

Fraudulent Transfer Act: Be Wary of the Uncollectable Judgment Debtor

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Financial institutions that become judgment creditors should always take a hard look at a judgment debtor's financials and assets after getting a judgment against them. This is especially the case if the financial institution finds out that a debtor no longer has the assets that it had before. Some debtors fraudulently transfer assets to another individual or entity to hide them from financial institutions trying to collect on a judgment. If this has happened, then the financial institution may not be out of luck. They may be able to recover under a fraudulent transfer theory.

In a recent 1st District case, *A.L. Dougherty Real Estate Management Co., LLC v. Tsai*, 2017 IL App (1st) 161949 (December 29, 2017), the court found the corporation that received assets of the debtor and the individual that aided in forming this corporation liable to the creditor for the amount of the judgment due to a fraudulent transfer. The newly formed corporation took over and performed the same work that the debtor had previously done and all of the assets of the debtor were transferred to the newly formed corporation. The court found that these two entities were one in the same and held the newly formed corporation responsible for the judgment.

The court further stated that claims like these involve a dispute over enforcement of a judgment rather than breach of contract. In the *A.L. Dougherty Real Estate Management Co., LLC* case, the creditor was attempting to hold the individual and the newly formed corporation liable for the judgment rather than hold them to a prior contract. Because of this, contract principles did not apply. Contract principles are more stringent than finding that an individual or an entity is one in the same as the entity transferring the assets, so creditors will have an easier time recovering assets when only attempting to enforce a judgment.

A debtor who appears to have no assets may just be hiding them and a financial institution should be wary of these debtors as they may be able to collect on the judgment after all. Debtors may try to make all sorts of arguments to prevent financial institutions from finding their hidden assets. These arguments are likely to include that the tougher contract principles should apply when enforcing judgments, but *A.L. Dougherty Real Estate Management Co., LLC* shows that this should not be the case.

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