IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2899

Summary Calendar

IN THE MATTER OF: KEY COMMUNICATIONS, INC.,

LAWRENCE A. WADE, Individually
and as trustees of Key Communications
Profit Sharing Plan and Trust, ET AL.,

Appellants,

versus

LOWELL T. CAGE, Trustee,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-571)

(May 17, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Lawrence Wade raises six challenges to the bankruptcy court's judgment avoiding several transfers. Three involve bankruptcy court factual findings: that the debtor was insolvent when the

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

transfers occurred, that the transfers were made with actual intent to hinder, delay, or defraud, and that the trustee produced business records satisfactorily. We find no clear error in the bankruptcy court's assessment of the evidence. See Anderson v. City of Bessemer City, 470 U.S. 564, 573 (1985).

Wade further contends that the bankruptcy court erred in finding the transfers avoidable under 11 U.S.C. § 547, when two transfers were made after the filing of the petition. As the court found that the transfers were made with fraudulent intent, they were not "authorized under this title or by the court" and were properly avoided under 11 U.S.C. § 549. A specific citation to section 549 was not necessary. See In re Texas Extrusion Corp. v. Palmer, Palmer & Coffee, 836 F.2d 217, 221 (5th Cir. 1988). Wade's limitations defense was waived by not pleading it below. See, e.g., Huennekens v. Marx (In re Springfield Contracting Corp.), 154 B.R. 214, 225 (Bankr. E.D. Va. 1993).

Wade next contends that participants in the pension plan and the PBGC should have been joined under Federal Rule of Civil Procedure 19. We find no abuse of discretion in the court's determination that complete relief could be accorded without the presence of these parties. As trustee of the debtor's plan, Wade is a fiduciary and is charged with acting in the best interests of the plan participants, making their joinder unnecessary. See 29 U.S.C. § 1104; Arizona Laborers v. Conquer Cartage Co., 753 F.2d 1512, 1521 (9th Cir. 1985). Wade does not explain why the PBGC's presence is needed to give relief to the parties.

Wade finally argues that avoiding these transfers violated the bar on alienation of pension funds imposed by ERISA. Wade cites no authority for the proposition that pension plans can serve as safe harbors for fraudulent conveyances or voidable transfers. Cf. Velis v. Kardanis, 949 F.2d 78, 82 (3rd Cir. 1991).

AFFIRMED.