

Civil Conspiracy-Underlying Causes of Action as Basis

The majority of jurisdictions allow a claim for civil conspiracy if and only if there is an underlying cause of action. Most courts have held that there cannot be a civil conspiracy where there is no underlying claim of fraud, such as with a fraudulent transfer. But sometimes the underlying claim is not so clear, as we will see. Courts seem generally reluctant to allow civil conspiracy claims unless the underlying action supports the involvement in the conspiracy.

Keitel v. Heubel

The claims that were litigated in the present action arose while Keitel was trying to enforce a judgment that she obtained against the Heubels. Mary Keitel and George Heubel are brother and sister. The previous litigation involved the handling of their late mother's estate.

The case at bar concerns the actions taken by the Heubels prior to the previous judgment being entered against them. Keitel alleges that the day before the judgment was entered; the Heubels executed four Grant Deeds in order to prevent Keitel from executing her judgment. Pursuant to the deeds, the Heubels then transferred title to the trustees of the "George William Heubel and Peggy Anne Heubel Blind Trust dated June 19, 1997." Keitel further alleges that a notice

of levy was recorded and served on the Heubels, but Keitel was unable to execute on the property.

Keitel also alleges that the transfers into the trust violated the UFTA because they were 1) made without consideration, 2) rendered the Heubel's insolvent, and 3) were done with the specific intent to defraud Keitel. Keitel asserts that the Heubels and the named trustees of the trust "conspired together to steal assets from the estate of George Heubel and Mary Keitel's mother, and to conceal those assets and hide the true ownership thereof in order to insulate them from collection or recovery."

The court held that the conspiracy claim failed as a matter of law because there is no independent cause of action for conspiracy and the fraud claims upon which the conspiracy was based, failed. Keitel claims that the civil conspiracy claim should survive because the Heubels violated a penal code section that forbids fraudulent transfers to avoid debt execution. However, the court reasons that that particular provision of the Penal Code doesn't authorize a civil action for damages and can't support a civil conspiracy claim.

The Keitel shows us that even when a plaintiff has an underlying claim as a basis for civil conspiracy, the court can still reject the claim. It isn't clear what the specific standard is when proffering an underlying cause of action. What does

seem to be clear, are the courts' reluctance to uphold civil conspiracy claims unless the underlying cause of action directly relates to the conspiracy. The next case illustrates that the underlying fraudulent transfer must be one in which the creditor is truly injured.

Rooftop Management & Consulting v. Washington Mutual Bank

William Gibson, purchased a tract of real property in California. Gibson executed a first deed of trust in favor of Budget National Finance Company in the amount of \$417,000. Gibson then obtained a \$40,000 loan from Danco. This loan was secured by a second deed of trust against the property. Months later, Gibson defaulted on his loan to Danco, and Danco promptly recorded a notice of default. Danco tried to proceed with a foreclosure sale, but Gibson filed bankruptcy, which prevented Danco from proceeding with the sale. Danco then assigned its rights to plaintiff concerning the second deed of trust.

There were a series of foreclosure attempts made by plaintiff. Prior to the last scheduled sale date, plaintiff received a bid to purchase the property, from Vincent Quigg. Quigg opened an escrow and pursuant to certain restrictions, was scheduled to purchase the property. In the meantime however, Gibson had contracted with Dario and Gloria Ruiz to sell the property. The Ruiz's proceeded

to obtain a loan from defendant Washington Mutual bank. After a series of convoluted transactions, the parties find themselves in the present litigation.

The unpublished case of Rooftop Management v. Washington Mutual Bank, deals with the ramifications of a fraudulent conveyance. The court in this case holds, that a creditor can't be truly injured by the fraudulent conveyance, unless that transfer puts beyond their reach, property that would be able to be subject to the payment of the creditor's debt. This case illustrates the principle that a plaintiff seeking the equitable relief of setting aside a fraudulent transfer of property must show entitlement to relief and the inadequacy of a remedy at law.

Donald L. Summers v. William E. Hagen (Alaska 05/28/1993)

This dispute arises from an action brought by William E. Hagen against Donald L. Summers, alleging that Summers participated in a fraudulent conveyance scheme with Jerald C. Briske, a debtor of Hagen's. Hagen sold Briske a parcel of real property. In exchanges, Briske gave Hagen a deed of trust note to secure the principal amount. Needless to say, Briske defaulted on the note. But before defaulting on the note, Briske executed fourteen quitclaim deeds conveying seventeen parcels of real property to various family members, as well as his longtime business partner, Summers. The court discusses the elements needed

to prove liability for participation in a fraudulent conveyance scheme. The court finds that the plaintiff must establish:

- (1) An unlawful agreement;
- (2) The specific intent of each participant in the scheme to hinder, delay and defraud a creditor of one who participated in the scheme;
- (3) Acts committed pursuant to the unlawful agreement;
- (4) Damages caused by the acts committed pursuant to the unlawful agreement.

Professional Collection Consultants, Inc. v. Griffis

Appellant, Professional Collection Consultants, Inc., commenced this action on January 25, 2002. After several demurrers and amended complaints, appellant filed the third amended complaint on April 10, 2003. The third amended complaint alleges that in September 1994, Palos Verdes National Bank ("the bank") obtained a money judgment against respondent, Eldon R. Griffis, and in 1995, the bank assigned the judgment to appellant.

Appellant contends that various transactions are alleged to have been fraudulent transfers in violation of the California Uniform Fraudulent Transfers Act. The appellants assert the following nine transfers, as being fraudulent, and made

within the four-year statute of limitations, they say is applicable to those transactions:

1. Assignment of a deed of trust on Barkentine Road property by Bayview Investments to McMahan on April 12, 2000 (first, second, and third causes of action);
2. Foreclosure sale of Corona Avenue property on August 16, 1999 (fourth cause of action);
3. Collection of rents from the Corona property by Griffis after August 16, 1999 (fourth cause of action);
4. Assignment of a deed of trust on the Santa Fe Avenue property by Lawndale Properties Group to Vermont 53 Limited Partnership dated May 18, 1998 (fifth cause of action);
5. Grant deed of Santa Fe property from Griffis to Lawndale Properties Group dated December 1998 (fifth cause of action);
6. Foreclosure sale of Santa Fe property by Washington Mutual on April 20, 1999 (fifth cause of action);
7. Foreclosure sale of Spreckels Lane property by Thompson on January 13, 2000 (sixth cause of action);

8. Grant deed of Olympic Boulevard property by Griffis to 253 Harbor City Partners dated January 22, 1999 (seventh cause of action);

9. Foreclosure sale of Olympic Boulevard property by unnamed person or entity on June 2, 1999 (seventh cause of action).

The first cause of action alleges that Griffis and his wife own a residence on Barkentine Road. The property was subject to a deed of trust that secured a note that was already in default at the time the bank obtained its judgment. Appellants claim that Griffis' sister used her corporation to purchase the property, with money given to her by Griffis, for the purpose of hindering and frustrating Griffis' creditors. Then, the deed of trust was transferred to Kelly McMahan. Appellants didn't realize that the property had been transferred until they received a copy of the notice of default that had been recorded by "Kelly McMahan c/o Vickie Thompson." Appellants claim that the transactions were undertaken as part of a conspiracy between Griffis, Thompson, and McMahan to place the property out of appellant's reach, in order to hinder or delay the collection of the judgment.

The court reasoned that, although appellant's arguments were poorly articulated, they were invoking the rule that "when a civil conspiracy is properly alleged and proved, the statute of limitations does not begin to run on any part of a plaintiff's claims until the 'last overt act' pursuant to the conspiracy has been completed." The court found that the tortious scheme was lacking a crucial element. At least

by inference, the scheme was to culminate in a sham foreclosure. Well, the foreclosure never took place. The court states:

“Thus, even if we were to find, as appellant wishes, that a foreclosure sale can constitute a fraudulent conveyance, the cause of action with regard to the Barkentine Road property is premature, since there has been no foreclosure sale. We agree that the statute of limitations has not run on the "continuing scheme," because the cause of action for such a conspiracy has not yet arisen.”

Appellants next claim that Griffis and his wife owned an apartment complex on Corona Avenue in Bell, California, and that the property was sold in a sham foreclosure sale to respondent H & B Corona Partnership for no consideration or inadequate consideration, with the intent to hinder, defraud, or delay appellant in the collection of its claim against Griffis. Appellants contend that H & B Corona Partnership is an entity controlled by the Griffis'. Thus Griffis remained in control of the property, even collecting rents, after the foreclosure sale. Since the foreclosure sale took place within four years of filing the original complaint, the court agrees it is not barred by the statute of limitations.

Respondents contend that this was not a fraudulent transfer because a foreclosure sale can't be a transfer, under the meaning of the California Fraudulent Transfer Act. However, that is erroneous. Both under the CUFTA and the federal Bankruptcy Code, a transfer includes the “foreclosure of the debtor's

equity of redemption.” The court concludes that this indeed was a fraudulent transfer, made with the actual intent to hinder, delay, or defraud, and was brought in a timely matter.

The next cause of action alleges that Griffis owned a property on Santa Fe Avenue in Long Beach, California, and that on March 4, 1994, he gave a promissory note secured by a second trust deed on the property to respondent Lawndale Properties Group, Inc., which is owned or controlled by Griffis. Lawndale Properties then assigned the trust deed to Vermont 53 Limited Partnership, which is also controlled or owned by Griffis. The property was foreclosed upon. Appellants contend that Vermont 53 LP scared off any potential buyers by entering credit bids until the price was too high for outside bidders. Vermont 53 LP then purchased the property from the bank.

The next cause of action alleges that Griffis owned a property on Spreckels Lane in Redondo Beach, CA, in which he gave his sister a promissory note secured by a trust deed on the property. Then Griffis and his sister arranged a foreclosure sale where she obtained the property for little or no consideration. The court again reiterates, that a collusive foreclosure sale may be a fraudulent transfer.

The final cause of action alleges that Griffis owned real property on Olympic Boulevard in Los Angeles, CA, and that he transferred it to Respondent, a corporation owned and controlled by Griffis, for little or no consideration.

As we will see with the Mehrtash case, California doesn't recognize a separate tort of civil conspiracy, nor the civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed and damage results therefrom. In order to succeed on a claim of civil conspiracy, a plaintiff in California must prove that there is an underlying wrongful act.

Mehrtash v. ATA Mehrtash

In the case at bar, creditor files action to set aside as a fraudulent transfer, the transfer of debtor's home to his stepsons. Under the California Fraudulent Transfers Act, in some circumstances a creditor may sue to set aside a transfer of property by a debtor, where the transfer defrauds the creditor. The court argues that a well-established principle of fraudulent transfers law is that "a transfer in fraud of creditors may be attacked only by one who is injured by the transfer; mere intent to delay or defraud is not sufficient." As far as the civil conspiracy claim is concerned, the court held that "there is no separate tort of civil conspiracy, and there is no civil action for conspiracy to commit a recognized tort unless the wrongful act itself is committed and damage results therefrom."

Miller v. Lomax

Estelle Miller, Linda Miller, and Robert Miller sued Robert Lomax as executor of the estate of Thomas Miller, Carolyn Miller, and Ray's Uptown Body Shop, Inc. for fraud and breach of contract. A conspiracy is a combination of two or more persons to accomplish an unlawful end or to accomplish a lawful end by unlawful means. To recover damages for a civil conspiracy claim, a plaintiff must show that two or more persons, acting in concert, engaged in conduct that constitutes a tort. Absent the underlying tort, there can be no liability for civil conspiracy. The court in this case held that there was sufficient evidence to conclude that Carolyn Miller participated with Thomas Miller in a scheme to effect fraudulent transfers.

Bressner v. Ambroziak

In the case at bar, plaintiff claims the defendants engaged in a civil conspiracy against him and violated the Illinois Uniform Fraudulent Transfer Act. Plaintiff alleges that defendant Dennis is a primary participant in the generation of wealth that is formally held by defendant Shirlee and that the defendants Ambroziaks have since the date of judgment conspired together to defraud plaintiff by hiding Dennis's assets and income so as to prevent plaintiff from collecting his judgment. The court defines a civil conspiracy as (1) an agreement (2) by two or more persons (3) to perform an overt act or acts (4) in furtherance of the agreement or conspiracy (5) to accomplish an unlawful purpose or a lawful purpose by unlawful means (6) causing injury to another. The court reasons that "[t]o state a cause of action for conspiracy, a plaintiff must allege not only that

one of the conspirators committed an overt act in furtherance of the conspiracy, but also that such act was tortious or unlawful in character." In this case, the court held that there was no underlying tortious act to merit upholds a claim of civil conspiracy.

Martinek v. Farmers & Merchants State Bank of Krum

Robert Schluter owned two tracts of real property, which were subject to outstanding notes held by Ruth Gurley and Ruby McClure. After a series of transactions Martinek obtained a junior lien on the same properties. Eventually Schluter defaulted on the notes and filed for bankruptcy.

Schluter and his family had had a long-standing relationship with the financing bank. The bank agreed to meet with Schluter in an attempt to prevent him from losing the property. The bank then purchased the liens from Gurley and McClure and foreclosed on the properties. The bank then bought one tract of land at the foreclosure sale, and resold it to some of Schluter's family members. A bid came in for the second tract of property, however there was some undisclosed defect with the sale, and the bank was unable to transfer the tract to the bidder. The bank then sold the second tract to another one of Schluter's family members. This in effect extinguished Martinek's junior liens because the lien amounts exceeded the prices paid for the properties.

Martinek appeals the trial court summary judgment entered for Farmers & Merchants State Bank of Krum. Martinek argues that the trial court erred when it granted the Bank's motion for summary judgment because the evidence presented raised a question concerning the existence of a civil conspiracy and fraudulent transfer. The court states that a civil conspiracy is "a combination between two or more persons to accomplish an unlawful purpose or to accomplish a lawful purpose by unlawful means." The elements needed to accomplish a civil conspiracy are 1) two or more persons; 2) an object to be accomplished; 3) a meeting of the minds on the object or course of action; 4) one or more unlawful overt acts; and 5) damages as the proximate result. Although the bank had a long-standing relationship with Schluter, and didn't want to see him lose his property, the court held that the Bank committed no unlawful, overt act in furtherance of a conspiracy. Make one wonder what the "defect" in the outside bidders sale was. This case is highly illustrative of some courts' reluctance to apply the doctrine of civil conspiracy.

Gluck v. Sky Island Partnership, Ltd.

In the case at bar, appellant appeals from a grant of summary judgment in favor of appellees. Gluck argues that 1) the trial court erred in granting summary judgment on his claim for breach of contract; 2) the trial court erred in granting summary judgment on his claims for fraudulent transfer and civil conspiracy; and 3) the trial court erred in granting summary judgment on his claim for fraud.

Gluck claims that he made a deposit of \$5,000 on a plot of land that appellee claims he "owned". The court finds the following to be elements of civil conspiracy: 1) an agreement or understanding to inflict a wrong against or injury on another; 2) two or more parties to the agreement; 3) the meeting of the minds of the parties on the object or cause of an action; 4) an intention to commit the act and 5) resulting injury. The court held that without a written contract of sale, there is no obligation that is created; therefore there can be no fraudulent transfer of the property. And since there can be no fraudulent transfer, there can be no civil conspiracy.

Again, in this case we see that there has to be some underlying cause of action for a claim of civil conspiracy to prevail.

Donald M. White and Kathleen White v. Melvin D. Babcock

Appellants sued Gates Rental, Inc., a company controlled by appellees, Melvin Babcock and Babcock Management, Inc. for breach of contract. When appellants went to collect from Gates, they discovered that Mar-Jean Management, Inc. had purchased all the assets of Gates. The court finds that the essential elements of a civil conspiracy are: (1) two or more persons; (2) an object to be accomplished; (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result. The summary judgment evidence in this case, even when viewed in the light most favorable to appellants, does not show any unlawful, overt acts. The sale of the assets to

Mar-Jean to pay the loan to BankSouth was legal. Because there were no improper or illegal acts in paying the valid loan due to BankSouth, appellees did not engage in a conspiracy.