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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

UBS FINANCIAL SERVICES, INC.
Plaintiff

ALBERT V. LACAVA, JR., ET AL
Defendant

Case No: CV-16-868794

Judge: ROBERT C MCCLELLAND

JOURNAL ENTRY

ORDER AND OPINION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT. O.S.I.

Robert C McClelland 7/28/17

Judge Signature Date

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

UBS FINANCIAL SERVICES, INC.,)	CASE NO. CV 16 868794
)	
Plaintiff,)	JUDGE ROBERT C. MCCLELLAND
)	
v.)	
)	
ALBERT LACAVAL, JR., et al.,)	Journal Entry:
)	Order and Opinion on Cross-Motions for
Defendants.)	Summary Judgment
)	
)	
)	

This matter is before the court as a result of cross-motions for summary judgment filed by all the parties. The court has reviewed the motions, the briefs in opposition, and the voluminous exhibits and affidavits filed with the various briefs. The court grants summary judgment to Plaintiff UBS Financial Services, Inc. (UBS) and against Defendants, Albert Lacava (Mr. Lacava) and Mary Lacava (Mrs. Lacava). The court denies the motions for summary judgment filed by Mr. Lacava and Mrs. Lacava, and while the court grants the motion for summary judgment filed by Defendant, Assurance Investment Management, LLC (AIM) on the issue of statute of limitations, AIM is ordered to freeze any assets and accounts immediately and those assets and accounts can only be released to satisfy this judgment.

This case represents the most blatant form of fraudulent conveyance this court has ever seen. Mr. Lacava initiated an industry arbitration against UBS with the Financial Industry Regulating Authority (FINRA) in Case Number 08-04976 on December 26, 2009. Mr. Lacava presented claims seeking over two million dollars in recovery. UBS counterclaimed relating to promissory notes and advances made to Mr. Lacava in its answer and counterclaim filed March 26, 2009. On February 9, 2010, the FINRA arbitration panel denied and dismissed Mr. Lacava's claims and awarded UBS \$196,963.89 on its claims. On April 1, 2010, UBS filed to have the Common Pleas court confirm the award. Judge Joseph Russo confirmed the award in Case No. CV-10-723001 on June 17, 2010. All attempts to satisfy the judgment have been fruitless and blocked at every juncture.

AIM was created in 2008. In the original Operating Agreement, dated August 22, 2008, Mr. Lacava was the sole member and owner. On January 22, 2010, nineteen (19) days prior to

the announcement of the award from the FINRA panel, a Second Amended and Restated Operating Agreement for AIM was executed. With that amended agreement Mrs. Lacava went from no ownership to becoming a member with a 94.8% interest in AIM. Mr. Lacava's interest was reduced to 5.2%. On August 27, 2016 there was a further amendment to AIM's operating agreement with language which purports to nullify statutory law preventing a charging order against any members' interest in AIM.

In conjunction with the January 2010 amendment to AIM's operating agreement, \$140,000.00 was transferred by Mrs. Lacava to AIM as a capital contribution. There was no payment to Mr. Lacava for relinquishing 94.8% of his ownership in AIM. During 2010, Mrs. Lacava received a distribution of \$182,365.00 from AIM and \$51,407.00 of ordinary income from AIM. Distributions to Mrs. Lacava from AIM have continued since that time to the present.

Throughout all the time of these money transfers and distributions, the sole employee of AIM was Mr. Lacava. He is the only registered financial advisor and the only one transacting business activities which produce income to AIM. Mr. Lacava does not receive, directly, any salary, bonus, compensation, or income of any kind for the work he performs at AIM. He pays no income taxes for any ordinary income received by him since he receives nothing for his work as a financial advisor.

While Mr. Lacava does not receive any income for his work, a review of the banking records for AIM reveals that its accounts have been used like a personal checking account for Mr. Lacava and Mrs. Lacava. Entries are replete with charges for restaurants, retail stores, groceries, utility bills, on-line purchases, and veterinary bills to only mention a few.

Since the confirmation of the award, UBS has attempted to satisfy its judgment. It has been thwarted at every juncture due to Mr. Lacava's insolvency. There have been attempts through bank liens, garnishments, and foreclosure. There is apparently a Federal Tax Lien on the Lacava home in an amount in excess of \$142,000.00.

This case is governed by R.C. Chapter 1336, Ohio Uniform Fraudulent Transfer Act. UBS has requested multiple forms of recovery including:

- A. A charging order against the members' interests in AIM;
- B. Avoidance of the transfer of \$140,000.00 and membership in AIM;
- C. Attachment/garnishment of the transferred asset pursuant to R.C. 1336.07(A)(2);
- D. An injunction against further disposition of assets;
- E. Compensatory damages;

F. Punitive damages;

G. Interest; and

H. Attorneys' fees.

R.C. 1336.04, Transfer Made or Obligation Incurred Fraudulent as to Creditor, is the relevant code section governing this case. Since no one admits a fraudulent transfer, this code section contains eleven (11) criteria to determine whether fraud existed. These are referred to as the "badges of fraud", *Sanderson Farms, Inc. v. Gasbarro*, 10th Dist. Franklin No. 01AP-461, 2004-Ohio-1460. The transaction and activities here meet 9 of the 11 badges of fraud, as follows:

(1) Whether the transfer or obligation was to an insider.

The transfer was to Mrs. Lacava who by definition is an insider pursuant to R.C. 1336.01(G).

(2) Whether the debtor retained possession or control of the property transferred after transfer.

Mr. Lacava continued to run AIM, to be the only employee of AIM, to be the only registered financial advisor at AIM, to use funds for purchases other than true business expenses, and to take control of the operation of AIM despite retaining only a 5.8% member interest on paper.

(3) Whether the transfer or obligation was disclosed or concealed.

UBS only became aware of these transactions as a result of discovery and in pursuing satisfaction of its judgment. AIM continued to amend its Operating Agreement as recently as 2016 to continue to frustrate UBS and avoid the UBS judgment.

(4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit.

Mr. Lacava instituted the action with FINRA, was aware of the counterclaims made by UBS, attended the arbitration and probably had a sense of how the case was proceeding. The transfer at issue was made 19 days before the award against him in the amount of \$196,963.89 was announced.

(5) Whether the transfer was substantially all of the assets of debtor.

UBS has continuously been unsuccessful in all of its attempts to satisfy the award and judgment because Mr. Lacava is insolvent. It had to be all of his assets.

(6) Whether the debtor absconded.

Mr. Lacava did not abscond.

(7) Whether the debtor removed or concealed assets.

This is the essence of the case. Assets were transferred to AIM, used through AIM, and continue to be used through AIM. This includes the \$140,000.00 transfer, the profits earned and the use of the AIM accounts as if they were the personal accounts of the Lacavas.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

Mr. Lacava received nothing for the transfer of 94.2% of his interest in AIM for the \$140,000.00 alleged capital contribution. It is clearly a charade to have access to \$140,000.00 without exposing it to recovery by UBS.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

Again, it is clear that Mr. Lacava claims to be insolvent since all efforts by UBS to satisfy its judgment have been futile.

(10) Whether the transfer occurred shortly before or after a substantial debt was incurred.

The transfer occurred 19 days before the FINRA award was announced and with the UBS claims pending against Mr. Lacava.

(11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.

This did not occur.

Nine of the eleven badges of fraud are present and obvious. There can be no doubt as to what happened here.

The nine badges of fraud direct a determination of sections (A)(1) and (2) of R.C. 1336.04. Section (A) states that a transfer is fraudulent if it occurs in either of two ways. In subsection (A)(1) with intent to hinder, delay, or defraud a creditor of the debtor; or in subsection (A)(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and ... (b) the debtor... believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due.

While one of these is enough, the court finds that both have been met. The actions taken and the scheme employed by Mr. Lacava shows a clear intent to hinder, delay and defraud UBS.

As explained previously, Mr. Lacava did not receive anything in return for transferring 94.2% of his interest in AIM and he did it with the pending award about to be issued from FINRA.

Mrs. Lacava may simply be a pawn in this entire scheme, but she is subject to any judgment in this case because by his actions Mr. Lacava made Mrs. Lacava an "affiliate" because she is both an "insider" and a "relative" as defined in R.C. 1336.01(A)(3), (G), and (K). In addition, a judgment may be entered against the first transferee and any subsequent transferee pursuant to R.C. 1336.08(B)(1)(a) and (b).

In cases involving issues of fraud and fraudulent transfers, the burden of proof changes depending on the nature of the claims. Some require clear and convincing evidence, *United States v. Berman*, 884 F.2d 916 (6th Cir. 1989). It is unnecessary to distinguish each claim for its burden of proof here because as to all the claims at issue the evidence is overwhelming and exceeds clear and convincing evidence. The actions by Mr. Lacava constitute actual fraud as well as constructive fraud.

AIM moved for summary judgment on the basis of statute of limitations. Judgment is granted in favor of AIM on that ground. However, since AIM is in the line of transferees and in keeping with the statute, it is bound by the court's decision to comply with this order and is restricted from disbursing any money or asset other than to satisfy this judgment.

UBS is seeking multiple forms of relief in this case. The court grants the following relief in favor of UBS and against Mr. Lacava and Mrs. Lacava, and against AIM so far as it holds assets which are recoverable to satisfy this judgment and the prior judgment obtained by UBS:

1. The charging order against the member interests of Mr. Lacava and Mrs. Lacava in AIM is granted;
2. The transfer of money to AIM in the amount of \$140,000.00 is voided and the money is to be held for purposes of satisfying this judgment;
3. UBS is awarded attachment of all transferred assets in AIM, pursuant to R.C. 1336.07(A)(2);
4. AIM, Mr. Lacava, Mrs. Lacava, and any and all parties acting in concert with any of these parties are enjoined from any disposition of any assets of AIM, Mr. Lacava or Mrs. Lacava;
5. Compensatory damages are granted in the amount of \$196,963.89;
6. Interest at the legal rate is applied to the compensatory damages from January 21, 2010, the date of the fraudulent transfer;

UBS is also seeking punitive damages and attorneys' fees. In order to obtain punitive damages there must be clear and convincing evidence of actual malice or intent, or a reckless disregard for the rights of others. Mr. Lacava is guilty of both. There can be no doubt of the combination of dislike for UBS and the intent to prevent UBS from ever collecting the judgment it received through the FINRA arbitration. Throughout various filings by Mr. Lacava it shows an intense dislike and disrespect for UBS and its principals and employees. Mr. Lacava did not only perpetrate a fraud upon UBS but is also perpetrating a fraud upon this court. He admits working full time for AIM and generating income for AIM but receives no compensation for his efforts. This is not a charity and he uses the income generated by AIM indirectly for his own use and welfare. The AIM accounts, as shown in the bank records, have been used for more than business related items as discussed above. Mr. Lacava has either failed to file or provide tax returns for recent years and may be defrauding the Internal Revenue Service by failing to report his actual income and pay taxes on that ordinary income. It is long past time for these behaviors to cease and it is appropriate to set an example. Punitive damages are also referred to as exemplary damages so that the world can see that there is punishment for malicious and intentional conduct to the detriment of others. The court awards punitive damages against Mr. Lacava in the amount of \$98,481.95, an amount representing one-half of the original judgment.

Since the court is awarding punitive damages, attorneys' fees are also proper. Counsel for UBS is instructed to file an affidavit of its attorneys' fees for consideration by the court. Upon receipt of that affidavit, the court will consider what amount of fees will be awarded.

Accordingly, Plaintiff UBS's motion for summary judgment is granted against defendants Mr. Lacava and Mrs. Lacava. Defendant AIM's motion for summary judgment is granted. Defendants Mr. Lacava and Mrs. Lacava's motions for summary judgment are denied. This case is hereby disposed in its entirety pending the determination of the amount of attorneys' fees to be awarded. The trial date of August 14, 2017 is canceled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

- 1.) EFFECTIVE IMMEDIATELY, defendants AIM, Mr. Lacava and Mrs. Lacava, and any and all parties acting in concert with any of these parties, are enjoined from any disposition of any assets of AIM, Mr. Lacava or Mrs. Lacava;
- 2.) The charging order against the member interests of Mr. Lacava and Mrs. Lacava in AIM is granted;
- 3.) The transfer of money to AIM in the amount of \$140,000.00 is voided and the money is to be held for purposes of satisfying this judgment;
- 4.) UBS is awarded attachment of all transferred assets in AIM, pursuant to R.C. 1336.07(A)(2);

- 5.) Compensatory damages are granted in the amount of \$196,963.89;
- 6.) Interest at the legal rate is applied to the compensatory damages from January 21, 2010, the date of the fraudulent transfer;
- 7.) Plaintiff's counsel to file an affidavit of attorneys' fees for consideration by the court forthwith.

IT IS SO ORDERED:



Judge Robert C. McClelland

Date: 7/28/17

CERTIFICATE OF SERVICE

A copy of this Order was sent via Regular U.S. Mail and electronic mail on the 28th day of July, 2017 to:

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