Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed May 4, 2011.
Not final until disposition of timely filed motion for rehearing.

No. 3D10-1071
Lower Tribunal No. 07-39353

Western Hay Company, Inc.,
Appellant,

vs.

Lauren Financial Investments, Ltd., d/b/a Lauren Associates, and Ronald Rubin,
Appellees.

An Appeal from the Circuit Court for Miami-Dade County, Scott J. Silverman, Judge.

Zimmerman Kiser Sutcliffe, J. Timothy Schulte, Kevin P. Robinson, and Keef F. Owens, (Orlando) for appellant.

Jay A. Gayoso, for appellees.

Before WELLS, CORTIÑAS, and EMAS, JJ.

WELLS, Judge.

Western Hay Company, Inc., the plaintiff below, appeals from a final judgment entered in favor of the defendants below, Lauren Financial Investments, Ltd., d/b/a Lauren Associates and Ronald Rubin, on its fraudulent transfer claim under section 726.105(1)(a) of the Florida Statutes. Finding that the trial court correctly applied the time limitations set forth in section 726.110(1) of the Florida Statutes, we affirm.

In November 2005, Western Hay recovered a money judgment against Donner Stone Crabs, Inc. ("DSCI"), a Florida corporation, in a Utah court. Western Hay thereafter domesticated the judgment in Florida and conducted discovery in aid of execution on the judgment.

In January 2006, Western Hay sent a writ of garnishment to Colonial Bank in Hollywood, Florida, where DSCI had a bank account. On February 27, 2006, Colonial Bank answered, informing Western Hay that there were no assets to garnish. In December 2006 and February 2007, Western Hay subpoenaed Colonial Bank for bank records on the account. The bank records showed numerous money transfers from DSCI to Lauren Financial Investments, Ltd. and to Ronald Rubin, between August 2002 and August 2003, which dissipated substantially all of DSCI's assets in the account.

Ronald Rubin was managing partner of Lauren Financial Investments, Ltd. Patti Rubin, his wife, was the president and director of DSCI. Western Hay sought

to depose the Rubins. However, having moved from Florida, the Rubins were not located and deposed until September 25, 2007.

On November 6, 2007, Western Hay filed the underlying lawsuit against Lauren Financial Investments, Ltd. and Ronald Rubin alleging that DSCI had fraudulently transferred monies to them in order to avoid paying Western Hay for services it had rendered to DSCI in violation of section 726.105(1)(a) of the Florida Statutes. In their answer, the appellees raised the limitations period set forth in section 726.110(1) as an affirmative defense.

After holding a bench trial, the trial court entered final judgment in favor of the appellees. Therein, the court below found that DSCI had fraudulently transferred $240,568.97 to the appellees in violation of section 726.105(1)(a), and that Western Hay would be entitled to recover $123,422.05 from the appellees, plus prejudgment interest, but for the applicability of the limitations period set forth in section 726.110(1). Western Hay appealed. For the following reasons, we affirm.

Chapter 726, Florida's Uniform Fraudulent Transfer Act ("FUFTA"), provides "a cause of action for damages in favor of a creditor against an aider or abettor to a fraudulent transaction." Freeman v. First Union Nat'l Bank, 865 So. 2d 1272, 1273 (Fla. 2004); §§ 726.101-726.112, Fla. Stat. (2007). The chapter addresses three distinct types of fraudulent transfers made by a debtor, which

include: (1) transfers made by a debtor with the "actual intent to hinder, delay, or defraud any creditor of the debtor," § 726.105(1)(a), Fla. Stat. (2007); (2) transfers made by a debtor without "receiving a reasonably equivalent value in exchange for the transfer," § 726.105(1)(b), Fla. Stat. (2007); § 726.106(1), Fla. Stat. (2007); and (3) transfers made to an "insider for an antecedent debt, [where] the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent." § 726.106(2), Fla. Stat. (2007).

Section 726.110(1)-(3) provides a different limitation period for each of these fraudulent transfers:

> **Extinguishment of cause of action**
>
> A cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought:
>
> (1) ***Under s. 726.105(1)(a)***, within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;
>
> (2) ***Under s. 726.105(1)(b) or s. 726.106(1)***, within 4 years after the transfer was made or the obligation was incurred; or
>
> (3) ***Under s. 726.106(2)***, within 1 year after the transfer was made or the obligation was incurred.

§ 726.110(1)-(3), Fla. Stat. (2007) (emphasis added).

Unlike its predecessor[1], which contained no limitations provision, FUFTA expressly provides that a "cause of action" with respect to a fraudulent transfer brought under section 726.105(1)(a) "is extinguished" if not brought "within four years after the transfer was made . . . or, if later, within 1 year after the transfer . . . was or could reasonably have been discovered by the claimant." § 726.110(1), Fla. Stat. (2007). Here, Western Hay filed its complaint on November 6, 2007, which was more than four years after the last transfer in question was made on August 18, 2003. Thus, this appeal concerns the applicability of the one year savings clause of section 726.110(1).

Western Hay argues here, as it did below, that this Court should read the savings clause to mean that a fraudulent transfer action must be filed within one year after the fraudulent nature of the transfer could reasonably have been discovered by the claimant, as opposed to within one year after the transfer itself could reasonably have been discovered. Thus, according to Western Hay, the one year period did not begin to run until it deposed Patti Rubin on September 25, 2007, because, up until that time, it "could only speculate whether the transfers shown in the bank records were fraudulent." We disagree and find that the trial court was correct in holding that the savings clause requires that the lawsuit be filed within one year after the transfer itself could reasonably have been

[1] Florida's fraudulent conveyance statutes were repealed and replaced by FUFTA in 1987. See Ch. 87-79, § 13, at 296, Laws of Fla.

discovered. Therefore, the court below properly held that because "the information contained in the bank records could have been discovered by the plaintiff as early as the day Colonial Bank responded to the writ of garnishment," on February 27, 2006, "the plaintiff could reasonably have discovered evidence of the transfers during the one-year period between February 27, 2006 and February 27, 2007."

As with any statute, Florida courts must give effect to the legislature's intent by first looking to the actual language of the statute itself; if the statutory language is clear and unambiguous, there is no need to resort to the rules of statutory construction to explore the legislative history behind the act's enactment:

> Our purpose in construing a statute is to give effect to the Legislature's intent. State v. J.M., 824 So. 2d 105, 109 (Fla. 2002). In attempting to discern legislative intent, we first look to the actual language used in the statute. Joshua v. City of Gainesville, 768 So. 2d 432, 435 (Fla. 2000). If the statutory language is unclear, we apply rules of statutory construction and explore legislative history to determine legislative intent. Id.; Weber v. Dobbins, 616 So. 2d 956, 958 (Fla. 1993).

Freeman, 865 So. 2d at 1276 (quoting BellSouth Telecomm., Inc. v. Meeks, 863 So. 2d 287, 289 (Fla. 2003)); see also Knowles v. Beverly Enterprises-Florida, Inc., 898 So. 2d 1, 10 (Fla. 2004) (stating that "the rules of statutory construction are the means by which courts seek to determine legislative intent only when that intent is not plain and obvious enough to be conclusive," and finding that "[b]ecause we agree that the language used by the Legislature is unambiguous, it is not necessary to examine the legislative history"); State, Dep't of Revenue v.

Lockheed Martin Corp., 905 So. 2d 1017, 1020 (Fla. 1st DCA 2005) ("When a statute is clear, a court may not look behind the statute's plain language or resort to rules of statutory construction to determine the legislative intent. This is so because the Legislature is assumed to know the meaning of the words used in the statute and to have expressed its intent through the use of the words.") (Citations omitted).

In this case the statute is clear. Section 726.110(1) simply says that where a transfer was made with the actual intent to hinder, delay or defraud, no cause of action exists four years after "the transfer" or, if more than four years have passed, no more than one year after "the transfer" was or could reasonably have been discovered. The Act clearly defines the term "transfer" to mean "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." § 726.102(12), Fla. Stat. (2007). Nowhere does the Act or section 726.110 state or suggest that the time within which an action may be brought begins to run upon discovery of the fraudulent nature of a transfer. We must, therefore, conclude that section 726.110(1) is clear and unambiguous and means what it says: that actions under section 726.105(1)(a) must be brought within four years of a "transfer," or at best within one year after a "transfer" could reasonably have been discovered.

Moreover, the savings clause detailed in section 726.110(1) for fraudulent transfers under section 726.105(1)(a) is not present in the limitations periods for the other fraudulent transfers covered by Chapter 726. See § 726.110(1)-(3), Fla. Stat. (2007). The fact that additional time is accorded where intent to conceal forms the basis of a claim further evidences a clear intent by the Legislature to supplant the discovery rule accorded to fraud actions in general.

As the United States District Court for the Middle District of Florida has recently confirmed, had the Legislature intended for this limitations period to run from discovery of the fraudulent nature of a transfer rather from the transfer itself, it could have and would have said so:

> If the Florida legislature meant for actions brought within one year of when the "fraudulent nature of the transfer" was or could reasonably have been discovered by the claimant to be timely, it could have so provided in the savings clause. At least one other jurisdiction has done so. See Ariz. Rev. Stat. § 44-1009(1) (Arizona's savings clause provides that a claim for relief is extinguished unless an action is brought "within one year after the fraudulent nature of the transfer . . . was or through the exercise of reasonable diligence could have been discovered by the claimant."). The bankruptcy court therefore enunciated the proper standard under the savings clause in its summary judgment order: the fraudulent transfer action is barred under § 726.110(1) unless an action was brought "within one year after the alleged transfers were or could reasonably have been discovered by [the claimant]."

In re Hill, No. 3:03-cv-1034-J-32, 2004 WL 5694988, at *3 (M.D. Fla. Nov. 4, 2004) (footnote omitted).

Western Hay, relying upon Freitag v. McGhie, 947 P. 2d 1186 (Wash. 1997), argues that this Court should ignore the plain language of the Act because giving the term "transfer" its literal meaning would lead to an absurd result and also be in derogation of the common law discovery rule which acts to toll the running of the statute of limitations in cases of fraud. We disagree for the reasons eloquently set forth in the Freitag dissent:

> [The Uniform Fraudulent Transfer Act ("UFTA")] displaces the common law discovery of fraud rule by requiring the one-year limitation to run from the discovery of the transfer, not the fraud. The statute mandates the cause of action is extinguished "within four years" after the transfer was made or "if later, within one year after the transfer" was or could reasonably have been discovered. The Legislature used the word "transfer" in both the four-year and one-year provisions. No reason is advanced to give the same word, within the same sentence, two completely different meanings. . . .
>
> Perhaps the Legislature indeed made the wrong choice; however, [UFTA] clearly reflects a rational and intentional choice, if not the best one. . . . The stated legislative purpose of section 9 of UFTA . . . is to create an orderly, predictable, and uniform time for a claimant to bring a fraudulent transfer suit. The section as written, "transfer" and all, accomplishes just that. See Frank R. Kennedy, The Uniform Fraudulent Transfer Act, 18 UCC L.J. 195, 210 (1986); Uniform Fraudulent Transfer Act § 9 Comment, 7A U.L.A. 665-66 (1985) (UFTA § 9). . . . The finality with which the trial court disposed of Petitioners' claims is exactly what the drafters of section 9 intended: it ended Petitioners' opportunity to file a lawsuit at a specific time one year after discovery of the transfer. This is a tough bright-line rule.
>
> In a different sense the one-year discovery rule itself is designed to mitigate the harsh result of the four-year discovery rule that is embodied in the first part of [the statute of limitations]. "UFTA . . . provides an additional, though shorter, time period to guard against the potentially harsh application of the four-year extinguishment

> provision. . . . The plain language of the statute makes the one-year 'safety valve' limitations period available to all claimants under the UFTA."

Id. at 825-27 (Sanders, J., dissenting) (citations omitted); see also § 726.111, Fla. Stat. (2007) (stating that principles of law and equity and the law relating to fraud supplement the Act "[u]nless displaced by the provisions of ss. 726.101-726.112").

Accordingly, because the limitations period set forth in section 726.110(1) of the Florida Statutes expired in this case before the instant action was brought, we affirm the final judgment entered in favor of the appellees.

EMAS, J., concurs.

CORTIÑAS, J. (dissenting)

Because the majority misinterprets and misapplies the one-year savings provision, which extends the four-year statute of limitations under Florida's Uniform Fraudulent Transfer Act ("FUFTA"), I must respectfully dissent. See generally ch. 726, Fla. Stat. (2007); Unif. Fraudulent Transfer Act (1984).

In November 2005, Western Hay Company, Inc. ("Western Hay") recovered a money judgment in Utah against Donner Stone Crabs, Inc., a Florida corporation, ("DSCI"). In January 2006, Western Hay domesticated the judgment in Florida and conducted discovery in aid of execution. In furtherance of the execution on the judgment, Western Hay sent a writ of garnishment to Colonial Bank where DSCI had a bank account. After Colonial Bank stated that the DSCI account contained no assets, Western Hay then subpoenaed Colonial Bank in December 2006 and February 2007 for bank account records. Although the records showed money transfers from DSCI to Lauren Financial Investments, Ltd. and to Ronald Rubin (collectively "Appellee") between August 28, 2002 and August 18, 2003, which substantially dissipated all of DSCI's assets in the account, the records did not reveal if consideration was paid for the transfers or whether the transfers were fraudulent.

Therefore, in order to ascertain the nature of the transfers, Western Hay sought to depose both Ronald Rubin and his wife, Patty Rubin ("Ms. Rubin"), but having moved from Florida, they were not located and deposed until September 25, 2007. Ms. Rubin's deposition testimony revealed, for the first time, that DSCI received no consideration for the transfers to Appellee. Thus, it was not until Ms. Rubin's deposition, on September 25, 2007, the delay of which was through no fault of Western Hay, that Western Hay discovered or reasonably could have discovered the fraudulent nature of the transfers. It was only at this point that Western Hay could sufficiently allege a cause of action under section 726.105(1)(a), Florida Statutes (2007). Accordingly, on October 23, 2007, within one month of discovery of the fraudulent transactions, Western Hay filed its complaint under section 726.105(1)(a), alleging that DSCI had fraudulently transferred monies to Appellee in order to avoid payment of the judgment.

After a bench trial, the trial court made the following findings of fact: (1) the transfers from DSCI were made with an actual intent to hinder, delay or defraud Western Hay, (2) the transfers injured and prejudiced Western Hay, an existing creditor, (3) Appellee failed to meet their burden on any good-faith defense, and (4) Western Hay's efforts were reasonable in seeking discovery in aid of execution, specifically, that once Colonial Bank answered that there were no assets to garnish, Western Hay sought several times to take the depositions of the Rubins, a

reasonable effort to search for executable or garnishable assets. Based on these findings, the trial court ruled that DSCI had fraudulently transferred $240,568.97 to Appellee in violation of section 726.105(1)(a). Nevertheless, the trial court entered judgment in favor of Appellee, interpreting section 726.110(1), Florida Statutes (2007), to preclude a cause of action for a fraudulent transfer where a creditor fails to file within one year of discovery of a transfer, and not discovery of the fraudulent nature of the transfer. This appeal followed.

Because a cause of action under section 726.105(1)(a), Florida Statutes (2007), requires that a transfer be considered fraudulent to a present creditor only if the debtor made the transfer with an actual intent to hinder, delay, or defraud any creditor of the debtor, the one-year savings provision within section 726.110 cannot be read to preclude a cause of action thereunder until all of the elements can be alleged as true. Here, Western Hay first discovered or reasonably could have discovered the fraudulent nature of the transfers on September 25, 2007, and thus, only at this point fulfilled the statutory requirements to plead a cause of action under section 726.105(1)(a). By filing the complaint within one year of discovery of the fraudulent transfer under section 726.105(1)(a), Florida Statutes, and thereafter substantiating the allegation therein, Western Hay is entitled to the legal remedies provided in chapter 726, namely, the monies from the judgment it received in November 2005.

First, it is important to note that we are dealing with the *Uniform Fraudulent Transfer Act* ("UFTA"), which, was approved by the National Conference of Commissioners on Uniform State Laws to create a *uniform* statutory cause of action by which a creditor may seek recourse against a **fraudulent transfer** for which there is a claim of a right to payment. See Unif. Fraudulent Transfer Act (1984); see also §§ 726.101-726.112, Fla. Stat. (2007).

Today, the majority has obliterated the principle of *uniformity* given by the Florida Legislature in the enactment of FUFTA. The Florida Legislature, in its enactment of FUFTA, expressed its intent in adopting a *uniform* statutory cause of action as part of Florida's statutory scheme.[2] See Laws of Fla., ch. 87-79 (1987), as amended by ch. 91-102, § 937 (1997). Reiterating the legislative intent for "[u]niformity of application and construction" in applying FUFTA, is the incorporation of section 726.112, Florida Statutes (2007), which expressly provides:

> [FUFTA] shall be applied and construed to effectuate its general purpose to make **uniform the law with respect to the subject of the law among states enacting** it.

§ 726.112, Fla. Stat. (2007) (emphasis added). Moreover, the Florida Supreme Court has acknowledged that, through the adoption of FUFTA, the Florida

[2] Interestingly, the Florida House of Representatives companion bill relating to the enactment of the UFTA was sponsored by the Honorable Charles T. Canady, presently Chief Justice of our Supreme Court. See Fla. H.R., Comm. on Judiciary Staff Analysis, 87-236 (1987).

Legislature "intended to codify an existing but imprecise system whereby transfers that were intended to defraud creditors could be set aside." Freeman v. First Union Nat'l Bank, 865 So. 2d 1272, 1276 (Fla. 2004). By joining the now forty (40) other states in adopting UFTA within chapter 726, Florida Statutes, there can be little doubt that the Legislature intended to implement a *uniform* procedure for fraudulent transfers. §§ 726.101-726.112, Fla. Stat. (2007).

The precise issue before us is whether, under FUFTA, the one-year savings provision applies to and allows claims to be filed within one year after a creditor discovers the existence of a **fraudulent transfer**. See § 726.110(1), Fla. Stat. (2007) (emphasis added).

Specifically, FUFTA provides that:

> A cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought:
>
> (1) Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;

§ 726.110(1), Fla. Stat. (2007).

To date, the numerous other jurisdictions that have considered the precise issue before us all have decided it contrary to the majority's view. Those jurisdictions have consistently held that the one-year savings provision does not begin to accrue until discovery of the *fraudulent nature* of the transfer. As such,

the limitations period does not begin to run until the creditor discovers or could have reasonably discovered the nature of the *fraudulent transfer*, and the one-year savings provision acts to allow a creditor to file a cause of action under the state's UFTA within one year after discovery or reasonable discovery of the *fraudulent nature* of the transaction. Freitag v. McGhie, 947 P.2d 1186, 1190 (Wash. 1997) (holding that UFTA's one-year savings provision provides a "one-year period from the date of discovery of the *fraudulent nature* of the transfer within which to initiate a claim under UFTA.") (emphasis added); Duran v. E.G. Henderson, 71 S.W.3d 833, 839 (Tex. App. 2002) (rehearing overruled) (holding that "[a] creditor's cause of action to set aside a fraudulent conveyance accrues[, and thus the limitation period does not begin to run, until] the *creditor acquires knowledge of the fraud*, or would have acquired knowledge of the fraud in the exercise of ordinary care.") (emphasis added) (citation omitted); Rappleye v. Rappleye, 99 P.3d 348, 356 (Utah Ct. App. 2004) (holding UFTA incorporates a fraudulent discovery rule within the one-year savings provision, and as such, the limitations period is determined by the date on which the creditor was "on notice that the conveyance was *fraudulent*"); In re Sw. Supermarkets, L.L.C., 315 B.R. 565, 577 (Bankr. D. Ariz. 2004) ("Arizona's fraudulent transfer statute, like [UFTA], expressly provides a discovery rule for actual fraudulent conveyance claims, requiring that if they are brought later than four years after the transaction, they

must be brought within one year of when the creditor knew or, with reasonable diligence, should have known of the existence of the cause of action."), disagreed with on other grounds, In re Scott Acquisition Corp., 344 B.R. 283 (Bank. D. Del. 2006); In re Bushey, 210 B.R. 95, 99 n.5 (B.A.P. 6th Cir. 1997) (noting that "because Ohio applies a discovery-of-the-fraud rule" to the state's UFTA, a cause of action for a fraudulent transfer was not barred by the extinguishment clause where the action was brought one year after discovery of the fraudulent conduct); Fidelity Nat'l Title Ins. Co. of N.Y. v. Howard Savs. Bank, 436 F.3d 836, 839 (7th Cir. 2006) (noting UTFA's limitations period under the one-year savings provision does not begin to run until "discovery that the plaintiff has been wrongfully injured.") (citation omitted). By taking a completely opposite view from every other jurisdiction having considered the exact issue, the majority has gifted our state with essentially a "Transfer Act" entirely different from UFTA, as enacted by forty other states, and contrary to the expressed intent of the Florida Legislature.

The majority's rationale is based upon In re Hill, where a solitary federal judge from the Middle District of Florida concluded that, had the Legislature intended the one-year savings provision to run from discovery of the fraudulent nature of the transfer, it would have so provided.[3] In re Hill, 2004 WL 5694988,

[3] We note that we are not required to follow a federal district court's construction of Florida substantive law, particularly where the case is unreported, as is In re

*3 (M.D. Fla. Nov. 4, 2004). In re Hill remanded, in part, a bankruptcy court's judgment on the basis that the factual findings pertaining to the alleged fraudulent transfers were silent as to whether the creditor discovered or reasonably could have discovered each transfer within one year of each individual transfer. In remanding, the judge noted that "[t]he Court expresses no opinion on whether the limitations period is subject to equitable tolling. If the bankruptcy court bases its decision on tolling as **opposed to or in addition to the savings clause**, the court should state and make the necessary findings." Id. at *5, n.14 (emphasis added). Although he noted that the one-year savings provision should be interpreted by the actual language used, the judge also stated the "purpose in construing a statute is to give effect to the [L]egislature's intent."[4] Id., at * 3 (citation omitted). However, this outlier holding failed to construe the language within the one-year savings provision to give effect to the legislative intent "to codify an existing but imprecise system whereby transfers that were intended to defraud creditors could be set aside." Freeman, 865 So. 2d at 1276.

Hill, 2004 WL 5694988, *3 (M.D. Fla. Nov. 4, 2004). See Bridges v. Williamson, 449 So. 2d 400, 401 (Fla. 2d DCA 1984).

[4] The Court cited to Arizona's one-year savings provision which, as amended, expressly provides for the discovery of the fraudulent nature of the transfer. However, Arizona courts have consistently interpreted the one-year savings provision as providing a discovery rule for actual fraudulent conveyance claims. In re Sw. Supermarkets, L.L.C., 315 B.R. at 577.

Furthermore, in noting "the difficulty in proving actual intent of a fraudulent transfer, case law and the [UFTA] look to indicia of fraudulent intent commonly referred to as 'badges of fraud.'" Hill, 2004 WL 5694988, at * 6 (quoting Lab. Corp. of Am. v. Prof'l Recovery Network, 813 So. 2d 266, 271 (Fla. 5th DCA 2002)), the federal court held that FUFTA did not supplant the common law, as the majority suggests, but instead, remained supplemental to UFTA, as intended by the Legislature to "make uniform the law with respect to the subject of the law among states enacting it." § 726.112, Fla. Stat. (2007); see also Fla. Dep't of Health & Rehab. Servs. v. S.A.P., 835 So. 2d 1091, 1098 (Fla. 2002) (holding "a statute enacted in derogation of the common law must be strictly construed and that, even where the Legislature acts in a particular area, the common law remains in effect in that area unless the statute specifically says otherwise."). Notably, by stating that the one-year savings provision may be applied in addition to the statutory cause of action for supplemental proceedings, in accord with section 726.111, Florida Statutes (2007), the Middle District gave credence to the expressed legislative intent for applying "the principles of law and equity, including . . . estoppel [and] fraud," supplemental to provisions found in FUFTA. See § 726.111, Fla. Stat. (2007). Therefore, by finding the legislative intent was to provide a *uniform* statutory cause of action in adopting FUFTA, an interpretation that directly contravenes this goal is erroneous, in so far as it leads to absurd and ridiculous

results. See City of St. Petersburg v. Siebold, 48 So. 2d 291, 294 (Fla. 1950) ("The courts will not ascribe to the Legislature an intent to create absurd or harsh consequences, and so an interpretation avoiding absurdity is always preferred.") (citation omitted).

States, such as Washington and Texas, reason that because a cause of action under UFTA for relief from a *fraudulent transfer*, accrues upon discovery or reasonable discovery of the *fraudulent* nature of the conveyance, and not simply discovery of the transfer itself, the one-year savings provision must be interpreted to calculate the limitations period from the date of discovery or reasonable discovery of the *fraudulent* nature of the transaction for which a claim may be brought under UFTA. For example, in Freitag, 947 P.2d at 1190, the Washington Supreme Court held that the one-year savings provision, which notably contains the exact language as FUFTA's one-year savings provision, does not begin to run until the date of discovery of the fraudulent nature of the transfer. In Freitag, the Washington Supreme Court reversed the Washington Court of Appeals in McMaster v. Farmer, 886 P.2d 240 (Wash. Ct. App. 1994), which held, much like the majority does today, that based on the plain language of the statute, a fraudulent transfer claim must be brought within one year of discovery of the transfer, and not discovery of the fraudulent nature of the transfer. Freitag, 947 P.2d at 1188. In overruling the Court of Appeals, the Washington Supreme Court

noted that "common sense and the statutory purpose of the UFTA necessitate a finding that the statute begins to run with the discovery of the fraudulent nature of the conveyance." Id. at 1189.

Further, the common law discovery rule, which tolled the limitations period until the aggrieved party actually discovered the fraud, "is incorporated into the UFTA statute of limitations" in so far as the provisions and the policies of UFTA are the same. Id. Because "absent an express indication otherwise, new legislation will be presumed to be consistent with prior judicial decisions," the Washington Supreme Court reasoned the Legislature did not intend to eliminate the common law discovery rule that the "claimant have knowledge of the fraudulent nature of the transfer before the statute of limitations begins to run." Id. at 1189-90. Likewise, a Texas Court of Appeals, in interpreting the one-year savings provision in UFTA, which also contained the exact language as FUFTA, held that "[a] creditor's cause of action to set aside a fraudulent conveyance accrues when the creditor acquires knowledge of the fraud, or would have acquired such knowledge in the exercise of ordinary care." Duran, 71 S.W.3d at 839 (citation omitted). The Texas Court of Appeals reasoned that the one-year savings provision was "similar to the discovery rule applicable to general fraud claims[, for which it] provides that a claim for fraud does not accrue, and thus the limitation period does not begin to

run, until the fraud is discovered, or in the exercise of reasonable diligence should have been discovered." Id. (citation omitted).

FUFTA does not include any express intent by the Florida Legislature to eliminate the common law discovery rule to toll the limitations period until discovery of the fraud. On the contrary, FUFTA contains a specific provision for the **supplementary** application of "the principles of law and equity, including the law relating to . . . fraud." § 726.111, Fla. Stat. (2007). Accordingly, despite FUFTA's one-year savings provision lacking any reference to fraudulent concealment, the common law discovery rule as it applies to frauds must be applied to determine when the one-year savings provision begins to run.

Next, we consider the meaning of the words "fraudulent transfer," which must be read in pari materia to be given any semblance of rational thought or reasonable meaning. See Bush v. Holmes, 919 So. 2d 392, 406-07 (Fla. 2006) (holding that in order to give effect to the principle of pari materia to constitutional provisions, "the provision should 'be construed as a whole in order to ascertain the general purpose and meaning of each part; each subsection, sentence, and clause must be read in light of the others to form a congruous whole.'") (quoting Dep't of Envtl. Prot. v. Millender, 666 So. 2d 882, 886 (Fla. 1996)). Clearly, the word "fraudulent" modifies the word "transfer" to allow us to understand that chapter

726 deals only with a transfer that is fraudulent as opposed to any other garden variety of transfer. See § 726.108, Fla. Stat. (2007).

In interpreting a statute, "the Legislature evidently meant something by said section, and it is our duty to ascertain that meaning if possible." Goode v. State, 39 So. 461, 463 (Fla. 1905). Although the majority notes that the one-year savings provision allows for a discovery period for fraudulent transfers where the transfer was made with an actual intent to hinder, delay, or defraud the creditor, it illogically concludes that this additional one-year time period, which supplements the discovery rule for fraud actions in general as expressed in section 726.111, Florida Statutes (2007), does not apply to the discovery of the nature of the concealed fraudulent transfer in question. Specifically, because section 95.031(2)(a), Florida Statutes (2007), provides that the limitations period does not begin to run until the time the fraud is discovered or reasonably could have been discovered, to read the one-year savings provision in any other way than providing for discovery of the fraudulent nature of the transfer, would negate the legislative intent in codifying a uniform "existing but imprecise system whereby transfers that were intended to defraud creditors could be set aside." Freeman, 865 So. 2d at 1276; see Paragon Health Servs., Inc. v. Cent. Palm Beach Cmty. Mental Health Ctr., Inc., 859 So. 2d 1233, 1236 (Fla. 4th DCA 2003) (noting that the Fourth District Court of Appeal had previously discussed the one-year savings provision

and "referred to the [creditors] as having 'four years from the filing of the UCC statement or **one year from discovery of the fraudulent transfer in which to bring suit**.'") (emphasis added) (quoting Segal v. Rhumbline Int'l, Inc., 688 So. 2d 397, 400 (Fla. 4th DCA 1997)). Therefore, the majority's interpretation of the one-year savings provision belies the purpose and language encompassed within FUFTA, as it was meant to codify an existing right of a creditor to bring a cause of action, and not a remedy, to a fraudulent conveyance.

Understanding that we are interpreting the savings provision within the limitations clause of FUFTA, the only reasonable interpretation is to read the one-year savings provision to mean that a fraudulent action must be brought within one year after the fraudulent nature of the transfer was or could reasonably have been discovered by the claimant. To hold otherwise, effectively reads the word **fraudulent** out of the *Uniform Fraudulent Transfer Act*. In effect, the majority's opinion reads as if we were considering a Florida statute called merely the *Transfer Act* rather than the *Uniform Fraudulent Transfer Act*. The majority reasons that because the Legislature did not put the word "fraudulent" in the one-year savings provision, the provision only applies to a transfer of any kind. Forget that throughout FUFTA, every section and every clause deals exclusively with fraudulent transfers. See Goode, 39 So. at 463 ("[A] construction which would leave without effect any part of the language used should be rejected, if an

interpretation can be found which will give it effect.") (citation omitted); City of Boca Raton v. Gidman, 440 So. 2d 1277, 1281 (Fla. 1983) ("The primary rule of construction is to ascertain [the legislative intent] and give effect to that intent.") (citation omitted).

The majority's interpretation of the one-year savings provision not only ignores that we are dealing with UFTA, its application does not make sense in the complex business law arena, where the majority's interpretation would place it in direct conflict with other laws relating to the same purpose. See City of Boca Raton, 440 So. 2d at 1282 ("A law should be construed together with any other law relating to the same purpose such that they are in harmony.") (citation omitted).

Imagine now the application and legal ramifications of the majority's holding. For example, let's say that from, 2000 to 2003, Business A is defrauded by Fraudster X and, as a result, Business A loses $500 Million. In 2005, Business A files a civil action in a Florida Circuit Court and, in 2007, obtains a final judgment in its favor and against Fraudster X for $500 Million. Fraudster X is a massive fraudulent enterprise with an office in Miami as well as offices throughout the world. After obtaining a final judgment in 2007, Business A commences discovery in aid of execution. Business A subpoenas Fraudster X's banking accounts for its Miami office as well as international offices. In response, on December 22, 2007, Fraudster X provides over 100 boxes of records, which are of

course not organized chronologically or otherwise, but contained in one of the boxes is a document showing a 2002 payment of $10 Million from Fraudster X to another entity. Business A's lawyers gather the records and begin the process of numbering the boxes and bates-stamping each document. In order not to disturb original documents, the lawyers make a duplicate set so that they may work off the copies. The lawyers then begin to organize the documents chronologically, by dollar amount, and by payor/payee. Naturally, the lawyers issue subpoenas and notices of depositions. In a deposition, on December 23, 2008, for the first time, Business A's lawyers discover that the $10 Million transfer was fraudulent.

Too bad, so sad for Business A, as the majority's rendition of the Transfer Act bars any claim based on this fraudulent transfer simply because it had in its possession, more than 365 days earlier, a document showing that a transfer of monies was made. This illogical holding would essentially vitiate FUFTA's statutory cause of action that allows creditors a right to remedy. The majority's interpretation of the one-year savings provision favors the fraudsters over the victims of fraudulent transfers and, in practice, is entirely inconsistent with the Legislature's enactment of a Uniform Fraudulent Transfer Act. Large commercial banks and insurers, frequently the victims of massive fraud schemes, are left without recourse against sophisticated fraudsters.

I would reverse the trial court's judgment in favor of the fraudulent transferor as section 726.110(1) allows a cause of action for a fraudulent transfer within one year of discovery of the fraudulent nature of the transfer.