SO ORDERED.

SIGNED this 14th day of April, 2026.

Mitchell L. Herren
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE: **Arrowhead Financial ITC, LLC,** **Debtor.**	**Case No. 22-10066** **Chapter 7**
Darcy D. Williamson, **Chapter 7 Trustee,** **Plaintiff,** **vs.** **NextGear Capital, Inc,** **Defendant.**	**Adv. No. 23-05035**

Order Denying Plaintiff's Motion for Summary Judgment (Doc. 69) and Defendant's Cross-Motion for Summary Judgment (Doc. 79)

Plaintiff Darcy Williamson, Chapter 7 Trustee, brought this adversary proceeding under 11 U.S.C. § 548(a)(1)[1] to avoid transfers of $141,572.41 from Debtor Arrowhead Financial ITC, LLC to Defendant NextGear Capital, Inc. Plaintiff argues these transfers are both actually and constructively fraudulent under § 548(a)(1). Plaintiff also seeks recovery of the transferred funds under § 550(a) and disallowance of Defendant's claim under § 502(d). Defendant denies the loan repayments are avoidable as fraudulent transfers and argues further that, even if the transfers were fraudulent, Defendant should prevail because it took for value and in good faith as required by § 548(c)'s affirmative defense. Both Plaintiff and Defendant moved for summary judgment and both motions were taken under advisement after oral argument.

The Court denies both Plaintiff's Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment; too many material facts remain in genuine dispute.

I. Undisputed Material Facts

While most of the material facts related to the motions remain in dispute, the parties do agree on some facts, which are described below.

Prior to 2020, Adam Newbrey formed used-car dealerships in Kansas, including iDeal Enterprises, LLC d/b/a iDeal Motors and Midwest Wholesale, LLC d/b/a Kansas Motor Company.[2] Many dealers fund their dealerships using

[1] All future statutory references are to title 11, the Bankruptcy Code, unless noted otherwise.
[2] Doc. 79 at p. 9 ¶¶ 1, 5.

"floorplan" loans from lenders like Defendant.[3] Typically, dealers use floorplan loans to fund purchases of used vehicles.[4] The dealer bids on a vehicle at auction and then arranges financing with a floorplan lender to pay for that vehicle.[5]

In late 2020, Newbrey began discussions about starting a car dealership with a family friend, Dale Hybki.[6] On December 11, 2020, Hybki formed the Debtor, Arrowhead Financial ITC, LLC, d/b/a Dale's Truck Sales (Arrowhead) with Newbrey's assistance.[7] Newbrey represented to Hybki that he was knowledgeable and experienced in the used car business and would teach Hybki how to operate a used car lot.[8]

Hybki, acting on behalf of Arrowhead and, again, under Newbrey's guidance, applied for a floorplan loan of $150,000 from Kinetic Advantage, LLC on January 13, 2021, but it was denied due to Arrowhead's lack of business history.[9] Hybki opened a business account for Arrowhead at Intrust Bank on January 14th[10] and received a used-vehicle license from the State of Kansas in late March.[11] On March 21, 2021, Kinetic Advantage advanced $75,000 to Arrowhead as its first floorplan

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[3] According to the National Automobile Dealers Association, a "floorplan loan" is a revolving line of credit used by dealerships to purchase both new and used vehicles. The vehicles are then sold by the dealership to consumers or other dealers. The loans are secured by the respective vehicles and potentially other assets the dealer may have an interest in. Once the vehicles are sold, the dealer pays the lender and retains the proceeds. Dealerships 101: What is Auto "Floor Plan" Lending, National Automobile Dealers Association (Nov. 13, 2017), https://www.nada.org/nada/nada-headlines/dealerships-101-what-auto-floor-plan-lending.
[4] *See, e.g.*, Doc. 79 at p. 133 ¶¶ 14–15 and Doc. 98 at p. 192 ¶¶ 14–15.
[5] *See, e.g.*, Doc. 79 at p. 133 ¶¶ 11, 14 and Doc. 98 at p. 190 ¶ 11, p. 192 ¶ 14.
[6] Doc. 79 at pp. 10–11 ¶¶ 9–10.
[7] *Id.* at p. 11 ¶ 11.
[8] *Id.* at p. 11 ¶ 10.
[9] *Id.* at p. 11 ¶¶ 12–13.
[10] *Id.* at p. 11 ¶ 14.
[11] *Id.* at p. 13 ¶ 20.

loan.[12] It was not until three months later, on June 22nd, that Arrowhead applied for its first floorplan loan with Defendant, which Defendant approved on June 28, 2021.[13]

All told, Arrowhead would receive forty-eight floorplan loans from Defendant,[14] and while the details of these loans varied from vehicle to vehicle, the process to acquire them, as well as the terms and agreements surrounding them, were largely identical. For example, approval for the first loan from Defendant required several steps typical for the industry. First, Arrowhead executed both a "Demand Promissory Note" and a "Loan and Security Agreement."[15] This Note and Agreement granted Defendant a defined interest in Arrowhead's properties and assets, and also set the terms of repayment.[16] Under these terms, Arrowhead had to repay the advance within 60 days, or invoke an option to pay a sum and extend that period for an additional 30 days—which could be done only twice. At the end of the maximum 120 days, Arrowhead could either: 1) pay the advance using other funds; 2) default on the loan; 3) sell the vehicle for a loss and pay the difference; or 4) refinance through another lender.[17] In addition to the Note and Agreement, Hybki executed an "Individual Guaranty of the Debtor's Obligations."[18] After these documents were signed, Defendant filed a U.C.C. Financing Statement with the Kansas Secretary of State, identifying the vehicle and establishing Defendant's

[12] *Id.* at p. 12 ¶ 19.
[13] *Id.* at p. 16 ¶ 33; *id.* at p. 17 ¶ 36.
[14] *Id.* at p. 23 ¶ 53.
[15] *Id.* at p. 131 ¶ 4; Doc. 98 at p. 190 ¶ 4.
[16] Doc. 79 at pp. 131–32 ¶¶ 5, 7; Doc. 98 at p. 190 ¶¶ 5, 7.
[17] Doc. 79 at p. 132 ¶ 7; Doc. 98 at p. 190 ¶ 7.
[18] Doc. 79 at p. 131 ¶ 5; Doc. 98 at p. 190 ¶ 5.

security interest in it.[19] Defendant then advanced Arrowhead the necessary funds to purchase a given vehicle by paying the auctioneer or seller directly, as opposed to direct payment to Arrowhead.[20] Last, after the auctioneer reassigned the legal title of the vehicle to Arrowhead, the auctioneer sent that title to Defendant to be held in a physical, fire-proof vault until Arrowhead repaid the advance in full.[21] That process repeated itself many times.

Newbrey traveled to different vehicle auctions bidding on, purchasing, and selling vehicles on Arrowhead's behalf.[22] In late October 2021, Newbrey indirectly confessed to Hybki he had been using Arrowhead's floorplans, business structure, and finances for improper purposes.[23] Hybki claims he was unaware of Newbrey's improper actions prior to October 2021.[24] On or about November 1, 2021, Hybki closed Arrowhead.[25] Later, Arrowhead filed a Chapter 11 bankruptcy petition on February 1, 2022.[26]

The parties agree Hybki was the sole member and owner of Arrowhead.[27] It is not disputed that Hybki authorized Newbrey to act as Arrowhead's agent with respect to purchasing vehicles, managing Arrowhead's floorplans, and directing Arrowhead's operations and finances.[28] It is also not disputed that Hybki expressly

[19] Doc. 79 at p. 132 ¶ 6; Doc. 98 at p. 190 ¶ 6.
[20] Doc. 79 at p. 133 ¶ 14; Doc. 98 at p. 192 ¶ 14.
[21] Doc. 79 at p. 133 ¶¶ 16, 17; Doc. 98 at p. 192 ¶¶ 16, 17.
[22] Doc. 79 at pp. 132–33 ¶¶ 10–12; Doc. 98 at p. 190 ¶¶ 10–12. *See also* Doc. 79 at p. 18 ¶ 39.
[23] Doc. 79 at p. 20 ¶ 48.
[24] Doc. 79 at p. 19 ¶ 47.
[25] *Id.* at p. 20 ¶ 49. *Id.* at p. 134 ¶ 22; Doc. 98 at p. 193 ¶ 22.
[26] Doc. 79 at p. 25 ¶ 58; Case No. 22-10066, Doc. 1.
[27] Doc. 79 at p. 132 ¶ 9; Doc. 98 at p. 190 ¶ 9.
[28] Doc. 79 at p. 132 ¶¶ 9–10; Doc. 98 at p. 190 ¶¶ 9–10.

authorized Newbrey to acquire floorplans from lenders, like Defendant, to purchase inventory for Arrowhead and to make repayment on those floorplans using Arrowhead's bank account.[29]

What remains in dispute revolves around: the characterization of the transactions between the sellers, Arrowhead, and Defendant; whether Arrowhead "purchased" and "owned" certain vehicles; the timing and legitimacy of vehicle title transfers; the scope of Newbrey's agency and the intent behind Newbrey's actions; the scope of Hybki's involvement with Arrowhead's finances and floorplan loans, and whether Defendant acted in good faith.

II. Procedural History

Arrowhead filed for Chapter 11 relief only to have the case converted to Chapter 7 a few months later following an evidentiary hearing on the United States Trustee's motion to dismiss or convert pursuant to § 1112(b).[30]

Plaintiff initiated this adversary proceeding, along with two others, to reclaim funds she alleges were fraudulent transfers under § 548(a)(1).[31] The other proceedings have since been resolved.[32]

In March 2025, Plaintiff filed her Motion for Summary Judgment,[33] with a voluminous Memorandum in Support of Plaintiff's Motion for Summary Judgment.[34] After being granted additional time to respond, Defendant filed a

[29] Doc. 79 at pp. 132–33 ¶¶ 9–12, p. 134 ¶ 19; Doc. 98 at p. 190 ¶¶ 9–12, p. 192 ¶ 19.
[30] *See* Case No. 22-10066, Docs. 34 and 49.
[31] *Id.*, Docs. 115, 116, and 117.
[32] Adv. No. 23-5036, Adv. No. 23-5037.
[33] Doc. 69.
[34] Doc. 70. *See* Doc. 71 for the amended version.

Response in Opposition to Amended Memorandum in Support of Plaintiff's Motion for Summary Judgment and Cross-Motion for Summary Judgment.[35] Plaintiff replied to Defendant's brief and responded to the Cross-Motion for Summary Judgment with another voluminous document,[36] which was amended twice.[37] Plaintiff's reply was followed by Plaintiff's Second Motion Pursuant To Fed. R. Civ. P. 56 And LBR 7056.1 For Entry Of Summary Judgment and its Memorandum In Support Of Plaintiff's Second Motion For Summary Judgment on September 12, 2025.[38] At this point, with over 1,400 pages of briefing, over 4,600 pages of exhibits, and with no end in sight, the Court set a status conference.[39]

At the status conference the Court and parties discussed the posture of the case, the reasons for Plaintiff's second summary judgment motion, and the parties' voluminous briefs.[40] The Court gave Defendant time to respond to Plaintiff's second motion and reply to Plaintiff's response to its Cross-Motion for Summary Judgment.[41] Plaintiff later withdrew her second motion.[42]

Plaintiff then made a request for oral argument.[43] Defendant filed its reply to Plaintiff's response to its Cross-Motion for Summary Judgment.[44] The Court held oral argument and took both motions under advisement.[45]

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[35] Doc. 79.
[36] Doc. 94.
[37] Doc. 97 and 98.
[38] Docs. 95 and 96.
[39] Doc. 101.
[40] Doc. 102.
[41] *Id.*
[42] Doc. 103.
[43] Doc. 106.
[44] Doc. 107.
[45] Doc. 108.

III. Standards

Both 28 U.S.C. §§ 157 and 1334 grant this Court jurisdiction over this matter and venue is proper per 28 U.S.C. § 1408.

A. Summary Judgment

Summary judgment is an important procedure "designed 'to secure the just, speedy and inexpensive determination of every action;'" it is not a "disfavored procedural shortcut."[46] Fed. R. Civ. P. 56 makes summary judgment appropriate when the movant shows no genuine dispute of material fact exists and the movant is entitled to judgment as a matter of law.[47] A "genuine" issue means the evidence is such that a reasonable [trier of fact] could return a verdict for the nonmoving party.[48] A "material" fact is one that affects the outcome of the dispute.[49] In ruling on a motion for summary judgment, the court must draw all reasonable inferences from the record in favor of the non-moving party.[50]

In an individual motion for summary judgment, the movant must carry its burden by negating the existence of genuine issues of material fact, and then showing the law entitles the movant to judgment on their claims.[51] Only if the movant is successful in meeting the burden of production does the burden shift to

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[46] *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1).
[47] Rule 56 applies to this adversary proceeding via Fed. R. Bankr. P. 7056.
[48] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
[49] *Id.*
[50] *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).
[51] Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact *and* the movant is entitled to judgment as a matter of law." (emphasis added)). *See also Celotex Corp.*, 477 U.S. at 325 (stating the moving party bears the initial burden of showing an absence of evidence to support the nonmoving party's case).

the non-movant; otherwise, the Court will deny the motion.[52] The non-movant can avoid summary judgment if it identifies specific evidence that demonstrates there is a genuine dispute of material fact for trial, or if the undisputed facts do not establish a sufficient legal basis to grant the movant judgment as a matter of law.[53] Both D. Kan. Rule 56.1 and D. Kan LBR 7056.1 lay out several additional requirements for motions for summary judgment.

These same standards apply to competing or "cross" motions for summary judgment.[54] As with an individual motion for summary judgment, whether a genuine dispute over a material factual exists depends on which party bears the burden of proof, the associated standard of proof used for that claim, and whether that party presented enough evidence to support their position or negate their opponents.[55] Thus, it is necessary that courts treat cross motions for summary judgment separately, such that, the denial of one motion, does not guarantee the success of the other.[56] Furthermore, "[w]hen the parties file cross motions for summary judgment, [courts] are entitled to assume that no evidence needs to be considered other than that filed by the parties, but summary judgment is

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[52] *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160-61 (1970); *see also Reed v. Nellcor Puritan Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002).
[53] *See Assessment Tech. Institute, LLC v. Parkes*, 588 F. Supp. 3d 1178, 1189 (D. Kan. 2022) ("To prevail on a motion for summary judgment on a claim upon which the moving party also bears the burden of proof at trial, the moving party must demonstrate no reasonable trier of fact could find other than for the moving party.") (internal quotation omitted); *In re QuVis, Inc.*, 446 B.R. 490, 493-94 (Bankr. D. Kan. 2011) (noting even if there are no disputed material facts, movant has burden to show those facts entitle movant to judgment as a matter of law).
[54] *Ross v. Rothstein*, 92 F. Supp. 3d 1041, 1048 (D. Kan. 2015).
[55] *Atl. Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1148 (10th Cir. 2000).
[56] *Ross*, 92 F. Supp. 3d at 1048 (quoting *Buell Cabinet Co. v. Sudduth*, 608 F.2d 431, 433 (10th Cir. 1979)).

nevertheless inappropriate if disputes remain as to material facts."[57] In other words, the existence of any "genuine issue as to any material fact" precludes a grant of summary judgment for either party on that issue.[58] In that case, a trial is necessary.

B. Fraudulent Transfers under § 548(a)(1)

Section 548(a)(1) grants a trustee authority, on behalf of the bankruptcy estate, to avoid certain transfers—whether voluntary or involuntary—made within two years of the petition date, provided those transfers meet the conditions for actual fraud under § 548(a)(1)(A) or constructive fraud under § 548(a)(1)(B). Plaintiff argues that the transfers in question fall under both § 548(a)(1)'s constructive fraud and actual fraud theories, and that Debtor's estate is entitled to avoid these transfers under § 550(a) and recoup the associated value from Defendant as matter of law.

1. Actual Fraud, § 548(a)(1)(A)

To show actual fraud, the trustee must show: 1) the transfer occurred with two years of the petition date,[59] and 2) the debtor "made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted."[60] "When determining whether a transfer was made with the intent to hinder, delay, or defraud creditors, courts must look for

[57] *Atl. Richfield Co.*, 226 F.3d at 1148 (internal quotation marks omitted).
[58] Fed. R. Civ. P. 56(c).
[59] 11 U.S.C. § 548(a)(1).
[60] 11 U.S.C. § 548(a)(1)(A).

'*actual* intent to defraud creditors,' in light of the events giving rise to the transfer."[61] Of course, intent to hinder, delay, and defraud a creditor may be established by direct evidence, but that is rare. "A debtor rarely admits it acted with fraudulent intent."[62] Thus, courts may consider circumstantial evidence establishing that fraud.[63]

One method of doing so is by establishing the existence of a Ponzi-scheme.[64] The Tenth Circuit defines "Ponzi scheme" as "a fraudulent scheme in which the business pays returns to its investors that are financed, not by the success of the business, but instead with money acquired from later investors."[65]

Different courts use different tests to determine if a scheme exists. Some courts employ a four-factor test to determine whether a Ponzi scheme existed: (1) deposits were made by "investors"; (2) the debtor conducted little to no legitimate business; (3) the debtor's business produced little to no profits or earnings; and

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[61] *In re Ashwood*, No. 24-11378-T, 2025 WL 2806303, at *7 (Bankr. N.D. Okla. Sept. 30, 2025) (quoting *In re Carey*, 938 F.2d 1073, 1077 (10th Cir. 1991) ((emphasis in original)). *See also In re Agnew*, 355 B.R. 276, 283–84 (Bankr. D. Kan. 2006).
[62] *In re Darter*, No. 23-11680-SAH, 2024 WL 5152577, at *14 (Bankr. W.D. Okla. Dec. 16, 2024) (citing *Zubrod v. Kelsey (In re Kelsey)*, 270 B.R. 776, 782 (B.A.P. 10th Cir. 2001)).
[63] *In re Darter*, 2024 WL 5152577 at *14 (citing *Taylor v. Rupp (In re Taylor)*, 133 F.3d 1336, 1338–39 (10th Cir. 1998)).
[64] *Wagner v. Pruett (In re Vaughan Co., Realtors)*, 477 B.R. 206, 218 (Bankr. D.N.M. 2012); *Hafen v. Howell*, 121 F.4th 1191, 1199–1200 (10th Cir. 2024) ("But if a creditor . . . can show that the debtor operated a Ponzi scheme, the law presumes the debtor's transfers were fraudulent.") (citing *Georgelas v. Desert Hill Ventures, Inc.*, 45 F.4th 1193, 1197 (10th Cir. 2022)); *Gillman v. Russell (In re Twin Peaks Fin. Servs., Inc.*), 519 B.R. 549, 555 (Bankr. D. Utah 2014), *aff'd sub nom. In re Twin Peaks Fin. Servs., Inc.*, 562 B.R. 519 (D. Utah 2016); *Pergament v. Torac Realty, LLC (In re Diamond Fin. Co.*), 658 B.R. 748, 771 (Bankr. E.D.N.Y. 2024).
[65] *Sec. & Exch. Comm'n v. Scoville*, 913 F.3d 1204, 1209 (10th Cir. 2019) (citing *S.E.C. v. Thompson*, 732 F.3d 1151, 1154 n.3 (10th Cir. 2013) and *Okla. Dep't of Sec. ex rel. Faught v. Wilcox*, 691 F.3d 1171, 1173 n.2 (10th Cir. 2012)).

(4) previous investors were paid using funds from new investors.[66] Other courts use a "badges of fraud" standard looking for factors like "the absence of any legitimate business connected to the investment program, the unrealistic promises of low risk and high returns, commingling investor money, the use of agents and brokers paid high commissions to perpetuate the scheme, misuse of investor funds, the 'payment' of excessively large fees to the perpetrator and the use of false financial statements."[67] For the purposes of either test, an entity advancing a loan is considered an "investor."[68]

In addition to the Ponzi-scheme presumption, a trustee may use traditional badges of fraud to establish intent under § 548(a)(1)(A). In that circumstance, courts in the Tenth Circuit look for:

> (1) lack or inadequacy of consideration for transfer;
> (2) special relationship between parties;
> (3) attempt by debtor to keep transfer secret;
> (4) financial condition of the party sought to be charged both before and after transaction;
> (5) existence or cumulative effect of pattern or series of transactions or course of conduct after incurrence of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and
> (6) overall chronology of events and transactions.[69]

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[66] *In re Diamond Fin. Co., Inc.*, 658 B.R. at 766 (citing *Sec. Inv'r Protec. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 531 B.R. 439, 471 (Bankr. S.D.N.Y. 2015)); *see also Gowan v. Amaranth Advisors L.L.C. (In re Dreier LLP)*, Adv. P. No. 10-03493, 2014 WL 47774, at *9 (Bankr. S.D.N.Y. Jan. 3, 2014).
[67] *In re Diamond Fin. Co., Inc.*, 658 B.R. at 767 (citing *In re Dreier LLP*, 2014 WL 47774 at *9).
[68] *Id.* (citing *Sec. Inv'r Protec. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 528 F. Supp. 3d 219, 238 (S.D.N.Y. 2021), *aff'd sub nom. Picard Tr. for SIPA Liquidation of Bernard L. Madoff Inv. Sec. LLC v. JABA Assoc. LP*, 49 F.4th 170 (2d Cir. 2022)).
[69] *In re Ashwood*, No. 24-11378-T, 2025 WL 2806303, at *7–8 (Bankr. N.D. Okla. Sept. 30, 2025) (citing *Freelife Int'l, LLC v. Butler (In re Butler)*, 377 B.R. 895, 916-17 (Bankr. D. Utah 2006) (internal citations and footnotes omitted)).

It's not a matter of keeping score. Cases involving fraudulent intent "are peculiarly fact specific, and the activity in each situation must be viewed individually."[70] A court must look to "whether the aggregate of facts demonstrates an inference of fraud rather than requiring the plaintiff to show a majority or any specific number of the badges."[71]

2. Constructive Fraud, § 548(a)(1)(B)

Section 548(a)(1) also empowers the trustee to avoid any transfer on the basis of constructive fraud under subsection (B). To do so, the statute requires the trustee to prove several elements: 1) that the transfer occurred; 2) and "was made or incurred on or within 2 years before the date of the filing of the petition;"[72] 3) the debtor "received less than a reasonably equivalent value in exchange for such transfer or obligation;"[73] and 4) the debtor "was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation."[74]

C. Good Faith under § 548(c)

Congress provided an affirmative defense to claims of fraudulent transfer in § 548(c), which states:

> Except to the extent that a transfer or obligation voidable under [§ 548] is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that *takes for value* and *in good faith* has a lien on or may retain any interest transferred or may enforce

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[70] *In re Carey*, 938 F.2d 1073, 1077 (10th Cir. 1991).
[71] *In re Ashwood*, 2025 WL 2806303, at *8 (quoting *Horizon Fin. Bank v. Borstad (In re Borstad)*, 550 B.R. 803, 830 (Bankr. D.N.D. 2016).
[72] 11 U.S.C. § 548(a)(1).
[73] 11 U.S.C. § 548(a)(1)(B)(i).
[74] 11 U.S.C. § 548(a)(1)(B)(ii)(I).

> any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.[75]

Thus, when a transferee proves it has provided both "value" and "good faith" to the debtor in a transaction, the transferee receives a lien on the property transferred—entitling it "to set off the value they gave to the debtor against the amount of the voidable transfer they received from the debtor."[76]

The Bankruptcy code does not define "good faith."[77] The Tenth Circuit employs an objective standard of good faith to fill this gap: "if the circumstances would place a reasonable person on inquiry of a debtor's fraudulent purpose, and a diligent inquiry would have discovered the fraudulent purpose, then the transfer is fraudulent."[78] That said, while several approaches exist to determine "value" under § 548(c), the Tenth Circuit has no set standard.[79]

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[75] 11 U.S.C. § 548(c) (emphasis added).
[76] *In re Brooke Corp.*, 541 B.R. 492, 521 (Bankr. D. Kan. 2015) (citing *Clark v. Sec. Pac. Bus. Credit, Inc. (In re Wes Dor, Inc.)*, 996 F.2d 237, 242–43 (10th Cir. 1993)).
[77] *In re M & L Bus. Mach. Co., Inc.*, 84 F.3d 1330, 1335 (10th Cir. 1996).
[78] *Id.* at 1338 (quoting *Jobin v. McKay (In re M & L Business Mach. Co.)*, 164 B.R. 661 (D. Colo. 1994), *aff'd*, 84 F.3d 1330 (10th Cir. 1996). *See also Hayes v. Palm Seedling Partners–A (In re Agric. Rsch. & Tech. Grp., Inc.)*, 916 F.2d 528, 535–36 (9th Cir. 1990).
[79] *See, e.g.*, *In re Brooke Corp.*, 541 B.R. 492, 521 (Bankr. D. Kan. 2015); *see also Stalnaker v. Gratton (In re Rosen Auto Leasing, Inc.)*, 346 B.R. 798, 806 (B.A.P. 8th Cir. 2006) (*citing Helms v. Roti (In re Roti)*, 271 B.R. 281, 299 (Bankr. N.D. Ill. 2002) ("[C]ourts have denied use of the § 548(c) shelter to defendants who were not able to establish 'reasonably equivalent value' for purposes of § 548(a)(1)(B).")). *But cf. In re Positive Health Mgmt.*, 769 F.3d 899, 908–09 (5th Cir. 2014) ("A good faith transferee is entitled to the protections of section 548(c) when it gives *any* value in return, but only to the extent of that value. When a transferee receives a fraudulent transfer the value of which exceeds the consideration it gave up in return, section 548(c) requires netting.") (emphasis in original)).

IV. Discussion

A. Procedural Issues

Before considering the substantive arguments in the motions, some procedural deficiencies in the briefing should be briefly addressed.

Fed. R. Civ. P. 56, D. Kan. Rule 56.1, and D. Kan LBR 7056.1 govern summary judgment motions in this court. There were several instances where the parties failed to adhere to these rules, namely: both parties inserted significant amounts of legal argument in their statements of uncontroverted fact; Plaintiff's replies to Defendant's responses to Plaintiff's statement of uncontroverted facts, which violated D. Kan LBR 7056.1(c); [80] and Plaintiff's failure to conform with Fed. R. Evid. 1006 when she inaccurately summarized evidence by injecting legal argument and characterization into the summary tables.[81]

Because these failures to follow the rules did not impact the Court's decision, they will not be discussed further.

B. Disputed Facts on the Prima Facie Elements of Each Claim

1. Constructive fraud

Plaintiff and Defendant do not dispute the first two elements required to establish a constructive fraud claim under § 548(a)(1)(B). However, elements three, the exchange occurred for reasonably equivalent value, and four, whether the

[80] D. Kan LBR 7056.1(c); *see* Doc. 98 at pp. 7–189.
[81] Fed. R. Evid. 1006.

Debtor was insolvent or became insolvent as a result of such transfer or obligation, remain in dispute.[82]

a. Reasonably Equivalent Value

The Bankruptcy Code does not define "reasonably equivalent value," only "value."[83] To determine reasonably equivalent value, bankruptcy courts begin with a fact intensive, three-pronged inquiry: (1) whether value was given; (2) if value was given, whether it was given in exchange for the transfer; and (3) whether what was transferred was reasonably equivalent to what was received."[84]

Courts approach this inquiry using a totality of the circumstances approach from the standpoint of a debtor's creditors, not the debtor.[85] Courts determine what "reasonably equivalent value" is in each case by comparing the value of the property transferred with the value of property received on the date of the transfer.[86] Events or valuations after the fact should not affect this determination.[87] If a court finds no reasonably equivalent value was exchanged in a transfer with a debtor, a presumption of fraud arises that "unfairness stems from the disparity of [the] exchange coupled with the debtor's lack of other assets."[88]

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[82] *In re Brooke Corp.*, 541 B.R. at 507–08.
[83] 11 U.S.C. § 548(d)(2)(A) (defines "value" as "property, or satisfaction or securing of a present or antecedent debt of the debtor.").
[84] *In re Brooke Corp.*, 541 B.R. at 510.
[85] *In re Kinderknecht*, 470 B.R. 149, 170 (Bankr. D. Kan. 2012); *In re Mercury Companies., Inc.*, 527 B.R. 438, 448 (Bankr. D. Colo. 2015).
[86] *In re Mercury Companies, Inc.*, 527 B.R. at 448.
[87] *In re Brooke Corp.*, 541 B.R. at 510–11 (citing *White v. Coyne, Schultz, Becker & Bauer, S.C. (In re Pawlak)*, 483 B.R. 169, 183 (Bankr. W.D. Wis. 2012).).
[88] 5 *Collier on Bankruptcy*, ¶ 548.01[1][a] at 548–10 (Alan N. Resnick & Henry J. Sommer, eds.in-chief, 16th ed. 2015).

Here, Plaintiff contends that Arrowhead received no value for these transfers. Instead, Plaintiff alleges no reasonably equivalent value could have been given to Arrowhead here because the vehicle purchases were either "sham purchases" or the vehicles were later embezzled by Newbrey.[89] Thus, according to Plaintiff, Newbrey usurped any value Arrowhead would have received from the transfers through and by his fraud, gave that value to himself and his affiliates, and rendered the transfers valueless.[90] In other words, no value was given because the purchases rendered no benefit to Arrowhead.

To support this contention, Plaintiff relies on two theories: first, that the transfers were made solely for the benefit of a third party,[91] and second, the bare-legal title theory under Kansas law.[92] Defendant responds by arguing it did give Arrowhead reasonably equivalent value for the loans, both when Defendant advanced the funds, which allowed Arrowhead to purchase and own the vehicles, and when Arrowhead repaid the obligation, which reduced the outstanding debt to Defendant.[93]

i. Solely for the Benefit of a Third Party

Plaintiff first contends the floorplan transfers were made solely for the benefit of a third party, namely Newbrey and his affiliated companies. However, at this stage in the litigation, given Newbrey's role as Arrowhead's agent, several

[89] Doc. 71 at p. 54–55; Doc. 98 at p. 315–18.
[90] Doc. 98 at p. 315–18.
[91] Doc. 71 at pp. 54–55.
[92] Doc. 98 at pp. 315–18.
[93] Doc. 79 at pp. 175–81; Doc. 107 at pp. 4–11.

genuine and material factual disputes remain as to who actually received benefit from these transfers, and who received title to and ownership of the vehicles.

Plaintiff is correct that the general rule is that "obligations incurred by a debtor solely for the benefit of a third party are treated as not supported by a reasonably equivalent value."[94] Thus, Arrowhead cannot derive value from an obligation incurred on its behalf by Newbrey that *only* benefitted Newbrey. However, if the **"**debtor receives an indirect benefit from paying or guaranteeing the obligation of a third party," then that indirect benefit provides reasonably equivalent value to the debtor.[95] In other words, a debtor can benefit and receive reasonably equivalent value by repaying a loan obligation it is obligated to pay, even if it only benefitted a third party. [96]

The application of these general principles remains disputed. Several factual disputes remain concerning the value conferred to Arrowhead, Arrowhead's solvency, the scope of Newbrey's agency and his actions, Arrowhead's title to and ownership of each vehicle, how the vehicles were purchased, and exactly who they were purchased for.

These fact-intensive questions cannot be determined on summary judgment based on the parties' competing arguments and briefing. Evidence must be presented regarding these issues.

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[94] *In re Brooke Corp.*, 541 B.R. 492, 511 (Bankr. D. Kan. 2015) (quoting *Tourtellot v. Huntington Nat'l Bank (In re Renegade Holdings, Inc.)*, 457 B.R. 441, 444 (Bankr. M.D.N.C. 2011)).
[95] *Id.* (quoting *In re Renegade Holdings, Inc.*, 457 B.R. at 444).
[96] *In re M&L Bus. Mach. Co., Inc.*, 84 F. 3d 1330, 1341 (10th Cir. 1996).

ii. Bare-Legal Title Theory

Plaintiff also argues Arrowhead received no value from these transfers: the "bare legal title" theory. Plaintiff asserts, "[b]are legal title without any proprietary interest is not sufficient to establish ownership."[97] In other words, Plaintiff claims for Arrowhead to have owned the vehicles in question, Arrowhead was required to have "dominion and control" over the vehicles—which Plaintiff argues it did not have.[98]

The bare-legal title theory comes from a string of Kansas state court cases interpreting a civil forfeiture statute, Kan. Stat. Ann. § 65–4135(a).[99] That statute was repealed in 1994 and applied to transfers of "vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession, concealment, purchase, exchange or giving away of [ ] [controlled substances]."[100]

The Court questions whether this statute and the cases Plaintiff cites apply to facts such as in this case. Regardless, material fact issues remain about Debtor's dominion and control over the vehicles financed through Defendant.

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[97] *State ex rel. Love v. One 1967 Chevrolet El Camino Bearing VIN No. 136807Z141367*, 247 Kan. 469, 475, 799 P.2d 1043, 1047 (1990); *see also* Doc. 98 at p. 191.
[98] *City of Prairie Village. v. 1990 White Chevrolet Corvette*, No. _____, 1994 WL 17120259 at *2 (Kan. App. 1994).
[99] *State ex rel. Love*, 247 Kan. at 472; *City of Prairie Village*, 1994 WL 17120259 at *2.
[100] *State ex rel. Love*, 247 Kan. at 472.

b. Insolvency

The fourth element in determining whether a transfer is constructively fraudulent under § 548(a)(1)(B) is whether Debtor was insolvent at the time of, or as a result of, the transfer in question.[101]

The Bankruptcy Code defines "insolvent" as a "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation," exclusive of property transferred fraudulently or property exempted from property of bankruptcy estate under § 522.[102] To determine insolvency, the Tenth Circuit implements a "balance sheet" approach.[103] That approach requires a court to evaluate both the assets and liabilities of a debtor on the date of the transfers.[104] This sort of inquiry requires an in-depth and fact-intensive analysis of Arrowhead's financial records and information. The current state of the summary judgment record does not enable the Court to make a finding for either party on this element.

2. Actual fraud.

In the alternative to her constructive fraud claim, Plaintiff also argues three theories as to why the transfers show Debtor's actual intent to "hinder, delay, and defraud" its creditors under § 548(a)(1)(A). First, Plaintiff argues Arrowhead had intent to hinder, delay, and defraud creditors as shown by both Hybki's admissions,

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[101] 11 U.S.C. § 548(a)(1)(B)(I).
[102] 11 U.S.C. § 101(32)(A).
[103] *Porter v. Yukon Nat'l Bank*, 866 F.2d 355, 357 (10th Cir. 1989).
[104] *See id.* (". . . the matrix within which questions of solvency and valuation exist in bankruptcy demands that there be no rigid approach taken to the subject. Because the value of property varies with time and circumstances, the finder of fact must be free to arrive at the "fair valuation" defined in [11 U.S.C. § 101(32)] by the most appropriate means.")

as well as Newbrey's admissions and actions.[105] Second, Plaintiff argues the facts surrounding Newbrey's lending scheme creates a Ponzi-scheme presumption.[106] Third, Plaintiff claims the presence of traditional badges of fraud indicate the existence of Arrowhead's intent to hinder, delay, and defraud its creditors.[107]

a. Arrowhead's intent to hinder, delay, or defraud.

Plaintiff argues that Hybki's admissions as well as Newbrey's statements and actions establish that Arrowhead engaged in the transfers and incurred the loans with actual intent to hinder, delay, or defraud its creditors.[108] Again, the Court concludes material facts are in dispute.

First, Fed. R. Civ. P. 56(e) requires that any affidavits offered in support or opposition of summary judgment "be made on personal knowledge" and that the facts set forth be admissible in evidence.[109] Here, it is unclear whether Hybki had sufficient personal knowledge of Arrowhead's affairs to make assertions relating to this issue, given the broad powers delegated to his agent, Newbrey, coupled with Hybki's alleged ignorance of Newbrey's fraudulent actions. Thus, this remains a material fact in dispute.

Second, Fed. R. Evid. 701 requires all lay opinion testimony be "(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical,

[105] Doc. 71 at p. 57–58; Doc. 98 at p. 320–22.
[106] Doc. 71 at p. 58–62; Doc. 98 at p. 322–23.
[107] Doc. 71 at p. 62–67; Doc. 98 at p. 323–26.
[108] Doc. 71 at p. 57–58; Doc. 98 at p. 320–22.
[109] Fed. R. Civ. P. 56(e).

or other specialized knowledge within the scope of Rule 702."[110] Opinions that amount to bare legal conclusions do not meet this criterion.[111] Here, the only support for Plaintiff's argument comes from two nearly identical statements from Hybki's affidavit:

- "The twenty (20) floorplan loan obligations incurred by the Debtor in connection with NXT1 through NXT20 inclusive were incurred by the Debtor, though agent Newbrey, with actual intent to prolong Newbrey's embezzlement scheme and hinder, delay, and defraud creditors of the Debtor."[112]

- "The twenty-two (22) transfers from the Debtor's Intrust accounts to NXT made in repayment of the twenty (20) floorplan obligations incurred in connection with NXT1 through NXT20 were made by the Debtor, though agent Newbrey, with actual intent to prolong Newbrey's embezzlement scheme and hinder, delay, and defraud creditors of the Debtor."[113]

These statements fall short of Fed. R. Evid. 701's requirements as they merely recite § 548(a)(1)(A)'s intent language and have no additional support in Hybki's affidavit. Ultimately, they amount to bare legal conclusions on an ultimate issue.

Third, Plaintiff also argues that Newbrey's actions and some text messages demonstrate sufficient intent to hinder, delay, and defraud.[114] But again, these arguments characterize debated material facts. Significant disagreement exists as to the scope of Newbrey's agency and whether his intent can be imputed to the Debtor.

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[110] Fed. R. Evid. 701.
[111] *United States v. Richter*, 796 F.3d 1173, 1195–96 (10th Cir. 2015).
[112] Hybki Affidavit, p. 21, ¶ 173.
[113] *Id.* at p. 21, ¶ 174.
[114] Doc. 98 at p. 320–322.

b. The Ponzi-scheme presumption.

Next, Plaintiff argues that, even if Hybki's and Newbrey's admissions are insufficient, sufficient evidence exists to show that Arrowhead, through Newbrey, operated a Ponzi scheme and thus hindered, delayed, and defrauded its creditors.[115] Plaintiff may establish intent to commit actual fraud via a Ponzi-scheme presumption using either a four-factor test or the "badges of fraud" test. The four-factor test requires Plaintiff to prove: (1) that deposits were made by lenders, like Defendant; (2) Arrowhead conducted little to no legitimate business; (3) Arrowhead's business produced little to no profits or earnings; and (4) previous lenders were paid using funds from new lenders.[116] Significant factual disputes remain as to the nature of Arrowhead's existence as a legitimate business, the profits and earnings the debtor produced, and whether any lenders were paid using the funds of another lender. The Court concludes a trial is needed to flesh out these issues.

While Plaintiff did not specifically argue that badges of fraud establish the existence of a Ponzi scheme, the Court considers Plaintiff's argument alleging that badges of fraud establish a presumption of improper intent to be making effectively the same point. It is addressed below.

c. Actual intent based on badges of fraud.

Here again, disputed factual issues remain: whether Arrowhead received value, the relationship between Arrowhead and Newbrey, whether Arrowhead was

[115] Doc. 71 at pp. 58–62.
[116] *In re Diamond Fin. Co.*, 658 B.R. 748, 766 (Bankr. E.D.N.Y. 2024).

insolvent, and the allegation that documents were falsified or forged.[117] The badges of fraud analysis will require resolution of material facts in dispute.

To summarize, the Court concludes resolution of both the constructive fraud allegations under § 548(a)(1)(B) and the actual fraud allegations under § 548(a)(1)(A) are not possible at the summary judgment stage because material facts remain disputed.

C. Defendant's Good Faith Affirmative Defense

Defendant's Cross-Motion for Summary Judgment also argues that, regardless of the success of Plaintiff's Motion for Summary Judgment, Defendant should prevail by virtue of its good faith affirmative defense under § 548(c).

First, as to Defendant's good faith, substantial facts remain in dispute. The record remains unclear at this stage whether Defendant had any actual or constructive knowledge of Newbrey's fraudulent actions or intent when it advanced any one of the twenty-two floorplan loans at issue here to Arrowhead, or as it followed up on the location of vehicles. Second, the question of whether Defendant gave "value" under § 548(c) is very much intertwined with the heated factual dispute over whether Defendant gave "reasonably equivalent value" under § 548(a)1)(B).[118] Defendant's ability to invoke the good faith defense depends on whether Defendant gave value and the extent to which it did so.[119] Further, if

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[117] *See* Doc. 71 at pp. 62–67; *see also* Doc. 98 at pp. 323–26.
[118] *In re Brooke Corp.*, 541 B.R. 492, 521 (Bankr. D. Kan. 2015).
[119] *See* 11 U.S.C. § 548(c) ("[Defendant] has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that [Defendant] gave value [to the Debtor].)"

Plaintiff establishes that a Ponzi-scheme presumption applies, Defendant's good faith defense only protects "an innocent investor" by allowing it "to retain funds up to the amount of the initial outlay."[120]

Defendant has failed to show a lack of genuine dispute as to material facts necessary for success on the § 548(c) affirmative defense.

V. Conclusion

Despite the voluminous briefing, this case remains replete with contentious factual disputes that are both genuine and material to the resolution of the case. Thus, the Court denies the competing motions for summary judgment.[121]

The Court schedules a pretrial conference at 10:30 a.m. on May 14, 2026, when the Court and parties will discuss next steps and set a date for trial. Plaintiff shall prepare, circulate for comment, and submit to the Court via email at KSBml_Wichita_CRDs@ksb.uscourts.gov (not file) in Microsoft Word format a Joint Final Pretrial Order using the Court's form (www.ksb.uscourts.gov/judges-info/herren.com) not later than May 7, 2026.

It is so ordered.

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[120] *In re Vaughan Co., Realtors*, No. 10-10759, 2014 WL 271632, at *5 (Bankr. D.N.M. Jan. 23, 2014) (quoting *Donell v. Kowell*, 533 F.3d 762, 771 (9th Cir. 2008)). *See also Perkins v. Haines*, 661 F.3d 623, 627 (11th Cir. 2011) (holding that § 548(c)'s good faith defense only protects Ponzi investors to the extent of their original investment).

[121] Doc. 69, Doc. 79.