

Fifth Circuit Holds that “Value” under the Uniform Fraudulent Transfer Statute Requires a Showing of Value to the Transferor’s Creditors Where the Transferor Operated a Ponzi Scheme

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In its decision in ***Janvey v. The Golf Channel***, 2015 WL 1058022 (5th Cir. 2015), the [Fifth Circuit](#) reiterated its requirement that value for purposes of the ***Uniform Fraudulent Transfer Act*** requires a showing of value to the transferor’s creditors where the transferor was operating a ***Ponzi scheme***. The facts in the case were undisputed. Stanford International Bank operated a Ponzi scheme over the course of many years. In order to increase its name recognition, Stanford decided to sponsor the St. Jude’s Championship, a golf tournament broadcast on The Golf Channel. The Golf Channel offered Stanford an advertising package which included a range of marketing services, and for which Stanford paid The Golf Channel \$5,900,000 by the time it was placed into receivership. The receiver sued to recover these payments on the grounds that they were fraudulent transfers.

In light of established Fifth Circuit precedent providing that transfers made by the perpetrator of a Ponzi scheme are fraudulent for purposes of the UFTA, the parties stipulated that the payments by Stanford to The Golf Channel were fraudulent. The parties also stipulated that The Golf Channel acted in good faith in accepting the payments. Consequently, the only issue in the dispute was whether, in providing advertising and marketing services to Stanford, The Golf Channel gave reasonably equivalent value in exchange for the payments.

In finding that The Golf Channel did not give reasonably equivalent value, the court held that the market value of the marketing and advertising services failed to meet the standards for “value” under the statute. The court held that “value,” for purposes of the UFTA is measured “from the standpoint of the creditors, not from that of a buyer in the marketplace.” Further, the court held that services—even legitimate services provided by an entity which has no knowledge of the fraudulent scheme—which further the scheme, have no value as a matter of law. When dealing with a Ponzi scheme, which is inherently illegitimate and insolvent from its inception, the court stated that the “primary consideration . . . is the degree to which the transferor’s net worth is preserved.” As a

result, the fact that The Golf Channel's services would have been valuable to legitimate businesses in the marketplace was of no moment. In the context of a Ponzi scheme, they had no value as a matter of law.

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