2017 IL App (1st) 161460-U

FOURTH DIVISION
June 29, 2017

Nos. 1-16-1460 and 1-16-1461, Consolidated

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PANOS TRADING, LLC, Petitioner-Appellee, v. RICHARDO FORRER, JOSEPH HAYES, and JACQUES FERNANDES, Respondents-Appellees, and LOUIS S. PANOS, and CRAIG CALLAHAN, Third-Party Respondents-Appellants.	Appeal from the Circuit Court of Cook County 11-CH-042915 Honorable Alexander P. White, Judge Presiding

---

O R D E R

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

¶ 1 *Held*: Circuit court relied on relevant statute and precedent in action to recover insolvent debtor's assets from third parties, and did not err in granting summary judgment, entering money judgment, and denying motion for reconsideration, with the exception of a single issue which presented a question of material fact.

¶ 2 In a petition based on the Uniform Fraudulent Transfers Act (UFTA) (740 ILCS 160/1 *et seq*. (West 2010)), Richardo T. Forrer, Joseph Hayes, and Jacques Fernandes alleged their

collection of a $1.295 million arbitration award from Panos Trading, LLC had been fraudulently thwarted by large cash transfers while the arbitration was pending to two members of the company, Louis G. Panos and Craig J. Callahan, and that the transfers to these third parties should be reversed. The circuit court found this persuasive, resolved crossmotions for summary judgment in favor of the petitioners, granted their motion for a money judgment, and declined to reconsider its rulings. The third-party respondents appeal.

¶ 3 Panos Trading has disbanded but was a limited liability company doing business as a broker-dealer firm at the Chicago Board of Options Exchange (CBOE) and was comprised of Panos as the sole Class A member and seven Class B members that included Callahan, Forrer, Hayes, and Fernandes. Between mid 2005 and mid 2007, Forrer, with the financial backing of Panos Trading, led the Class B members to trade profitably together on the CBOE. However, the firm started to break down in August 2007, when there was a $2 million loss which Forrer and Panos disagreed on how to fairly allocate. Panos subsequently asked Forrer to leave the firm. Hayes and Fernandes allied with Forrer. The three withdrawing members, whom we will refer to collectively as the Forrer group, traded remotely outside of the firm's offices through December 2007 until their securities positions were transferred to their new firm in January 2008.

¶ 4 The parties' relationship was governed by a contract executed in 2006 entitled "Agreement of the Members of the Panos Trading LLC." The contract indicated withdrawing members would receive within approximately one year the balance of their capital accounts and shares of the company's 2007 trading profits:

> "**WITHDRAWAL**
>
> If any member shall **withdraw from the LLC or shall seek to dissolve the LLC** the Class A Member will have the sole and exclusive right to continue the LLC or to

> reconstitute the LLC and to continue the business which was formerly the business of the LLC; and it is specifically Agreed that Louis S. Panos shall have the sole and exclusive authority and the sole right to determine if the LLC or any successor shall have permission to use the name 'Panos' as any part of its ordinary business title or legal title or in any other manner or for any reason whatsoever. Upon withdrawal a Member shall have absolutely no claim on future earnings of the LLC or its successor however or whenever accrued, derived, or determined. Whether upon withdrawal or dissolution a Member shall not be entitled to any payment for his interest or for good will or for anything else, however claimed or denominated, from the LLC, from any other Member or from any other party, except as provided in this Agreement including any properly executed Addendum. *All amounts due to the withdrawing Member shall be paid in lump sum, as soon as possible, if agreed by the Class A Member [Panos], but if not so agreed shall be paid not less than 25% of the amount due on the last calendar day of the next four calendar quarters beginning with the next full following calendar quarter*.
>
> No Members shall have any right to demand or receive property other than cash upon withdrawal or dissolution of the LLC." (Emphasis added.)

¶ 5 Panos Trading failed to pay the Forrer group by December 31, 2008, negotiations were unsuccessful, and on November 3, 2009, the Forrer group filed an arbitration action against Panos Trading and Panos under CBOE Rules, for breach of the LLC contract. The claim concerned the proper allocation of profits to the former members of Panos Trading and stated that Panos would not release the trading sheets and clearing house statements that the Forrer group needed to calculate the "amounts due and owing" to them. Members of the CBOE were required by CBOE Rule 18.1 to arbitrate their dispute over CBOE-related business. Panos

Trading and Panos counterclaimed that the contract gave Panos discretion to allocate the August 2007 losses to the Forrer group, that their existing withdrawals exceeded his calculations, and that the firm should be repaid. Since no part of the arbitration claim, counterclaim, or award are subject to our review, we will not detail the allegations or contract terms that were at issue there. All the parties to the arbitration executed a "Uniform Submission Agreement" in which they agreed to abide by the CBOE arbitration process and perform any award rendered, and that an arbitration award could be reduced by a court of competent jurisdiction to a judgment which included interest. Monetary court judgments are valuable because the judgment creditor may issue garnishment process and attach the debtor's assets to collect the judgment. See 735 ILCS 5/12-701 *et seq*. (West 2010). The matter was heard by a CBOE arbitration panel between September 13 and 28, 2011. Shortly after the hearing concluded, but before a decision had been issued, Panos Trading transferred more than $1 million to Panos and Callahan, Callahan and the other three remaining Class B members left Panos Trading and joined Belvedere Trading, and Panos Trading ceased doing business in October 2011. On November 10, 2011, the arbitration panel awarded the Forrer group $1.295 million and denied the counterclaim of Panos and Panos Trading.

¶ 6 The following month, Panos Trading petitioned the circuit court of Cook County to vacate the arbitration award on grounds that one of the panel members had an undisclosed relationship with and bias for the Forrer group. The Forrer group responded that the business connection was quite remote and impersonal, argued that the petition was just a stalling tactic to further delay payment of funds owed since 2008, and filed a counterpetition for judicial confirmation of the 2011 award. In February 2012, the CBOE directed Panos Trading to deposit the arbitration award amount into an escrow account pending the outcome of the circuit court

proceedings, but Panos Trading did not comply with the exchange's direction. During April 2012, the circuit court rejected the bias argument and entered a $1.295 million judgment, and the Forrer group issued citations to discover assets. Panos testified in a citation examination in May 2012 that Panos Trading lacked sufficient assets to satisfy the judgment against it. The Forrer group then used the citation process against various accounts, but was able to collect only about 40% of the judgment. The citation process revealed that between the time the Forrer group had withdrawn from the firm and the arbitration award had been entered, Panos Trading transferred at least $9 million to Panos and Callahan, which included the $1 million or so that had been transferred between the conclusion of the arbitration hearing and the arbitration award. More specifically, Panos Trading made the following transfers to Panos: $15,000 on December 31, 2009; $142,500 on January 31, 2010; $75,000 on February 28, 2010; $20,000 on March 31, 2010; $200,000 on June 30, 2010; $100,000 on October 4, 2011; and $200,000 on October 17, 2011; and the following transfers to Callahan: $10,000 on December 31, 2009; $6667 on January 31, 2010; $115,079 on February 28, 2010; $6667 on April 30, 2010; $271,143 on June 30, 2010; $3334 on July 31, 2010; and $350,000 on September 29, 2011.

¶ 7 These are the circumstances that led the Forrer group to file its UFTA petition in December 2012, to recover Panos Trading's funds from Panos and Callahan. UFTA enables a creditor to defeat a debtor's transfer of assets to which the creditor was entitled. *A.G. Cullen Construction, Inc. v. Burnham Partners, LLC*, 2015 IL App (1st) 122538, ¶ 26, 29 N.E.3d 579. Section 6(a) of UFTA states:

> "(a) A transfer made or 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 that time or the debtor became insolvent as a result of the transfer or obligation." 740 ILCS 160/6(a) (West 2010).

Section 8(a)(1) of UFTA provides that a creditor may obtain "avoidance of the transfer *** to the extent necessary to satisfy the creditor's claim." 740 ILCS 160/8(a)(1) (West 2010). UFTA defines a transfer to include "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." 740 ILCS 160/2 (West 2010).

¶ 8 The circuit court's rulings in favor of the UFTA petition are now on appeal. The firm is not opposing the rulings which reversed its payments to Panos and Callahan, however, the two men have filed individual briefs. We first consider Panos's arguments, which Callahan has adopted, and then turn to Callahan's two arguments.

¶ 9 When reviewing a summary judgment ruling, we address the issues *de novo*. *People* ex rel. *Madigan v. Lincoln, Ltd.*, 383 Ill. App. 3d 198, 204, 890 N.E.2d 975, 980 (2008). The summary judgment process is intended to streamline litigation, avoid unnecessary trials, and reduce congestion on the court's calendar. *Lincoln*, 383 Ill. App. 3d at 204, 890 N.E.2d at 980. When the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, show there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law, then the entry of summary judgment is appropriate. *Lincoln*, 383 Ill. App. 3d at 204, 890 N.E.2d at 980.

¶ 10 Panos contends Forrer, Fernandes, and Hayes were improperly given "creditor" status under UFTA which is only a general act, when their petition was asserting a contractual right to

capital withdrawals as Class B members of a LLC and they did not qualify as creditors under the more specific and narrower terms of the Illinois Limited Liability Company Act ((ILLCA) 805 ILCS 180/25-20 (West 2010)) and the Panos Trading LLC contract. Building on the premise that ILLCA and the LLC, instead of UFTA, are controlling, Panos contends the members of the Forrer group were not creditors with a contractual right to payment in 2008 because he, the Class A member, had not exercised his sole discretion to consent to withdrawals by Class B members and that the agreement also provided that undistributed profits were at risk of loss and that Panos Trading would continue in perpetuity until the Class A member terminated the LLC. Panos contends that in the absence of his consent, no payment became "due" until the arbitration panel awarded the funds. He contends the arbitration award in 2011 *"created* an entitlement to distributions" instead of "merely *recognize[d]* a previously existing right to payment [that dated to 2008]" (emphasis in original), and thus, the Forrer group did not attain creditor status until after Panos Trading had disposed of its assets in the ordinary course of business and was unable to pay the award.

¶ 11 In our opinion, this argument misapprehends the nature of the Forrer group's "Petition to Recover Transferred Funds Pursuant to the Uniform Fraudulent Transfer Act." Because the UFTA petition was based on UFTA, not on ILLCA, we look to UFTA to determine whether the three petitioners were "creditor[s]" within the meaning of that statute. UFTA defines a creditor as "a person who has a claim" and defines a debtor as "a person who is liable on a claim." 740 ILCS 160/2(d), (f) (West 2010). Under UTFA, a claim is "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 740 ILCS 160/2(c) (West 2010). UFTA's definition of claim is "unquestionably broadly worded" (*Hullett v. Cousin*, 204 Ariz.

292, 297, 63 P.3d 1029, 1034 (2003) (Arizona UFTA case)) and "expansive" although not "all encompassing" (*A.P. Properties, Inc. v. Goshinsky*, 186 Ill. 2d 524, 529, 714 N.E.2d 519 (1999) (Illinois UFTA case)). See also *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 Ill. App. 3d 179, 187, 935 N.E.2d 963, 970 (2010) (indicating that in UFTA actions, Illinois courts are known to treat the term "claim" "fairly broadly"). In this context, a "right to payment" is " 'nothing more nor less than an enforceable obligation.' " *Hullett*, 204 Ariz. at 296-97, 63 P.3d at 1033-34 (quoting *Cohen v. de la Cruz,* 523 U.S. 213, 218 (1998)). Thus, an UFTA petition sets out a factual situation that includes a "creditor" who has a "right to payment" from a "debtor." *Apollo Real Estate Investment Fund*, 403 Ill. App. 3d at 186, 935 N.E.2d at 970. In *Cook*, for instance, a central Illinois man shot someone without provocation or mitigating circumstances and days later rendered himself insolvent by selling off his home and all his farmland. *Cook v. Tedrick*, 338 Ill. App. 3d 573, 574-75, 88 N.E.2d 515, 516 (1949). The circuit court set aside the real estate conveyances as fraudulent and void, and appellate court affirmed the ruling, commenting that the shooter "must have realized that he would have absolutely no defense to a civil action in damages based on his wrongful conduct [against an unarmed person]" and had conveyed the real property "with dispatch to defraud a tort creditor he had grievously injured." *Cook*, 338 Ill. App. 3d at 579, 88 N.E.2d at 518.

¶ 12 Under UFTA's terms and the "WITHDRAWAL" language of the LLC agreement (quoted above), Forrer, Hayes, and Fernandes were creditors when they withdrew from Panos Trading in late 2007, because that event triggered their contractual right to receive "[a]ll amounts due to the withdrawing Member[s]," meaning the balance of their capital accounts and shares of the 2007 trading profits, which were to be paid either "as soon as possible" if Panos agreed to a lump sum resolution or "if not so agreed [by Panos]" then paid quarterly "on the last calendar

day of the next four calendar quarters," meaning no later than the end of 2008. The specific "amounts [that were] due to the withdrawing Member[s]" from the firm and how to properly calculate those amounts were the subject of the arbitration claim and counterclaim which are not on appeal. The Forrer group became creditors upon their withdrawal from the firm in late 2007, even though the exact amounts owed to each them was uncertain until there was an accounting and even though Panos was disputing whether their assets should be offset by the August 2007 trading loss. When they withdrew, the Forrer group had "a right to payment, whether or not the right [was then] reduced to judgment, [or was] liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 740 ILCS 160/2(c) (West 2010). In other words, when the Forrer group withdrew, they had " 'an enforceable obligation' " against Panos Trading. *Hullett*, 204 Ariz. at 296-97, 63 P.3d at 1033-34 (quoting *Cohen,* 523 U.S. at 218). Thus, the Forrer group had a "claim" and were "creditors" within the meaning of UFTA as early as 2007, when a lump sum satisfaction could have been made, but no later than the end of 2008, when all quarterly payments in satisfaction of the debt should have concluded.[1]

[1] We diverge slightly from the circuit court's conclusion that the members of the Forrer group became creditors for purposes of UFTA by filing the arbitration claim on November 3, 2009. We attribute no significance to resorting to arbitration, because UFTA's broadly worded definition of claim "includes unknown and unasserted claims." *Hullett*, 204 Ariz. at 297, 63 P.3d at 1034 (citing *In re W.R.* Grace & Co., 281 B.R. 852, 862 (Bankr.D.Del. 2002) ("This expansive language [defining a claim] must negate any residual inference that a right to payment must be known and asserted to be a claim."). In our opinion, the members of the Forrer group became creditors by withdrawing from the firm because doing so triggered their right to payment from Panos Trading, regardless of whether they subsequently asked the arbitrators to order compliance with the contract language. Our disagreement with the reasoning of the circuit court is inconsequential because in this *de novo* review, we are addressing the ruling rather than the reasoning and may affirm a proper decision on any ground disclosed by the record *Belton v. Forest Preserve District of Cook County*, 407 Ill. App. 3d 409, 418, 943 N.E.2d 221, 230 (2011); *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 84, 33 N.E.3d 696 (a reviewing court may sustain a decision of the circuit court on any ground called for by the record regardless of whether the circuit court relied on that reasoning).

¶ 13 The Forrer group's UFTA petition was not a declaratory judgment action seeking judicial determination of the parties' rights to certain assets based on the LLC agreement and ILLCA. In fact, the parties' rights to their capital accounts and 2007 profits had been the subject of the underlying arbitration. Based on the parties' actions in 2007 and 2008 and the LLC contract, the arbitration panel granted $1.295 million in compensatory damages to the Forrer group "for amounts due and owing [since 2008] under the agreement" and rejected the counterclaim alleging Panos had been given unilateral discretion by the LLC agreement to determine what was "due" and to charge the $2 million trading loss entirely to the Forrer group. Panos's appellate argument, particularly his contention that his lack of consent was dispositive of whether funds were "due and owing" before they were awarded by the arbitration panel, is an improper attempt to revisit the arbitration. The panel's involvement in the dispute did not create a right to be paid, as Panos argues. Instead, it resolved the parties' ongoing dispute over the proper application of the terms of their LLC contract to the events that had occurred in 2007. Panos's attempt to now revisit the five-year-old arbitration award is contrary to the " 'long-accepted and encouraged principle that an arbitration award should be the end, not the beginning, of litigation.' " *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 564, 834 N.E.2d 468, 476 (2005) (quoting *Perkins Restaurants Operating Co. v. Van De Bergh Foods Co.*, 276 Ill. App. 3d 305, 309, 657 N.E.2d 1085, 1088 (1995). See also *Merit Insurance Co. v. Leatherby Insurance Co.*, 714 F. 2d 673, 681 (7th Cir. 1983) (indicating the standards for judicial intervention are "narrowly drawn to assure the basic integrity of the arbitration process without meddling in it").

¶ 14 Even assuming that ILLCA controls, Panos fails to cite any statutory language that defines and diminishes the creditor status of the Forrer group in this UFTA action. Panos relies on one sentence in Article 25 of ILLCA. 805 ILCS 180/25 (West 2014). Article 25 of ILLCA is

entitled “Distributions” (805 ILCS 180/25 (West 2014)), and consists of numbered sections that speak to member rights to distributions from their LLC assets, limitations on distributions, and member liabilities for distributions. For instance, Article 25, section 1 is about member rights, is entitled “Interim distributions,” and indicates “distributions made by a [LLC] before its dissolution and winding up must be in equal shares,” and that a member “has no right to receive, and may be not be required to accept, a distribution in kind.” 805 ILCS 180/25-1 (West 2014). Next, Article 25, section 20 speaks to the members’ “Right to distribution” and indicates “At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the [LLC] with respect to distributions.” 805 ILCS 180/25-20 (West 2014). This is followed by section 30, which curtails member rights to distributions, by setting “Limitations on distributions” that would impair the company’s financial health, and by section 35, which indicates who will have “Liability for unlawful distributions.” 805 ILCS 180/25-30, 25-35 (West 2014). Thus, the various sections spell out member rights to and liabilities for distributions from LLC assets.

¶ 15 Panos seizes on the word “creditor” in section 20 (805 ILCS 180/25-20 (West 2014)); however, section 20 speaks to member rights to distributions and does not purport to define the term “creditor.” ILLCA has a “Definitions” section, in the “General Provisions” that are set out in Article 1 (see 805 ILCS 180/1-5 to 1-60 (West 2014)), and there is no indication in the definitions section of how one becomes a creditor of a LLC. Practically speaking, there are many ways to become a creditor of a LLC and there is no apparent reason for ILLCA to define how one becomes a creditor of a LLC. We do not read this section of ILLCA to be a more specific and pertinent statute than UFTA in this UFTA action.

¶ 16 Additionally, as the Forrer group points out, "By stating [in section 25-20 of ILLCA] that a member 'has' the status and rights of a creditor with respect to a distribution that a member is entitled to receive, rather than 'obtains,' 'gains,' or 'acquires,' for example, [the statute] says nothing about whether or not a member can obtain creditor status *** through some other provision of [ILLCA] or by operation of other law." Similarly, section 25-20 does not say that "until" a member is entitled to a distribution, the member "does not have" the rights of a creditor. The Forrer group also notes that section 15-20 of ILLCA specifically authorizes members to maintain an action against a LLC to enforce "rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company" (805 ILCS 180/15-20 (West 2010)) and that the Forrer group's UFTA petition relied on creditor status and was "independent[]" of a membership relationship with Panos Trading or any LLC contract terms.

¶ 17 Panos argues that if UFTA is controlling, then Forrer, Hayes, and Fernandes could not be creditors within the meaning of UFTA because they were still equity owners of Panos Trading until the arbitration award in 2011, and case law indicates equity is not debt and equity holders are not creditors. Panos contends that as continuing members of Panos Trading, the Forrer group bore the risk during the arbitration proceedings (between 2009 and 2011) that their continuing interests would be affected by the trading firm's "profits and losses." Panos contends that to "hold otherwise would have elevated them above the true creditors of Panos Trading–all of whom ended up being paid." Panos cites his own affidavit executed in 2014, indicating that when Panos Trading ceased doing business at CBOE it "paid all of its creditors, including brokerage and professional fees *** as part of concluding its ongoing trading operations."

¶ 18 This argument is not persuasive, however, in part because under UFTA's definition of creditor, the Forrer group attained creditor status by withdrawing from the firm in late 2007. We reject the premise that so long as Panos chose to withhold payment, the Forrer group would remain as members of the LLC, until the arbitration panel ultimately overrode his choice. Panos cites no LLC contract terms, statute, CBOE rule, legal precedent, or arbitrators' ruling indicating the Forrer group remained a part of Panos Trading, whether they liked it or not, until they obtained either Panos's consent or an arbitration panel's decision that they were no longer members. Furthermore, his argument also conflicts with the LLC contract language that, "Upon withdrawal a Member shall have absolutely no claim on future earnings of the LLC or its successor however or whenever accrued, derived, or determined." Panos also relies on irrelevant authority indicating how to treat general creditors relative to equity holders when dividing up the assets of a bankrupt company. See *e.g.*, *In re Riverside-Linden Investment Co.*, 925 F.2d 320, 323 (9th Cir. 1991) (indicating partnership interests were not claims against the partnership); and *Tanzi v. Fiberglass Swimming Pools, Inc.*, 414 A.2d 484 (1980) (indicating shareholders were not corporate creditors). That principle is irrelevant because there is no competition in this UFTA proceeding between creditor claims and equity owner claims. This UFTA proceeding concerns the claim of the Forrer group only, and we are not asked to consider the priority or character of the Forrer group's claim relative to the priority or character of the claims of the general creditors of Panos Trading.

¶ 19 Panos additionally argues that if UFTA is controlling, then not only were the members of the Forrer group "creditors" but Panos and Callahan were too, and the trading firm permissibly gave preference to Panos and Callahan. Panos cites *In the Matter of Liquidation of Medcare HMO*, 294 Ill. App. 3d 42, 52, 689 N.E.2d 374, 381 (1997), for the proposition that "the mere

preference of one or more creditors over others does not constitute a fraudulent transfer." There, the court was addressing the fraudulent intent prong of a fraud in fact claim under UFTA section 5, rather than the current fraud in law claim under UFTA section 6. 740 ILCS 160/5, 160/6 (West 2010). In a section 5 claim, the plaintiff must prove the defendant had actual intent to hinder, delay, or defraud its creditor. *Medcare HMO*, 294 Ill. App. 3d at 52, 689 N.E.2d at 38. But in a section 6 claim, fraud is presumed, intent is immaterial, and the plaintiff need only show inadequate consideration, existing or contemplated indebtedness, and failure to retain sufficient property to repay the indebtedness. *Medcare HMO*, 294 Ill. App. 3d at 50, 689 N.E.2d at 38. These elements were shown and the record indicates the transfers to Panos and Callahan were transfers made to company insiders despite the existing indebtedness to the Forrer group and pending arbitration, in an apparent attempt to deplete the firm's assets in order to avoid the debt and the effect of the arbitration. Furthermore, preferential distributions to some members over other members is contrary to section 25-1(a) of ILLCA which requires that members be treated equally prior to the dissolution and winding up of their company. 805 ILCS 180/25-1(a) (West 2010) ("Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares.").

¶ 20 Panos's second major contention is that the circuit court used the wrong insolvency standard to determine which transfers may be reversed to satisfy the firm's debt. According to Panos, ILLCA provides an accounting book insolvency test that should be applied here instead of the UFTA insolvency standard. He argues, "Because this case involves claims by members of an LLC that distributions to other members were unlawful, the Court should follow the specific statutory guidance enacted by the legislature in [ILLCA] to govern such challenges." He contends Panos Trading was solvent at the time of all the challenged transfers and that the

distributions were reasonable, as indicated by the firm's annual audited financial statements for 2007 through 2010, the firm's general ledger from 2008 to 2011, the firm's monthly "FOCUS" reports required by the United States Securities and Exchange Commission (SEC) from January 2008 through December 2010, his November 2014 affidavit indicating the firm complied with the SEC minimum net capital requirement of $100,000, and the firm's joint back office clearing agreements which required it to guarantee minimum net liquidating equity of $1 million and later $1.5 million.

¶ 21 Panos, however, again misstates the nature of the UFTA petition as if it were a members-versus-members dispute over the terms of the LLC contract and ILLCA. We decline to delve into an analysis of a statute that is plainly irrelevant in this UFTA action. Insolvency is defined in section 160/6 of UFTA, which states, "(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation." 740 ILCS 160/6(a) (West 2010). A helpful case is *Cairo Lumber*, in which the defendant, who was indebted to the plaintiff for building materials and had executed notes totaling $1552, contended that after conveying real estate to her son, she retained other property whose value far exceeded her debt. *Cairo Lumber Co. v. Ladenberger*, 313 Ill. App. 1, 6, 39 N.E.2d 596, 598-99 (1941). Before considering her evidence of solvency, the court stated:

> "The established rule in this state does not require proof of actual insolvency in order to render a voluntary conveyance void ***. The true test in determining the validity of a voluntary conveyance as against creditors in such a case is whether or not it directly tended to or did impair the rights of creditors. It is of no moment that the property remaining in the grantor's hands after the conveyance was in nominal value more than equal to the amount of his indebtedness if subsequent events show that the property

> retained was not sufficient to discharge all his liabilities." *Cairo Lumber*, 313 Ill. App. at 6, 39 N.E.2d at 598-99.

See also *Birney v. Solomon*, 348 Ill. 410, 414, 181 N.E. 318, 320 (1932) (rejecting contention that creditor's claim to set aside a deed could not be maintained unless there was a positive showing of the grantor's insolvency). This means that if a challenged transfer directly tended to or did impair the rights of creditors, it may be set aside as fraudulent. *A.G. Cullen Construction*, 2015 IL App (1st) 122538, ¶ 27, 29 N.E.3d 579. Thus, it is well settled law that an UFTA petitioner is not required to show accounting book insolvency and that for purposes of an UFTA claim insolvency means a debtor has not retained sufficient assets after a transfer to discharge its obligations to its creditors.

¶ 22 Panos's third argument is that the UFTA petition was untimely. However, our earlier rejection of his contention that ILLCA controlled these UFTA proceedings sufficiently disposes of his contention that the two-year limitations period in ILLCA prevailed over the four-year limitations period in UFTA. *See* 740 ILCS 160/10(b) (West 2010) (a cause of action based on section 6 of UFTA has a limitations period of four years after the transfer was made).

¶ 23 Panos also contends the judgment should be reduced to the amount of capital he had remaining in the firm at the time of the arbitration award, $238,389, because an exculpatory clause in the LLC agreement stated "Each Member shall have no liability beyond his then current investment in the LLC (as reflected in an updated capital account on the books and records of the LLC) plus any undistributed profit due to the Member." Panos again appears to misapprehend the nature of the UFTA proceeding. Panos and Callahan were not sued in their personal capacity as members of the LLC nor were they pursued for any individual wrongdoing. Panos and Callahan were named only as third-party recipients of funds which the debtor Panos

Trading should have retained to satisfy its obligations to the Forrer group. This distinction was articulated in *Kennedy*, in which the court noted, "[A]n action brought pursuant to [UFTA] directly concerns the assets of the judgment debtor and imposes liability based on the value of the transferred assets. *** Such an action does not concern personal liability [of the recipient of the assets]; rather it attempts to avoid the transfer and seeks the actual assets transferred." *Kennedy v. Four Boys Labor Service, Inc.*, 279 Ill. App. 3d 361, 368-69, 664 N.E.2d 1088, 1092-93 (1996). See also *Apollo*, 403 Ill. App. 3d at 187, 935 N.E.2d at 970 (a claim brought under UFTA is not an attempt to enforce the underlying judgment). Because the UFTA claim sought to recall the assets of Panos Trading and was limited to the value of the assets which Panos Trading impermissibly transferred to another party, the personal exculpatory clause which protected a member of Panos Trading was not implicated.

¶ 24 Panos's final contention is that post-judgment interest cannot be collected from him. However, we find this contention has been waived because Panos's reasoning is unclear and not supported by citation to any authority. Illinois Supreme Court Rule 341(h)(7) mandates that the argument section of an appellant's brief "shall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied on." Rule 341(h)(7) (eff. July 1, 2008). A general contention that is not supported by cohesive, sufficient legal argument and citation to case law or other relevant authority does not suffice and results in waiver of the contention. *Fortech, L.L.C. v. R.W. Dunteman Co., Inc.*, 366 Ill. App. 3d 804, 818, 852 N.E.2d 451, 463 (2006). A reviewing court is entitled to briefs which comply with the fundamental rules of appellate practice. *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 208, 872 N.E.2d 447, 474 (2007). We decline to take on the appellant's burden.

¶ 25 Callahan has joined in all of Panos's arguments and filed a separate brief presenting two arguments he contends are unique to him and provide independent grounds for reversing the judgment as to him.

¶ 26 Callahan first contends that each transfer the Forrer group sought to reverse from him occurred prior to the date Panos Trading became insolvent, as determined by the circuit court, and thus those transfers were not avoidable transfers under UFTA. Section 6(a) of UFTA states that a "transfer made *** by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made *** if the debtor made the transfer *** without receiving a reasonably equivalent value in exchange *** and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer." 740 ILCS 160/6(a) (West 2010). Callahan points to a statement in the summary judgment order that Panos Trading was insolvent on October 3, 2011, and he argues the statement should be read to mean that the Forrer group, whose claim arose upon their withdrawal in 2007 had no right to recoup (1) a $350,000 transfer from Panos Trading to Callahan on September 29, 2011, (2) a $3334 transfer from Panos Trading to Callahan on July 31, 2010, and (3) a $271,143 transfer from Panos Trading to Callahan on June 30, 2010.

¶ 27 We do not read the circuit court's statement as an indication that only the transfers made on or after October 3, 2011, would be avoided. Instead, it appears the court was commenting on and rejecting Panos's contention that the UFTA claims failed because the firm's monthly balance sheets showed that the firm remained solvent at all relevant times. It is clear from the record that the court determined the firm rendered itself insolvent for purposes of the section 6(a) UFTA claim, that the court rejected all of the counterarguments, and that the court granted judgment on the Forrer group's petition. The court's determinations entitled the Forrer group to avoid as many transfers as necessary in order to collect Panos Trading's debt, including the three transfers that

the firm made to Callahan in 2010 and 2011 despite the firm's preexisting debt to the former members of the LLC.

¶ 28 Callahan's second contention concerns the largest of those three reversals. He filed an affidavit indicating the $350,000 transfer he received from Panos Trading on September 29, 2011 was not the return of his capital contribution to the firm and was instead the repayment of funds he loaned to the firm on a short-term basis on July 6, 2011, so the firm could meet a margin call. Callahan's and Panos Trading's bank statements confirm that $350,000 was transferred to Panos Trading and then returned to Callahan a few months later. Callahan states that under Securities and Exchange Commission (SEC) Rule 15c3-1 "any infusion of money for less than one year cannot be viewed as a capital contribution but rather must be treated as a loan," and that FINRA (Financial Industry Regulation Authority) Release 91-20, which comments on SEC Rule15c3-1, indicates that funds held for a relatively short period of time "could be viewed as a loan by the affiliate [company] to the broker-dealer [instead of permanent capital]." Callahan also points to the Forrer group's admission that the transfer was not susceptible to summary judgment, when counsel stated:

> "As far as the loan, and [Callahan] raised for the first time SEC and FINRA Sections, I haven't looked at them so I can't speak to them, but I can point out *** that Mr. Zuckerman, the firm's accountant, testified at his deposition that this $350,000 *** was a capital contribution and was treated as a capital contribution of the LLC. I suppose I can't ask for summary judgment on that transfer based on the dispute, but neither can they because there is a dispute because the[ir] own accountant states that it was not a loan but that it was a capital contribution[.]"

Callahan contends that instead of addressing this disputed issue, the circuit court "inexplicably" concluded without explanation that the Forrer group was entitled to avoid that particular transfer. He urges us to reverse that portion of the court's judgment.

¶ 29 The Forrer group's response in support of the court's judgment is halfhearted. The Forrer group contends it is possible that the court rejected Callahan's affidavit as self-serving and then deemed Zuckerman's deposition testimony to be uncontradicted, and thus a proper basis for summary judgment against Callahan. The Forrer group proposes, however, that if we determine the character of the $350,000 transfer is a material issue, then, instead of reversing the order, we modify it by avoiding other transfers that occurred in 2010.

¶ 30 We find that the record does present a fact dispute as to the proper characterization of the $350,000 transaction, and whether the source of the funds exempts them from this UFTA claim. This is the only one of the appellants' arguments that we find persuasive, and thus, we conclude that the entry of summary judgment as to this single issue was in error. Accordingly, we affirm the entry of summary judgment for the Forrer group in all respects with the exception of the $350,000 transfer that occurred on September 29, 2011 and we remand for further proceedings so that the circuit court may determine which of the numerous transfers, including the $350,000 transfer, should be avoided in order to satisfy Panos Trading's judgment debt to the Forrer group.

¶ 31 On the basis of the preceding arguments, the appellants also seek reversal of the orders subsequently granting a money judgment and denying reconsideration, but the appellants offer no arguments specific to those rulings. Accordingly, with the exception of the $350,000 transfer, we affirm all aspects of the money judgment and reconsideration orders.

¶ 32 Affirmed in part, vacated in part, and remanded for further proceedings.