

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

THOMAS A. SHUMAY)	CASE NO. CV 12 772916
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	
)	
ANTHONY DATTILO)	<u>JOURNAL ENTRY</u>
)	
Defendant.)	

John P. O'Donnell, J.:

STATEMENT OF THE CASE

The plaintiff filed this lawsuit on January 9, 2012. The complaint asserts a cause of action for a violation of Ohio's Uniform Fraudulent Transfer Act, codified at Ohio Revised Code Chapter 1336. A bench trial took place on May 23 and this entry follows.

STATEMENT OF FACTS

Plaintiff Thomas A. Shumay obtained a \$6,600 judgment against Enviromatrix, Inc. on July 29, 2009. With a credit for a bank attachment of \$984.66, plus accrued interest, the current amount owed on the judgment is \$8,669.09.

Defendant Anthony Dattilo is a shareholder and the president of Enviromatrix, Inc. He testified at the trial that, beginning around 2009, he "sort of wound down" the business when his mother became ill and he had to devote a lot of his time to her care. Enviromatrix is an extant corporation but has not generated much revenue over the past three years.

Dattilo

that on July 31, 2009, he made a payment to himself of \$1,200.00. Over the next several weeks, through September 19, he issued himself seven more payments in the total amount of

\$16,050.00. Dattilo conceded that those payments were not wages or other remuneration for services rendered. Instead, he claimed that the payments were made pursuant to the terms of a note that Environment One, Inc., executed in favor of his father, Joseph Dattilo, on March 9, 1993. Anthony Dattilo claims that he is now the holder of that note, but he offered no evidence of a written assignment to him or a written assumption by Enviromatrix of liability on the note.

Dattilo testified that Enviromatrix's only assets are the bank account, which is now nearly empty, and two computers that are each about seven or eight years old. He acknowledged that, taking into account the note under which he claimed his payments, Enviromatrix is insolvent.

LAW AND ANALYSIS

R.C. §1336.04(A)(1) provides that a transfer made by a debtor is fraudulent as to a creditor if it was made with actual intent to hinder, delay, or defraud any creditor of the debtor.

Additionally, R.C. §1336.05 provides as follows:

1336.05 Claims arising before the transfer or obligation incurred.

(A) A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor became insolvent as a result of the transfer or obligation.

(B) A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the transfer was made to or the obligation was incurred with respect to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Where a creditor proves a fraudulent transfer, §1336.07(A)(1) provides that the transfer may be avoided to the extent necessary to satisfy the claim of the creditor, and

§1336.08(B)(1)(a) allows a judgment for the amount necessary to satisfy the claim to be entered against the transferee.

The plaintiff proved by a preponderance of the evidence that Enviromatrix transferred \$16,000.00 to Anthony Dattilo, an insider under §§1336.01(G)(2)(b) and (c), without receiving reasonably equivalent value in exchange and that Enviromatrix was insolvent at the time of the transfer.

Dattilo's argument that Enviromatrix did receive reasonably equivalent value i.e., that the amount owed on the 1993 promissory note was reduced by the amount of the payments is not credible for two reasons. First, the note was made by Environment One, Inc., not Enviromatrix, Inc. Even though Dattilo testified that Enviromatrix, Inc., is a successor corporation of Environment One, Inc., he offered no corroborating evidence that can be reasonably inferred to exist. For example, Enviromatrix would probably have executed a written assumption of liability under the note at the time that Environment One, Inc. was dissolved. Second, Dattilo's testimony that his father orally assigned the note to him is not persuasive. While it might be true that his father forgave the obligation, that is something entirely different from assigning his rights under the note to his son. Besides that, there does not seem to be any consistency to the alleged payments under the note. Enviroma register shows a \$1,200.00 payment to Dattilo on July 31, 2009; a \$4,500.00 payment eleven days later; and a separate \$1,500.00 payment that same day. Then, just over two weeks later, there is another \$700.00 payment on August 28 and, within less than a week, another \$700.00 payment on September 2. Six days later there are payments totaling \$3,750.00. One week later, on September 15, Dattilo paid himself another \$4,500.00 and then, just four days later, on

September 19, another \$400.00. No credible explanation was offered for the timing and amount of these payments.

The court therefore finds that the transfers totaling over \$16,000.00 in the several weeks after the judgment was entered are fraudulent as to the plaintiff. Therefore, the first \$8,669.09 of those transfers are hereby ordered avoided pursuant to R.C. §1336.07(A)(1). Additionally, a judgment in the amount of the avoided transfers, \$8,669.09, is hereby entered against defendant Anthony Dattilo as the first transferee of the avoided transfers pursuant to R.C. §1336.08(B)(1)(a). Anthony Dattilo is further ordered to pay 1) interest at the statutory rate on this judgment beginning May 23, 2012, and 2) court costs.

IT IS SO ORDERED:

Date: _____

SERVICE

A copy of this Journal Entry was sent by regular e-mail, this 4th day of June, 2012, to the following:

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