

3D DCA: FLORIDA FRAUDULENT TRANSFER BARRED BY STATUTE OF LIMITATIONS

[Western Hay v. Lauren Financial, 36 Fla. L. Weekly D953a \(May 4, 2011\)](#) - The statute of limitations on Florida fraudulent transfers begins to run when the transfer itself could be known, not when the fraudulent nature of the transfer could be known.

Florida's fraudulent transfer statute requires the cause of action to be brought "within four years" of the date the transfer is made or "if later, within one year after the transfer" was or reasonably could have been discovered.

The 3rd DCA upheld the Miami-Dade County Circuit Court's decision to construe this language literally. The issue is not whether the fraudulent nature of the transfer could have been discovered, but whether the transfer itself could reasonably have been discovered.

The creditor argued that, while it knew of the transfer, it could only speculate as to the fraudulent nature of the transfer. The fraudulent nature of the transfer was not confirmed until a deposition that occurred more than one year after the actual transfer was known.

The 3rd DCA reasoned that the legislature could have chose to use the discovery of the fraudulent nature of the transfer as the triggering event for the statute of limitations but had not done so. Giving the statute its plain meaning, the court held that the actual transfer is the trigger date for statute of limitations purposes.

The dissent argued that since only fraudulent transfers were actionable, the fraudulent nature of the transfer must have been reasonably knowable before the statute of limitations began to run:

"Because a [fraudulent transfer claim] requires that a transfer be considered fraudulent to a present creditor only if the debtor made the transfer with the actual intent to hinder, delay, or defraud any creditor of the debtor, the one-years savings provision ... cannot be read to preclude a cause of action thereunder until all of the elements can be alleged as true."

For the dissent, the issue what not whether there was a transfer, but whether it was a fraudulent transfer. And other jurisdictions that have adopted the Florida Uniform Fraudulent Transfer Act "uniformly" held that the statute of limitations did not begin until the fraudulent nature of the transfer could be ascertained.