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Rights of Creditors Under the Uniform Fraudulent Conveyance Act

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RIGHTS OF CREDITORS UNDER THE UNIFORM FRAUDULENT CONVEYANCE ACT

The Uniform Fraudulent Conveyance Act is one of the many acts resulting from the National Conference of Commissioners on Uniform State Laws. This act has been adopted in seventeen states including Pennsylvania[1] and New Jersey.[2] Section 1 says, *inter alia,*

> "Creditor is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent."

Section 9 says,

> "Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such purchaser: (a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim; or (b) Disregard the conveyance and attach or levy execution upon the property conveyed."

The application of these sections is the basis of this note.

Prior to the Act there were two methods by which a creditor could recover property conveyed by his debtor to "hinder, delay or defraud" him. As so admirably stated by Mr. Chief Justice Von Moschzisker; "The established way to test the question of whether real property has been conveyed in fraud of creditors is for one claiming to be a creditor to obtain a judgment and issue execution against the premises in question as the property of his debtor, this to be followed by an action of ejectment at the suit of the purchaser at the sheriff's sale."[3] While this was a Pennsylvania case it applies with equal force to New Jersey and most states. The other remedy was by a bill in equity to

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[1]Act of 1921, P. L. 1045.

[2]Act of 1919, Chapter 213.

[3]Sauber v. Nouskajian, 286 Pa. 449.

have the conveyance set aside. The rule in Pennsylvania seems to have been that the creditor could not come into equity[4] except where the property was "beyond the reach of the ordinary process of execution."[5] New Jersey held that even in such cases the creditor would have to establish his claim at law by getting a judgment against the debtor.[6] There was a seeming exception to these rules of equity in the case of a trustee in bankruptcy.[7]

The Act has had no effect on the remedy at law.[8] That a trustee in bankruptcy may go into equity is particularly true since the Act.[9] Section 9 makes the relief by bill in equity, not supplementary to, but concurrent with, the remedy at law. However, some courts hold that the foundation for the bill must be laid in an action at law.[10] The extent of this foundation, if any is necessary, is the problem which seems to be bothering the courts. Even in states which held, prior to the Act, that some further step other

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[4]Kemmler v. McGovern, 238 Pa. 460; Bank v. Kern, 193 Pa. 59; Hyde v. Baker, 212 Pa. 224.

[5]Peoples Nat. Bank v. Loeffert, 184 Pa. 164; Fowler's App., 87 Pa. 449; Houseman v. Grossman, 177 Pa. 453; Curtis and Co. v. Olds, 250 Pa. 320.

[6]Biglow Blue Stone Co. v. Magee, 27 N. J. Eq. 392, "When a creditor comes into equity to reach the equitable interest of his debtor in land, he must show a judgment which would, in case the legal title to the property were in the debtor, be a legal lien thereon, and an execution returned unsatisfied. This will show that his remedy at law is exhausted, and will entitle him to the aid of equity. It is not necessary in such case to show a levy of execution on the land which he seeks to reach." Robert v. Hodges, 1 C. E. Green 299; Dunham v. Cox, 2 Stockt. 437; Cuyler v. Moreland, 6 Paige 273.

[7]Geary v. Schwem, 280 Pa. 435, Davis v. Hudson, 28 Fed. (2nd) 740.

[8]Conemaugh W. Co. v. Delano C. Co., 298 Pa. 182: "It (Uniform Act) does not deprive a creditor of the right, as formerly, to work out his remedy at law." Penna. Trust Co., v. Schenecker, 289 Pa. 277; Doland v. Burns Lumber Co., 194 N. W. (Minn.) 636; Quellin v. Gibson, 13 D. & C. 446.

[9]Geary v. Schwem, 280 Pa. 435; Davis v. Hudson, 28 Fed. (2nd) 740 construing N. J. Act.

[10]Gross v. Pa. Mtg. & Loan Co., 146 Atl. (N. J.) 328; Frawley v. Chakos, 36 Fed. (2nd) 373; Harrison v. Triplex Gold Mines, 33 Fed. (2nd) 664.

than merely getting a judgment was required to get a lien, those states which have adopted the Act now uniformly hold that getting a judgment is sufficient to proceed in equity.[11] It is needless to say that if a lien is also acquired, it will be adequate.[12] In *U. S. Realty Corp. v. Asea,*[13] the court said, "This statutory provision, we consider, embraces by implication, creditors whose claims have not only matured but been reduced to judgment at law, although such judgment is not impressed as a lien upon the land of the debtor." This is a proper conclusion because the question of the existence of the debt is still established at law, and, if the parties so desire, by a jury. The rule does not take away the common law right of a debtor to require that claims against him be established at law. In a few cases, however, an attempt has been made to have the courts extend the doctrine to situations where the plaintiff is a general creditor and has not even attempted to establish his claim at law. The case of *Gross v. Pa. Mtg. and Loan Co.*[14] on its first appeal, held that such a person was a creditor within the meaning of the Act. While the question did not arise in *U. S. Realty Corp. v. Asea,*[15] the court held as dictum that such part of the Act was unconstitutional. The point was directly before the Court of Errors and Appeals of New Jersey when the case of *Gross v. Pa. Mtg. and Loan Co.*[16] was taken before it the second time and the court held, "The 1919 statute is unconstitutional, to the extent that it attempts to give the court of chancery authority to hear and determine actions for debts and for damages arising out of a breach of contract, which power is solely

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[11]Quackenbush v. Slickel, 9 D. & C. 155; Zook v. Sherk, 12 D. & C. 322; Fesovitz v. Cordosco Const. Co., 140 Atl. (N. J.) 573; Virgil State Bank v. Wahl, 228 N. W. (S. D.) 392; Hulsether v. Sanders, 223 N. W. (S. D.) 335; Lipskey v. Voloshers, 141 Atl. (Md.) 402; Morse v. Roach, 201 N. W. (Mich.) 471.

[12]Sauber v. Nouskajian, 286 Pa. 449; Dutcher v. Van Duine, 219 N. W. (Mich.) 651; Mason Co. v. Poust, 227 N. W. (Wisc.) 392.

[13]142 Atl. (N. J.) 38.

[14]137 Atl. (N. J.) 89.

[15]142 Atl. (N. J.) 38.

[16]146 Atl. (N. J.) 328.

within the jurisdiction of the law courts." They base their decision on *U. S. Realty Corp. v. Asea.* By reference to that case we find the reason given is that, according to the constitution of New Jersey, no power of the common law courts which existed at the time of the adoption of the constitution may be delegated by statute to the equity courts. A like case arose in *Frawley v. Chakos.*[17] There the court said that under the laws of Wisconsin a suit could not be brought in equity until after the plaintiff had gotten a judgment at law. In *Harrison v. Triplex Gold Mines*[18] the court says,[19] "The plaintiffs were simple contract creditors of the company. It is the settled law of this court that such creditors cannot come into a court of equity to obtain the seizure of the property of their debtors, and its application to the satisfaction of their claims; and this notwithstanding a statute of the state may authorize such a proceeding in the courts of the state. The line of demarcation between the equitable and legal remedies in the federal courts cannot be obliterated by state legislation."

At first glance it would appear that Pennsylvania should be controlled by these cases but upon closer examination it will be found that all of them have features that make their reasoning inapplicable in Pennsylvania. The New Jersey case does not apply for there is no such constitutional restriction against the granting of the powers of the law courts to the equity courts. While the case of *Frawley v. Chakos*[20] was decided after the Act was passed in Wisconsin the court wholly overlooked it. They cited as authority three cases, all of which were decided prior to the Act. The case of *Harrison v. Triplex Gold Mines*[21] cannot be considered as interpreting the Act since it was a federal case and the federal courts have their own equity rules. Thus we see that although these three cases have held that the bill was not maintainable, none of them apply

[17]36 Fed. (2nd) 373.
[18]33 Fed. (2nd) 664.
[19]Citing Hollins v. Brierfield Coal and Iron Co., 150 U. S. 341.
[20]Note 17.
[21]Note 18.

in Pennsylvania. It appears, therefore, that unless the courts can find some other grounds for holding the Act unconstitutional, a creditor will be allowed to come into equity without first establishing his claim at law, and have set aside a fraudulent conveyance made by his debtor as has been done in New York.[22]

It seems not only possible but probable that such "other grounds" may be found in the constitutional provision that "Trial by jury shall be as heretofore, and the right thereof remain inviolate."[23] Purdon's Digest[24] interprets this to mean that "the legislature cannot confer upon a court of equity the power of trying, according to the course of chancery, any question which has always been triable according to the course of law by a jury".[25] The duty of saying whether a tort has been committed or a contract breached has always been on the law courts. Insofar as the Act tries to give this duty to an equity court it would be, apparently, unconstitutional. A creditor would not need to do anything more at law than get a judgment. The courts of equity have always exercised the power of declaring conveyances fraudulent, imposing liens, and even setting conveyances aside at the suit of judgment creditors.[26] The fact that such power has been changed from an unusual remedy to a usual one, does not violate the constitution for "the legislature may enlarge the scope of the equity jurisdiction of the courts."[27] As held in one case,[28] the plaintiff may get a temporary injunction under the Act to prevent his debtor's conveying his property before the com-

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[22]Gatto v. Boyd, 137 Misc. 156, 241 N. Y. Supp. 626 which applied the dictum in American Surety Co. v. Conner, 251 N. Y. 1, 166 N. E. 783.

[23]Article 1, Section 6, Constitution of Pennsylvania of 1873.

[24]Constitution, page 109.

[25]North Pa. Coal Co. v. Snowden, 42 Pa. 488; Norris' Appeal, 64 Pa. 275; Tillmes v. Marsh, 67 Pa. 507; Grubb's Appeal, 105 Pa. 480; Duncan v. Hollidaysburg Iron Works, 136 Pa. 478; Penna. Co. v. Ohio R. R. Co., 204 Pa. 356.

[26]Note 5.

[27]Purdon's Digest, Constitution, page 340.

[28]Oliphant v. Moore, 293 S. W. (Tenn.) 541.

pletion of an action at law then pending between the parties. This will not be unconstitutional.[29]

To summarize the law in Pennsylvania: a creditor may proceed at law to avoid a fraudulent conveyance by his debtor; or he may get a temporary injunction against the debtor pending the determination of his claim at law; or, he may establish his claim at law and then have the conveyance set aside in equity without regard to the adequacy of the remedy at law; or, possibly, he may be allowed to go into equity without first getting a judgment at law. The existence of this latter right, however, is very doubtful.

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[29]Purdon's Digest, Constitution, page 112,n 11