IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
July 30, 2020

Lyle W. Cayce
Clerk

No. 19-20358

In the Matter of: OLUYEMISI OMOKAFE OKEDOKUN,

Debtor

ELBAR INVESTMENTS, INCORPORATED,

Appellant,

v.

TODD PRINS; TRANSWORLD LEASING CORPORATION; INDUSTRY DRIVE PARTNERS, LIMITED; UNITED SENTRY MORTGAGE INVESTMENT FUND #1, L.L.C.,

Appellees.

Appeal from the United States District Court for the Southern District of Texas

Before ELROD, SOUTHWICK, and HAYNES, Circuit Judges..

JENNIFER WALKER ELROD, Circuit Judge:

This appeal arises from the criminal actions of former attorney Todd Prins. Two of Prins's former clients—TransWorld Leasing Corp. and Industry Drive Partners—are co-appellees. Appellee United Sentry Mortgage Investment Fund, a private lender, retained Prins to execute and post a notice of sale related to a piece of real property. Appellant Elbar Investments, Inc. is a foreclosure investment firm. Elbar, looking to make another investment,

wired $2.4 million to Prins to purchase the real property. Prins stole the funds tendered by Elbar and used a portion of those funds to pay TransWorld and Industry—from whom he was also stealing. Because of an automatic stay, title never transferred to Elbar. Now that much of the $2.4 million has been spent, the dispute is who will recover what is left.

At first glance, this case seems simple: United hired Prins to conduct a foreclosure sale; Elbar wired funds to Prins; Prins stole those funds and used them to reimburse other clients. But many of the key issues in this case turn on another part of the story: Elbar's repeated decisions to violate the bankruptcy code. Because Elbar fails to demonstrate reversible error as to the merits of its claims, we AFFIRM in part. We REMAND for the further consideration of prejudgment interest.

I.

This case involves an investor, Elbar, that wired money to an attorney, after the owner of a foreclosed property had declared bankruptcy. The attorney, who is currently serving time for his crimes, spent some of that money on personal luxuries, and transferred some of it to clients (whom he had also defrauded). That is the short story. But the details take some unpacking.

A.

United Sentry Mortgage Investment Fund is a private lender. United provided financing to Triple Gate Investments, an entity owned by Oluyemisi Omokafe Okedokun, the debtor, to purchase the real property located in Houston, Texas. Upon default by the debtor, United retained attorney Todd Prins to post the property for notice of sale, scheduled to occur on October 4, 2016. Elbar Investments, Inc., a privately held foreclosure investment firm, attended the October 4, 2016 sale.

On the morning of the foreclosure sale, the debtor filed a Chapter 7 bankruptcy petition and faxed a notice-of-bankruptcy filing to Prins.

Notwithstanding the bankruptcy notice, the foreclosure sale proceeded. With a bid of $2.4 million, Elbar won the auction. To satisfy the purchase price, Elbar tendered eleven cashier's checks, totaling the $2.4 million purchase price, to Victoria Shum, Prins's associate. Prins claimed, however, that his bank would not accept the cashier's checks and therefore the purchase price would need to be paid with either a single check or a wire transfer.

The next morning, October 5, 2016, Prins received both the recorded deed, evidencing a transfer of the property from Triple Gate to the debtor, and records from the Harris County Appraisal District, evidencing a homestead claim on the property. Victoria Shum relayed this information to Elbar which it acknowledged. Elbar, knowing that the automatic stay would preclude transfer of title, still wired $2.4 million to Prins's IOLTA account, in its second attempt to satisfy the purchase price. Because of the automatic stay triggered by the bankruptcy proceeding, Prins lacked the legal ability to transfer title to Elbar.

Prins subsequently transferred $2 million from his IOLTA account into his Prins Law Firm Wells Fargo account. Between October 19, 2016 and December 12, 2016, Prins spent these funds liberally. With the funds now in his Wells Fargo Operating account, Prins closed his law firm, paid his personal lawyers and taxes, and traveled across Europe. Prins also used a portion of the funds to pay clients from whom he had previously stolen. Two of these clients were TransWorld Leasing Corp. and Industry Drive Partners.

TransWorld and Industry had an unfortunate relationship with Prins. Transworld's started working with Prins on February 4, 2008, when it transferred $230,853.66 to Prins to resolve a tax dispute with Bexar County. Prins did not use these funds to resolve the tax dispute. Unbeknownst to TransWorld, as of December 27, 2017, the tax debt of $230,000 had risen to over $445,000. Prins's streak of fraudulent conduct continued in 2016 after

TransWorld became concerned that its tax dispute from 2008 had not been resolved. Prins forged a letter from the county tax assessor's counsel stating that TransWorld owed $169,807.29 in unpaid taxes. Prins then convinced TransWorld to deposit $169,807.29 into his IOLTA account. On October 21, 2016, after "resolving the tax issue" for $5,000, Prins wrote a check from the Wells Fargo Operating account to TransWorld in the amount of $164,807.29. This amount represents the $169,807.29 deposited by TransWorld, less the $5,000 "tax settlement." Elbar claims that it is entitled to the $164,807.29 Prins transferred to TransWorld because Prins took those funds out of its $2.4 million wire transfer.

We turn next to Industry's relationship with Prins. A year before the foreclosure sale at issue, Jim Pfirrmann, a co-manager of Industry's general partner, G5 Property Holdings, LLC, transferred $300,000 out of Industry's account and into Prins's for safekeeping. On November 4, 2016, upon learning that Prins had filed for bankruptcy and was being sued by two of his former clients, Cindy Gabriel, a general partner of Industry, asked Pfirrmann to request the $300,000 he had placed in safekeeping to be returned. Prins returned $300,000 later that day. Elbar claims that it is entitled to the $300,000 Prins transferred to Industry because the source of this transfer was also its own $2.4 million wire transfer.

On November 8, 2016, Elbar's counsel requested that Prins return the $2.4 million Elbar had wired to Prins. However, as we now know, Prins had already transferred a significant portion of these funds to his Wells Fargo Operating account. As of October 17, 2016 only $13,414.57 remained.

Prins has since entered into a plea agreement with the United States Attorney for the Western District of Texas. He pled guilty to wire fraud and on May 15, 2018 was sentenced to seventy-two months imprisonment, three years of supervised release, and was ordered to pay $2,975,264 in restitution.

That district court granted the government's motion to set aside the preliminary order of forfeiture in lieu of restitution, effectively allowing funds to be returned to Elbar. In fact, of the $2.4 million that Elbar initially sought to recover, Elbar has received a total of $1,683,915.42: $82,373.28 from the IRS as a result of Prins's bankruptcy plus $1,601,542.14 from Prins's criminal case.

B.

This appeal arises from Elbar's litigation against United, TransWorld, and Industry in the debtor's bankruptcy proceeding. The bankruptcy court conducted a multi-day trial, took the matter under advisement, and issued a 176-page memorandum opinion detailing its judgment denying all relief requested by Elbar against United, TransWorld, and Industry. Elbar appealed to the district court, which affirmed. Elbar then timely appealed to this court.

II.

We review the district court's judgment "by applying the same standard of review to the bankruptcy court's conclusions of law and findings of fact that the district court applied." *In re JFK Capital Holdings, L.L.C*, 880 F.3d 747, 751 (5th Cir. 2018) (*quoting Barron & Newburger, P.C. v. Tex. Skyline, Ltd. (In re Woerner)*, 783 F.3d 266, 270 (5th Cir. 2015) (en banc). Accordingly, we review questions of fact for clear error and conclusions of law *de novo*. *Matter of Cowin*, 864 F.3d 344, 349 (5th Cir. 2017). Mixed questions of law and fact are reviewed *de novo*. *Id.*

III.

When it comes to foreclosure speculation and automatic stay violations, this is not Elbar's first rodeo. *See, e.g.*, *Elbar Invs., Inc. v. Pierce (In re Pierce)*, 272 B.R. 198, 203 (Bankr. S.D. Tex. 2001), *aff'd*, 91 F. App'x 927 (5th Cir. 2004); *see also In re Cueva*, 200 F. App'x 334 (5th Cir. 2006) ("Once again, [Elbar's vice president] comes before this court demanding a return of money he lost in foreclosure speculation. And, once again, we must deny him."); *In re Cueva*,

371 F.3d 232, 237 (5th Cir. 2004) (concluding that "[t]he foreclosure sale was invalid, the stay was not modified, and therefore [Elbar's vice president] was not entitled to possession or ownership of the Property").

This time around, Elbar asked the bankruptcy court to recover $716,084.58. That amount would make Elbar whole ($2,400,000 less the $1,683,915.42 already recovered equals $716,084.58). The bankruptcy court found that Elbar was not entitled to any relief against United, TransWorld, or Industry for a number of reasons but predominantly because of Elbar's repeated and willful violations of the automatic stay. The bankruptcy court found that Elbar's multiple violations of the automatic stay were the most significant factor weighing against Elbar's claim for equitable subrogation, unjust enrichment, and money had and received. To rebut that analysis, Elbar argues on appeal that it did not violate the automatic stay. Accordingly, we turn to that issue first.

A.

A bankruptcy petition operates as a stay against "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate" and "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a)(3)−(4). The stay is not a judicial injunction that depends on notice; rather the stay is effective upon the filing of the case, regardless of notice. *See id.* § 362(a); *In re Cueva*, 371 F.3d at 237 ("Texas law has long held that foreclosures in violation of the automatic stay are invalid, even if the parties did not have notice . . . ."); *see also Elbar Invs., Inc.*, 272 B.R. at 203.

The bankruptcy court found that Elbar violated the stay on three occasions. First, on October 4, 2016, when Elbar was the high bidder at the foreclosure sale and tendered cashier's checks to Shum. That tender occurred three hours after the debtor had filed her bankruptcy petition. Second, Elbar

willfully violated the stay on October 6, 2016, when it wired transferred $2.4 million to Prins's IOLTA, even after it received notice of the bankruptcy petition. Third, it willfully violated the stay on January 3, 2017, when it filed a *lis pendens* against the property. On appeal, Elbar contends that none of those actions ran afoul of the bankruptcy code. We reject those contentions.

First, Elbar's October 4 attempt to satisfy the purchase price and obtain possession of the property by tender of the eleven cashier's checks—even without the knowledge of the bankruptcy petition—was an "act to obtain possession of property of the estate." *See* 11 U.S.C. § 362(a). That means it is a violation of the automatic stay. While notice of the petition would have been a relevant consideration as to the willfulness of any stay violation, it is not a relevant consideration as to *whether* the stay was violated.

Second, Elbar concedes that on October 6, after it "learned of the Debtor's bankruptcy, [it] completed the agreement to wire the $2.4 million to Prins' IOLTA Account." Elbar reasoned that either the automatic stay was annulled (in which case it would receive the deed to the property) or the stay was not annulled (in which case the money would be returned). We agree with the bankruptcy court that this was a willful violation. *See In re Chesnut*, 422 F.3d 298, 302 (5th Cir. 2005) ("A willful violation does not require a specific intent to violate the automatic stay.") (quoting *In re Taylor*, 884 F.2d 478, 482 (9th Cir. 1989) (internal quotation marks omitted).

Elbar violated the automatic stay a third time when it filed a notice of *lis pendens* against the property on January 3, 2017. This was an "act . . . to exercise control over property of the estate." *See* 11 U.S.C. § 362(a)(3). A *lis pendens* acts similarly to a lien or attachment in that it acts as a cloud on title. *See Drake Interiors, Inc. v. Thomas*, 531 S.W.3d 325, 329 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Because Elbar knew of the automatic stay and intentionally filed a post-petition *lis pendens* action, we agree with the

bankruptcy court that Elbar engaged in another willful violation of the automatic stay.

The bankruptcy court properly found Elbar violated the automatic stay thrice, and twice willfully. In addition, we agree with the bankruptcy court that "Elbar is an extremely knowledgeable and sophisticated litigant that understands perfectly [that its actions were] a direct violation of the Bankruptcy Code." *Cf. Elbar Invs., Inc.*, 91 F. App'x at 929−30; *see also In re Cueva*, 371 F.3d at 238−39. The bankruptcy court was correct to weigh those violations against Elbar in its decision.

IV.

On appeal, Elbar raises two claims against United. First, Elbar argues that Texas law regarding equitable subrogation entitles it to the note and a lien against the property. And second, Elbar claims that United is liable for fraud in a real estate transaction. Despite prompting from the clerk's office of this court, United did not file a response to either claim. Nonetheless, we agree with the bankruptcy court that neither Elbar's claim for equitable subrogation nor its claim for fraud in a real estate transaction warrant relief.

A.

Elbar contends that the bankruptcy court erred when it denied its claim for equitable subrogation against United. Elbar paid Prins following the foreclosure sale but never received the title to the property from United. Thus, Elbar argues, it should be subrogated to United's lien on the property.

"Equitable subrogation is the legal fiction through which a person or entity, the subrogee, is substituted, or subrogated, to the rights and remedies of another by virtue of having fulfilled an obligation for which [another] was responsible." *Universal Truckload, Inc. v. Dalton Logistics, Inc.*, 946 F.3d 689, 701–02 (5th Cir. 2020) (quoting *Gen. Star Indem. Co. v. Vesta Fire Ins.*, 173

F.3d 946, 949 (5th Cir. 1999)). Equitable subrogation applies "when 'one person, not acting voluntarily, has paid a debt for which another was primarily liable and which in equity should have been paid by the latter.'" *Id.* (quoting *Frymire Eng'g Co. v. Jomar Int'l, Ltd.*, 259 S.W.3d 140, 142 (Tex. 2008)). When the issue is one of purely equitable subrogation, "[it] is a matter left to the court's discretion" that requires the trial court to balance the equities in light of the totality of the circumstances; thus each case will turn on its own facts. *In re Cueva*, 371 F.3d at 238; *see also Providence Inst. for Savs. v. Sims*, 441 S.W.2d 516, 519 (Tex. 1969).

The equitable factors that Texas courts generally consider when conducting the balancing test include: (1) the negligence of the party claiming subrogation; (2) whether that party had notice of other interests; and (3) whether the superior or equal equities of other interests will be prejudiced if equitable subrogation is allowed. *See Sims*, 441 S.W.2d at 519; *Bank of Am. v. Babu*, 340 S.W.3d 917, 926 (Tex. App.—Dallas 2011, pet. denied) (describing the factors a court may consider in conducting as including "the negligence of the party claiming subrogation, whether that party had notice of the intervening lien, and whether the intervening lienholder will be prejudiced if equitable subrogation is allowed"); *Farm Credit Bank of Tex. v. Ogden*, 886 S.W.2d 305, 311 (Tex. App.—Houston [1st Dist.] 1994, no writ) (finding that "[t]his equitable subrogation [did] not prejudice the [appellees]"). This list of factors is illustrative, not exhaustive. *Babu*, 340 S.W.3d at 926. Because Elbar is the party asserting equitable subrogation, it bears the burden of persuasion. *See Murray v. Cadle Co.*, 257 S.W.3d 291, 300 (Tex. App.—Dallas 2008, pet. denied).

The bankruptcy court determined that Elbar failed to satisfy the elements of the cause of action because it did not pay a debt, and that even if Elbar had, it would not prevail on the equities.

As to the elements, the bankruptcy court concluded that Elbar did not pay a debt to United. Elbar transferred $2.4 million to Prins, who then spent the funds on travel, personal taxes, legal fees, and partially repaying former clients from whom he had previously stolen (Industry and Transworld). Prins never wired the money to United. And because of the automatic stay, title never transferred from United. Prins stole Elbar's money; he did not pay it to United, which means the debt to United (*i.e.* the remaining balance under the note) was never paid. A plaintiff may not subrogate "the rights of a creditor until the creditor's claim against the debtor has been satisfied or paid in full." *Dietrich Indus., Inc. v. United States*, 988 F.2d 568, 572 (5th Cir. 1993). Because Elbar never paid another's debt, the bankruptcy court held, it was not entitled to equitable subrogation.

The balance of the equities also weighed against Elbar in the bankruptcy court. First, Elbar's willingness to knowingly violate the automatic stay was a "large strike" against its claim for equitable relief. Second, Elbar was both a sophisticated party, and a repeat player in the world of bankruptcy and foreclosure sales. Moreover, Elbar acted carelessly by failing to determine that the property of the estate was subject to the automatic stay before it wired Prins the proceeds. Elbar also had notice of United's deed of trust lien on the Property, which weighed against it. And finally, the bankruptcy court explained, if Elbar subrogated United's lien, then United would be unfairly prejudiced. Elbar has already recovered over $1.6 million from the Prins criminal case and Prins bankruptcy; United has received no such funds. If Elbar subrogated United's lien, then Elbar would be made whole for its $2.4 million loss, while United's claim would be reduced from $1,568,782.76 to $565,804.41. Given that subrogation would prejudice United, the bankruptcy court weighed that factor against Elbar. Considering all the factors together, the bankruptcy court concluded that they weighed against Elbar.

We agree with the bankruptcy court's analysis. Elbar argues that the bankruptcy court erred by denying its theory of equitable subrogation because it completed the foreclosure sale and "the debt to United had been paid when [it] tendered the $2.4 million to [Prins]." But the automatic stay prevented that sale. There is no error in the bankruptcy court's factual finding that the debt to United was never paid.

Moreover, even if the sale had been completed, Elbar has not demonstrated that its payment of the debt was coerced or unintentional. Equitable subrogation only applies when payment is involuntary. *See Universal Truckload*, 946 F.3d at 701–02 (quoting *Frymire Eng'g Co.*, 259 S.W.3d at 142). But Elbar transferred the proceeds without any agreement for subrogation, without a legal obligation to subrogate, and in willful violation of the bankruptcy code. That is a voluntary payment. *See Frymire Eng'g Co.*, 259 S.W.3d at 145. Thus, we agree with the bankruptcy court that Elbar does not satisfy the elements of equitable subrogation.

Equally fatal to its claims, Elbar does not demonstrate error in the bankruptcy court's balancing of the equities. Elbar correctly notes that under Texas law negligence does not preclude equitable subrogation. *Cf. Murray*, 257 S.W.3d at 300; *Sims*, 441 S.W.2d at 519. But negligence still weighs against Elbar, as do the other equitable factors. Finally, Elbar urges us to jettison the three factors from *Murray*, contending that they are inapplicable because *Murray* was not a foreclosure case. But *Murray* lays out factors for equitable subrogation generally. 257 S.W.3d at 300. There is no reason it would not apply in a foreclosure case. The bankruptcy court did not err in applying it.

In sum, we agree with the bankruptcy court that Elbar failed to satisfy the elements of equitable subrogation and that the equities weighed against it.

B.

We are left with Elbar's claim that United is liable for fraud in a real estate transaction. The Texas Business and Commerce Code establishes a statutory cause of action for fraud in real estate transactions. Tex. Bus. & Comm. Code Ann. § 27.01(a). Fraud in a transaction involving real estate occurs when: (1) the defendant makes a false representation of a past or existing material fact (2) to a person for the purpose of inducting that person to enter into a contract, that is (3) relied upon by that person in entering into that contract. *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 343 (5th Cir. 2008).

The bankruptcy court held that Elbar did not demonstrate that Prins or United committed fraud in a real estate transaction. The court found that Prins, acting as United's agent, did not make a material misrepresentation of fact that induced Elbar to purchase the property. Nor, the court concluded, did Prins make a false promise with the intention not to fulfill it. Rather, Prins did not transfer the deed to Elbar because he wanted to honor the automatic stay. The court made a factual finding that Prins formed an intent to use Elbar's $2.4 million for his own personal benefit "*two weeks after* the foreclosure sale of the Property and Elbar's wire-transfer of the Proceeds to the IOLTA." And Elbar introduced no evidence to the contrary.

The bankruptcy court conducted a multi-day trial and heard extensive testimony. We must say its factual finding that "[t]he evidence does not show that at the relevant time period . . . Prins made any material misrepresentation to induce Elbar to purchase the Property" was appropriate. Elbar submitted no evidence that Prins was acting in bad faith at the time of the foreclosure sale. Rather, the evidence indicated that Prins acted properly in not conducting the sale once he learned of the automatic stay. His later

appropriation of Elbar's funds that he was holding in trust may have breached a fiduciary obligation to Elbar, but that does not mean Prins (or United) committed fraud in a real estate transaction. We affirm the district court's conclusion that Elbar did not demonstrate fraud in a real estate transaction.

V.

Elbar also raises several claims against TransWorld and Industry including money had and received, unjust enrichment, and conversion. We agree with the bankruptcy court that each claim fails.

A.

Under Texas law, "[t]he question, in an action for money had and received, is to which party does the money, in equity, justice, and law, belong." *Bank of Saipan v. CNG Fin. Corp.*, 380 F.3d 836, 840 (5th Cir. 2004) (quoting *Staats v. Miller*, 243 S.W.2d 686, 687 (Tex. 1951). The general rule is that when property is stolen, the party who acquires the stolen property does not acquire its title. *Matter of Approximately $80,600.00*, 537 S.W.3d 207, 211 (Tex. App.—Houston [1st Dist.] 2017, pet. denied). Rather, "[t]itle remains with the original owner, who can recover the property or its value from whomever has received it." *Id.*. There is an exception to this general rule—money. *Id.* A plaintiff seeking recovery under a theory of money had and received must prove that the "defendant holds money which in equity and good conscience belongs to him." *Staats*, 243 S.W.2d at 687. But in considering the "good conscience" element, "one who receives money which has been illegally obtained by a third party in due course of business, in good faith, and for valuable consideration, can keep it without liability to him from whom it was stolen." *Sinclair Hous. Fed. Credit Union v. Hendricks*, 268 S.W.2d 290, 295 (Tex. Civ. App.—Galveston 1954, writ ref'd n.r.e.)).

The bankruptcy court concluded that Elbar satisfied the elements for money had and received against TransWorld and Industry. This was because neither entity received the money in due course of business or for valuable consideration. TransWorld (a leasing company) received the money by putatively settling a tax dispute, while Industry (a real-estate management company) received it as a return of money it had given Prins for safekeeping. Thus, the bankruptcy court held, neither entity received the money in due course of business. Similarly, the court explained, neither received the money for valuable consideration. Although TransWorld believed (because Prins told it so) that it had settled a dispute with the Tax Assessor, in reality no antecedent debt had been satisfied. And for Industry, there was never a debt between Prins and Industry. The bankruptcy court found that both TransWorld and Industry received the money in good faith. But because a defendant seeking to defeat a claim for money had and received must conjunctively demonstrate that it received money (1) in due course of business, (2) in good faith, and (3) for valuable consideration, the bankruptcy court explained, Elbar satisfied its initial burden.

Turning to the equities of the case, however, the bankruptcy court found against Elbar. The bankruptcy court noted that neither TransWorld nor Industry materially changed their positions in reliance on the money they received. And it also explained that the doctrine of unclean hands did not weigh against Elbar, because neither TransWorld nor Industry could show how Elbar's violation of the automatic stay caused them any harm. But the factor that weighed most strongly, and tipped the equities in the defendants' favor, was Elbar's knowledge and intent. The violations of the automatic stay demonstrated that "Elbar ha[d] little respect for the Bankruptcy Code and . . . acted solely in its perceived best interests." Those violations were multiple, and two were willful. The court also found, as a matter of fact, that Elbar knew

"that its chosen line of work . . . is a risky business" and freely chose to build it business model on those risks. In contrast to Elbar's knowledge and intent, the bankruptcy court found that neither TransWorld nor Industry knew that Prins had transferred stolen money. Rather, they believed that they were getting money that was rightfully theirs.

Trial courts have broad discretion in balancing the equities, and the bankruptcy court's careful opinion cogently explains its thinking in this case. We find no reversible error. Elbar's multiple violations of the automatic stay (two of which were willful) strongly weigh against it. And Elbar is engaged in the risky business of foreclosure sales, a business in which it has lengthy experience. In contrast, TransWorld and Industry acted in good faith, and were not engaged in fraught and precarious transactions when they received the money. The money does not, in equity, justice, or law belong to Elbar. *See Bank of Saipan*, 380 F.3d at 840. We agree with the bankruptcy court that Elbar's claim for money had and received does not merit relief.

B.

Texas courts are divided on whether unjust enrichment is recognized as an independent cause of action or is merely recognized as a quasi-contractual theory of recovery. *See Elias v. Pilo*, 781 F. App'x 336, 339 n.3 (5th Cir. 2019). However, we need not resolve this issue today. Regardless of the distinction, a plaintiff can only recover when "one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992). That is not the situation here.

The bankruptcy court noted that "it is difficult to understand how a party receives a windfall which would be unconscionable to retain when that party genuinely believed it was receiving back its own funds." We agree. Elbar does not indicate how any action on the part of TransWorld or Industry

amounts to fraud, duress, or the taking of an undue advantage. Elbar argues that it would be unconscionable for TransWorld or Industry to retain the benefits of Prins's actions. But the bankruptcy court correctly pointed out the uncomfortable truth: "Elbar is the ultimate source of its own misfortune." Elbar broke the law when it violated the automatic stay by wiring Prins $2.4 million; to make TransWorld and Industry hold the bag for that decision would be the unjust result. The bankruptcy court did not err in denying Elbar's claim.

C.

A conversion occurs when, to the exclusion of or inconsistent with the owner's rights, one wrongfully and without authorization assumes and exercises dominion and control over the personal property of another. *Arthur W. Tifford Pa., v. Tandem Energy Corp.*, 562 F.3d 699, 705 (5th Cir. 2009); *Waisath v. Lack's Stores, Inc.*, 474 S.W.2d 444, 447 (Tex. 1971). Because Elbar argues that the chattel converted here is money, he must show that the money (1) was delivered to the defendant for safekeeping, (2) was intended to be kept segregated, (3) was substantially in the form in which it is received or intact, and (4) was not the subject of a title claim by the defendant. *See Estate of Townes v. Townes*, 867 S.W.2d 414, 419 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

The bankruptcy court, as finder of fact, concluded that the money in question was not delivered to either Industry or TransWorld for safekeeping. Elbar shows us no evidence to the contrary. Because Elbar fails to meet an essential element of its claim for conversion, we agree with the bankruptcy court that Elbar's claim for conversion does not merit relief.

VI.

The Bankruptcy Court ruled against Elbar on all of its causes of action, save one: a Texas Theft Liability Act claim against Prins for which the court awarded $716,084.58 in actual damages (Elbar waived attorney's fees). However, the court did not award prejudgment interest, a decision that Elbar now appeals.

The Texas Supreme Court recognizes two separate bases for the award of prejudgment interest: (1) an enabling statute; and (2) general principles of equity. *See Int'l Turbine Servs. v. VASP Brazilian Airlines*, 278 F.3d 494, 499 (5th Cir. 2002). Statutory prejudgment interest applies only to judgments in wrongful death, personal injury, property damage, and condemnation cases. *Id.* On the other hand, equitable prejudgment interest, which focuses on the need to compensate a plaintiff for the defendant's beneficial use of the damage funds between the time the injury occurred and the time the judgment was rendered, is available as a matter of course, absent exceptional circumstances. *Joy Pipe, USA, L.P. v. ISMT Ltd.*, 703 F. App'x 253, 257 (5th Cir. 2017).

The trial court may exercise its discretion to forego an award of prejudgment interest in the presence of "exceptional circumstances," but those circumstances must be explained. *Id.* at 258. The failure to explain the presence of exceptional circumstances is grounds for remand. *Am. Int'l. Trading Corp. v. Petroleos Mexicanos*, 835 F.2d 536, 541 (5th Cir. 1987). Because the district court failed to explain the exceptional circumstances justifying its denial of prejudgment interest, we remand with instructions to explain the exceptional circumstances, if any, that justify denial of prejudgment interest or to order prejudgment interest.

VII.

The bankruptcy court correctly concluded that Elbar violated the automatic stay. That finding was the most important factor weighing against

Elbar's request for equitable relief. We find no reversible error in the bankruptcy court's judgment finding against Elbar on each count. We AFFIRM the judgment as to the merits of Elbar's claims and REMAND for the district court to explain the exceptional circumstances or to order prejudgment interest.