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UNITED STATES COURT OF APPEALS

MAY 10 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: MOMENTUM DEVELOPMENT, LLC, Debtor, ----------------------------- THE PYRAMID CENTER, INC., Appellant, v. DIANE C. WEIL, Chapter 7 Trustee, Appellee.	No. 23-60019 BAP No. 22-1084 MEMORANDUM[*]

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Corbit, Faris, and Lafferty III, Bankruptcy Judges, Presiding

Submitted May 6, 2024[**]
Pasadena, California

Before: WARDLAW, CHRISTEN, and BENNETT, Circuit Judges.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

The Pyramid Center, Inc. (Pyramid) appeals from the Bankruptcy Appellate Panel's (BAP) judgment that the bankruptcy Trustee's suit to recover fraudulently transferred property was timely. Because the parties are familiar with the facts, we do not recount them here. We review the BAP's statutory interpretation de novo. *In re Stevens*, 15 F.4th 1214, 1216 (9th Cir. 2021). We have jurisdiction pursuant to 28 U.S.C. § 158(d), and we affirm.

1. An action to void a fraudulent transfer under California Civil Code § 3439.04 is subject to two timing requirements: (1) a four-year statute of limitations, *see id.* § 3439.09(a)–(b), and (2) a seven-year statute of repose, *see id.* § 3439.09(c). We must determine when the statute of limitations in § 3439.09(a)–(b) begins to run. "Our duty as a federal court in this case is to ascertain and apply the existing California law." *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 889 (9th Cir. 2010) (citation omitted). "We are bound by pronouncements of the California Supreme Court on applicable state law, but in the absence of such pronouncements, we follow decisions of the California Court of Appeal unless there is convincing evidence that the California Supreme Court would hold otherwise." *Id.* Because "there are no conflicting California Courts of Appeal decisions," *Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1070 (9th Cir. 2020), we conclude that the California Supreme Court would follow the Court of Appeal's decisions in *Cortez v. Vogt*, 60 Cal. Rptr. 2d 841 (Cal. Ct. App. 1997), and *Macedo*

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v. Bosio, 104 Cal. Rptr. 2d 1 (Cal. Ct. App. 2001).[1]

Applying *Cortez* and *Macedo*, a cause of action for fraudulent conveyance under § 3439.04 may "accrue[] not when the fraudulent transfer occurs but when the judgment against the debtor is secured." *Macedo*, 104 Cal. Rptr. 2d at 5. Here, Momentum Development LLC (Momentum) transferred the property to Pyramid on October 31, 2012, and the state court entered judgment against Momentum in 2018. The Trustee's suit was filed on October 25, 2019, within the four-year statute of limitations from when judgment was entered against Momentum and within the seven-year statute of repose from the date of the transfer. *See* Cal. Civ. Code § 3439.04(a)–(c). The suit was therefore timely.

2. Pyramid's argument that there was no "triggering" creditor who could have brought a fraudulent transfer action on the date of the bankruptcy filing fails because the bankruptcy court found that Momentum had "four unsecured creditors, each holding an allowable claim" on the petition date and that the Trustee could "assume the position of any one of them." Pyramid did not challenge the bankruptcy court's factual findings on appeal.

3. Pyramid makes several arguments about the Trustee's suit not following the requirements of a common law claim for fraudulent conveyance. Because the

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[1] The BAP acknowledged that the *Cortez* opinion "has been criticized by scholars and by courts in other jurisdictions," but correctly concluded that it was required to apply current California precedent.

Trustee brought claims only under California statutory authority and not under

common law, Pyramid's common law arguments are inapplicable.

AFFIRMED.