

IT IS SO ORDERED.

Dated: 04:34 PM January 26 2009



**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

| | | |
|-------------------------------------|---|----------------------------------|
| IN RE: |) | CASE NO. 06-50210 |
| |) | |
| GINGER R. STAAB |) | ADVERSARY NO. 07-5060 |
| Debtor |) | |
| |) | CHAPTER 7 |
| |) | |
| KATHRYN A. BELFANCE, TRUSTEE |) | |
| Plaintiff |) | JUDGE MARILYN SHEA-STONUM |
| vs. |) | |
| |) | |
| |) | |
| GINGER R. STAAB, et al. |) | |
| |) | |
| Defendants |) | MEMORANDUM DECISION |
| |) | |
| |) | |

This matter comes before the Court on the complaint of Plaintiff Kathryn Belfance, (the "Trustee") to determine the Trustee's powers to avoid the transfer of certain property from Debtor/Defendant Ginger Staab to Defendant Allan Staab and the transfer of certain property from Defendant Mary Cruise (Ginger Staab's mother) to Allan Staab under 11 U.S.C. § 544 [docket #1] and

on the answer of the defendants [docket #30]. On May 11, 2007, the defendants filed a Joint Motion to Dismiss (“the Motion”) [docket #8] pursuant to Fed. R. Bankr. P. 7012 and Rule 12(b) (6) of the Federal Rules of Civil Procedure. The Court denied the Motion with respect to the Trustee’s preference claims based on O.R.C § 1313.56 and avoidance claims based on O.R.C. § 1336.04(A)(1) relating to the transfer of properties from Debtor/Defendant Ginger Staab to Defendant Allan Staab [docket #24]. The Court granted the Motion with respect to any avoidance claim premised on O.R.C. § 1336.04(A)(2) and granted the Motion with respect to any transfers made by Mary Cruise [docket #24].

The trial took place on October 27, 2008. Appearing at the trial was Thomas R. Houlihan, counsel for the Trustee, and Michael J. Moran, as counsel for Debtor/Defendant Ginger Staab and Defendant Allan Staab (collectively the “Defendants”). During the trial, the Court admitted various exhibits and heard testimony from the following individuals: (1) creditor, Dorothy Perrine; (2) Debtor-Defendant, Ginger Staab; and (3) Defendant, Allan Staab. At the conclusion of the trial, the Court took the matter under advisement.

This proceeding arises in a case referred to this Court by the Standing Order of Reference entered in this District on July 16, 1984. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H) and (O) over which this Court has jurisdiction pursuant to 28 U.S.C. § 1334(b). Based upon testimony and evidence presented at the trial, the arguments of counsel, the pleadings in this adversary proceeding and certain pleadings in the main chapter 7 case, pursuant to Fed. R. Bankr. P. 7052, the Court makes the following findings of fact and conclusions of law.

I. STIPULATED FACTS

The following facts are not in dispute and are the subject of Joint Stipulations filed by the parties:

1. Kathryn Belfance is the duly appointed trustee of the bankruptcy estate of Ginger R. Staab (“Debtor”) in U.S. Bankruptcy Court, Northern District of Ohio, Eastern Division at Akron in case #06-50210.

2. This action is properly commenced as an adversary proceeding pursuant to Fed. R. Bankr. Proc. 7001.
3. This adversary proceeding relates to and arises in the chapter 7 bankruptcy action identified above.
4. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334(b) and 157 (b)(2)(F)(H) and (O) and General Order No. 84 entered in this district on July 16, 1984.
5. This Court has personal jurisdiction over defendants pursuant to Fed. R. Bankr. Proc. 7004(f).
6. This district is the proper venue for this adversary proceeding pursuant to 28 U.S.C. § 1409(a).
7. Debtor was formerly known as Virginia Perrine, having been married to Thomas Perrine (“Thomas”) on February 24, 1973.
8. During the marriage, on August 13, 1993, Debtor executed two promissory notes payable to Dorothy Perrine (“Dorothy”), on December 8, 1993.
9. A divorce action was commenced in the Summit County Common Pleas Court, Domestic Relations Division, case # 93-12-2766, Virginia R. Perrine v. Thomas D. Perrine, Summit County, hereinafter the “Divorce Action.”
10. Debtor was awarded 61 S. Tamarack Drive, Akron, OH 44319 (“61 S. Tamarack”), debt-free, in the divorce action by order of the Summit County Court of Common Pleas, Domestic Relations Division in 1994.
11. Dorothy brought suit against Debtor and Thomas on September 28, 1994, seeking repayment of the loans, (Dorothy Perrine v. Thomas Perrine, et al., Summit County Common Pleas Court case #94-09-3243, hereinafter the “Collections Action”).
12. The docket of the Clerk of Common Pleas Court of Summit County, Ohio, reveals the following activity in the Collections Action.

13. On October 26, 1995, a Magistrate's Decision was entered. Joint Exhibit A. This and the following bracketed text is this Court's summary of the stipulated exhibits and is not explicitly part of the parties' stipulations. [The Magistrate found that Dorothy forgave the first two loans, that Thomas repaid the third and fourth loans in part, and that Dorothy forgave the remaining balances on the third and fourth loans.]

14. On February 16, 1996, the Summit County Common Pleas Court entered its judgment. Joint Exhibit B. [Dorothy objected to the Magistrate's October 26, 1995 Decision. The trial court overruled Dorothy's objection and entered the Magistrate's Decision.]

15. On November 20, 1996, the Ninth District Court of Appeals entered its order. Joint Exhibit C. [Dorothy appealed the trial court's decision and the Ninth District held that the trial court's decision with regard to the first loan was proper. The Ninth District reversed and remanded the matter in the second loan because the Ninth District found that the trial court's decision was inconsistent. The Ninth District also remanded the matter in the third and fourth loans and found that the record did not support the trial court's conclusion that Dorothy forgave the loans .]

16. On September 10, 1997, the Common Pleas Court of Summit County, Ohio Magistrate entered his decision. Joint Exhibit D. [The Magistrate addressed only the second loan and concluded that it was not a loan and that Dorothy and Thomas tried to circumvent the probate process and the consequences of the division of property order in the Divorce Action through the second loan.]

17. On January 30, 1998, the Common Pleas Court of Summit County, Ohio entered its order. Joint Exhibit E. [Dorothy objected to the Magistrate's September 10, 2007 Decision. The trial misinterpreted her objection as a motion to vacate a judgment and overruled her motion.]

18. On December 14, 2001, the Common Pleas Court of Summit County, Ohio issued its order. Joint Exhibit F. [The trial court overruled Dorothy's objection to the Magistrate's September 10,

1997 Decision and adopted the Magistrate's Decision as its own. Dorothy appealed that decision.]

19. On July 20, 2005, under the caption Perrine v. Perrine, Summit App. No. 22472, 2005-Ohio-363, the Ninth District Court of Appeals issued a mandate to the Summit County Common Pleas Court to enter judgment against Thomas and Debtor and in favor of Dorothy in the collections action. Joint Exhibit G.

20. Debtor filed the bankruptcy action on February 22, 2006, which stayed the collections action.

21. In the month of September 2005, Debtor opened up a line of credit with Chase Bank USA, N.A.

22. At the time of filing the bankruptcy action, Debtor had credit card debt to Chase Bank USA, N.A. ("Chase Bank") in the amount of \$5,250.

23. On July 17, 1997, Debtor married Allan Staab ("Staab").

24. Staab knew that Dorothy was suing Debtor and Thomas for money and had known since 1997.

25. On August 7, 1997, Debtor transferred a one-half interest in 61 S. Tamarack to Staab by survivorship deed (the "1997 Tamarack Transfer").

26. Debtor received six lots of real estate in Florida (the "Florida Lots") in the Divorce Action and Debtor transferred those lots to Staab on May 19, 1997 (the "Florida Transfer"). These lots were subsequently transferred to third-party bona fide purchasers for value on January 22, 1998.

27. On December 30, 2001, Debtor transferred her interest in 61 S. Tamarack to Staab by quit claim deed (the "2001 Tamarack Transfer").

II. FINDINGS OF FACT

After trial the Court finds that the creditor on whom the Trustee relies for her derivative standing knew or should have known of the transfers in question for well more than four years before this action was commenced. The Court therefore finds that the Defendants' statute of limitations defense is well taken with regard to the Trustee's claims under O.R.C. §§ 1336.04 and 1313.56. Because the matter did proceed to trial, the Court is addressing the evidence adduced at trial, so in addition to the foregoing Stipulated Facts, the Court makes the following findings of fact:

1. Dorothy is Debtor's ex-mother-in-law.
2. Dorothy has had at least four attorneys represent her over the course of the litigation against Debtor.
3. On August 17, 1999, Dorothy filed a request for the filing of a certificate of judgment lien in the amount of \$46,550.00 plus costs and interest against Debtor at the Common Pleas Court of Summit County, Ohio. Joint Exhibit G, ¶7.
4. At the time of the 1997 Tamarack Transfer and the Florida Transfer, Staab believed that Debtor did not owe money to Dorothy.
5. After her divorce, Debtor borrowed money from her parents to help her pay legal fees and for living expenses.
6. Between August 24, 1993, and October 30, 1993, Staab performed \$3,255.00 in services to make improvements at 61 S. Tamarack and received compensation in the form of a refrigerator worth \$700.00.
7. On May 9, 1996, Staab transferred \$5,000.00 to Debtor for her to use to pay toward monies owed to Thomas.
8. On July 15, 1996, Staab transferred \$10,000.00 to Debtor which was used to pay on the judgment in her divorce proceeding and to pay a debt owed to her parents.

9. On July 22, 1996 Staab transferred \$5,000.00 to Debtor.
10. In July 1997 Staab paid \$10,000.00 to Debtor's parents towards a debt Debtor owed to her parents.
11. In 1994, Staab paid \$1,731.79 for improvements to 61 S. Tamarack.
12. In 1995, Staab paid \$1,182.20 for improvements to 61 S. Tamarack.
13. In 1996, Staab paid \$3,482.63 for improvements to 61 S. Tamarack.
14. In 1997, Staab paid \$13,232.97 for improvements to 61 S. Tamarack, prior to the 1997 Tamarack Transfer.
15. Staab received a one-half interest in 61 S. Tamarack from Debtor in consideration for repair work that he performed at 61 S. Tamarack and for improvements for which he paid preceding the transfer. Debtor also wished to share her assets with Staab because she felt that it was the right thing to do after their marriage.
16. At the time of the 1997 Tamarack Transfer Debtor believed, based upon the assessment of her counsel in the state court litigation, that Dorothy's lawsuit was without merit and that she did not owe Dorothy money.
17. Staab received the Florida Lots in the Florida Transfer as repayment for \$32,000 that he loaned to Debtor for payment of legal fees and payment of monies Debtor owed to her parents.
18. Staab sold the Florida Lots for \$30,000. After Staab paid settlement costs, he received \$26,395.65 from the sale.
19. At the time of the 2001 Tamarack Transfer, Staab believed that Debtor did not owe Dorothy money.
20. At the time of the 2001 Tamarack Transfer Debtor believed, based upon the assessment of her counsel in the state court litigation, that she was winning the state court litigation filed by Dorothy and that she did not owe Dorothy money.

21. Staab received a second one-half interest in 61 S. Tamarack in the 2001 Tamarack Transfer for no additional consideration.
22. Debtor transferred the rest of her interest in 61 S. Tamarack in order to avoid the potential claims of real estate clients.
23. Debtor filed for relief under chapter 7 of the Bankruptcy Code on February 22, 2006.
24. Schedule A of Debtor's bankruptcy petition indicates that Debtor does not own real property.
25. Notice of the first meeting of creditors in the main case was sent on February 25, 2006. Dorothy is listed on the certificate of service list.
26. The first meeting of creditors in the main case took place on April 18, 2006.

III. DISCUSSION

A. Trustee's Power to Avoid Transfers Under 11 U.S.C. § 544(b)

According to 11 U.S.C. § 544(b)(1) "the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable under section 502(e)." Unlike the "strong arm" provision in § 544(a), which releases the trustee from defenses that are based upon the creditor's earlier knowledge of the transfer, § 544(b) merely permits the trustee to "'step into the shoes' of a creditor in order to nullify transfers voidable under state fraudulent conveyance acts for the benefit of all creditors." *In re Fordu*, 201 F.3d 693, 698 n.3 (6th Cir. 1999) (citing *NLRB v. Martin Arsham Sewing Co.*, 873 F.2d 884, 887 (6th Cir. 1989)).

In order to establish standing under this section the trustee must show the existence of an actual unsecured creditor holding an allowable unsecured claim who could avoid the transfer in question. *In re Wingspread Corp.*, 178 B.R. 938, 945 (Bankr. S.D. N.Y. 1995). In *Wingspread*, the court held that the trustee must show that there is at least one holder of an allowable unsecured claim against the estate against whom the transfer was invalid under applicable state or federal law. *Id.* In the present case the

Trustee has placed herself in the shoes of creditor Dorothy Perrine. The only other unsecured creditor in the main case, is Chase Bank. The Trustee's Complaint alleged that the transfers at issue were preferential and fraudulent with regard to all general unsecured creditors; however, the Trustee did not present any evidence at trial with regard to Chase's eligibility to assert preferential transfer and fraudulent conveyance claims under Ohio law. Trustee's Complaint ¶24. The Trustee focused on Dorothy's eligibility to bring such claims.

B. O.R.C. §§ 1336.04 (A)(1) and 1336.05 Fraudulent Transfers and the Statute of Limitations

A fraudulent transfer claim under O.R.C § 1336.04 (A)(1) must be filed "within four years after the transfer was made or the obligation incurred or, if later, within one year after the transfer was made or the obligation was or reasonably could have been discovered by the claimant." O.R.C. § 1336.09(A).¹ The Trustee argues that Dorothy was unaware of the transfers until the summer of 2006 and that this action was timely because it was filed in April of 2007, within a year of Dorothy learning of the transfers. The Defendants claim that this action was filed outside the time limit proscribed in O.R.C. § 1336.09(A) because the action was filed more than four years after the last transfer and because Dorothy could have reasonably discovered the transfers earlier than the summer of 2006.

Debtor is Dorothy's ex-daughter-in-law. Dorothy and Debtor have been involved in protracted litigation since 1994, when Dorothy filed suit against Debtor and her ex-husband, Thomas (Dorothy's

¹ Ohio codified the Uniform Fraudulent Transfer Act (UFTA) in O.R.C. § 1336 and it is clear that the statute of limitations under UFTA begins to run from the time of the transfer and not from the time that a creditor receives a favorable judgment. This issue has been addressed by several courts in states where the legislature adopted UFTA and many of those courts found that the language of the statute is unambiguous and that the date of the transfer is the determinative date. *See, e.g., Moore v. Browning*, 203 Ariz. 102, ¶29, 2002 Ariz. App. LEXIS 118 (Ariz. App. 2002); *Levy v. Markal Sales Corp.*, 311 Ill. App. 3d 552, 559-60, 724 N.E.2d 1008, 1012 (Ill. App. Ct. 2000); *Sasco 1997 NI, LLC v. Zudkewich*, 166 N.J. 579, 767 A.2d 469, 473 (N.J. 2001); *Gulf Ins. Co. v. Clark*, 2001 MT 45, P43, 20 P.3d 780 (Mont. 2001). *But see Cortez v. Vogt*, 52 Cal. App. 4th 917, 60 Cal. Rptr. 2d 841 (Cal. App. 1997) (finding that the statute of limitations of UFTA is tolled until a creditor obtains a judgment).

son), for default on loans Dorothy made to Debtor and Thomas. This litigation has wound its way through the Summit County Common Pleas Court and the Ninth District Court of Appeals for well over a decade. The Ohio Ninth District Court of Appeals rendered the most recent decision in Dorothy's favor on July 20, 2005. The last transfer at issue, the 2001 Tamarack Transfer, was made nearly four years prior to the Ninth District's decision. The other two transfers, the 1997 Tamarack Transfer and the Florida Transfer, occurred eight years prior to the latest decision in the state court action. All of the transfers were duly recorded and easily discoverable by any individual who cared to look, including any of Dorothy's four attorneys.

Dorothy testified at trial that she could not remember if, during the course of the state court litigation, any of her attorneys checked the ownership status of 61 S. Tamarack or the Florida Lots. The Court finds that this testimony is borderline incredible. In 1999 Dorothy requested a certificate of judgment lien in the Summit County Common Pleas Court against Debtor. Joint Exhibit G ¶7. As of that time frame Staab was already a co-owner of 61 S. Tamarack. It would have been reasonable for Dorothy or her attorney to check the title on 61 S. Tamarack at that time. Under these circumstances, an individual involved in litigation, particularly involving a house loan, might be expected to do a periodic title check to determine the defendant's property holdings. After over a decade of protracted litigation over loans Dorothy made to Debtor and Thomas to purchase 61 S. Tamarack, it is reasonable to conclude that Dorothy would have checked the deed of 61 S. Tamarack in the last eleven years. Although Dorothy testified in a vague and unconvincing manner that this had not happened, the "could have reasonably been discovered" prong of O.R.C. § 1336.09 is triggered by the facts of this case: Dorothy should reasonably have discovered the transfers at least by the time of Debtor's bankruptcy filing.²

At the very latest, Dorothy should have discovered the transfers once Debtor filed for bankruptcy.

² This analysis applies to the statute of limitations laid out in O.R.C. § 1336.09. As the Court notes in its analysis of the statute of limitations for O.R.C § 1313.56, Dorothy should have discovered the transfers much earlier than 2006.

Debtor filed for bankruptcy on February 22, 2006. Debtor listed Dorothy as an unsecured creditor. Notice of the first meeting of creditors was sent on February 25, 2006, and Dorothy was on the certificate of service list. Schedule A of Debtor's bankruptcy filing indicates that Debtor does not own real property. In the Court's analysis, the information in the Debtor's bankruptcy schedules put Dorothy in a position that reasonably required inquiry on her part by not later than early March 2006. This is the latest reasonable date from which the statute of limitations clock starts running from Dorothy's perspective. Once Debtor filed for bankruptcy Dorothy was on notice that Debtor no longer owned 61 S. Tamarack and the Florida Lots. The applicable statute of limitations language is claimant specific. O.R.C. § 1336.09(A). The Trustee is barred from raising a claim under O.R.C. § 1336.04 (A)(1) because she failed to raise her claim within four years of the date of the transfers or within a year of when Dorothy could reasonably have discovered the transfers.

Were the Court to have reached the issue of whether or not the transfers were fraudulent under O.R.C. § 1336.04, the trial evidence would lead to the conclusion that the 1997 Tamarack Transfer and the Florida Transfer were not fraudulent because Staab proved himself to be a good faith transferee. Staab paid Debtor consideration for each of those transfers and the two transfers did not render Debtor insolvent.

A claim under O.R.C. § 1336.05(A) is considered timely if filed within four years of the transfer and a claim filed under O.R.C. § 1336.05(B) is timely if filed within one year of the transfer. O.R.C. § 1336.09 (B) and (C). Accordingly, the Trustee's claim under O.R.C. § 1336.05 is outside the requisite statute of limitations.

C. O.R.C. §1313.56 Preferential Transfers and the Statute of Limitations

The Defendants maintained at trial that the Trustee is outside the statute of limitations for bringing an action under O.R.C. § 1313.56. The Trustee asserted that the statute of limitations for an

action brought under O.R.C. § 1313.56 is contained in O.R.C. § 2305.09. O.R.C. § 2305.09 provides in pertinent part,

Except as provided for in division (C) of this section, an action for any of the following causes shall be brought within four years after the cause thereof accrued:

(C) For relief on the ground of fraud, ***

(D) For an injury to the rights of the plaintiff not arising on contract nor enumerated in sections 1304.35, 2305.10 to 2305.12, and 2305.14 of the Revised Code.

If the action is for trespassing under ground or injury to mines, or for the wrongful taking of personal property, the causes thereof shall not accrue until the wrongdoer is discovered; nor, if it is for fraud, until the fraud is discovered.

The Trustee cited one case that suggests that the fraud statute of limitations is appropriate. In *James v. McCoy*, the United States District Court for the Southern District of Ohio determined that the applicable statute of limitations for an action brought under O.R.C. § 1313.56 was four years from the time that the fraud is discovered. 56 F. Supp. 2d 919, 930, 1998 U.S. Dist. LEXIS 22495 (noting that the statute of limitations for claims brought under the Revised Code precursor to O.R.C. §1313.56 was four years from the time of discovery) (citing *First Citizens' National Bank of Elizabeth City v. Seip*, 43 Ohio App. 440, 183 N.E. 448, 448 (Ohio Ct. App. 1931)). A similar discovery rule is also contained in O.R.C. § 2305.09. Ohio courts have interpreted the discovery rule set out in O.R.C. § 2305.09 to accrue from the time the plaintiff discovered the fraud or reasonably should have discovered the fraud. *Investors REIT One v. Jacobs*, (1989) 46 Ohio St. 3d 176, 180, 546 N.E. 2d 206, 210; *Wooten v. Republic Sav. Bank*, 2007 Ohio 3804, ¶43, 876 N.E.2d 1260, 1267 (Ohio Ct. App. 2007). The discovery rule operates such that “when determining whether, through the exercise of reasonable diligence, a party should have discovered a case of fraud, the relevant inquiry is whether the facts known ‘would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry.’” *Marks v. Keybank N.A.*, 2005 Ohio 769, ¶24, 2005 Ohio App. LEXIS 748 (Ohio Ct. App. 2005) (quoting *Hambleton v. R.G. Barry Corp.* (1984), 12 Ohio St. 3d 179, 181, 465 N.E.2d 1298).

In this proceeding Dorothy testified unconvincingly that she first discovered the transfers in the summer of 2006 and the parties stipulated that she definitely learned of the transfers by the summer of 2006. Dorothy's discovery of the transfers, however, is not the determinative date from which the statute of limitations begins to run. Dorothy, through the exercise of reasonable diligence, could have discovered the transfers much earlier than the summer of 2006. As noted above, Dorothy and Debtor have been involved in litigation since 1994. In 1999, Dorothy filed for a certificate of judgment lien in the common pleas court to enforce the Ninth District's 1996 decision in her favor. There was no evidence presented at trial that she attempted to record the certificate of judgment, but that would have been the reasonable thing for her to do and what most judgment creditors would have done. A reasonably prudent person would have checked the county recorder's records to determine what property Debtor owned and would have recorded the certificate of judgment lien against Debtor's property. Both the Trustee and Debtor testified to the relative ease of looking up the ownership status of a piece of real property. It is unreasonable for Dorothy, over the course of the drawn out litigation in state court, to never have checked the ownership status of 61 S. Tamarack and the Florida Lots.

Dorothy should have discovered the first two transfers by the time she requested a certificate of judgment lien in 1999. If Dorothy had acted in a reasonably prudent manner in 1999 she would have effectively been put on notice that Debtor was transferring her property and she would have discovered the 2001 Tamarack Transfer much sooner than she alleges that she did. From August 1999 forward Dorothy should have been checking whether or not Debtor had transferred her remaining interest in 61 S. Tamarack. The Court finds that six months from the time of the 2001 Tamarack Transfer is a reasonable amount of time for Dorothy to have discovered that transfer. As noted above, Dorothy also received notice of the transfers when Debtor filed for bankruptcy. If the Trustee had not waited nearly a year from the date of the first meeting of creditors to file her complaint, the Trustee would have likely been within the statute of limitations for the 2001 Tamarack Transfer.

Dorothy should have discovered the 1997 Tamarack Transfer and the Florida Transfer by August 17, 1999 when she filed for a certificate of judgment lien in the Summit County Court of Common Pleas. Therefore, the deadline for filing a timely action under O.R.C. § 1313.56 with regard to the 1997 Tamarack Transfer and the Florida Transfer, was August 17, 2003. Dorothy also should have reasonably discovered the 2001 Tamarack Transfer within six months of the transfer. The 2001 Tamarack Transfer occurred on December 30, 2001, therefore the filing deadline for a timely action under O.R.C. § 1313.56 would have been June 30, 2006. The Trustee is time barred from raising a claim under O.R.C. § 1313.56.

IV. CONCLUSION

The Defendants raised the statute of limitations issue in their Motion to Dismiss [docket #8] and argued that once the deeds were recorded all creditors had constructive notice of the transfers at issue. The Court declined to extend the concept of constructive notice to the statute of limitations for fraudulent transfers and denied that portion of the Motion to Dismiss [Memorandum of Opinion on Defendants' Motion to Dismiss, docket #24]. At the Motion to Dismiss stage there was not sufficient evidence for the Court to decide whether or not each unsecured creditor met the requirements to bring a timely fraudulent transfer claim. The Court is now satisfied that there is sufficient evidence to support the finding that Dorothy would be time barred from bringing claims under O.R.C. §§ 1336.04, 1336.05 and 1313.56. The Trustee adduced no proof with respect to any other holder of an unsecured claim. Accordingly, pursuant to §544(b), the Trustee is also time barred from bringing such a claim.

Based upon the foregoing the Court finds that the Trustee's claim under O.R.C. § 1336.04(A)(1) and O.R.C. § 1336.05 is outside the statute of limitations defined in O.R.C. § 1336.09(A),(B), and (C) and was not timely filed. The Court also finds that the Trustee's claim under O.R.C § 1313.56 was not timely filed pursuant to O.R.C. § 2305.09 and the relevant statute of limitations. A judgment consistent with this Memorandum Opinion will be entered separately in this case.

IT IS SO ORDERED

cc: (via electronic mail)

Michael J. Moran, Counsel for Defendants

Thomas R. Houlihan, Counsel for the Trustee

Kathryn A. Belfance, Plaintiff and Ch. 7 Trustee

cc: (via U.S. Mail)

Ginger R. Staab, Debtor/Defendant

Allan Staab, Defendant