SUPREME COURT OF TEXAS

Ralph S. Janvey, in His Capacity as Court-Appointed Receiver for the Stanford International Bank, Limited, et al.; Official Stanford Investors Committee v. The Golf Channel, Incorporated; TGC, L.L.C., Doing Business as Golf Channel

487 S.W.3d 560 (Tex. 2016) · No. 15-0489 · Decided April 1, 2016

SUMMARY

The Supreme Court of Texas answers a certified question concerning the meaning of "value" and "reasonably equivalent value" under the Texas Uniform Fraudulent Transfer Act. The court holds that a transferee may satisfy the reasonably equivalent value requirement by showing that it fully performed a lawful, arm’s-length contract for fair market value, provided objectively valuable consideration at the time of the transaction, and acted in the ordinary course of business. The case involved payments made by the Stanford Ponzi scheme to the Golf Channel for media-advertising services.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Eva M. Guzman
JURISDICTION	Texas
DECIDED	April 1, 2016
DOCKET	15-0489
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Texas answered a certified statutory-construction question from the United States Court of Appeals for the Fifth Circuit concerning the reasonably equivalent value element of a transferee's good-faith affirmative defense under the Texas Uniform Fraudulent Transfer Act.
STANDARD OF REVIEW	De novo statutory construction and review of summary judgment; the certified question was answered based on the undisputed facts and the meaning of TUFTA.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Texas; binding Texas precedent on the construction of TUFTA.

PARTIES	Ralph S. Janvey, in his capacity as court-appointed receiver for the Stanford International Bank, Limited, et al., Official Stanford Investors Committee v. The Golf Channel, Incorporated, TGC, L.L.C., doing business as Golf Channel

TOPICS

statutory interpretation · plain meaning rule · asset protection · commercial litigation · remedies

PRACTICE AREAS

fraudulent transfers · commercial litigation · statutory interpretation · receivership · bankruptcy-related litigation

QUESTIONS PRESENTED

1. What showing of value under the Texas Uniform Fraudulent Transfer Act is sufficient for a transferee to establish the reasonably equivalent value element of the good-faith affirmative defense under section 24.009(a)?
2. Whether TUFTA applies a different value or reasonably equivalent value standard when the debtor operates a Ponzi scheme.
3. Whether objectively valuable services and consumable goods can constitute value even though the transaction does not leave a tangible or leviable asset in the debtor's estate.

HOLDINGS

1. Value exists when the debtor receives consideration with objective economic value at the time of the transfer, viewed from a reasonable creditor's perspective. The consideration need not preserve the debtor's estate or create a tangible or leviable asset, and services or consumable goods are not rendered valueless merely because they deplete estate assets.
2. The reasonably equivalent value requirement in TUFTA section 24.009(a) is satisfied when a transferee fully performs an arm's-length transaction in the ordinary course of its business at market rates.
3. TUFTA does not contain separate standards for assessing value or reasonably equivalent value based on whether the debtor operated a Ponzi scheme.

KEY QUOTATIONS

> *"Construing the relevant statutory provisions, we conclude TUFTA's "reasonably equivalent value" requirement can be satisfied with evidence that the transferee (1) fully performed under a lawful, arm's-length contract for fair market value, (2) provided consideration that had objective value at the time of the transaction, and (3) made the exchange in the ordinary course of the transferee's business."* (at 560-561)

> *"Whether a debtor obtained reasonably equivalent value in a particular transaction is determined from a reasonable creditor's perspective at the time of the exchange, without regard to the subjective needs or perspectives of the debtor or transferee and without the wisdom hindsight often brings."* (at 593-594)

> *"Value must be determined objectively at the time of the transfer and in relation to the individual exchange at hand rather than viewed in the context of the debtor's entire enterprise, viewed subjectively from the debtor's perspective, or based on a retrospective evaluation of the impact it had on the debtor's estate."* (at 594)

FACTUAL BACKGROUND

Stanford International Bank operated a multibillion-dollar Ponzi scheme and paid Golf Channel approximately $5.9 million under a two-year contract for media-advertising services, including commercial air time and sponsorship recognition. Golf Channel fully performed the contract, and the services were provided in the ordinary course of its business at fair-market rates in an arm's-length transaction. After Stanford entered receivership, the receiver sought to claw back the payments as fraudulent transfers, arguing that the services had no value to Stanford's creditors because they helped continue the Ponzi scheme.

PROCEDURAL HISTORY

A court-appointed receiver and the Official Stanford Investors Committee sued Golf Channel in federal district court to recover approximately $5.9 million paid under a media-advertising contract with Stanford International Bank. On cross-motions for summary judgment, the federal district court held that Stanford's fraudulent intent was established because it operated a Ponzi scheme but granted summary judgment for Golf Channel on its affirmative defense, finding that the advertising services provided reasonably equivalent value. The Fifth Circuit initially reversed, then vacated its decision and certified the statutory question to the Supreme Court of Texas.

DISPOSITION

other

REMAND INSTRUCTIONS

The court answered the certified question according to the stated construction of TUFTA. No remand instructions to a lower court were specified in the opinion.

CASES CITED

- In re Bonham, 229 F.3d 750, 759 n.1 (9th Cir. 2000)
- Klein v. Cornelius, 786 F.3d 1310, 1320 (10th Cir. 2015)
- Janvey v. Brown, 767 F.3d 430, 439, 441-43 (5th Cir. 2014)
- Wiand v. Lee, 753 F.3d 1194, 1201 (11th Cir. 2014)
- Donell v. Kowell, 533 F.3d 762, 777 (9th Cir. 2008)
- Warfield v. Byron, 436 F.3d 551, 558-60 (5th Cir. 2006)
- Janvey v. Golf Channel, 780 F.3d 641, 642, 645-47 (5th Cir.), vacated by 792 F.3d 539 (5th Cir. 2015) (per curiam)
- Janvey v. Golf Channel, Inc., 792 F.3d 539, 544-47 (5th Cir. 2015) (per curiam)
- KCM Fin. LLC v. Bradshaw, 457 S.W.3d 70, 89 (Tex. 2015)
- State Office of Risk Mgmt. v. Carty, 436 S.W.3d 298, 301 n.3 (Tex. 2014)

- Fiess v. State Farm Lloyds, 202 S.W.3d 744, 751 (Tex. 2006)
- Greene v. Farmers Ins. Exch., 446 S.W.3d 761, 767 (Tex. 2014)
- G.M. Houser, Inc. v. Rodgers, 204 S.W.3d 836, 843 (Tex. App.—Dallas 2006, no pet.)
- Queen v. Dupree, 303 S.W.2d 769, 774 (Tex. 1957)
- City of Lorena v. BMTP Holdings, L.P., 409 S.W.3d 634, 641 (Tex. 2013)
- Liberty Mut. Ins. Co. v. Adcock, 412 S.W.3d 492, 494 (Tex. 2013)
- Tex. Lottery Comm’n v. First State Bank of DeQueen, 325 S.W.3d 628, 635 (Tex. 2010)
- First Nat’l Bank of Seminole v. Hooper, 104 S.W.3d 83, 86 (Tex. 2003)
- Nathan v. Whittington, 408 S.W.3d 870, 873 (Tex. 2013)
- Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson, 209 S.W.3d 644, 651 (Tex. 2006)
- In re Financial Federated Title & Trust, Inc., 309 F.3d 1325, 1331-33 (11th Cir. 2002)
- In re Universal Clearing House Co., 60 B.R. 985, 998-1000 (D. Utah 1986)
- Finn v. Alliance Bank, 860 N.W.2d 638, 642, 647-50 (Minn. 2015)
- In re R.M.L., Inc., 92 F.3d 139, 148-53 (3d Cir. 1996)
- In re Chomakos, 69 F.3d 769, 770-72 (6th Cir. 1995)
- In re Fairchild Aircraft Corp., 6 F.3d 1119, 1123-27 (5th Cir. 1993), abrogated on other grounds by In re Dunham, 110 F.3d 286 (5th Cir. 1997)
- In re Ozark Rest. Equip. Co., 850 F.2d 342, 344-45 (8th Cir. 1988)
- In re JTS Corp., 617 F.3d 1102, 1109 (9th Cir. 2010)
- In re Carrozzella & Richardson, 286 B.R. 480, 487-88 (D. Conn. 2002)
- Scholes v. Lehmann, 56 F.3d 750, 757 (7th Cir. 1995)
- Mellon Bank, N.A. v. Metro Commc’ns, 945 F.2d 635, 647-48 (3d Cir. 1991)
