

Fraudulent Transfers

CLLA NATIONAL CONVENTION 2026

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Outline

Novel Hidden Value & Recovery Topics

§§ 544, 547, 548

- Modified Right to Payments
- Crypto Transfers
- Non-Monetary Benefits
- IRS as Golden Creditor under § 544(b)
- UFTA/UVTA Alternatives
- Q&A



Modified Right to Payments

"[The Bankruptcy Courts] have been invoked to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done."

- *Pepper v. Litton*, 308 U.S. 295, 304 (1939)



Avoiding Modified Rights to Payment

- Termination or Modification
 - Value "transfers" could be surrender, waiver, acceleration, deferral ...
 - Fraudulent Transfer via relinquishment of rights
 - Indirect benefit and diminution of estate
- Executory Contracts; Receivables; Earn-Outs; Deferred Compensation
 - Issues:
 - Valuation: FMV v. Discounted Exp. Recovery
 - Timing: Petition Date v. Transfer Date





ORDERED in the Southern District of Florida on January 5, 2023.

Erik P. Kimball, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

Case No. 20-16686-EPK
Chapter 7

QUANTUM PARK PROPERTY
OWNERS' ASSOCIATION, INC.,

Debtor.

ROBERT C. FURR, as Trustee,

Plaintiff,

v.

Adv. Proc. No. 22-01190-EPK

OLEN PROPERTIES CORP., *et al.*,

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO DISMISS

This Order addresses the *Motion to Dismiss Adversary Proceeding With Prejudice* filed by defendants Boynton Lodge No. 236 Free & Accepted Masons of Florida, High Ridge Investments, LLC, and West Quantum Plaza Owners Association, Inc. [ECF No. 336], and

Fraudulent Transfer may include the **loss of value to debtor Florida Property Owners' Association (POA). Owners attempted termination of the POA's Declaration of Covenants, to escape assessments that would cover POA's liabilities.**



Crypto Transfers

"It's only digital gold if it has a use. If it doesn't have a use, it's just paper. Not paper, it's air, not even air."

- Eugene Fama, Nobel Prize Winner in Economics (2013)

<https://www.chicagobooth.edu/review/capitalist-why-this-nobel-economist-thinks-bitcoin-is-going-zero>



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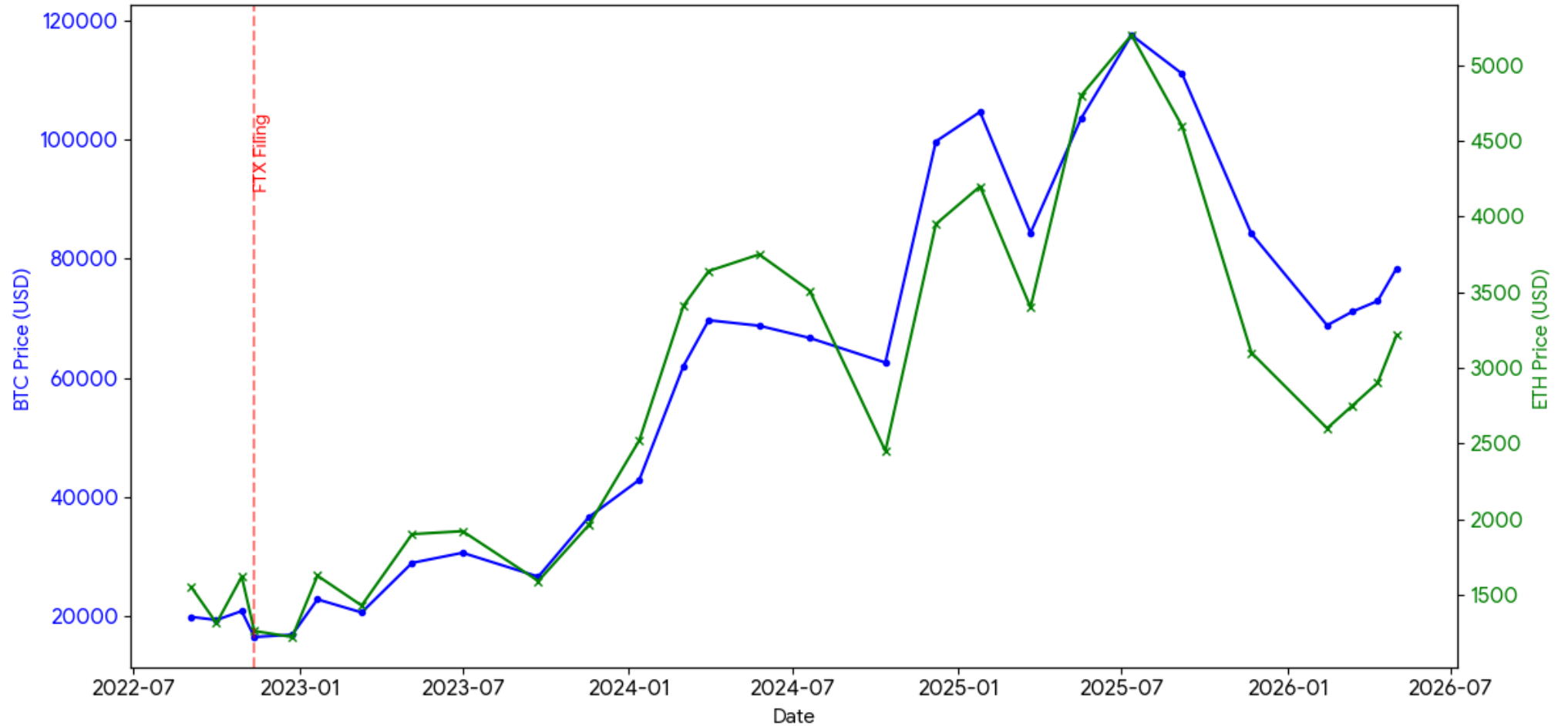
Avoiding Crypto Transactions

- **What is Crypto?**
Characterization – currency, commodity, security – regulatory changes; Depends
- **Avoidance/Clawback:**
 - Preference exposure
 - Fraudulent transfer claims w/consideration unstable or speculative
- Contract, property, how held and where?
- Issues:
 - Valuation
 - Timing (volatility)
 - Spot v. Average v. Realized Value
 - Expert Testimony
 - Market Manipulation & Liquidity Arguments
 - Bankruptcy claims process and recovery less than FMV



Crypto Volatility

BTC vs. ETH Volatility (Sep 2022 - May 2026)



Graph: Prepared with Google Gemini AI Assistance.

Non-Monetary Benefits

"The insider that taketh away from the estate
must giveth it back"

- Fraudulent transfer law as divine intervention?



Insider Perks & Benefits

Continued employment or title

Control, influence, or release
from guarantees

Enhanced severance
positioning

Perks, e.g., Clubs, Miles/Points,
Use of Vehicles/Jet ...



Capturing Value from Insiders

- **Transfer of Value:**
 - Benefits not booked as compensation
 - Informal or undocumented consideration
- **Measure Value:**
 - Comparable market compensation
 - Opportunity Cost / Downside Risk Avoidance

- **Insiders – Heightened Scrutiny**
 - Burden Shifting
 - Badges of Fraud
 - Lack of Reasonably Equivalent Value
 - May Not Require Insolvency to Prove
 - Actual Fraud



IRS Golden Creditor

"It is good to be the king, or the trustee"



IRS as the Golden Creditor – § 544(b)

- 544(b): The "Golden" or "Triggering" Creditor
 - Actual creditor with an allowable unsecured claim as of the Petition Date
 - Creditor holds legal right to void the transfer under UFTA/UVTA (state law; 4-year lookback period*)
 - Trustee "steps into the shoes" of the creditor (IRS)
- Full recovery of entire transfer, not merely amount owed, for estate-wide benefit
 - Enhances pro rata unsecured creditor distributions
 - *Moore v. Bay*, 284 U.S. 4 (1931); 11 U.S.C. § 544(b)



IRS as the Golden Creditor – § 544(b)

- Trustee leans into the IRS as a super-charged version of the hapless unsecured creditor
 - If IRS satisfies "golden" creditor status
 - Trustee may **leverage** IRS's 10-year lookback under IRC, 26 U.S.C. § 6502
 - **Remedies** under Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. §§ 3304 & 3306
 - Waiver, Tolling & "Allowability" under § 502
 - Adversary Proceeding Protocols



IRS as the Golden Creditor – § 544(b)

- IRS as Golden Creditor Super Charges State Law!

Jurisdiction	Standard Lookback	Notes
Federal (§ 548(a)(1))	2 Years	Standard bankruptcy lookback.
Most States (UFTA/UVTA)	4 Years	Includes Ohio, Delaware, Florida ...
New York (Old/New Law)	6 Years Old/4 Years New	April 2020 law change (UVTA).
Any State (IRS as Creditor)	10 Years	The Super Golden Creditor theory.



IRS as Golden Creditor Works!

- *In re Kaiser*, 525 B.R. 697 (Bankr. N.D. Ill. 2014)
- *In re Omansky*, 2022 Bankr. LEXIS 2535 (Bankr. S.D.N.Y. Sept. 15, 2022)

Caution:

- IRC Collection (post-assessment) v. Fraudulent Transfer Statute; Defenses
- A Minority View Exists
 - *In re Vaughan Co., Realtors*, 498 B.R. 297 (Bankr. D.N.M. 2013), relying on *In re G-I Holdings, Inc.*, 313 B.R. 612 (Bankr. N.J. 2004)
 - *In re Mirant Corp.*, 675 F.3d 530 (5th Cir. 2012) (narrow, FDCPA, 6-year lookback period)



UFTA/UVTA Alternatives

"When all else fails, try, try again."



Causes of Action Hiding in Plain Sight



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Companion Tort Causes of Action

- Tortious Interference
 - Aiding & Abetting Breach of Fiduciary Duties
 - Civil Conspiracy / Unjust Enrichment
 - Fraud
- *Malpiede v. Townson*, 780 A.2d 1075 (Del. 2001) (elements)
 - As applied, *see, e.g., RBC Capital Markets, LLC v. Jervis*, 129 A.3d 816 (Del. 2015)
 - Change of Control; Sales; Lost Business Deals; Ponzi Schemes



Tortious Interference

- Target solvent third-party conduct at time of alleged interference
- Prove:
 - Reasonable probability of business opportunity existed
 - Defendant intentionally interfered
 - Damages proximately caused by interference
- *E.g., ASDI, Inc. v. Beard Research, Inc.*, 11 A.3d 749 (Del. 2010)



Aiding & Abetting B/Fid Duties

- Target solvent third-party at time of alleged breach
- **Prove:**
 - Fiduciary relationship (care or loyalty)
 - Breach
 - Knowing participation or substantial assistance in breach
 - Damages proximately caused by breach

Caution:

- Defenses may apply
- Exculpation; Modification or Elimination of Duties
- Shorter limitations period (unless allege fraud)*
- Failure of Proof
 - *E.g., In re Mindbody Shareholder Litigation*, 332 A.3d 349 (Del. 2023)



Best of the Rest

- Ponzi cases, *e.g.*, *Janvey v. Brown*, 767 F.3d 430 (5th Cir. 2014): Receiver TUFTA
- *Dunden (GUC Trustee) v. McKinsey & Co. (In re Endo Int'l PLC)*, 674 B.R. 349 (Bankr. S.D.N.Y. 2025): NY, PA & Irish law re aiding & abetting (dismissed w/o prejudice); *in pari delicto* defenses vary
 - \$1.5bn indemnity and good faith-due care contractual claims ("but for" theory)

Thank you

Questions?

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