

MEHRDAD JON JAHANSHAHI,	:	IN THE COURT OF COMMON PLEAS OF
SHAHROK NAGHDI and	:	LYCOMING COUNTY, PENNSYLVANIA
HAPPY VALLEY ROASTERS, INC.	:	
Plaintiffs	:	
	:	
vs.	:	NO. 99-00,899
	:	
CENTURA DEVELOPMENT CO. INC.,	:	
and KEITH ECK	:	
Defendants	:	PETITION TO SET ASIDE TRANSFER

Date: February 2, 2005

OPINION and ORDER

Before the Court is the Petition to Set Aside Transfer Pursuant to Uniform Fraudulent Transfer Act of Plaintiffs Mehrdad Jon Jahanshahi, Shahrok Naghdi, and Happy Valley Roasters, Inc. (hereafter “Jahanshahi”) filed October 1, 2004. Before matters proceeded any further, the parties agreed to address Centura Development Company, Incorporated (hereafter “Centura”) and Keith Eck’s argument that the Petition should be dismissed on the ground that it is barred by the statute of limitations. On November 15, 2004, the Court held argument to address two issues: (1) What statute of limitations applied to a fraudulent conveyance claim?; (2) When did the statute of limitations begin to run on Jahanshahi’s fraudulent conveyance claim? The Court finds that Jahanshahi’s fraudulent conveyance claim is governed by a two year statute of limitations and, as a general rule, the statute of limitations begins to run on the date of the conveyance.

The Petition alleges the following facts. The property that is the subject of the Petition is Defendant Keith Eck’s residential property. On June 14, 1979, Keith Eck and Stephanie Miles originally took title to that property as joint tenants with the right of survivorship.

Subsequently, Keith Eck and Stephanie Miles married. On August 17, 1988, the property was transferred to Keith Eck and Stephanie Eck as tenants by the entireties. At the time of the August 1988 transfer, Keith Eck was engaged in the commercial land development and realty business, together with various entrepreneurial ventures.

Initially, the Court must note that the Pennsylvania Uniform Fraudulent Conveyances Act (hereafter “PUFC”), 39 P.S. §351 *et seq.*, has been repealed and replaced by the Pennsylvania Uniform Fraudulent Transfer Act (hereafter “PUFTA”), 12 Pa.C.S.A. §5101 *et seq.* The PUFC became effective sixty days after December 3, 1993. The PUFTA applies only to transfers that occurred on or after its effective date. 12 Pa.C.S.A. §5101, Historical and Statutory Notes. Therefore, the PUFC governs Jahanshahi’s claim since the subject conveyance occurred prior to the effective date of the PUFTA.

The Court will now address what statute of limitations governs the fraudulent conveyance claim. Pursuant to 42 Pa.C.S.A. §5501(a), “[a]n action, proceeding or appeal must be commenced within the time specified in or pursuant to this chapter unless, in the case of a civil action or proceeding, a different time is provided by this title or another statute ...” The PUFTA does not contain a specific statute of limitations intended to govern claims asserted under it.¹ Nor does Chapter 55 of the Pennsylvania Judicial Code provide a specific section addressing a cause of action based upon a fraudulent conveyance. Pursuant to 42 Pa.C.S.A. §5527, “[a]ny civil action or proceeding which is neither subject to another limitation specified

¹ In contrast, the PUFTA does contain a governing statute of limitations. It provides that a cause of action must be brought: “(1) under section 5104(a)(1) (relating to transfers fraudulent as to present and future creditors), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or (2) under section 5104(a)(2) or 5105 (relating to transfers fraudulent as to present creditors), within four years after the transfer was made or the obligation was incurred.” 12 Pa.C.S.A. §5109.

in this subchapter nor excluded from the application of a period of limitation by section 5531 (relating to no limitation) must be commenced within six years.” However, the Court does not find that a fraudulent conveyance claim falls within this catch-all section.

Chapter 55 of the Pennsylvania Judicial Code does have a specific section addressing fraud claims. Pursuant to 42 Pa.C.S.A. §5524(7), “[a]ny other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortuous conduct or any other action or proceeding sounding in trespass, including *deceit or fraud*, except an action or proceeding subject to another limitation specified in this subchapter” must be commenced within two years. (emphasis added) The Court finds that a fraudulent conveyance claim would fall within this category.

A fraudulent conveyance claim is a fraud type claim. The harm to be remedied by this claim is the fraud committed against the creditor. The fraud could be actual fraud in that the individual made the conveyance with the actual intent to hinder, delay, or defraud his creditor. *See*, 30 P.S. §357. The fraud could be constructive fraud, which is established based upon the circumstances surrounding the conveyance. *See*, 30 P.S. §§354, 355, 356. Since the conduct underlying a fraudulent conveyance claim is fraudulent it would be appropriate to apply the statute of limitations the Legislature has determined should apply to fraud claims. Therefore, a fraudulent conveyance claim brought under the PUFCA is governed by a two-year statute of limitation.

The second issue is when does the statute of limitations begin to run on a fraudulent conveyance claim asserted under the PUFCA. Jahanshahi contends that the statute of limitations

did not begin to run until a judgment was entered against Centura and Keith Eck. On June 11, 1999, Jahanshahi brought suit against Centura and Keith Eck. Jahanshahi's claims arose out of a real estate venture between them and Defendants concerning the leasing of a commercial property. The operative events were alleged to have occurred in a period of time between from September 1996 to July 1997. Following a trial, the jury awarded Jahanshahi \$70,000 for loss of profits and \$7,850 in damages for out of pocket expenses. Judgment was entered October 29, 2001.

In support of their position that the entry of judgment triggered the statute of limitations, Jahanshahi cites to *ProtoComm Corporation v. Novell, Incorporated*, 55 F. Supp.2d 319 (E.D.Pa. 1999). In *ProtoComm*, the District Court held that the statute of limitations did not begin to run on the plaintiff's fraudulent conveyance claim under the PUFC until the claim had matured and judgment was entered against the defendant. 55 F. Supp.2d at 236. The *ProtoComm* decision is not binding upon this Court. *Martin v. Hale Prods.*, 699 A.2d 1283, 1287 (Pa. Super. 1997) ("Decisions of the federal courts lower than the United States Supreme Court possess a persuasive authority. (citation omitted) Nevertheless, a federal court's interpretation of state law does not bind state courts."). The Court does not find *Protocomm* persuasive, because established Pennsylvania law requires us to find that the statute of limitations begins to run when the alleged fraudulent conveyance is made.

The statute of limitations starts to run as soon as the right to institute and maintain the suit arises. *Dalrymple v. Brown*, 701 A.2d 164, 167 (Pa. 1997); *Gatlin v. Eaton Corp.*, 807 A.2d 283, 289 (Pa. Super. 2002). "The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a

successful completion.” *Kapil v. Assoc. of Pennsylvania State College & Univ. Faculty*, 470 A.2d 482, 485 (Pa. 1983); *Marino v. Seneca Homes, Inc.*, 439 A.2d 1287, 1289-90 (Pa. Cmwlth. 1980). “A cause of action is the facts which establish or give rise to a right of action the existence of which upholds a party’s right to judicial relief.” *Saft v. Upper Dublin Twp.*, 636 A.2d 284, 286 (Pa. Cmwlth. 1993). “As a general rule, in tort cases a cause of action accrues at the time of the act or failure to act upon which the claim is based.” *Marino*, 439 A.2d at 1290.

As a general principle, the statute of limitations on a fraudulent conveyance claim would start to run when the conveyance is made. The event which gives rise to the cause of action is the conveyance. This is true whether the creditor’s claim against the defendant has matured or not. In either event, the creditor does not have a fraudulent conveyance claim until the conveyance occurs. Until that point, the creditor suffers no harm recognized under the PUFCA for which he can invoke the PUFCA to seek redress. Therefore, the two-year statute of limitations begins to run when the conveyance is made.

The facts of the case *sub judice* present a unique situation. Here, the alleged fraudulent conveyance occurred prior to Jahanshahi becoming creditors of Keith Eck. Conceptually, for the purposes of the statute of limitations, that would mean that Jahanshahi’s fraudulent conveyance claim did not arise until they became creditors of Keith Eck. The question then becomes whether the statute of limitations began to run when Jahanshahi became creditors or was the statute of limitations tolled until they discovered the conveyance. The answer to this question would necessarily implicate the discovery rule.

The discovery rule is an exception to the general rule that the statute of limitations starts to run as soon as the right to institute and maintain a suit arises and is borne out of "... the inability of the injured, despite the exercise of due diligence, to know of the injury or its cause." *Pocono Int'l Raceway, Inc. v. Pocono Produce*, 468 A.2d 468, 471 (Pa. 1983) (emphasis in original). The discovery rule test provides that the statute of limitations does not begin to run until "... the plaintiff knows, or reasonably should know (1) that he has been injured, and (2) that his injury has been caused by another party's conduct." *Carns v. Yingling*, 594 A.2d 337, 339 (Pa. Super. 1991) (quoting *Cathcart v. Keene Indust. Insulation*, 471 A.2d 493 (Pa. Super. 1984)); *MacCain v. Montgomery Hosp.*, 578 A.2d 970, 972-73 (Pa. Super. 1990). The most important basis underlying the application of the discovery rule is the plaintiff's inability to know of the injury, despite the exercise of due diligence. *Pocono*, 468 A.2d at 471. Before a court can apply the discovery rule, it must address the ability of the plaintiff to ascertain the facts of a cause of action through the exercise of reasonable diligence. *Ibid.*

Jahanshahi was not aware and had no reason to be aware that he suffered an injury and that another caused the injury when the conveyance was made in August 1988. The events giving rise to Jahanshahi's suit against Centura and Keith Eck did not occur until the time period of September 1996 to July 1997. Until that point, Jahanshahi had no claim against Keith Eck; therefore, he was not a creditor of Keith Eck. See, 39 P.S. §351.² However, once Jahanshahi became aware of his claim against Keith Eck, he was required to use due diligence to discover whether that claim could be compromised by a conveyance.

² The PUFCA defines a creditor as "a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent." 39 P.S. §351.

Reasonable diligence is an objective standard. *Ingenito v. AC & S, Inc.*, 633 A.2d 1172, 1174 (Pa. Super. 1993). If the plaintiff has the means of discovering the injury and that another caused it, then the suit is barred if the plaintiff fails to use those means. *Ibid.* “The polestar of the Pennsylvania discovery rule is not a plaintiff’s actual acquisition of knowledge, but whether the information, through the exercise of due diligence, was knowable to plaintiff.” *Id.* at 1175. “The failure to make inquiry when information is available is a failure to exercise reasonable diligence as a matter of law.” *Ibid.* The knowledge possessed by the plaintiff that starts the statute of limitations is not that he has a cause of action. *Id.* at 1174-75. The triggering information is that the plaintiff knows or should know that he has been injured and the injury was the result of another’s conduct. “ ‘Once [a plaintiff possesses the salient facts concerning the occurrence of his injury and who or what caused it, he has the ability to investigate and pursue his claim.’ ” *Ibid.* [quoting *Burnside v. Abbott Labs.*, 505 A.2d 973, 987-89 (Pa. Super. 1985)] (change in original).

Once Jahanshahi were aware of their claim and status as creditors of Keith Eck, they had the knowledge and ability to investigate and pursue any possible fraudulent conveyance claim they had against Keith Eck. When the claim against Keith Eck arose, Jahanshahi knew they had suffered an injury and Keith Eck caused the injury. In order to protect the claim, Jahanshahi should have undertaken an investigation to determine whether Keith Eck had sufficient assets to satisfy the claim. During this investigation, Jahanshahi would have discovered that Keith Eck owned the property along with Stephanie Eck. It would have been apparent from the face of the deed that the grantors were Keith Eck and Stephanie Miles and the grantees were Keith Eck and Stephanie Eck. The deed would also have contained sufficient

information to indicate these were the same parties who were converting a previously owned joint asset into entireties property. Similar information would have been available in the County Assessment Office. This public information would have informed Jahanshahi that the property was conveyed between family members, which in turn would raise a red flag such that consideration should be given as to whether this conveyance was fraudulent. Thus, if Jahanshahi had exercised reasonable diligence, then the conveyance would have been discovered much earlier.

The Court will not endeavor to fix the date on which Jahanshahi became creditors and thereby should have started their investigation. In any event, the latest point at which the statute of limitations could have begun to run would have been on June 11, 1999 when Jahanshahi's complaint against Keith Eck was filed. Jahanshahi was clearly aware of their claim against Eck by this point in time. Therefore, the Petition was filed after the two-year statute of limitations had run, since it was filed on October 1, 2004.

Accordingly, the Petition is dismissed.

ORDER

It is hereby ORDERED that the Petition to Set Aside Transfer Pursuant to Uniform Fraudulent Transfer Act of Plaintiffs Mehrdad Jon Jahanshahi, Shahrok Naghdi, and Happy Valley Roasters, Inc. filed October 1, 2004 is DISMISSED as being barred by the statute of limitations.

BY THE COURT:

William S. Kieser, Judge

cc: Matthew J. Ziegler, Esquire
Norman M. Lubin, Esquire
Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)