
Pennsylvania Court Voids Innocent Asset Transfer as Fraudulent

By Jonathan W. Hugg / Oct 19, 2015

According to the Pennsylvania Superior Court's October 5, 2015 opinion in *Fell v. 340 Associates, LLC and 334 Kayla, Inc.*, plaintiffs attempting to collect judgments in Pennsylvania now have authority to request that a Court undo a defendant's pre-judgment sale of property to an innocent purchaser. A Court can still reverse the sale so that a plaintiff can execute on the assets formerly owned by the defendant, even when: (1) a defendant markets its assets long prior to when it damaged the plaintiff (and therefore prior to when the defendant could have had fraudulent intent); (2) at the time of the sale there is still no judgment against the defendant; (3) the transaction is properly documented, including with a conventional promissory note, upon which the buyer is making payments; and (4) the buyer has no knowledge of a claim or possible judgment against the defendant.

Defendant 340 Associates owned a liquor license, which was its sole asset. In January 2006, 340 Associates began to market the license for sale. More than a year later, in March 2007, a car driven by a patron of a bar using the liquor license hit and injured Fell. Fell sued 340 Associates in November 2007. In June 2009, 340 Associates and defendant 334 Kayla entered into an agreement of sale for the liquor license. They closed the sale, which was a matter of public record, in February 2010, with 340 Associates taking back a promissory note for the full purchase price. In August 2010, a jury rendered a \$6.8 million verdict in favor of Fell and against 340 Associates. In September 2011, Fell sued both 340 Associates and 334 Kayla under the Pennsylvania Uniform Fraudulent Transfer Act. Fell demanded that 334 Kayla return the liquor license to 340 Associates, so that Fell could execute upon it.

After a trial, the lower court found for 334 Kayla and 340 Associates on the ground that there was no actual intent to defraud Fell. The trial court stressed that 340 Associates had marketed the liquor license continuously, beginning 15 months prior to Fell's accident. Furthermore, 334 Kayla had given 340 Associates a promissory note, and was making payments, in exchange for the license. The lower court also specifically found that 334 Kayla was not related to 340 Associates, was not an insider, and was an innocent, good faith purchaser. However, none of this mattered to the Superior Court, which reversed. The Superior Court concluded that the sale was fraudulent as a matter of law because the sale stripped 340 Associates of its only asset, rendered 340 Associates insolvent, and left 340 Associates incapable of discharging its debt to Fell.

The take away from the Superior Court's opinion is that Pennsylvania courts will aggressively scrutinize transactions by debtors and assist creditors in satisfying their judgments. By enabling a plaintiff to set-aside a defendant's pre-judgment transaction with an innocent third party who otherwise knew nothing about the defendant's legal situation, the Superior Court has handed plaintiffs a powerful new tool to apply pressure to recalcitrant judgment debtors. Meanwhile, defendants and potential judgment debtors must consider whether they have a duty to disclose a plaintiff's potential claims to those purchasing assets from them, lest unknowing buyers sue them for fraud if a Court voids a sale and forces the return of property.

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