Michigan Law Review

Volume 39 | Issue 2

1940

FRAUDULENT CONVEYANCES - RIGHT OF CREDITOR WHOSE CAUSE OF ACTION ACCRUED AFTER THE DEBTOR'S VOLUNTARY CONVEYANCE

Reed T. Phalan
University of Michigan Law School

FRAUDULENT CONVEYANCES — RIGHT OF CREDITOR WHOSE CAUSE OF ACTION ACCRUED AFTER THE DEBTOR'S VOLUNTARY CONVEYANCE — On the morning following the accident in which plaintiff's husband was struck and fatally injured by an auto owned and driven by defendant John Manning, the latter conveyed to his sister, Anna, his undivided one-half interest in certain realty, thereby making himself insolvent. About two and one-half weeks later, plaintiff's husband died as a result of the accident, and plaintiff brought suit on behalf of herself and her daughter to recover damages for the wrongful death of her husband. Plaintiff recovered judgment, and then filed the present action to set

aside the conveyance. The court so decreed, and defendants John and Anna appealed. One of their contentions was that, although after the collision there was a cause of action in the injured party which upon his death could have been prosecuted by the plaintiff as administratrix, her cause of action on her own behalf to recover for wrongful death did not accrue until the death, which was after the alleged fraudulent conveyance. *Held*, although the cause of action did not accrue until after the conveyance, plaintiff was entitled to have the fraudulent conveyance set aside. *Edwards v. Manning*, 137 Ohio St. 268, 28 N. E. (2d) 627 (1940).

The holding in the principal case is not a departure from the general law of fraudulent conveyances. As the court recognized, its decision would probably have been justified under the Uniform Fraudulent Conveyance Act (not adopted in Ohio).[1] The uniform law, in general, served to codify what was the existing law under the usual fraudulent conveyance statutes.[2] The important issue in a fraudulent conveyance case is that of the fraud.[3] It is the ease or difficulty of proving fraud, or what the law accepts as fraud, that has engendered the differences in rights of the various types of claimants—i.e., existing and subsequent creditors. If a man with existing debts makes a material, voluntary conveyance,[4] there is a strong likelihood that he means to avoid his debts, and the law, considering the necessity for the protection of creditors, conclusively presumes an intent to defraud them.[5] The grantor must retain sufficient funds or property to provide for his existing creditors.[6] If, however, at the time of the material, voluntary conveyance, the creditor's claim is unliquidated (i.e., an indefinite claim, not accrued or not reduced to judgment), its remoteness and uncertainty prevent treating as a defrauder the grantor who, with no bad faith (i.e., no actual fraudulent intent), fails to retain sufficient funds or property to satisfy the claim.[7] Considering the social importance of freedom of transfer as one of the attributes of property ownership, the law requires proof of actual fraudulent intent.[8] If it is reasonably foreseeable that the grantor will shortly

[1] " 'Creditor' is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent." Uniform Fraudulent Conveyance Act, § 1. "Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors." Id., § 7. See Themo v. Themo, 296 Mass. 190, 5 N. E. (2d) 26 (1936).

[2] See Commissioners' notes, 9 UNIFORM LAWS ANNOTATED and 44 A. B. A. REP. 341 (1919); Bridgman, "Uniform Fraudulent Conveyance Act in Minnesota," 7 MINN. L. REV. 453 (1923).

[3] See 37 HARV. L. REV. 489 (1924).

[4] As used in this note, the conveyance is material if it leaves the debtor insolvent as regards the creditor in question. A conveyance is voluntary if made without any consideration or for a consideration that is not substantial.

[5] 1 GLENN, FRAUDULENT CONVEYANCES AND PREFERENCES, rev. ed., § 270 (1940).

[6] Crumbaugh v. Kugler, 2 Ohio St. 374 (1853).

[7] Rosen v. Levy, 120 Tenn. 642, 113 S. W. 1042 (1908); Ex parte Mercer, 17 Q. B. D. 290 (1886).

[8] Sexton v. Wheaton, 21 U. S. (8 Wheat.) 227 (1823); Winchester v. Charter,

incur debts which he will not be able to pay, then, although free from debts at the time, he shows bad faith in making a material, voluntary conveyance. His salutary freedom of transfer does not extend this far, and his creditors with unliquidated claims will have the same rights, after reducing their claims to judgments, and showing bad faith, as they would have had, had they held liquidated claims.[9] For example, the grantor's material, voluntary conveyance is voidable by his tortfeasee if made shortly after commission of a tort from which an adverse judgment of substantial damages can be reasonably expected.[10] Likewise is the conveyance voidable if made shortly before the grantor enters into a new business [11] or otherwise incurs debts which he cannot reasonably expect to be able to pay.[12] The latter are well-recognized instances in which a creditor may impeach a conveyance made prior to the accrual of his claim. In the usual case of non-intentional tort, there can be no grounds for inferring fraud unless the material, voluntary conveyance follows commission of the tort; it is "little short of inconceivable" [13] that the grantor should intend to defraud a person who is to become his creditor in the future as a result of the grantor's future negligence. In the principal case, conveyance followed the tort, but under the particular circumstances preceded accrual of the plaintiff's cause of action. That cause of action was one of the reasonably foreseeable results of commission of the tort, and it accrued without further act of the tortfeasor. Inference of fraud was clear, and, from the theory of the law of fraudulent conveyances, the court had adequate precedent for impeaching the "unconscionable" [14] conveyance.

Reed T. Phalan

94 Mass. (12 Allen) 606 (1866); Evans v. Lewis, 30 Ohio St. 11 (1876); 1 GLENN, FRAUDULENT CONVEYANCES AND PREFERENCES, rev. ed., § 319 (1940).

[9] Hutchison v. Kelly, 40 Va. 131 (1842).

[10] Shean v. Shay, 42 Ind. 375 (1873).

[11] Jones v. Wright, 222 Ala. 530, 133 So. 275 (1931); see 27 C. J. 522 (1922).

[12] Case v. Phelps, 39 N. Y. 164 (1868); Kohn v. Meyer, 19 S. C. 190 (1882); see 27 C. J. 521 (1922).

[13] Speer v. Stewart, (Wash. 1940) 100 P. (2d) 404 at 406.

[14] Principal case, 28 N. E. (2d) 627 at 629.