

REL: September 10, 2021

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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623 Partners, LLC

v.

Bart Bowers; Tabitha Adcock Bowers; the Estate of Betty Meeks, deceased; and Dolphin Tales, LLC

**Appeal from Baldwin Circuit Court
(CV-18-900577)**

MITCHELL, Justice.

This case addresses fraudulent-conveyance claims that are now moot. In an earlier action, 623 Partners, LLC, obtained a default

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judgment against Bart Bowers. But 623 Partners never collected on that judgment. About nine years after obtaining the judgment, 623 Partners filed this case, alleging that Bart and members of his family had orchestrated the fraudulent conveyance of a property that should be used to pay the judgment. While this case was pending, the judgment in the earlier action reached the 10-year mark, meaning the judgment was presumed satisfied. 623 Partners tried but failed to revive the judgment. The defendants in this case then moved for summary judgment on the sole basis that 623 Partners could not enforce the judgment -- effectively arguing that the 623 Partners' fraudulent-conveyance claims were moot. The trial court granted that motion. Because we must presume that the judgment against Bart and its underlying debt are satisfied, we affirm.

Facts and Procedural History

JBV Enterprises, LLC, took out a loan to develop a subdivision, which was secured by a mortgage on real property in Baldwin County ("the subdivision property"). Bart, a principal of JBV Enterprises, jointly owned a separate parcel of real estate in Gulf Shores ("the parcel") with

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his wife, Tabitha Adcock Bowers. In 2008, the Bowerses conveyed the parcel to Tabitha's mother, Betty Meeks.

A few months later, 623 Partners purchased the loan secured by the mortgage that JBV Enterprises had obtained for the development of the subdivision property. But that subdivision was never completed. After JBV Enterprises defaulted on the loan and mortgage, 623 Partners foreclosed on the subdivision property. To recover the difference between the amount of the foreclosure sale and the remaining balance JBV Enterprises owed, 623 Partners sued JBV Enterprises and some of its principals, including Bart, in the Baldwin Circuit Court ("the original action"). The trial court entered separate default judgments against Bart and the other defendants in the original action in December 2009.

In 2017, shortly before she died, Meeks transferred the parcel to Dolphin Tales, LLC -- an entity in which Tabitha is listed as the "president/owner." The next year, 623 Partners brought this action against Bart, Tabitha, Meeks's estate, and Dolphin Tales ("the defendants"). 623 Partners alleged that the defendants had orchestrated two fraudulent transfers of the parcel -- first from the Bowerses to Meeks,

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then from Meeks to Dolphin Tales -- to avoid the debt Bart owed 623 Partners through the default judgment entered against him in the original action.

The default judgments that had been entered against Bart and the other defendants in the original action reached the 10-year mark in December 2019. Under § 6-9-191, Ala. Code 1975, a judgment over 10 years old "must be presumed satisfied, and the burden of proving it not satisfied is upon the plaintiff." Because over 10 years had passed since entry of the default judgments, 623 Partners filed a motion in the original action seeking to revive the judgments. In doing so, 623 Partners took on the burden of proving that the judgments had not been satisfied. The trial court in the original action determined that 623 Partners had not met its burden and, thus, denied its motion.

After 623 Partners failed to revive the lapsed judgments in the original action, the defendants in this case moved for summary judgment on the fraudulent-conveyance claims against them. The defendants' only argument was that they were entitled to summary judgment on the fraudulent-conveyance claims because 623 Partners could no longer

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execute on the default judgment against Bart. In effect, their argument was that the fraudulent-conveyance claims 623 Partners brought to attempt to satisfy the default judgment against Bart were moot because the default judgment itself was unenforceable. The trial court granted the defendants' motion.

623 Partners appealed the trial court's summary judgment and, then, less than a month later, appealed the trial court's denial of its motion to revive the default judgments in the original action. We considered the appeal in the original action first and affirmed, without an opinion, the trial court's denial of 623 Partners' motion to revive. See 623 Partners, LLC v. JBV Enters., LLC (No. 1200035, June 11, 2021), ___ So. 3d ___ (Ala. 2021) (table). We now consider whether the trial court properly entered summary judgment on the fraudulent-conveyance claims in this case.

Standard of Review

We review the trial court's summary judgment de novo. In doing so, we apply the same standard that the trial court applied -- we must determine " 'whether the movant has made a prima facie showing that no

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genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law.' " Shoals Extrusion, LLC v. Beal, 288 So. 3d 448, 450 (Ala. 2019) (citation omitted). In making that determination, "we must review the evidence in the light most favorable to the nonmovant.'" Id. (citation omitted). "Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce "substantial evidence" as to the existence of a genuine issue of material fact.'" Id. at 450-51 (citation omitted).

Analysis

This case presents a question of first impression before this Court: whether a creditor may maintain claims under the Alabama Uniform Fraudulent Transfer Act ("the Act"), § 8-9A-1 et seq., Ala. Code 1975, when the debt has been reduced to a judgment and that judgment is presumed satisfied.¹ The principles set out in our caselaw, and the weight of authority from other courts that have considered similar issues, guide

¹The Legislature adopted the Act based on the Uniform Fraudulent Transfer Act. See § 8-9A-11, Ala. Code 1975.

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us to the answer -- 623 Partners' fraudulent-conveyance claims are moot and cannot be considered further.

Once 10 years had passed since the entry of the default judgments in the original action, those judgments were presumed satisfied. See § 6-9-191. This presumption "is a substantial statutory right accorded the debtor in a stale judgment as a shield to defeat recovery until opposing evidence is reasonably sufficient in the opinion of the court to overcome it." Gambill v. Cassimus, 247 Ala. 176, 178, 22 So. 2d 909, 910 (1945). Importantly, it is also "'equivalent to direct proof of payment'" that "'prima facie obliterates the debt, and is conclusive in the absence of any evidence tending to show nonpayment.'" Id. (emphasis added) (citation omitted); see also id. at 179, 22 So. 2d at 910 (explaining that payment of the judgment "would have completely extinguished the debt"). Put simply, the presumption of satisfaction does not merely apply to the judgment -- it also extends to the debt that formed the basis for the judgment. Accordingly, the debt does not exist separate and apart from the judgment -- satisfaction of the judgment satisfies the underlying debt as well. Although 623 Partners attempted to revive the default

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judgments, its efforts fell short. Thus, we presume that the debt no longer exists.

The defendants raise an obvious question: Because we must presume that the default judgment against Bart and the underlying debt are satisfied, what is there to remedy? 623 Partners never squarely addresses that question.² Instead, 623 Partners recites some of the remedies available to creditors in the Act and argues that those remedies "do not rest upon the status of the certificate of judgment in the 2009 case and should not be swept away by summary judgment that arguably relies on said status." But 623 Partners cites no authority for that proposition. Nor does it explain why any relief -- including its attempt to undo the transfers of the parcel to "fully satisfy its creditor claims" against Bart -- would be appropriate when the default judgment against Bart and the underlying debt are presumed satisfied. In short, there is no basis to

²Granted, when 623 Partners submitted its briefing in this appeal, we had not yet affirmed the trial court's denial of 623 Partners' motion to revive the default judgments in the original action. But that outcome should not have been a surprise because 623 Partners filed its appeal in the original action several months before it submitted its initial brief in this case.

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grant a remedy for a debt that no longer exists -- and 623 Partners offers none.³

The cases on which 623 Partners relies likewise fail to address the core questions before us -- why a remedy would be appropriate or how its fraudulent-conveyance claims could remain viable. But at least five courts in other jurisdictions that have adopted the Uniform Fraudulent Transfer Act ("the UFTA") have concluded that fraudulent-conveyance claims cannot proceed in circumstances similar to those in this case.⁴ Those

³In its reply brief, 623 Partners argues for the first time that it could also be entitled to a remedy through the United States Bankruptcy Code. We will not consider that argument. See Byrd v. Lamar, 846 So. 2d 334, 341 (Ala. 2002) (applying the "settled rule that this Court does not address issues raised for the first time in a reply brief").

⁴See, e.g., RRR, Inc. v. Toggas, 98 F. Supp. 3d 12, 22 (D.D.C. 2015) ("[O]nce a judgment has been extinguished as a matter of law, any fraudulent transfer action based upon that judgment is also extinguished."); Timothy v. Pia, Anderson, Dorius, Reynard & Moss, LLC, 456 P.3d 731, 736 (Utah 2019) (holding that, once the trial court denied the plaintiffs' motion to renew a judgment, they were "not creditors with a claim" and thus could "no longer obtain a remedy under the UFTA," rendering their fraudulent-transfer claim moot); Hullett v. Cousin, 204 Ariz. 292, 297, 63 P.3d 1029, 1034 (2003) ("But while the UFTA defines a claim broadly, such a claim must be an enforceable obligation. ... Accordingly, a claim that is time-barred is not a 'right to payment.'" (citation omitted)); Jahner v. Jacob, 515 N.W.2d 183, 185 and 186 (N.D. 1994) (holding that a "valid, presently enforceable debt against the

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cases are especially relevant in light of § 8-9A-11, Ala. Code 1975, which provides that the Act "shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [the Act] among states enacting [statutes based on the UFTA]."

We agree with the clear majority of fellow UFTA jurisdictions that have examined issues similar to this one. When 623 Partners commenced its fraudulent-conveyance action in 2018, it had not yet been 10 years since the entry of the default judgments in the original action. Consequently, the default judgment against Bart was not presumed satisfied at that time and there remained a live controversy -- whether the defendants orchestrated fraudulent transfers of the parcel and, if so,

original transferor is an essential element of an action against the transferee to set aside a fraudulent transfer" and that "failure to renew the judgment against [the transferor] is fatal to [an] action to set aside the fraudulent transfer"); Oregon Recovery, LLC v. Lake Forest Equities, Inc., 229 Or. App. 120, 127, 211 P.3d 937, 942 (2009) ("[W]hen the judgments on which the UFTA claim is based expired, plaintiffs were no longer creditors of defendants and their claims became moot."). But see Parker v. Livingston, 817 So. 2d 554, 562 (Miss. 2002) ("Assuming arguendo that the Florida judgments had expired, the underlying debt remained. Therefore it was still within the chancellor's power to entertain the fraudulent conveyance action").

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whether the transfers of the parcel should be set aside, or damages awarded, to satisfy Bart's debt to 623 Partners. But in December 2019, the presumption of satisfaction attached to the default judgment against Bart and the underlying debt, rendering the parties' dispute moot because there was no longer a debt to remedy. See Ex parte Carter, 275 So. 3d 115, 123 (Ala. 2018) (holding that, with no remedy available, ruling in the appellant's favor "would serve no purpose" and that the matter was moot). 623 Partners attempted to revive the default judgments, but it was unsuccessful. Thus, its fraudulent-conveyance claims remain moot, and the trial court did not err by entering summary judgment against 623 Partners.⁵

⁵623 Partners makes no argument concerning whether it could move a second time to revive the default judgments. Nor does it argue that it could reassert its fraudulent-conveyance claims if a second motion to revive were successful. Thus, we express no view concerning those questions. See Ex parte Kelley, 296 So. 3d 822, 829 (Ala. 2019) ("[I]t is well settled that this Court will not reverse a trial court's judgment based on arguments not made to this Court.").

Conclusion

The default judgment against Bart in the original action was presumed satisfied 10 years after it was entered, rendering 623 Partners' fraudulent-conveyance claims moot. 623 Partners tried but failed to revive the lapsed default judgments. Thus, the trial court did not err when it entered summary judgment on 623 Partners' moot fraudulent-conveyance claims.

AFFIRMED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Mendheim, and Stewart, JJ., concur.

Sellers, J., dissents.

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SELLERS, Justice (dissenting).

I respectfully dissent. Under Alabama's statutory framework, a judgment cannot be revived more than 20 years after the date of its entry; thus, only after 20 years is a judgment that has not been revived conclusively deemed satisfied. See § 6-9-190, Ala. Code 1975 ("A judgment cannot be revived after the lapse of 20 years from its entry."). Nonetheless, a judgment is presumed satisfied if it has not been executed on within 10 years of its entry or if 10 years have elapsed since the date of the last execution issued, and the burden is on the judgment creditor to demonstrate that the judgment has not been satisfied. § 6-9-191, Ala. Code 1975. When a judgment creditor fails to execute on a judgment within 10 years of its entry, the judgment creditor must move for and obtain a revival of the judgment before the expiration of the 20-year limitations period. § 6-9-192, Ala. Code 1975. In other words, an order granting a motion to revive a judgment filed within the 20-year period allows a judgment creditor to avoid being cut off at 10 years by the presumption imposed by § 6-9-191. The main opinion concludes that, because 623 Partners, LLC, was unsuccessful in its attempt to revive the

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lapsed default judgment against Bart Bowers entered in the original action, it must be presumed that the judgment, as well as the underlying debt, are satisfied, thus leaving no controversy to be resolved regarding the fraudulent-conveyance claims asserted by 623 Partners. Specifically, the main opinion concludes that a debt cannot exist separate and apart from a judgment securing the debt. In reaching that conclusion, the main opinion relies on Gambill v. Cassimus, 247 Ala. 176, 178, 22 So. 2d 909, 910 (1945), which quotes the general rule stated in 48 Corpus Juris Payment § 200: that the presumption of payment arising from the lapse of time prima facie obliterates the debt. However, the issue involved in Gambill was whether the judgment creditor had met his burden of establishing that a lapsed judgment had not been satisfied. Therefore, any extrapolation in Gambill regarding the extinguishment of underlying debts is merely dicta. Furthermore, the status of a debt is an evidentiary issue involving whether the underlying obligation has or has not been satisfied, what a creditor must show to support his or her possession of a validly existing unpaid obligation, and what a debtor must show to confirm payment and satisfaction of the debt. See 48 Corpus Juris

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Payment § 199 ("The presumption of payment arising from lapse of time is one of fact, and differs essentially from the bar of the statute of limitations. This presumption is usually drawn from the evidence in support of the claim, and amounts to nothing more than a rule of evidence affecting the burden of going forward with the evidence on the issue of payment or non-payment." (footnotes omitted)). Until the expiration of 20 years, the parties to an unrevived judgment are locked in an evidentiary burden-of-proof battle that ends when the judgment is conclusively deemed satisfied or when a debtor conclusively establishes satisfaction of the debt, whichever occurs first.

There is a distinction between a debt, a judgment, and a certificate of judgment. Even if a certificate of judgment is void, that merely makes the creditor unsecured because the judgment lien no longer attaches to the debtor's property. Until a judgment is conclusively deemed satisfied, the daily nonpayment by the debtor provides a continuing basis for the creditor to execute on the judgment by using, for instance, a writ of garnishment. As long as the initial judgment was not entered outside the 20-year period, the underlying debt has some viability because it has not

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been conclusively deemed satisfied. In this case, the default judgment against Bart was entered on December 2, 2009; only after December 2, 2029 (8 more years from now) could the judgment be conclusively deemed satisfied. Just over 10 years after the entry of the judgment, 623 Partners filed its motion to revive the judgment. That motion was filed within the time limits imposed by §§ 6-9-190 and 6-9-191 -- that is, after the lapse of 10 years from the entry of the judgment and before the expiration of the 20-year limitations period for reviving the judgment. Although it is true that the trial court in the original action denied 623 Partners' motion to revive the judgement, and that the judgment was therefore presumed satisfied, I cannot agree that the judgment is conclusively deemed satisfied.⁶ Thus, the fraudulent-transfer claims asserted by 623 Partners

⁶The trial court's denial of the motion to revive in the original action does not automatically foreclose the possibility that 623 Partners could revive the judgment at some later time within the 20-year limitations period. Imagine a scenario in which a judgment creditor files a motion to revive supported by evidence that it believes demonstrates that its judgment has not been satisfied, and the judgment debtor offers no evidence to rebut that evidence. However, the trial court is not persuaded that the judgment creditor met its burden of proof or simply denies the motion for procedural reasons or otherwise fails to provide a rationale for its denial. Then, what if the judgment creditor subsequently learns that

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should be decided and not disposed of under a theory that the certificate of judgment expired, thereby eliminating the debt and making any allegation of a fraudulent transfer moot. And, because the 20-year limitations period had not expired, by moving for a summary judgment on the fraudulent-transfer claims, the defendants failed to meet their burden of establishing that the presumption that a judgment has been satisfied conclusively means that the underlying debt no longer exists, thus making the inquiry into the fraudulent transfer moot. As noted, there may be special circumstances warranting a second attempt at reviving a judgment that is presumed satisfied when that attempt comes within the 20-year

new or additional evidence exists to prove that the judgment had not, in fact, been satisfied? Under such a scenario, the judgment creditor could move to set aside the prior judgment denying the motion to revive based on the newly discovered evidence indicating that the judgment had not been satisfied. Consider also an abstractor searching title to a parcel of property. If in the course of the record search the abstractor finds a recorded judgment more than 10 years old but less than 20 years old, the abstractor might check with the debtor to determine if the debt had been satisfied. Should the debtor inform the abstractor that the debt is still outstanding, the abstractor would note an exception to title and such information could provide additional evidence to rebut the presumption that the judgment had been satisfied, the debt canceled, and the judgment lien invalidated.

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limitations period. See note 6, *supra*. The cases cited in note 4 of the main opinion addressed debts that were conclusively satisfied, not presumed satisfied, and there is a difference. The cases from other jurisdictions cited in note 4 of the main opinion discuss debts that were "extinguished as a matter of law," "time-barred," "expired," or "unenforceable." None of those words accurately describe the debt at issue here, which will not be conclusively deemed satisfied for another eight years; thus, the debt in this case remains viable. Accordingly, I would not affirm the trial court's summary judgment on 623 Partners' fraudulent-transfer claims on the basis that the default judgment against Bart and the underlying debt are presumed satisfied because that presumption is easily rebuttable and should be addressed in relation to elements necessary to prove a fraudulent transfer. Because I would specifically address whether the trial court erred in entering a summary judgment in favor of the defendants on 623 Partners' fraudulent-transfer claims when the debt 623 Partners is seeking satisfaction of can be revived for another eight years before it is conclusively deemed satisfied, I dissent.