UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

Anna Phillips, in her capacity as the Liquidating Trustee of the ONH Liquidating Trust v. SS Associates LLC

Adv. Proc. No. 25-51090 (Bankr. D. Del. Feb. 4, 2026) · No. Adv. Proc. No. 25-51090 (CTG); Main Case No. 23-10931 (CTG) · Decided February 4, 2026

SUMMARY

The memorandum opinion addresses a motion to dismiss an adversary proceeding seeking recovery of an allegedly fraudulent transfer from SS Associates LLC as a subsequent transferee under 11 U.S.C. § 550(a)(2). The court holds that the trustee may establish and avoid the initial transfer from the debtors to Schwartz within an action against the subsequent transferee without naming Schwartz as a party. The court denies dismissal with prejudice but dismisses the existing complaint with leave to amend because its counts confusingly characterize the transfer to SS Associates as an initial transfer.

CASE DETAILS

COURT	United States Bankruptcy Court for the District of Delaware
WRITING FOR THE COURT	Craig T. Goldblatt
JURISDICTION	United States Bankruptcy Court for the District of Delaware
DECIDED	February 4, 2026
DOCKET	Adv. Proc. No. 25-51090 (CTG); Main Case No. 23-10931 (CTG)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved to dismiss the trustee's adversary complaint under Federal Rule of Civil Procedure 12(b)(6), arguing that a trustee cannot recover from a subsequent transferee without first avoiding the initial transfer and joining the initial transferee. The court denied that argument but dismissed the existing complaint without prejudice because its avoidance counts were pleaded as though SS Associates were the initial transferee, granting leave to amend.
STANDARD OF REVIEW	On a motion to dismiss, the court construes the complaint in the light most favorable to the plaintiff and accepts reasonable inferences in the plaintiff's favor. Under Rule 8(a)(2), the complaint must contain more than labels, conclusions, or a formulaic recitation of the elements and must state a facially plausible claim for relief.

PRECEDENTIAL VALUE	unpublished
PARTIES	Anna Phillips, in her capacity as the Liquidating Trustee of the ONH Liquidating Trust v. SS Associates LLC

TOPICS

fraudulent transfer | motions to dismiss | bankruptcy | adversary proceedings | pleadings

PRACTICE AREAS

Bankruptcy | Bankruptcy litigation | Fraudulent transfer litigation | Civil procedure | Commercial litigation

QUESTIONS PRESENTED

1. Whether a trustee may recover from a subsequent transferee under 11 U.S.C. § 550(a)(2) without naming the initial transferee as a defendant.
2. Whether the complaint adequately alleged an avoidable actual fraudulent transfer from the debtors to Schwartz.
3. Whether the complaint adequately alleged that SS Associates was a subsequent transferee with potential liability under 11 U.S.C. § 550(a)(2).
4. Whether the complaint's avoidance counts were deficient because they sought to avoid transfers from the debtors directly to SS Associates rather than the initial transfer from the debtors to Schwartz.

HOLDINGS

1. A trustee must actually avoid the initial transfer before recovering from a subsequent transferee under 11 U.S.C. § 550(a)(2), but the initial transferee need not be named as a party to the lawsuit.
2. The complaint adequately alleged an actual fraudulent conveyance from the debtors to Schwartz under 11 U.S.C. § 548(a)(1)(A) and therefore stated a basis for avoiding that initial transfer.
3. The complaint adequately alleged that SS Associates received funds from Schwartz that had previously been fraudulently transferred from the debtors, and those allegations were sufficient to plead prima facie potential liability as a subsequent transferee under § 550(a)(2).
4. The existing complaint was deficient because Counts I through IV were most naturally read as seeking avoidance of transfers from the debtors directly to SS Associates, although the trustee's theory was that the debtors' transfer to Schwartz should be avoided and recovery should then be sought from SS Associates as a subsequent transferee.

KEY QUOTATIONS

> *"Avoidance is just an element of liability that must be shown to permit a trustee, as plaintiff, to recover against a defendant under § 550. That is simply an in personam action against the defendants named in that lawsuit."* (Analysis § II)

> *“The language of the statute is clear that the initial transfer must be avoided. There is no reason, however, why the initial transferee needs to be a party to the lawsuit in which that transfer is avoided.”* (Analysis § II)

> *“The existing complaint, however, will be dismissed with leave for the trustee to file an appropriate amended complaint within 30 days.”* (Conclusion)

FACTUAL BACKGROUND

Elchonon Schwartz allegedly raised tens of millions of dollars from investors through the debtors for stated commercial real estate projects, while representing that investor funds would be held in the debtors' accounts and used only for the projects. The complaint alleges that Schwartz instead transferred investor funds from the debtors into his personal bank account for personal use. Schwartz then transferred $250,000 from that account to SS Associates, which allegedly had no business relationship with the debtors and provided no value in exchange. Schwartz later pleaded guilty to wire fraud and admitted misappropriating and converting funds raised through CrowdStreet.

PROCEDURAL HISTORY

The debtors filed voluntary Chapter 11 petitions in July 2023, and the court confirmed their plan in December 2023. The plan transferred the debtors' claims and causes of action to the ONH Liquidating Trust. The trustee commenced this adversary proceeding in July 2025, alleging that funds fraudulently transferred from the debtors to Elchonon Schwartz were later transferred by Schwartz to SS Associates. SS Associates moved to dismiss, and the court issued this memorandum opinion after briefing and argument.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The complaint was dismissed without prejudice, and the trustee was granted leave to file an appropriate amended complaint within 30 days. The amended pleading may seek to avoid the transfer from the debtors to Schwartz and recover the transferred property or its value from SS Associates as a subsequent transferee.

CASES CITED

- In re Slack-Horner Foundries Co., 971 F.2d 577 (10th Cir. 1992)
- Image Masters, Inc. v. Chase Home Fin., 489 B.R. 375, 398 n.18 (E.D. Pa. 2013)
- In re Advanced Telecomm. Network, Inc., 321 B.R. 308, 328 (M.D. Fla. 2005)
- In re AVI, Inc., 389 B.R. 721, 733-734 (B.A.P. 9th Cir. 2008)
- In re Richmond Produce, 195 B.R. 455 (N.D. Cal. 1996)
- Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 501 B.R. 26, 30-31 (S.D.N.Y. 2013)
- In re International Administrative Services, Inc., 408 F.3d 689, 704 (11th Cir. 2005)
- In re Trans-End Technology, Inc., 230 B.R. 101, 104-105 (Bankr. N.D. Ohio 1998)

- In re Enron Corp., 343 B.R. 75, 80-81 (Bankr. S.D.N.Y. 2006)
- In re Enron Creditors Recovery Corp., 388 B.R. 489, 490 (S.D.N.Y. 2008)
- In re Student Aid Center, Inc., 608 B.R. 583, 587, 589 n.10 (Bankr. S.D. Fla. 2019)
- United States v. Whiting Pools, 462 U.S. 198, 203, 210 (1983)
- Rieser v. District of Columbia, 563 F.2d 462, 469 n.39 (D.C. Cir. 1977)
- Milligan v. Anderson, 522 F.2d 1202 (10th Cir. 1975)
- Temple v. Synthes Corp., 498 U.S. 5, 7 (1990)
- Nottingham v. General Am. Commc’ns Corp., 811 F.2d 873, 880 (5th Cir. 1987)
- Ashcroft v. Iqbal, 556 U.S. 662, 677-678 (2009)
- Phillips v. County of Allegheny, 515 F.3d 224, 233 (3d Cir. 2008)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)