

COURTS RULING ON BELL'S MOTION SUMMARY JUDGMENT
02-50477

transfers are avoided under various sections of the Bankruptcy Code, including sections 544, 547 and 547, "the trustee may recover for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property" Such recovery may be from either the "initial transferee⁵," which would be Ms. Bell, or "any immediate or mediate transferee of such initial transferee⁶," which would be Holdings.

The gist of Counts II, III, and IV is that the Trustee is seeking to avoid the transfer between the Trust and Ms. Bell, namely, the Dation en Paiement. If such transfer is avoided, then pursuant to section 550, the Trustee may recover the property or its value from either Ms. Bell or Holdings. The Motion is not well-founded with respect to this argument.

B. Proof of the allegation of breach of fiduciary duty on the part of Ms. Bell will not support an avoidance of the Act of Exchange or receipt of farm and royalty income subsequent to such transfer.

The court agrees with Ms. Bell and Holdings in this regard. The Trustee asserts that Count I alleges numerous facts which will support a breach of fiduciary claim against Ms. Bell. Even if that is so, the remedy provided for such action is one in damages rather than an avoidance of the transaction. While the Trustee relies

⁵Section 550(a)(1).

⁶Section 550(a)(2).

