



Fraudulent Transfers: What Every Creditor Should Know

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May, 2013

In the face of mounting debt, some debtors will resort to transferring ownership of their property to a family member or close friend in order to keep the property out of the hands of their creditors. It is not uncommon for boats, cars, and financial assets to be transferred once a judgment has been obtained against a debtor or the threat of a judgment is imminent.

When this occurs, the creditor's first question is typically whether there is any way that they can use property in someone else's name to satisfy the obligation owed to them by the debtor.

North Carolina has adopted the Uniform Fraudulent Transfer Act that, in certain circumstances, allows creditors to reach these transferred assets in order to secure payment for the obligations owed to the creditor.

Elements of a Fraudulent Transfer

A transfer is "fraudulent" as to a creditor if the debtor made the transfer (1) with the intent to hinder, delay, or defraud any creditor of the debtor, or (2) without receiving a reasonably equivalent value in exchange for the transfer, and the debtor either (a) was engaged or about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or (b) intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

In cases in which intent is an element, it can be one of the most difficult to prove. However, in determining whether a transfer was fraudulent under the Act, consideration may be given to the following non-exclusive list of factors:

1. The transfer was made to an "insider," such as a relative, business partner, or entity in which the debtor exercises control;
2. The debtor retained possession or control of the property following the transfer;
3. The filing of or threat of a lawsuit occurring prior to the transfer;
4. The transfer occurred shortly before or after a substantial debt was incurred;
5. The value received for the transfer in comparison to the value of the property transferred.
6. The debtor was insolvent at the time of the transfer or became insolvent shortly after the transfer was made. For this purpose, insolvency is simply the debtor's debts exceeding a fair valuation of the debtor's assets.

Remedies

If the court determines that a fraudulent transfer has occurred, there are several remedies available to the creditor. The court may "reverse" the transfer so that the creditor can utilize the asset to satisfy its claim, or the court could order the property be seized and liquidated in

order to satisfy the creditor's claim. Finally, the court is given broad authority to provide "any other relief that the circumstances may require."

Deadline for Filing/Defenses

Although there are some exceptions, lawsuits claiming that a transfer was fraudulent must be brought within four years of the transfer being made.

The best defense a transferee of property can make to these causes of action is that the value given to the transferor in exchange for the property was a "reasonably equivalent value." It would be a question of fact as to whether the required value was received in exchange for the transfer.

In summary, it is certainly possible for a creditor to reach a debtor's transferred assets under certain circumstances. Our office is available for any questions regarding these types of transfers and how they can affect your ability to collect payment from your debtors.

For more information on this author and his law practice, click here: <http://www.ck-attorneys.com>