

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 01-173-WRS  
Chapter 7

GEORGE E. HUTCHINSON,

Debtor

TOM MCGREGOR, TRUSTEE,

Plaintiff

Adv. Pro. No. 02-3137-WRS

v.

DAWN HUTCHINSON, ET AL.,

Defendants

**MEMORANDUM DECISION**

This Adversary Proceeding is before the Court upon cross motions for summary judgment filed by Defendant Great Dane Financial, LLC and Plaintiff Tom McGregor, Trustee. First, the Court will set out the relevant procedural history of these proceedings. Second, the Court will summarize the material, undisputed facts. Third, the Court will discuss the application of the statute of limitations. Fourth, the Court will consider the Plaintiff's claim that the statute of limitations was tolled on equitable principles. For the reasons set forth here, the motion for summary judgment filed by Defendant Great Dane Financial is GRANTED and the motion for summary judgment filed by Plaintiff Tom McGregor, Trustee is DENIED.

**I. PROCEDURAL HISTORY**

On November 14, 2002, the Plaintiff Tom McGregor, Trustee filed a 10 count complaint against Defendant Dawn Hutchinson, who is the former spouse of George E. Hutchinson, the

debtor in these Chapter 7 proceedings. George and Dawn were divorced shortly before the filing of this bankruptcy case. The Plaintiff, George Hutchinson's trustee in bankruptcy, alleges that certain transfers to Dawn incident to the divorce were fraudulent conveyances. The Trustee identifies several parcels of real property, among other things, which will be described in more detail below. Defendant Great Dane Financial, LLC, was not named as a party to the original complaint. On June 10, 2004, the Trustee filed his Third Amended Complaint, naming Great Dane as a party defendant. (Doc. 32). Great Dane had not been named a party prior to that time. On July 23, 2004, Great Dane filed a motion for summary judgment, alleging that the Trustee's claims are barred by the statute of limitation. (Docs. 39, 40). The Trustee has responded with a motion for summary judgment of his own. (Docs. 44, 45). Great Dane has filed a response to the Trustee's motion for summary judgment. (Doc. 46, 47).

## **II. FACTS**

The material facts are not in dispute and may be summarized as follows. On November 29, 2000, Defendant Great Dane Financial, LLC, was awarded a money judgment in its favor against George Hutchinson, the Debtor, in the amount of \$164,725.08, in a civil action styled Great Dane Financial, LLC, v. Guardian Logistics, Inc., George E. Hutchinson and Glenis (Chip) Hollingsworth, Civil Action No. 00-D-1099-N, in the United States District Court for the Middle District of Alabama. (Doc. 32, Para. 133, see also, Exhibits A, B and C). A Certificate of Judgment was recorded in Montgomery County on December 14, 2000. Id. A second Certificate of Judgment was filed in Elmore County, Alabama also on December 14, 2000. Id. A

Certificate of Judgment was filed in Autauga County, Alabama on December 16, 2000. (Doc. 32, Para. 134).

In the meantime, divorce proceedings were pending between Dawn and George in the Montgomery County Circuit Court, under Case No. DR-2000-1555. On December 15, 2000, Dawn and George executed a “Marital Settlement Agreement” which was filed in the divorce proceedings on the same date. (Doc. 41, Ex. 5). A Final Decree of Divorce was rendered on December 18, 2000. *Id.* Pursuant to the Marital Settlement Agreement, six parcels of real property were transferred to Dawn. *Id.* at 13-14. Several deeds were executed and recorded on various dates between December 19, 2000, and December 28, 2000. (Doc. 32).

On January 10, 2001, George Hutchinson filed a voluntary petition in bankruptcy pursuant to Chapter 11 of the Bankruptcy Code. (Case No. 01-173, Doc. 1). That case was converted to a case under Chapter 7 on February 5, 2001. (Case No. 01-173, Doc. 20). George Hutchinson was granted a discharge on August 31, 2002. (Doc. 103).

### **III. THE STATUTE OF LIMITATIONS**

The pertinent statute of limitations is set forth at 11 U.S.C. § 546(a), which provides, in part, as follows:

An action or proceeding under section . . . 547 . . . of this title may not be commenced after the earlier of—

(1) the later of—

(A) 2 years after the entry of the order for relief; or

(B) 1 year after the appointment or election of the first trustee under section 702 . . . or

(2) the time the case is closed or dismissed.

Applying this rule to the facts of these cases yields the following results: (1) the order for relief was entered on January 10, 2001. (Case No. 01-173, Doc. 1) Two years after that date is January 10, 2003; (2) the Trustee was appointed on February 6, 2001. (Case No. 01-173, Doc. 24). One year after that date would be February 6, 2002. The later of these two dates is January 10, 2003, which is the pertinent date here. The bankruptcy case has not been closed or dismissed so that date would necessarily be later than January 10, 2003. Therefore, the pertinent statute of limitations here is January 10, 2003. The complaint against Great Dane was not filed until June 10, 2004 (Doc. 32), which is considerably after the time the statute of limitations expired.

#### **IV. EQUITABLE TOLLING**

The Trustee does not dispute Great Dane's statute of limitation analysis and concedes that the period of limitations, by the plain language of the statute, ran on January 10, 2003. The Trustee contends that the statute of limitations was extended by the doctrine of equitable tolling. (Doc. 45, pp. 4-8). The Trustee states that "the undisputed facts show that the Trustee's claims against Great Dane were not readily apparent and actionable during the two-year period after the Trustee's appointment on February 6, 2001." (Doc. 45, p. 6). This is clearly not true. The Trustee brought suit against Dawn Hutchinson on November 14, 2002, well within the period of limitations. Review of the complaint filed November 14, 2002, shows that the Trustee was well aware of subject property and the relevant transfers. The judgment liens of Great Dane were a

matter of record long before the time the Trustee filed his complaint against Dawn Hutchinson. The Trustee knew or should have known of the Great Dane judgment liens not later than the time he filed his complaint against Dawn Hutchinson. The problem was not, as the Trustee contends, that the cause of action was not readily apparent. Rather, the Trustee failed to fully think through his position. He clearly should have anticipated the possibility that he would prevail in his suit against Dawn Hutchinson and thereby avoid the transfer of the several parcels of real property, giving him title to the property, albeit subject to the judgment liens of Great Dane.

The Trustee's claim against Great Dane, that the attachment of the judgment liens should be set aside as a voidable preference, may well have merit. The problem is that there is no relevant fact of which the Trustee was not aware, or could not have been aware through the exercise of due diligence, at or before the time he filed his complaint against Dawn Hutchinson on November 14, 2002. The Trustee alleges, in the November 14, 2002 complaint, that the transfers of the property in question to Dawn were a fraud on George Hutchinson's creditors. The fact that rendition of the money judgment in favor of Great Dane, rendition of the judgment of divorce and the filing of the petition in bankruptcy all occurred within a period of only several days gives rise to an inference that the transfers to Dawn may have been fraudulent. Had the case against Dawn Hutchinson gone to trial the Trustee certainly would have stressed the timing of these events and argued that these events were badges of fraud. It is inconceivable that these facts escaped the Trustee's attention until June 2004.

In a spirited Reply Brief, Great Dane takes exception to the Trustee's claim that he has been diligent here. (Doc. 47). The Court finds that Great Dane's argument is well taken. "One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence."

Baldwin County Welcome Center v. Brown, 466 U.S. 147, 151, 107 S.Ct. 1723, 1726, 80

L.Ed.2d 196 (1984). The Trustee's request to invoke equitable tolling is denied. For this reason, the motion for summary judgment filed by Great Dane is GRANTED. It therefore follows that the Trustee's motion is DENIED. The Court will dismiss Great Dane by way of a separate document.

Done this 24<sup>th</sup> day of September, 2004.

/s/ William R. Sawyer  
United States Bankruptcy Judge

c: Floyd R. Gilliland Jr., Attorney for Plaintiff  
Derek F. Meek, Attorney for Defendant Great Dane Financial