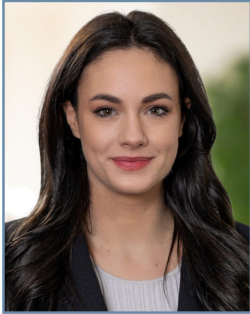


Navigating proceedings supplementary while *Saadi* is pending: *Bear v. Underhill*

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TRAINA

Florida’s proceedings supplementary statute has long been a critical tool for judgment creditors, but the current legal landscape is more unsettled than it has been in decades.

The Florida Supreme Court¹ now has questions certified by the United States Court of Appeals for the Eleventh Circuit² in *Saadi v. Maroun* concerning the interpretation and application of Florida’s “proceedings supplementary” statute, section 56.29, Florida Statutes.

While that process plays out, the Northern District of Florida’s 2024 decision in *Bear v. Underhill*, 754 F. Supp. 3d 1185 (N.D. Fla. 2024), provides meaningful provisional guidance. The decision outlines a way for creditors to avoid losing their cause of action for actual fraud under section 56.29(3) for the life of the judgment while still pursuing constructive fraud claims under section 56.29(9).

At the heart of the uncertainty is a familiar concern for practitioners: Pursuing fraudulent transfer claims under section 56.29(9) risks tethering the action to Florida’s Uniform Fraudulent Transfer Act’s (FUFTA) limitations periods. By contrast, fraudulent-transfer remedies under section 56.29(3) may continue for the full life of the judgment, so long as that right is not inadvertently waived. *Bear* identifies a possible plan to keep both avenues open until the Florida Supreme Court provides definitive answers.

Bear: Keeping tracks separate

The primary holding in *Bear* is straightforward. A creditor may not pursue claims under section 56.29(3) for actual fraud through notices to appear while simultaneously pursuing the same actual fraud theory through a supplemental complaint under section 56.29(9) and Chapter 726. In short, a creditor cannot litigate actual fraud in both tracks at once.

What makes *Bear* notable is that the Northern District did not treat this rule as forcing a strict election between the two statutory mechanisms. Instead, the court recognized that the two subsections allow multiple procedural paths, so long as there is no overlap in pursuing actual fraud claims. *Bear* identified two primary options, with the first containing two sub-options.

1. Proceed with actual fraud under section 56.29(3) and constructive fraud only under section 56.29(9)

Under the first option, a creditor may: (1) proceed with actual fraud claims under section 56.29(3) and/or (2) the creditor may also choose to add constructive fraud claims by filing a supplemental complaint under section 56.29(9). If the creditor chooses to do so, the complaint must omit reference to section 56.29(3) actual fraud claims in the complaint. This allows creditors to pursue actual fraud under section 56.29(3) and also pursue constructive fraud under Chapter 726.

2. Proceed entirely under section 56.29(9)

The second option is to forgo section 56.29(3) entirely and litigate all Chapter 726 claims, including both actual and constructive fraud,

through a supplemental complaint under section 56.29(9). In that scenario, there is more risk. Section 56.29(9) incorporates the time limits in Chapter 726, and as a result, a creditor may unintentionally forfeit the section 56.29(3) actual fraud cause of action—which otherwise may have continued for the life of the judgment—by bringing it solely through the supplemental complaint mechanism.

Bear versus Saadi certified questions

The Florida Supreme Court is now considering five certified questions from the Eleventh Circuit in *Saadi*. These questions address how section 56.29 operates, what remedies creditors may pursue, how long those remedies last, and how section 56.29(3) interacts with section 56.29(9) and Chapter 726.

1. Can a judgment creditor obtain a money judgment against a transferee under Fla. Stat. section 56.29(3)(b)?

McGregor: No. The Fourth DCA³ held that section 56.29(3) is limited to voiding transfers of personal property that can be levied upon and that money damages belong only under section 56.29(9). The court reasoned that allowing money judgments under both subsections would create an absurd result because only section 56.29(9) claims are subject to FUFTA’s limitation periods.

Rosenberg: Yes. The Third DCA⁴ held that section 56.29(6) authorizes money judgments for the entire section, which includes subsection (3). The court concluded that fraudulent transfer money judgments have long been part of section 56.29 and that

the Legislature did not remove that remedy.

2. Can a creditor seek fraudulently transferred funds under section 56.29(3)(b), and must those funds be identifiable?

McGregor: No. The Fourth DCA held that funds are not “property, debt, or other obligation” under section 56.29(2) and that section 56.29(3)(b) applies only to “identifiable” personal property. The disputed funds in that case were not identifiable, so the creditor could not pursue them under subsection 56.29(3)(b).

Rosenberg: Yes. The Third DCA held that personal property includes intangible personal property and that intangible personal property includes money. *Rosenberg* explained that section 56.29(3) may therefore be used to set aside fraudulent transfers of funds.

3. Can a creditor seek a judgment under section 56.29(3)(b) for the life of the judgment, or

is the remedy limited to section 56.29(9) and FUFTA’s extinguishment periods?

McGregor: FUFTA periods apply. The Fourth DCA concluded that claims for money judgments brought under section 56.29 are subject to the limitation periods in section 726.110. *McGregor* read the amendments as reserving a money judgment remedy only for claims under section 56.29(9) and reasoned that it would be absurd to interpret the statute as allowing identical causes of action under section 56.29(3) and section 56.29(9) with each being subject to a different limitation period.

Rosenberg: Remedies continue for the life of the judgment. The Third DCA held that the remedy under section 56.29(3) continues to “extend for the life of the judgment.” The Third DCA concluded the limitation period in section 726.110 did not apply to subsection 56.29(3) because the Legislature inserted FUFTA-related language only into subsection 56.29(9), not subsection 56.29(3).

Rosenberg observed that it was not absurd to have different limitation periods for different remedies.

Bear provides interim guidance

These questions capture the core dispute between the Fourth DCA and the Third DCA. *McGregor* treats subsection (3) as a narrow tool, and *Rosenberg* treats subsection (3) as a fully independent fraudulent transfer remedy that continues for the life of the judgment and includes money judgments. This is where *Bear* becomes useful.

Until the Florida Supreme Court resolves these questions, *Bear* functions as a procedural roadmap. It identifies how a creditor can preserve every viable remedy without inadvertently forfeiting one. It allows creditors to continue pursuing actual fraud under section 56.29(3) and, at the same time, proceed under section 56.29(9) for constructive fraud without creating inconsistent claims. When viewed against the competing interpretations that form the basis of the certified questions, this becomes significant.

<i>Rosenberg</i> affirmed	<i>McGregor</i> affirmed
If the Florida Supreme Court ultimately affirms <i>Rosenberg</i> , then a creditor who preserved the section 56.29(3) path remains protected for the life of the judgment because <i>Rosenberg</i> held that the money judgment remedy under section 56.29(3) continues for the life of the judgment.	If the Florida Supreme Court instead affirms <i>McGregor</i> , then it does not matter whether the creditor proceeded under section 56.29(3) or section 56.29(9) because <i>McGregor</i> limited money judgments to section 56.29(9) and applied the FUFTA limitations periods regardless.

In either outcome, following *Bear* avoids the risk that an attorney’s procedural choice during the certification period might unknowingly eliminate a longer-lived remedy. Because the certified questions directly involve whether fraudulent transfer remedies under section 56.29(3) survive for the life of the judgment or are confined to the extinguishment periods in section 726.110, *Bear* offers a functional procedural bridge during the *Saadi* certification.

By outlining options for proceeding under section 56.29(3), section 56.29(9), or both in carefully separated roles, *Bear* provides a way to preserve creditor rights while the Florida Supreme Court determines the broader framework. Until that decision is issued, *Bear* functions as a procedural compass that keeps the two paths open, clean, and reversible while the larger structural questions remain unresolved.

Endnotes

- 1 *Initial Brief of Appellant, Saadi v. Maroun*, No. SC2025-1675 (Fla. filed Jan. 16, 2026).
- 2 *Saadi v. Maroun*, 157 F.4th 1353, 1355 (11th Cir. 2025).
- 3 *McGregor v. Fowler White Burnett, P.A.*, 332 So. 3d 481 (Fla. 4th DCA 2021).
- 4 *Rosenberg v. U.S. Bank, N.A.*, 360 So. 3d 795 (Fla. 3d DCA 2023).