

NO. 46235-4

COURT OF APPEALS, DIVISION II



STATE OF WASHINGTON

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**SHELCON CONSTRUCTION GROUP, LLC, a Washington  
Corporation,**

**Respondent,**

**vs.**

**SCOTT HAYMOND & JANE DOE HAYMOND, husband and wife;  
A-3 VENTURE, LLC, a Washington limited liability company; A-4  
VENTURE, an unknown entity type, A-1111 VENTURE, LLC, a  
Washington limited liability company, 14224 PIONEER LIVING  
TRUST, & ANCHOR MUTUAL SAVINGS BANK,**

**Appellants.**

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**SUPERIOR COURT FOR PIERCE COUNTY**

**HONORABLE VICKI L. HOGAN**

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**BRIEF OF APPELLANT  
SCOTT HAYMOND**

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## INTRODUCTION

This brief involves only one named Defendant, Scott Haymond. Haymond's sister, Darra Odenwalder, who is not named as a party in this case is appealing separately with separate counsel.

The order appealed from was not based on a trial or oral testimony. There were no Findings of Facts or Conclusions of Law. The order avoided a transfer of property to Darra Odenwalder in trust for the benefit of Haymond's daughter. It was a motion in the nature of Supplemental Proceedings to collect a judgment. Counsel for the Trustee, Darra Odenwalder, appeals separately, regarding the jurisdictional and standing questions including TEDRA, etc. This brief will only deal with the alleged fraudulent acts by Haymond.

Haymond is familiar with the position of counsel for Odenwalder and is in complete agreement with it but for the sake of brevity does not repeat it here.

## STATEMENT OF THE CASE

The important procedural facts in chronological order are as follows:

02/20/14 Shelcon filed a Motion for Order Avoiding Transfers to the trust CP 354-361.

03/12/14 Haymond's response to Shelcon motion filed CP 569-576.

03/14/14 Order of trial court entered avoiding Haymond's transfers to trust CP 587-589.

03/24/14 Haymond's Motion for Reconsideration filed CP 592-611.

04/08/14 Order entered denying Haymond's Motion for Reconsideration CP 689.

05/09/14 Notice of Appeal filed CP 691-696.

#### ARGUMENT

The Plaintiff relies upon The Uniform Fraudulent Transfers Act RCW 19.40.041 as the basis for its motion to avoid the subject transfers.

##### A. Testimony Required

The court ordered the transfers avoided without any testimony from any witnesses and without proof of fraudulent intent. Haymond denies any intent to defraud and established by declaration that there were not even any hints or inferences that could be drawn from the facts as to hinder, delay, or defraud the debtor or any creditor. Declaration filed 03/12/14 CP 569-576.

*Sedwick v. Gwinn*, 73 Wn. App. 879, 873 P.2d 528 (1994) held that "where the debtor denies intent to defraud,

the issue cannot be conclusively determined by the trier of fact until it has heard testimony and assessed witness credibility."

In this case there was no offer of testimony by Shelcon. This case required it.

The matter was set on the court's motion docket with several other cases set for the same time.

B. None of the Eleven Factors set forth in the Statute RCW 19.40.041 to Determine Intent to Defraud Were Present  
Haymond's Declaration of 03/12/14 CP 566-576.

In his declaration, Haymond referred to his financial condition as "solvent and in great shape." In answer to this Shelcon's response page 1, paragraph 1 was "that may well be" CP 581-584.

Shelcon's response stated that solvency is simply one factor in determining whether a transaction is fraudulent and referred to the 11 factors in the statute to be considered.

In Haymond's Motion for Reconsideration CP 592-600 he referred to all 11 which most are variations of insolvency. An objective appraisal of the great financial condition of Haymond at the time of the transfers defeats any argument that he was insolvent or had any intent but to establish a trust fund for his minor daughter.

The real estate crash occurred three years later and could not have been foreseen.

In any event, substantial evidence is required to constitute fraud under the Uniform Fraudulent Transfers Act RCW 19.40.041 . "Circumstances which are merely suspicious are not enough to render a conveyance fraudulent. All of the elements must be supported by very substantial proof." *Columbia Intern Corp v. Perry*, 54 Wn.2d 876, 344 P2d 509 (1959).

In this case the conclusion of the trial court that the transfers to the trust were fraudulent had no basis in fact.

Much of the case law in which fraud was found involved Bankruptcies and are found in the Bankruptcy Reporter but are not cited here as they are irrelevant to the facts.

#### ASSINGMENTS OF ERROR

The trial court erred by:

- 1) Entering its order avoiding transfers without testimony, contrary to *Sedwick v. Gwinn*, 73 Wn. App. 879, 873 P.2d 528 (1994).
- 2) Concluding by implication that the transfers were fraudulent without evidence of fraudulent intent except the inferences of the Plaintiff.
- 3) Denying Haymond's Motion for Reconsideration.

The issues pertaining to the errors are the failure of the trial court to follow the case law and the statutory standards in concluding that the transfers were fraudulent.

#### CONCLUSION

The order of the trial court of March 14, 2014 should be vacated on the grounds that there was insufficient evidence to support it for the following reasons:

- 1) No testimony was offered or presented.
- 2) The Declaration of Scott Haymond as to his excellent financial condition at the time of transfer and recording was not in any way disputed by the Plaintiff.
- 3) None of the 11 factors to determine intent to defraud were present.
- 4) Shelcon and the court failed to comply with the requirements of TEDRA RCW 11.96A in voiding transfers to the trust.

Respectfully Submitted:



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CERTIFICATE OF  
SERVICE

THIS IS TO CERTIFY that on this 6<sup>th</sup> day of August, 2014, I  
did by fax and by regular mail postage prepaid, send true and  
correct copies of Appellants Scott Haymond & A-1111 Venture,  
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