

[Cite as *UBS Fin. Servs., Inc. v. Lacava*, 2018-Ohio-3055.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 106461

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**UBS FINANCIAL SERVICES, INC.**

PLAINTIFF-APPELLEE

vs.

**ALBERT V. LACAVA, JR., ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:**  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-16-868794

**BEFORE:** Boyle, P.J., Celebrezze, J., and Jones, J.

**RELEASED AND JOURNALIZED:** August 2, 2018

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MARY J. BOYLE, P.J.:

{¶1} Defendant-appellant, Mary Ellen Lacava, appeals the trial court's order granting summary judgment to the plaintiff-appellee, UBS Financial Services, Inc. She raises nine assignments of error for our review:

1. Trial court erred by ignoring Appellant\_Transferee's and Appellant\_Debtor Mr. Lacava submitted evidence satisfying the necessary two elements listed in R.C. 1336.08(A) for a transfer to not be fraudulent under R.C. 1336.04 by a Transferee, irrespective of the outcome to the claims against the debtor.
2. Trial court erred by ignoring Appellant\_Transferee's and Appellant\_Debtor Mr. Lacava submitted evidence satisfying the necessary element listed in R.C. 1336.08(E)(1) for a transfer to not be fraudulent under 1336.05 by a Transferee, irrespective of the outcome to the claims against the debtor.
3. Trial court erred by ignoring Appellant\_Transferee's and Appellant\_Debtor Mr. Lacava submitted evidence satisfying the necessary element listed in R.C. 1336.08(E)(2) for a transfer to not be fraudulent under section R.C. 1336.05 by a Transferee, irrespective of the outcome to the claims against the debtor.

4. Trial court erred by ignoring Appellant\_Transferee's submitted evidence satisfying the necessary element listed in R.C. 1336.08(C)(1) for her statutory law protected right to retain any interest in the asset transferred, irrespective of the outcome to the claims against the debtor.

5. Trial court erred by ignoring Appellant\_Transferee's and Appellant\_Debtor Mr. Lacava submitted evidence satisfying the necessary element listed in R.C. 1336.08(C)(2) for her statutory law protected right to retain any interest in the asset transferred, irrespective of the outcome to the claims against the debtor.

6. Trial court erred in not following the statutory language of R.C. 1336.01(A)(3), (G), (K) in regards to Appellant\_Transferee Mrs. Lacava, irrespective of the outcome to the claims against the debtor.

7. Trial court erred in not applying the sections in R.C. 1336.08 detailed in Error #1, and either, #2 or #3, which nullifies R.C. 1336.08(B)(1)(a) in respect to Appellant\_Transferee Mrs. Lacava, irrespective of the outcome to the claims against the debtor.

8. The trial court erred in violating the law under the Consumer Credit Protection Act ("CCPA") not allowing any income to the Transferee, Mrs. Lacava, and hence, the Lacava family.

9. Trial court erred in not following the statutory exemptions of R.C. 2329.66(A)(3) for Appellant\_Transferee Mrs. Lacava and dependent 60 year old brother with mental health issues and unable to work.

{¶2} Finding no merit to her assignments of error, we affirm.

## **I. Procedural History and Factual Background**

{¶3} Mrs. Lacava's husband, Albert Lacava, previously worked for UBS. During his employment, specifically on or around August 27, 2004, Mr. Lacava received two loans from UBS, secured through promissory notes. On July 17, 2008, UBS terminated Mr. Lacava's employment. As of his termination date, Mr. Lacava had not yet satisfied the full amount of the promissory notes.

{¶4} On December 26, 2009, Mr. Lacava filed a Statement of Claim with the Financial Industry Regulatory Authority ("FINRA") against UBS and certain UBS employees, asserting claims for breach of contract, breach of covenant of good faith and fair dealing, failure

to supervise, tortious interference, wrongful termination, libel, and slander. UBS filed an answer and a counterclaim, alleging that Mr. Lacava breached the promissory notes and still owed the outstanding and unforgiven balance on those notes. The FINRA panel held a six-day evidentiary hearing on the matter. On February 9, 2010, the FINRA panel denied and dismissed Mr. Lacava's claims and awarded UBS \$196,953.89 ("the Award") for its counterclaim.

{¶5} Prior to the arbitration proceedings, on August 22, 2008, Mr. Lacava formed his own investment-management company, Assurance Investment Management, L.L.C. ("AIM"). According to the original operating agreement for AIM, AIM's principal place of business was his residential address.<sup>1</sup> Mr. Lacava was the sole member of AIM, had full management rights, and was entitled to all of the company's profits.

{¶6} On January 21, 2010, however, before the FINRA panel announced its decision in favor of UBS, Mr. Lacava amended the operating agreement for AIM, changing it to a multimember limited liability company. Under the new operating agreement, Mr. Lacava's wife, Mary Ellen Lacava, not only became a member of AIM but also obtained 94.8 percent ownership interest. According to the amended operating agreement, Mrs. Lacava made a capital contribution of \$140,000 to AIM. Further, the operating agreement established Mr. Lacava as the president and treasurer of AIM and Mrs. Lacava as the secretary.

{¶7} After the FINRA panel released its decision, UBS requested confirmation of the award from the Cuyahoga County Court of Common Pleas on April 1, 2010. On June 17, 2010, the common pleas court entered default judgment against Mr. Lacava, who failed to respond or contest UBS's request.

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<sup>1</sup> The original operating agreement was amended and restated on February 28, 2009.

{¶8} Despite UBS's multiple attempts to collect on its judgment against Mr. Lacava, it was unable to recover. While pursuing satisfaction of its judgment, UBS discovered AIM's restated January 21, 2010 operating agreement, which gave Mrs. Lacava majority ownership interest in AIM and effectively shielded Mr. Lacava's assets in AIM from UBS.

{¶9} As a result, UBS filed a complaint in January 2012 against Mr. and Mrs. Lacava alleging that Mr. Lacava fraudulently transferred his ownership interest to his wife in an effort to defraud UBS. In June 2015, however, UBS voluntarily dismissed its complaint without prejudice.

{¶10} On September 9, 2016, UBS filed a second complaint against Mr. Lacava, Mrs. Lacava, and AIM. In its complaint, UBS set forth one count for a request for charging order under R.C. 1705.19, one count for a request for appointment of receiver under R.C. 2735.01, and one count to set aside the transfer of ownership of AIM as a fraudulent transfer under R.C. 1336.04(A). UBS also subsequently filed a motion for appointment of receiver that the court denied.

{¶11} All of the parties filed motions for summary judgment. The trial court granted UBS's motion for summary judgment, denied Mr. and Mrs. Lacava's motions for summary judgment, and granted AIM's motion for summary judgment on the issue of statute of limitations, but ordered AIM to "freeze any assets and accounts immediately[, which would] only be released to satisfy th[e] judgment." Additionally, in its order, the trial court stated:

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

1. The charging order against the member interests of Mr. Lacava and Mrs. Lacava in AIM is granted;

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

The court also awarded \$98,481.95 for punitive damages against Mr. Lacava and \$50,155 and \$480.33 for attorney fees and expenses against all of the defendants. The trial court assessed court costs to the Lacavas and AIM as well.

{¶12} It is from this judgment that Mrs. Lacava now appeals.<sup>2</sup>

## II. Law and Analysis

{¶13} In her assignments of error, Mrs. Lacava contests the trial court's order granting summary judgment to UBS as well as the remedies the trial court awarded to UBS. Specifically, her first seven assignments of error argue that the trial court erred when it failed to apply R.C. 1336.08(A), (C), and (E), and her eighth and ninth assignments of error contest the remedies.

{¶14} An appellate court reviews a trial court's decision to grant summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). De novo review means that this court independently "examine[s] the evidence to determine if as a matter

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<sup>2</sup> Mr. Lacava and AIM also separately appealed the trial court's order. Those appeals are currently pending before the court in 8th Dist. Cuyahoga Nos. 106260 and 106256. Mr. Lacava appeals the trial court's order granting UBS summary judgment. Even though it won on summary judgment, AIM appeals the trial court's order, arguing that the trial court's order requiring AIM to "freeze any assets and accounts immediately" was error.

of law no genuine issues exist for trial.” *Brewer v. Cleveland Bd. of Edn.*, 122 Ohio App.3d 378, 383, 701 N.E.2d 1023 (8th Dist.1997), citing *Dupler v. Mansfield Journal*, 64 Ohio St.2d 116, 413 N.E.2d 1187 (1980). In other words, we review the trial court’s decision without according the trial court any deference. *Smith v. Gold-Kaplan*, 8th Dist. Cuyahoga No. 100015, 2014-Ohio-1424, ¶ 9, citing *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.*, 121 Ohio App.3d 188, 699 N.E.2d 534 (8th Dist.1997).

{¶15} Under Civ.R. 56(C), summary judgment is properly granted when (1) “there is no genuine issue as to any material fact”; (2) “the moving party is entitled to judgment as a matter of law”; and (3) “reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made[.]” *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). Because it ends litigation, courts should carefully award summary judgment only after resolving all doubts in favor of the nonmoving party and finding that “reasonable minds can reach only an adverse conclusion” against the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 604 N.E.2d 138 (1992).

{¶16} “The burden of showing that no genuine issue exists as to any material fact falls upon the moving party. Once the moving party has met his burden, it is the non-moving party’s obligation to present evidence on any issue for which that party bears the burden of production at trial.” *Robinson v. J.C. Penney Co.*, 8th Dist. Cuyahoga Nos. 62389 and 63062, 1993 Ohio App. LEXIS 2633, 14 (May 20, 1993), citing *Harless* and *Wing v. Anchor Media, Ltd. of Texas*, 59 Ohio St.3d 108, 570 N.E.2d 1095 (1991). “The moving party is entitled to summary judgment if the nonmoving party fails to establish the existence of an element essential to that party’s case and on which that party will bear the burden of proof at trial.” *Brandon/Wiant Co.*



*v. Teamor*, 125 Ohio App.3d 442, 446, 708 N.E.2d 1024 (8th Dist.1998), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

{¶17} Ohio's Uniform Fraudulent Transfer Act ("UFTA"), set forth in R.C. Chapter 1336, creates a right of action for a creditor to set aside an allegedly fraudulent transfer of assets.

*Yoo v. Ahn*, 8th Dist. Cuyahoga No. 105406, 2018-Ohio-1291, ¶ 11. A creditor seeking to vacate a fraudulent transfer must prove the essential elements of fraudulent conveyance by clear and convincing evidence. *Huntington Natl. Bank v. Ginn*, 8th Dist. Cuyahoga No. 70392, 1996 Ohio App. LEXIS 5828, 13 (Dec. 26, 1996). Clear and convincing evidence is

that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

*Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

{¶18} "If a transfer is fraudulent, then a creditor has the right to sue the original transferee and any subsequent transferee for the value of the transferred property." *Yoo* at ¶ 12, citing R.C. 1336.08(B) and *Esteco, Inc. v. Kimpel*, 7th Dist. Columbiana No. 07 CO 3, 2007-Ohio-7201. The UFTA identifies certain transfers from a debtor to a transferee as fraudulent. Specifically, R.C. 1336.04 states,

(A) A transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the claim of the creditor arose before, or within a reasonable time not to exceed four years after, the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation in either of the following ways:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor;
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and if either of the following applies:

(a) The debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction;

(b) The debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

{¶19} Put simply, to set forth a claim under R.C. 1336.04, a creditor must show (1) a conveyance or incurring of a debt, (2) made with actual intent to defraud, hinder, or delay, and (3) present or future creditors. *Saez Assocs. v. Global Reader Servs.*, 8th Dist. Cuyahoga No. 96555, 2011-Ohio-5185, ¶ 10.

{¶20} Because proof of actual intent is often impossible to acquire, creditors may establish a debtor's intent to defraud, hinder, or delay through "badges of fraud," which are set forth in R.C. 1336.04(B). *Saez Assocs.* at ¶ 12. The badges include:

- (1) Whether the transfer or obligation was to an insider;
- (2) Whether the debtor retained possession or control of the property transferred after the transfer;
- (3) Whether the transfer or obligation was disclosed or concealed;
- (4) Whether before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit;
- (5) Whether the transfer was of substantially all of the assets of the debtor;
- (6) Whether the debtor absconded;
- (7) Whether the debtor removed or concealed assets;
- (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred;

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

R.C. 1336.04(B).

{¶21} “While the existence of one or more badges does not establish a per se fraudulent transfer, a creditor need not demonstrate the presence of all badges in order to carry its burden.” *Seed Consultants, Inc. v. Schlichter*, 12th Dist. Fayette No. CA2011-02-002, 2012-Ohio-2256, ¶ 13, citing *Baker & Sons Equip. Co. v. GSO Equip. Leasing, Inc.*, 87 Ohio App.3d 644, 622 N.E.2d 1113 (10th Dist.1993).

{¶22} Even if a creditor cannot set forth a viable fraudulent-transfer claim requiring a showing of actual intent, that creditor may still succeed on a claim for constructive fraud, which “focuses on the effect of the transaction(s), and may exist even where the debtor has no actual intent to commit fraud.” *Blood v. Nofzinger*, 162 Ohio App.3d 545, 2005-Ohio-3859, 834 N.E.2d 358, ¶ 52 (6th Dist.). “In contrast to claims involving an actual intent to commit fraud in an asset transfer, R.C. 1336.04(A)(2) permits claims for constructive fraud against future creditors.” *Id.*, citing *Aristocrat Lakewood Nursing Home v. Mayne*, 133 Ohio App.3d 651, 729 N.E.2d 768 (8th Dist.1999). To set forth a claim for constructive fraud, a creditor must show that “no reasonably equivalent value was received in exchange for the transfer” and that one of the following applies:

“(a) The debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction” or “(b) The debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor’s ability to pay as they became due.” R.C. 1336.04(A)(2).

{¶23} Here, the trial court, in a written opinion, found that Mr. Lacava’s transfer of his ownership interest in AIM to Mrs. Lacava constituted “the most blatant form of fraudulent conveyance this court has ever seen.” The court found that nine badges of fraud existed, including those listed under R.C. 1336.04(B)(1), (2), (3), (4), (5), (7), (8), (9), and (10). The only badges the trial court found did not exist were 1336.04(B)(6) and (11), which include whether the debtor absconded and whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor. The trial court also found that the transfer constituted constructive fraud under R.C. 1336.05.

{¶24} Mrs. Lacava’s assignments of error do not contest the trial court’s grant of summary judgment based on its findings as to the badges of fraud or its finding of constructive fraud. As a result, we will not review the record to determine whether a genuine issue of material fact exists concerning the existence of those badges or of constructive fraud. Instead, we will move on to analyze Mrs. Lacava’s arguments concerning R.C. 1336.08(A), (C), and (E).<sup>3</sup>

{¶25} “If the party alleging fraud is able to demonstrate a sufficient number of ‘badges,’ an inference of actual fraud arises and the burden then shifts to the defendant to prove that the transfer was not fraudulent.” *Saez Assocs.*, 8th Dist. Cuyahoga No. 96555, 2011-Ohio-5185, at ¶ 13. Once the burden shifts, the debtor may rebut the presumption of fraud if, pursuant to R.C. 1336.08(A), “he or she can demonstrate that the transfer was made in good faith and that ‘reasonably equivalent value’ was paid by the transferee[.]” *Blood*, 162 Ohio App.3d 545, 2005-Ohio-3859, 834 N.E.2d 358, at ¶ 50. “Where there is a lack of ‘reasonably equivalent

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<sup>3</sup> App.R. 12(A)(1)(b) states, “On an undismissed appeal from a trial court, a court of appeals shall \* \* \* [d]etermine the appeal on its merits on the assignments of error set forth in the briefs under App.R. 16[.]” App.R. 16(A)(3) states, “The appellant shall include in its brief \* \* \* [a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.”

value' given in exchange, the defendant fails to carry the burden of proof, and intent to defraud the creditor is established." *Id.*

{¶26} In her first and seventh assignments of error, Mrs. Lacava argues that summary judgment was improper because there is a genuine issue of material fact as to whether the transfer was made in good faith and whether she paid "reasonably equivalent value" for the ownership interest in AIM under R.C. 1336.08(A). Specifically, she argues that Mr. Lacava's transfer of the 94.8 percent ownership interest was made in good faith because Mr. Lacava expected to win in the arbitration proceedings and that her capital contributions of \$140,000 to AIM constituted "reasonably equivalent value."

{¶27} "The determination of a lack of good faith does not rely solely on actual intent but can involve an inquiry into the party's motive and purpose. \* \* \* [T]he court can consider evidence of what is reasonable [] and can evaluate any objective facts that contradict the suggestion of a subjectively honest purpose." *E. Sav. Bank v. Bucci*, 7th Dist. Mahoning No. 08 MA 28, 2008-Ohio-6363, ¶ 85, citing *Castle Properties v. Lowe's Home Ctrs., Inc.*, 7th Dist. Mahoning No. 98CA185, 2000 Ohio App. LEXIS 1229 (Mar. 20, 2000).

{¶28} As the Ohio Supreme Court noted,

Good faith in law \* \* \* is not to be measured always by a man's own standard of right, but by that which it has adopted and prescribed as a standard for the observance of all men in their dealings with each other. When one conveys all his property to another with the intention of hindering and delaying his creditors, or a part of them, in pursuing their legal remedies against him and his property, his conduct in law is deemed fraudulent however honestly he may have intended to deal with all his creditors, in the future. \* \* \* The good faith of a party under such circumstances must be determined by the legal effect of what he deliberately does.

*First Natl. Bank v. F.C. Trebein Co.*, 59 Ohio St. 316, 325, 52 N.E. 834 (1898).

{¶29} There is no genuine issue of material fact as to whether Mrs. Lacava accepted the transfer of ownership interest in AIM in good faith. Mrs. Lacava accepted 94.8 percent of the

ownership interest in AIM after paying capital contributions of \$140,000 to AIM and giving no consideration to her husband despite knowing about the arbitration proceedings that her husband initiated and in which UBS filed counterclaims against her husband. That transfer occurred while the arbitration proceedings were pending and 19 days before the FINRA panel decided the arbitration proceedings in UBS's favor. Mrs. Lacava's claim that the transfer was in good faith because Mr. Lacava believed that the arbitration proceedings would come out in his favor does not create a genuine issue of material fact. *See Davis v. Cleveland*, 8th Dist. Cuyahoga No. 83665, 2004-Ohio-6621, ¶ 23 ("Generally, a party's unsupported and self-serving assertions, \* \* \* standing alone and without corroborating materials under Civ.R. 56, will not be sufficient to demonstrate material issues of fact. Otherwise, a party could avoid summary judgment under all circumstances solely by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party.').

{¶30} We also find that there is no genuine issue of material fact as to whether the parties exchanged "reasonably equivalent value" for the transfer of ownership interest in AIM. To satisfy R.C. 1336.08(A), the "reasonably equivalent value" must go to the debtor, who, in this case, is Mr. Lacava. Summary judgment is appropriate when the debtor is unable to show that he received consideration in exchange for the transfer. In *First Fin. Bank v. Combs*, 12th Dist. Butler No. CA2013-02-024, 2013-Ohio-4126, the court affirmed the trial court's grant of summary judgment because there was no genuine issue of material fact that the appellant-debtor "conveyed all of the assets held by the trust in return for no financial value[.]" *Id.* at ¶ 16. Similarly, in *Turner, May & Shepherd v. DeMattio*, 5th Dist. Tuscarawas No. 2005AP060038, 2006-Ohio-2050, the court affirmed the trial court's grant of summary judgment because the

appellant-debtor “admitted that she conveyed to her sister her share of the real estate that she inherited and no consideration was involved in the transfer.” *Id.* at ¶ 38.

{¶31} Here, Mr. Lacava transferred 94.8 percent of his ownership interest in AIM to Mrs. Lacava for no consideration. While Mrs. Lacava argues that her capital contribution qualifies as reasonably equivalent value, that value went to AIM, not Mr. Lacava. Mrs. Lacava’s argument that AIM allegedly benefitted from becoming a woman-owned company also does not prevent summary judgment on this issue because, once again, that benefit went to AIM, not Mr. Lacava, the debtor, and second, as UBS points out, Mrs. Lacava failed to offer any evidence that AIM actually benefitted from the change in ownership. As a result, we find that there is no genuine issue of material fact as to the applicability of R.C. 1336.08(A). Accordingly, we overrule Mrs. Lacava’s first assignment of error.

{¶32} In her second and third assignments of error, Mrs. Lacava argues that the trial court’s grant of summary judgment was improper because it ignored her evidence showing that her transfer was not fraudulent under R.C. 1336.08(E)(1) and (2).

{¶33} Mrs. Lacava did not raise this argument in the trial court below and she cannot do so for the first time on appeal. *See State ex rel. Zollner v. Indus. Comm. of Ohio*, 66 Ohio St.3d 276, 278, 611 N.E.2d 830 (1993) (“A party who fails to raise an argument in the court below waives his or her right to raise it here.”).

{¶34} Accordingly, we overrule Mrs. Lacava’s second and third assignments of error. We also overrule Mrs. Lacava’s seventh assignment of error, which depends on the viability of her first, second, and third assignments of error.

{¶35} In her fourth and fifth assignments of error, Mrs. Lacava argues that the trial court’s order granting summary judgment was improper because it did not apply the elements

found in R.C. 1336.08(C)(1) and (2). Specifically, she argues that the trial court did not protect her rights to the interest in the assets transferred and to enforce the obligations she incurred as a result of the transfer.

{¶36} Again, Mrs. Lacava did not raise this argument in the trial court below, and she cannot do so for the first time on appeal. *See Zollner* at 278 (“A party who fails to raise an argument in the court below waives his or her right to raise it here.”). Accordingly, we overrule Mrs. Lacava’s fourth and fifth assignments of error.

{¶37} In her sixth assignment of error, Mrs. Lacava argues that the trial court failed to follow the statutory language of R.C. 1336.01(A)(3), (G), and (K) and failed to consider “the evidential elements of fraudulent conveyance.” While not entirely clear, it seems that Mrs. Lacava’s sixth assignment of error simply takes issue with the trial court’s reliance on the definitions set forth in R.C. 1336.01 and then repeats the same arguments she made in her previous assignments of error concerning her alleged defenses under R.C. 1336.08(A) and (E).

{¶38} The pertinent subsections of R.C. 1336.01 identified by Mrs. Lacava define the terms “affiliate,” “insider,” and “relative.” “A person who operates the business of the debtor under a lease or other agreement, or controls substantially all of the assets of the debtor” is an “affiliate.” R.C. 1336.01(A)(3). If the debtor is an individual, an “insider” includes “[a] relative of the debtor.” R.C. 1336.01(G). Finally, a “relative” is “an individual related by consanguinity within the third degree as determined by the common law [or] a spouse[.]” R.C. 1336.01(K).

{¶39} There are no genuine issues of material fact as to whether Mrs. Lacava is an “affiliate,” an “insider,” and a “relative” of Mr. Lacava. In fact, she admits to being an “insider” and “relative” in her appellate brief.



{¶40} As to Mrs. Lacava's repetitive arguments concerning her defenses under R.C. 1336.08(A) and (E), we already addressed and overruled those arguments in the previous sections. Accordingly, we overrule Mrs. Lacava's sixth assignment of error.

{¶41} In her eighth and ninth assignments of error, Mrs. Lacava argues that the trial court violated the Consumer Credit Protection Act ("CCPA") by not applying the statutory exemptions found in R.C. 2329.66(A)(3). She also summarily contests the trial court's remedies.

{¶42} The CCPA, set forth in Section 1601, et seq., Title 15 of the U.S. Code, restricts the garnishment of wages. "The [CCPA] affords debtors relief from creditors by ensuring that no more than fifty percent of a wage earner's disposable earnings can be garnished for payment of child support obligations and no more than twenty-five percent garnished for the payment of other debts." *Colwell v. Jones*, 9th Dist. Summit No. 14528, 1990 Ohio App. LEXIS 3189, 5 (Aug. 1, 1990).

{¶43} Here, the trial court's order granting relief to UBS stated:

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

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

The court also awarded \$98,481.95 for punitive damages against Mr. Lacava and \$50,155 and \$480.33 for attorney fees and expenses against all of the defendants.

{¶44} After review, it is clear that the trial court did not violate the CCPA because it did not order a garnishment against Mrs. Lacava.

{¶45} Unlike the CCPA, R.C. 2329.66(A) allows individuals to “hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order” under certain circumstances. *See Daugherty v. Cent. Trust Co.*, 28 Ohio St.3d 441, 445, 504 N.E.2d 110 (1986) (explaining the difference between CCPA and R.C. 2329.66). Subsection (A)(3) allows exemption for a “person’s interest, not to exceed four hundred dollars, in cash on hand, money due and payable, money to become due within ninety days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person, other than personal earnings.” “The legislature’s purpose, in exempting certain property from court action brought by creditors, was to protect funds intended primarily for maintenance and support of the debtor’s family.” *Daugherty*, citing *Dennis v. Smith*, 125 Ohio St. 120, 180 N.E. 638 (1932).

{¶46} Mrs. Lacava’s argument regarding R.C. 2329.66(A) concerns exemptions that could possibly come into effect upon execution of a judgment. Execution in this case, however, has not yet occurred. Accordingly, we overrule Mrs. Lacava’s eighth and ninth assignments of error.

{¶47} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY J. BOYLE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and  
LARRY A. JONES, SR., J., CONCUR