

Getting Rid of Assets > Chased by Judgment Creditors, “What if the Debtor has been disposing of their assets?”

The Issue

What happens if you are ordered by the Court to pay someone money?

What assets can your creditor chase?

If you sell your house to your daughter, can your creditor still come after your (daughter’s) house?

In the recent case ***Rose v. Pica***, 2011 ONSC 7502 (CanLII), the Superior Court of Justice of Ontario set aside the transfer of a \$300,000 house from mother / debtor to her daughter, leaving the house available to be seized by the judgment creditor.

Unfortunately for the daughter, she lost her house and also had to pay the judgment creditor \$60,000 in legal costs and expenses, for having lost the case at Trial: [**Rose v. Pica, 2012 ONSC 3855 \(CanLII\)**](#)

Why This Matters

Section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 protects creditors by voiding any conveyance of real or personal property which is made with the “intent to defeat, hinder, delay or defraud creditors or others of their just and legal actions, suits, debts, accounts, damages, penalties or forfeitures.”

Section 3 however, states that section 2 does not apply to an estate or interest in real or personal property which has been conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section.

The issue which arises in these cases is how will the court determine when a conveyance is being done with “intent to defeat, hinder, delay or defraud.”

The purpose behind this section of the Act is to protect the interests of creditors from those debtors who attempt to frustrate their interests by fraudulently disposing of their assets in order to shield them from collection.

Parties who are successful in obtaining judgments often face an uphill battle when they attempt to collect on their judgment, particularly when the judgment debtor does not have a policy of insurance to collect under. Judgment debtors may however have significant assets which may be seized in order to satisfy a judgment.

It is therefore essential that creditors or judgment holders seek advice from a lawyer as soon as they suspect that the debtor is attempting to defeat their interests by fraudulently conveying their assets. The lawyer may then bring an application to the court to void the conveyance.

The Details

In the case of [*Rose v. Pica, 2011 ONSC 7502 \(CanLII\)*](#), the Superior Court of Justice of Ontario considered the case where a debtor attempted to convey to her 19 year old daughter a property for a total consideration of \$145,000.00. At the time, the debtor owed the plaintiff \$900,000.00. The plaintiff sought to have the conveyance voided.

The court first had to consider the circumstances surrounding the conveyance of the property in order to determine whether or not the conveyance was done fraudulently.

In this case, the court considered the very suspicious circumstances and found that the debtor was willfully blind to the extent of her indebtedness to the plaintiff and the fact that this transfer had the potential to frustrate any attempt to access the significant asset to satisfy his loan.

The next issue the court had to determine was whether there was “good consideration” for the conveyance. In this case, the debtor claimed that the property was conveyed to her daughter in order to settle a \$119,000 loan which the daughter had made to her parents. The court heard evidence that the property conveyed was actually worth approximately \$300,000.00. Therefore the consideration was inadequate. This combined with a “virtual tsunami of suspicious

circumstances” surrounding the daughter’s loan to her parents, led the court to conclude that the debtor and her daughter were active participants in attempting to frustrate the interest of the plaintiff as a creditor and the conveyance was declared void.

For further information on collection issues, see our previous blog:

- [Collecting on a Debt > Helpful Tips](#)