Anderson v. Koch

Court of Appeals of Minnesota

March 18, 2019, Filed

A18-0685

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David Anderson, et al., Plaintiffs, vs. David H. Koch, et al., Defendants, New State Funding, LLC d/b/a Partners Funding, Appellant, Mark Sheffert, in his capacity as the court-appointed receiver for Koch Group MPLS, LLC, Respondent.

Notice: THIS OPINION WILL BE UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINNESOTA STATUTES.

Prior History: [*1] Hennepin County District Court File No. 27-CV-16-15134.

Disposition: Affirmed.

Core Terms

receivables, district court, insolvent, equivalent value, financing, voidable, factoring, parties, interest rate, cash flow, Funding, good faith, restaurant, courts, receipts, law law law, credibility, quotation, entity's, true-up, financial condition, balance sheet, underwriting, Appointment, cash-flow, loans, balance-sheet, preponderance, receivership, unreasonably

Counsel: For Appellant: Paul L. Ratelle, Fabyanske, Westra, Hart & Thomson, P.A., Minneapolis, Minnesota; and Charles C.J. Schoenwetter, Bowman and Brooke LLP, Minneapolis, Minnesota.

For Respondent: Steven H. Silton, Joel D. Nesset, Cozen O'Connor, Minneapolis, Minnesota.

Judges: Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and Florey, Judge.

Opinion by: BJORKMAN

Opinion

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant-finance-company challenges the district court's disallowance of its secured-creditor claim against a restaurant receivership, arguing that the district court mischaracterized its agreement with the restaurant as a loan rather than a future-receivables factoring agreement and erred by voiding the agreement under the Minnesota Uniform Voidable Transfers Act. We affirm.

FACTS

On June 21, 2016, appellant New State Funding, LLC d/b/a Partners Funding (New State) entered into a "revenue based factoring agreement" with Koch Group MPLS, LLC d/b/a Seven Steakhouse (Koch Group).[1] In exchange for New State's immediate payment of $500,000, Koch Group agreed to make daily payments representing 16% of daily receipts to New State until it reached **[*2]** $670,000. The agreement sets Koch Group's daily payment at $4,528, but contains a "true-up" clause under which this amount could be adjusted. The agreement requires Koch Group to warrant its solvency, prohibits Koch Group from obtaining additional financing after the agreement became effective, and expressly states that it is not a loan. Upon default, which includes violation of any term of the agreement, Koch Group must immediately pay to New State the "full uncollected Receipts Purchased Amount plus all fees due under this Agreement."

Within four months, a number of individual Koch Group investors sued Koch Group, David H. Koch, and Alexus Koch for breach of fiduciary duty, theft, and unjust enrichment. The complaint alleges that David and

[1] In addition to the entities referenced above, the contract includes other similarly named entities.

Alexus Koch acted fraudulently and "grossly mismanaged Seven," and that they obtained "large loans secured by Seven," took money from Seven without accounting for it, and formed a new company in order to divert Seven's funds.

The district court appointed respondent Mark Sheffert as an emergency limited receiver over the assets of Koch Group and Seven, and amended that order to appoint Sheffert as general receiver in November 2016. A week after the **[*3]** general receiver appointment, the district court approved the sale of Seven's operating assets to another investment group for $1,700,000, free of all liens and interests. The sale closed on January 20, 2017.

In April 2017, the district court granted the receiver's motion to establish claim procedures for creditors. New State timely submitted a claim for $347,728.

In July 2017, the receiver submitted a report recommending that one secured creditor receive a full allowance, three receive reduced allowances, and seven claims be disallowed, for a total distribution of $340,632.34 from the receivership's assets. He recommended that New State's claim be discounted by $129,732.96, or roughly 39%, explaining:

> Pursuant to that certain Revenue Based Factoring (RBF/ACH) Agreement dated on or about June 16, 2016, New State Funding, LLC ("New State") advanced Koch Group the sum of $500,000.00. Pursuant to the parties' agreement, New State was to receive daily payments over a one hundred and forty-eight (148) day period, in a total amount of $670,000.00. The effective interest rate under the New State agreement, therefore, was 83.9% per annum. As of the Appointment Date, Koch Group had paid New State **[*4]** the sum of $330,072.00.
> . . . .
> The Receiver has determined that the interest rate and the fees sought by New State are not commercially reasonable, and that Koch Group did not receive reasonably equivalent value in exchange for any agreement that it may have made to pay such charges. It is the Receiver's determination that a commercially reasonable interest rate for a transaction of this type would be 15% per annum, and that the New State claim should therefore be allowed in the amount of $200,133.48 . . . .

New State is the only secured creditor that objected to the receiver's report.

The district court conducted an evidentiary hearing during which the parties' respective experts, both of whom the district court found qualified, submitted written reports and testified. Michael Doyle, the receiver's expert, testified that the exorbitant interest rate on the transaction made it an unreasonable debt for Koch Group to assume. Doyle testified that Koch Group had made 73 payments of $4,528 per business day at the time of the receiver's appointment—reflecting an annualized interest rate of nearly 84%. According to Doyle, the return on this transaction to New State was "far in excess of" the **[*5]** return rate for similar transactions.

Doyle further testified that Koch Group's balance sheet showed the company was clearly insolvent and "unfinanceable" when it entered the agreement in June 2016, and that the extent of its insolvency was even more apparent if intangible assets were considered.[2] Koch Group immediately spent $293,000 of the funds it received from New State to pay off existing creditors, and the funds received effectively wrapped the existing loans into the new $4,500 daily payment, extending the terms of the prior loans. According to Doyle, the new payment obligations to New State effectively increased the prior loan payments from $2,000 to $2,700. Under these circumstances, Doyle opined that the $500,000 Koch Group received from New State was not reasonably equivalent value for the $170,000 payment obligation Koch Group assumed.

Jason Bishop, for New State, described restaurant financing as different from other types of financing because restaurants have relatively little asset value but produce a relatively high cash flow. When evaluating a restaurant's financing request, potential investors examine the restaurant's debt obligations and "purchase the receivables . **[*6]** . . with the idea that the restaurant is going to throw off, if they average a 13-percent profit, enough money to be able to pay us back the receivables . . . while still maintaining their regular operations."

Bishop testified that the financing arrangement between New State and Koch Group "did not vary from the normal . . . industry practices." He opined that Koch Group received reasonably equivalent value for its obligations to New State because the agreement extinguished debt payments of over $7,000 per day,

[2] Doyle's report states that "New State did not conduct a reasonable level of underwriting prior to advancing $500,000 to Koch Group in June 2016."

replaced them with lower payments of approximately $4,500 per day, thus increasing daily cash flow by $3,000, all while "extinguish[ing] tax burdens." Based on a 20-day monthly banking calendar, Bishop calculated that the agreement improved Koch Group's cash flow by $60,000 per month.

Bishop faulted Koch Group for putting itself in a worse financial position by later entering into financing agreements with other investors, in contravention of the agreement. He asserted that Koch Group would "probably still be in business" had it not taken on additional debt after entering into the agreement with New State.

On cross-examination, Bishop conceded that he did not know whether the agreement's **[*7]** true-up provision was ever invoked, and had not analyzed whether Koch Group was in financial distress and "insolvent from a balance sheet perspective" at the time it entered the agreement. And he was unaware that Koch Group had "few, if any, other financing options available to it." But he still believed Koch Group was in a "good" financial position because "they were running about 5.7 percent rent to receipts" in an industry in which "it's acceptable to go up to ten percent," and because the receiver was able to sell the business immediately after establishment of the receivership. Bishop described the financing offered by New State as "provided to Koch [Group] in good faith,"[3] and approved in accordance with "traditional underwriting" principles. And he insisted the agreement is "[a]bsolutely not" a loan.

Following the evidentiary hearing, the district court issued an order disallowing New State's claim in its entirety. The district court determined that: (1) the agreement between New State and Koch Group is a loan, not a future-receivables factoring agreement, despite contract language suggesting otherwise; (2) the agreement is voidable under the Minnesota Uniform Voidable Transactions **[*8]** Act (the Act), *Minn. Stat. §§ 513.41-.51* (2018), because Koch Group did not receive a reasonably equivalent value in exchange for its debt obligation; and (3) New State is not entitled to an allowance as a creditor because it did not enter into the agreement in good faith. The district court's decision was premised, in part, on credibility determinations regarding the conflicting expert testimony:

> Mr. Doyle credibly testified that the Koch Group was unable to pay its debts and should not have qualified for additional financing at the time of the Agreement. The conflicting testimony from Mr. Bishop that the transaction left the Koch Group in a stronger financial position was less credible because the Koch Group was forced to obtain additional financing within three weeks of the transaction, and the company went into a state court receivership just a few months after that.

New State appeals.

DECISION

We review a district court's findings of fact for clear error. *Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999)*; *see* *Minn. R. Civ. P. 52.01* ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."). Under this standard, **[*9]** we view the evidence in the light most favorable to the district court's findings and defer to the district court's opportunity to assess witness credibility. *In re Stisser Grantor Trust, 818 N.W.2d 495, 507 (Minn. 2012)*. Factual findings are clearly erroneous "if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher, 589 N.W.2d at 101*. But we review de novo a district court's conclusions of law, including interpretation of contracts and statutes. *State v. Thonesavanh, 904 N.W.2d 432, 435 (Minn. 2017)*; *Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 364 (Minn. 2009)*.

New State argues that the district court erred by (1) construing the agreement between Koch Group and New State as a loan rather than a factoring agreement for future receivables, (2) concluding that the agreement is voidable because Koch Group did not receive reasonably equivalent value in exchange for the transfer under *Minn. Stat. § 513.44(a)(2)* and was insolvent at the time of the transfer within the meaning of *Minn. Stat. § 513.45(a)*, and (3) voiding the agreement based on the ground that New State did not enter into the agreement in good faith. We address each argument in turn.

[3] When asked about the interest rate that the receiver characterized as roughly 84%, Bishop said, "I don't look at it that way. I look at it as a discount rate based off of the receivables that were sold. So it was a 26-percent discount on the receivables. The issue is i[t] doesn't matter whether it takes two years or three months. They still only pay back the $670,000."

I. The agreement is a loan subject to the Act.

Generally, "[t]he plain and ordinary meaning of the contract language controls, unless the language is ambiguous." *Bus. Bank v. Hanson, 769 N.W.2d 285, 288 (Minn. 2009)*. "The cardinal purpose of construing a contract is to give effect to the intention **[*10]** of the parties as expressed in the language they used in drafting the whole contract." *Art Goebel, Inc. v. N. Suburban Agencies, Inc., 567 N.W.2d 511, 515 (Minn. 1997)*; *see* *Pollock-Halvarson v. McGuire, 576 N.W.2d 451, 455 (Minn. App. 1998)* (stating that "[p]eople have a right to make legal contracts and to expect the courts to honor and give binding effect to their agreements" and that district courts lack "authority to invalidate unwise or improvident agreements or to rewrite them so as to achieve a fairer bargain for one party or another"), *review denied* (Minn. May 28, 1998). But courts must also consider a contract's "spirit and purpose" and "there can be no doubt that the court may look beyond the form into which the parties have cast their agreement." *Marso v. Mankato Clinic, Ltd., 278 Minn. 104, 153 N.W.2d 281, 289 (Minn. 1967)* (quotation omitted); *see* *Liona Corp., N.V. v. PCH Assocs. (In re PCH Assocs.), 804 F.2d 193, 198 (2d Cir. 1986)* (stating that "it would be inherently inequitable to allow the parties' choice of label to affect the rights of third party creditors"). "In fact it is the substance of an agreement rather than its form . . . which must control its construction." *Marso, 153 N.W.2d at 289* (quotation omitted). When an appeal presents mixed questions of law and fact, we will "correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *Safety Ctr., Inc. v. Stier, 903 N.W.2d 896, 899 (Minn. App. 2017)* (quotation omitted).

New State contends that **[*11]** the district court erred by treating the agreement as something other than it is—an agreement to purchase future receivables. The agreement expressly states that it is a factoring agreement based on the sale of future accounts receivable. And it both includes and excludes provisions that are antithetical to its construction as a loan: the agreement does not include a fixed payment term but does contain a "true-up" provision that allows for adjustment of payment amounts based on variations in Koch Group's actual receivables.

But another important provision of the agreement is consistent with a loan and not a factoring agreement. The agreement requires Koch Group to "protect" New State against "default," and defines default broadly to include Koch Group's violation of "any term or covenant in this agreement." Upon default, Koch Group must pay to New State "[t]he full uncollected Receipts Purchased Amount plus all fees due under this Agreement . . . immediately." This provision shifts all risk of non-collection of receivables to Koch Group. "When a buyer of accounts receivable holds substantial recourse against the seller, thereby shifting all risk of non-collection on the seller, courts **[*12]** have routinely held the transaction to be a financing arrangement and not a sale." *Kerr v. Commercial Credit Grp., Inc. (In re Siskey Hauling Co., Inc.), 456 B.R. 597, 607 (Bankr. N.D. Ga. 2011)*; *see* *Major's Furniture Mart, Inc. v. Castle Credit Corp., 602 F.2d 538, 546 (3d Cir. 1979)* (ruling that a purported sale of accounts receivable was a loan because "none of the risks present in a true sale is present here").

The record also demonstrates that the parties performed as they would under a loan. Neither party disputes the fact that Koch Group made 73 identical payments to New State in the exact amount designated in the agreement, totaling $330,072. And it is undisputed that neither party invoked the true-up provision to alter the daily payment amount. Doyle's report describes the financing as a "short-term loan" that included "a fixed payment due of $4,528 per day for 147 days with a final payment due on day 148 for the balance." The district court credited this testimony, finding "no evidence that . . . the daily payment amount was going to change." We defer to the district court's supported factual determinations. The court's reliance on the periodic nature of the payments and the lack of implementation of the true-up provision is not misplaced—making identical payments over a fixed period of time is a key feature of an installment-type loan. *See Black's Law Dictionary* 1078 **[*13]** (10th ed. 2014) (defining "installment loan" as "[a] loan that is to be repaid in usu. equal portions over a specified period"); *see also* *Firstar Eagan Bank, N.A. v. Marquette Bank Minneapolis, N.A., 466 N.W.2d 8, 11 (Minn. App. 1991)* ("It is ordinarily essential to the existence of a loan that there be both an actual delivery of something to another and a promise of repayment."), *review denied* (Minn. Apr. 29, 1991).

Given the conflicting language of the agreement and the largely undisputed evidence regarding how the parties performed under the agreement, we discern no error in the district court's legal conclusion that the agreement is a loan. *See* *Fenway Fin., LLC v. Greater Columbus*

Realty, LLC, 2013- Ohio 3623, 995 N.E.2d 1225, 1231-32 (Ohio Ct. App. 2013) (considering conflicting provisions in a purported factoring agreement and how the parties performed under the agreement in determining that the agreement was actually a loan, relying on the receivables purchaser's failure to bear any risk). We conclude that the record and law support the district court's determination that the substance of the agreement is a loan, under which Koch Group's performance was "functionally a payment of $670,000 amortized in 148 daily installments."[4]

II. The agreement is voidable under the Act.

Having upheld the district court's determination that the agreement **[*14]** is a loan, we consider whether the debt Koch Group incurred is voidable based on constructive fraud.

A. Koch Group did not receive reasonably equivalent value for the loan.

Minn. Stat. § 513.44 provides:

> (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> . . . .
>
> (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
>
> (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
>
> . . . .
>
> (c) A creditor making a claim under *paragraph (a)* has the burden of proving the elements of the claim by a preponderance of the evidence.

The Act defines a transfer as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an **[*15]** asset." *Minn. Stat. § 513.41(16)*.

The parties dispute whether Koch Group received "reasonably equivalent value" for the debt it incurred. The Act does not define "reasonably equivalent value." But the term is derived from bankruptcy law,[5] and "largely [presents] a question of fact, as to which considerable latitude must be allowed to the trier of facts." *Stanley v. U.S. Bank Nat'l Assoc. (In re TransTexas Gas Corp.), 597 F.3d 298, 306 (5th Cir. 2010)* (quotation omitted). Generally, courts consider whether what the debtor received "is substantially comparable" to what the creditor transferred. *BFP v. Resolution Trust Corp., 511 U.S. 531, 548, 114 S. Ct. 1757, 1767, 128 L. Ed. 2d 556 (1994)*; *see* *Barber v. Golden Seed Co., 129 F.3d 382, 387 (7th Cir. 1997)* (in determining reasonably equivalent value, courts consider several factors, including the fair market value of "what was transferred and . . . what was received"; and whether the transaction took place at arm's length); *Harker v. Ctr. Motors, Inc. (In re Gerdes), 246 B.R. 311,*

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[4] In arguing that the district court erred in categorizing the agreement as a loan, New State relies heavily on *Colonial Funding Network, Inc. v. Epazz, Inc., 252 F. Supp. 3d 274 (S.D.N.Y. 2017)*. In *Colonial Funding*, the court considered whether "***merchant*** ***cash*** ***advance*** agreements," which authorized a merchant to sell its future receivables in exchange for money advances from a buyer, was a loan or another type of contract. *252 F. Supp. 3d at 278-79*. The agreements provided for specific daily amounts to be placed in a designated bank account which the buyer could withdraw "as base payments to be credited against 15% of daily receipts." *Id. at 279*. At month-end, the buyer was to "credit or debit" the account depending on the difference between the actual receipts and the base payments. *Id.* The agreements did not set an interest rate or an end-date for performance. *Id.* The court rejected the merchant's argument that the agreements constituted usurious loans, because the base payments were "not payable absolutely" and "depended upon a crucial contingency: the continued collection of receipts by [the merchant]." *Id. at 281*. While this case is somewhat factually similar to *Colonial Funding*, it is different in a crucial way: the true-up provision was never employed by Koch Group or New State over the course of 73 payments. And, as the receiver points out, "In purportedly purchasing all of Koch's future revenues, but permitting Koch to retain a large percentage of those same revenues, [New State] was looking to exactly the same source of payment as any other creditor, and the Agreement functioned exactly as a loan." For these reasons, *Colonial Funding* is not apposite.

[5] ***11 U.S.C. § 548(a)(1)(B) (2012)*** (providing that a "trustee may avoid any transfer" if the debtor "received less than a *reasonably equivalent* **[*16]** *value* in exchange for such transfer or obligation" and was insolvent (emphasis added)).

313 (Bankr. S.D. Ohio 2000) (in determining reasonably equivalent value, the court should "compare the value received to the value given up by the debtor"). Caselaw does not require "a dollar-for-dollar exchange," and "[s]ome courts have stated that a debtor receives reasonably equivalent value if it receives roughly the value it gave." ASARCO LLC v. Americas Mining Corp., 396 B.R. 278, 337 (Bankr. S.D. Tex. 2008); *see also* Lindquist v. JNG Corp. (In re Lindell), 334 B.R. 249, 255 (Bankr. D. Minn. 2005) (stating that courts may consider other factors, including fair-market value, which is a typical benchmark for exchanges of money and property).

New State argues that the receiver did not meet its burden of proving the $500,000 Koch Group received was not reasonably equivalent to the $670,000 it agreed to pay New State. We are not persuaded. In his report and testimony at the evidentiary hearing, Doyle offered two examples of why Koch Group did not receive reasonably equivalent value for its debt. First, the effective interest rate was excessive. Doyle calculated the effective interest rate as nearly 84%—an amount that is "significantly higher" than similar types of loans. Doyle reported that commercial loans such as factoring agreements do not require interest rates greater than 25%. Even when compared to equity financing, which involves unsecured debt, New State's interest return was "significantly higher than what quasi-equity or equity sources would expect." Even Bishop conceded that the interest rate reflected in the agreement "would absolutely be high" if the agreement is classified as a loan.

Second, the terms of the agreement were "extremely punitive to Koch Group" because the "loan permitted [an] insolvent company to continue to operate and to exacerbate and accelerate the speed and magnitude of [its] decline and **[*17]** losses." Doyle testified that he created a pro rata cash-flow analysis for a one-year period and, even though his estimates of Koch Group's debts were too conservative, he concluded that "cash flow available for debt service would be about 900-plus thousand dollars," and his estimate of Koch Group's debt "was over a million dollars." *See* Pioneer Home Builders, Inc. v. Int'l Bank of Commerce (In re Pioneer Home Builders, Inc.), 147 B.R. 889, 894 (Bankr. W.D. Tex. 1992) (interpreting "unreasonably small" assets provision as "a general inability to generate enough cash flow to sustain operations," and stating, "a debtor's unreasonably small capital structure is presumed to lead eventually to insolvency, which is why it serves as a ground for treating the transfer . . . as fraudulent vis-à-vis other unsecured creditors"). Doyle also stated that the loan from New State effectively extended the term of Koch Group's existing loan and incremental payments from $2,000 to $2,700. Consistent with this testimony, the district court found that "Koch Group's cash flow was unreasonably small relative to its debt" and it "incurred debts beyond its ability to pay."[6]

In evaluating the opposing expert opinions on matters related to reasonably equivalent value, the district court acted squarely within its role as fact-finder. "[W]hen **[*18]** conflicting opinions of expert witnesses have a reasonable basis in fact, the trier of fact must decide who is right," and "[t]he weight and credibility of expert testimony is for the fact-finder to determine." Rainforest Cafe, Inc. v. State Inv. Bd., 677 N.W.2d 443, 451 (Minn. App. 2004) (quotation omitted). The district court relied on Doyle's report and testimony, and rejected Bishop's opinion that Koch Group was in a sound financial condition when the parties entered into the loan and that the loan benefited Koch Group.

On this record, we conclude that the district court did not clearly err in determining that Koch Group did not receive reasonably equivalent value for the loan.

B. Koch Group was insolvent at the time it entered the agreement with New State.

Minn. Stat. § 513.45(a) provides:

> A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

The creditor must prove a transfer is voidable under this provision by a preponderance **[*19]** of evidence. *Minn. Stat. § 513.45(c)*. In addressing this voidability ground,

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[6] In examining Koch Group's overall financial condition, an important factor in determining reasonably equivalent value, the district court relied on a balance-sheet analysis proffered by Doyle, rather than the cash-flow considerations urged by Bishop. A district "court's method of valuation [of a restaurant] must be affirmed if it has an acceptable basis in fact and principle." Mitterhauser v. Mitterhauser, 399 N.W.2d 664, 666 (Minn. 1987). Both bases are met here.

the district court incorporated its previous analysis regarding reasonably equivalent value and specifically addressed only the additional element of Koch Group's solvency.

When a debtor's balance sheets show liabilities exceeding assets, the debtor is insolvent for purposes of the Act. *See Minn. Stat. § 513.42(a)* ("A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.").[7] The district court relied on this statutory definition in finding Koch Group was insolvent at the time it entered the agreement. The record supports this determination. Koch Group's June 2016 balance sheet, which New State had in its underwriting file, demonstrates the company was insolvent within the meaning of the statute. Indeed, the parties do not dispute that Koch Group was insolvent under the balance-sheet definition. The district court rejected New State's contention that it had examined Koch Group's cash flow because New State's underwriting file did not show that it had analyzed "whether the Koch Group had any money available after it met its operating expenses." And the court discounted New State's alternative **[*20]** cash-flow measure of Koch Group's financial condition because "Koch Group took on additional debt . . . in an attempt to *improve* its cash flow." The district court concluded, based on these findings, that Koch Group met the statutory definition of an insolvent debtor for purposes of application of the Act. The record fully supports these determinations.

In sum, the district court's findings that the agreement is voidable under two provisions of the Act are not clearly erroneous. And the court did not err in applying the Act to these findings.

III. New State is not a good-faith transferee.

If an agreement is voidable under the Act, it may still be enforced if its proponent demonstrates by a preponderance of the evidence that it was "a good faith transferee."

> Notwithstanding voidability of a transfer or an obligation under *sections 513.41 to 513.51*, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:
> (1) a lien on or a right to retain an interest in the asset transferred;
> (2) enforcement of an obligation incurred; or
> (3) a reduction in the amount of the liability on the judgment.

Minn. Stat. § 513.48(d). The party seeking to apply this provision bears **[*21]** the burden of proof, which must be demonstrated by a preponderance of evidence. *Id. (g)(1)*, *(h)*.

"A party to a contract does not act in bad faith by asserting or enforcing legal and contractual rights." *Sterling Capital Advisors, Inc. v. Herzog, 575 N.W.2d 121, 125 (Minn. App. 1998)* (quotation omitted). But when a party enters into an agreement with "enough knowledge of the actual facts to induce a reasonable person to inquire further about the transaction," that party lacks good faith under the Act. *Plotkin v. Pomona Valley Imports, Inc. (In re Cohen), 199 B.R. 709, 719 (B.A.P. 9th Cir. 1996)*. "Such inquiry notice suffices on the rationale that some facts suggest the presence of others to which a transferee may not safely turn a blind eye." *Id.* For this reason, courts "look to what the [creditor] objectively 'knew or should have known' in questions of good faith, rather than examining what the [creditor] actually knew from a subjective standpoint." *Hayes v. Palm Seedlings Partners-A (In re Agric. Research & Tech. Grp.), 916 F.2d 528, 535-36 (9th Cir. 1990)*.

The district court found that New State knew or should have known of Koch Group's dire financial condition, under either a balance-sheet or cash-flow analysis. As noted above, New State conceded Koch Group's insolvency based on a balance-sheet analysis, and the court specifically rejected New State's cash-flow argument, noting that "[f]inancing existing debt in a manner that reduces daily payments may improve **[*22]** cash flow, but reduced debt payment is not indicative of overall cash on hand." Doyle's testimony that New State's underwriting had not considered "whether Koch Group could essentially pay New State and all the other expenses" supports the district court's finding. Based on

[7] The Act's definition of insolvency is consistent with bankruptcy law. *See* ***11 U.S.C. § 101(32)(A) (2012)*** (defining "insolvent" as a "financial condition such that the sum of [an] entity's debts is greater than all of such entity's property, at a fair valuation"); *Everett v. Thomas Capital Invs. (In re Pacific Thomas Corp.), 543 B.R. 7, 13 (Bankr. N.D. Cal. 2015)* ("In an action to recover a preference or fraudulent transfer, insolvency may be determined on the basis of a 'balance sheet' test. This correlates with the definition of 'insolvent' in ***§ 101(32)*** that a corporation is insolvent if the sum of the entity's debts is greater than all of the entity's property at a fair valuation.").

the record and the Act, we discern no error by the district court in concluding New State did not prove that it entered the agreement in good faith.

Affirmed.

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