

FILED

NOV 30 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 296725

Superior Court No. 00-204021-5

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

A & W FARMS, WILLIAM GUHLKE, and ALEX GUHLKE,

Respondents,

v.

SUNSHINE LEND LEASE, INC., a Nevada Corporation, RAYMOND
COOK, JR., and ARLENE B COOK,

Appellants,

v.

HARD ROCK CONTROL, a West Indies limited liability company,
ELDEN SORENSEN, and ADELINE JOHNSON,

Appellants.

RESPONDENTS' BRIEF IN OPPOSITION TO
APPELLANT ADELINE JOHNSON'S OPENING BRIEF

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I. INTRODUCTION.

The case currently before the Court is hopefully near the end of over 10 years of litigation and attempts at recovery. At every step in the process the courts have determined that appellants Raymond Cook and Adeline Johnson lacked credibility. With the help of Ms. Johnson, Mr. Cook has lied about transactions, hidden documents, avoided service of process, and falsified evidence submitted to the trial court during two trials. This is their appeal of the order allowing A&W Farms, William Guhlke, and Alex Guhlke (the "Guhlkes") to finally collect on judgments for fraud and attorney fees against Mr. Cook with real property assets fraudulently transferred to Ms. Johnson.

II. ASSIGNMENTS OF ERROR.

The Guhlkes do not assign any error to the rulings of the trial court and request that the findings and ruling be upheld.

III. STATEMENT OF THE CASE.

This litigation began back in the late 1990s. During 1997 and again in 2000, the Guhlkes contracted with Deer Park Transfer, Inc. and Sunshine Lend Lease, Inc. to log the Guhlkes' property. CP 1227; *A & W Farms v. Sunshine Lend & Lease, Inc.*, 2003 Wn.App. LEXIS 1363, *1-2 (July 3, 2003), *reconsideration denied*, 2003 Wn.App. LEXIS 2511 (Oct. 24, 2003). The defendant, Raymond E. Cook, Jr., owned both Deer Park

Transfer, Inc. and Sunshine Lend Lease, Inc. CP 1228; *A & W Farms*, 2003 Wn.App. LEXIS 1363 at *1-2. In 1997, during the first logging job, Mr. Cook failed to pay for over 600,000 board feet of timber, though this was not discovered until later during 2000. CP 1227. It was not discovered because Mr. Cook falsified the log receipts and documents given to the Guhlkes and withheld the true volume harvested, so they were unaware how much timber had actually been logged until years later. CP 178. In 2000, during the second logging job, Mr. Cook paid only \$29,861 for the volume logged, despite that he removed three times as much. *A & W Farms*, 2003 Wn.App. LEXIS 1363 at *6.

The Guhlkes subsequently sued Mr. Cook and his company for failing to pay for the timber that was logged during the second job in 2000. CP 1227. In 2001, they were awarded a judgment following trial of \$129,204 and an additional judgment for attorneys' fees for Mr. Cook's misconduct during prejudgment garnishment proceedings. *Id.* Mr. Cook appealed the judgments and lost. *Id.*; see *A & W Farms*, 2003 Wn.App. LEXIS 1363. On remand, the trial court amended its findings and conclusions to acknowledge evidence of fraud regarding the earlier 1997 logging and further found that Mr. Cook had altered documents that he offered as evidence at trial. CP 175-178, 1227; Ex. P1. Notably, those altered documents included three \$10,000 checks written to Ms. Adeline

Johnson. Ex. P1 ¶ 18. The court's findings also state that Mr. Cook refused to cooperate, stonewalled, and had hidden documents from the Guhlkes. CP 1227; Ex. P1. The court further found that both Mr. Cook and Ms. Johnson lacked credibility. CP 175-178; Ex. P1.

During the same time that Mr. Cook was defrauding the Guhlkes, in 1999, Mr. Cook purchased a 60-acre ranch in Colville, Washington for \$230,000 cash. CP 1226. He signed a Purchase and Sale Agreement with the seller binding himself. Ex. P2. He paid \$30,000 down initially, and the remaining money was paid in two payments: \$80,000 and \$120,000. *Id.* The \$80,000 was paid personally by Mr. Cook to the seller. RP 276. Mr. Cook received that money as a personal check from appellant Adeline Johnson, which Mr. Cook deposited in his personal bank account. *Id.*; Exs. D101-D102, D107. Mr. Cook then got a cashier's check in the amount of \$80,000, which he paid to the seller in January 1999. *Id.* The final payment of \$120,000 was paid at the April 1999 closing in a similar manner. RP 289. Mr. Cook received a cashier's check in that amount from Ms. Johnson, which was also made out to him personally. *Id.* Mr. Cook then signed the back of the check and endorsed it over to the seller at closing. RP 271; Ex. P4.

After the money was paid at closing, however, Mr. Cook put title in Ms. Johnson's name as the record owner. CP 1226; Ex. P7. Ms.

Johnson has never lived on the ranch, nor has she ever received any rent payments from Mr. Cook. CP 1230. Mr. Cook and his wife have lived on the ranch ever since 1999, they continue to do so, rent-free, and they have made various improvements to the land. *Id.*

The \$200,000 loan Mr. Cook used to buy the ranch was borrowed from Adeline Johnson, documented as a loan, and secured in favor of Ms. Johnson by other real property Mr. Cook owned. RP 269-273. Mr. Cook gave Ms. Johnson a promissory note for \$200,000, also drafted in January 1999. CP 1226; Ex. P10. The loan was then secured by a trust deed on Mr. Cook's already over-encumbered personal residence (not the ranch) in Davenport, Washington, which he subsequently lost to other creditors. CP 1226, 1229; Ex. P11.

At the fraudulent transfer trial in August 2010, Mr. Cook came up with a brand new story and claimed that the promissory note was actually for \$200,000 *previously* lent to him in small sums, that the total of all these prior loans from Ms. Johnson just happened to come to exactly \$200,000, and that the note and trust deed had nothing to do with the ranch. CP 1229. However, in his earlier May 2001 deposition, Mr. Cook stated that the \$200,000 for the ranch was *loaned* to him by Ms. Johnson at the same time he was buying the ranch. CP 1228 n.8; RP 96-106, 111. Ms. Johnson also confirmed that she *loaned* Mr. Cook \$200,000 in 1999

during her March 2002 deposition, and that it was paid to him in two checks totaling \$80,000 and \$120,000. RP 101, 226-228. Thus, Ms. Johnson's deposition testimony contradicted Mr. Cook's unbelievable new story at trial. CP 1228.

Additionally, the seller of the ranch testified that Mr. Cook had told him that he was arranging "financing" through Ms. Johnson for the purchase of the ranch. *Id.*; RP 189. And significantly, Ms. Johnson did not, at any time, have the financial resources to loan Mr. Cook both \$200,000 in small sums and also give Mr. Cook another \$200,000 so that he could coordinate purchasing the ranch in her name. RP 294. Thus, Mr. Cook's new story improvised at trial that Ms. Johnson had previously loaned him \$200,000 in addition to the \$200,000 used to buy the ranch was false. *See* CP 1231 & n.17, 1233-1234.

After the ranch was recorded in Ms. Johnson's name, it was subsequently "sold" less than two years later in December 2001 for \$100,000 to Hard Rock, LLC, a West Indies company. CP 1229; Ex. P8. Yet no money was ever transferred to Ms. Johnson for the sale. CP 1230-1231; RP 247-248. Prior to trial, the LLC's manager, Elden Sorensen, produced certain off-shore documents from the West Indies attempting to show payment, but the evidence was undisputed at trial that no money was

ever paid, and Mr. Sorensen failed to appear for trial and "threw in the towel." CP 1225 n.1; RP 247-248.

Shortly after this supposed December 2001 closing, Mr. Sorensen then purported to transfer the property from Hard Rock, LLC to himself.¹ Ex. P9; CP 846. Again, Mr. Sorensen did not pay any money or give anything to Hard Rock, LLC for the property. *Id.* Additionally, despite claiming at trial that they hardly knew each other, according to the United States Securities and Exchange Commission, Mr. Sorensen and Mr. Cook had previously worked together toward defrauding individuals in a "Ponzi" scheme. CP 1233 n.20; RP 278-285. In addition, Mr. Cook originally asserted prior to trial that the true owner of the ranch was Mr. Sorensen, but later changed his story at trial to claim that the true owner remained his mother-in-law, Ms. Johnson. CP 1228. Mr. Cook continued to live on the property the entire time. CP 1230.

On appeal, Ms. Johnson asserts that due to her mental impairments, she was a vulnerable adult at the time of the 1999 real property transaction under which Mr. Cook bought the ranch but it was

¹ Mr. Cook claimed at trial that he barely knew Mr. Sorensen, yet the two were related parties and were investigated by the SEC for inducing individual investors to pay them tens of thousands of dollars by promising a return on their investment of 20% to 50% interest *per month*. RP 278-285.

recorded in her name. Appellant's Opening Brief ("Johnson App. Brief") at 14-17. Ms. Johnson's argument is without merit.

The first evidence of any possible mental issue is from later during 2002 after the Guhlkes had obtained a money judgment for fraud and were seeking to depose Ms. Johnson about Mr. Cook's assets. At that time, there was an affidavit from Dr. Husky, a family physician, stating that Ms. Johnson was not capable of being truthful in an adversarial proceeding. Ex. D201 ¶¶ 5-6. He stated that she would become too nervous and anxious and be unable to reliably answer questions. *Id.* He opined, though, that Ms. Johnson would be perfectly capable of safely answering questions in a supportive, non-adversarial environment. Ex. D201 ¶ 8. This exhibit was originally produced in an attempt to stop the March 2002 garnishment deposition of Ms. Johnson. Ex. P44. However, Judge Bastine (who was also the trial judge during 2001) reviewed all of the evidence and determined that Ms. Johnson was fully capable of participating in a garnishment deposition. RP 78-79. He therefore ordered the deposition to take place, *id.*, and Ms. Johnson appeared for her deposition on March 14, 2002. *See* RP 231-255. Ms. Johnson never appealed that order, and her testimony was used at trial. *Id.*

Ms. Johnson also points to later evidence from doctors claiming that she requires assistance with every day activities, such as cooking. *See*

Exs. D202, D203. However, two reports from 2008 indicate that Ms. Johnson was fully capable of understanding financial transactions and handling her own finances. The first is an October 2008 report from Clark Ashworth, PhD. Ex. D202. Dr. Ashworth evaluated Ms. Johnson at the request of her children. Ex. D202 at 1. As a part of his evaluation, he discussed her financial transactions with her. Ex. D202 at 3. He indicated that she understood all of the financial transactions discussed. *Id.* In November 2008, Ms. Johnson's primary care physician also reported that Ms. Johnson was able to manage her finances. Ex. D203.

The only evidence that Ms. Johnson had a mental issue in 1999 came from her son, Kenneth Johansson, at trial in 2010 on the Guhlkes' complaint to unwind the series of fraudulent transfers of the ranch. *See* RP 367-383. He claimed that Ms. Johnson began suffering from mental deficiencies after a stroke in 1994 or 1995, and this worsened as she has had subsequent "mini" strokes. CP 1229. Additionally, she suffers from depression, which started after the death of her husband in 1996. CP 1323. However, there is no evidence in the record of when these strokes allegedly took place or how many there were, other than the testimony of Mr. Johansson who is not a physician. RP 369-370. Nor is there evidence that her depression or any alleged strokes caused mental deficiencies other than the assertions of Mr. Johansson and Ms. Johnson's guardian, attorney

Joe Delay, who was her defense counsel at trial during 2010. *See id.* In fact, Ms. Johnson lived alone from 1996 when her husband died until 2007 or 2008, when her family moved her into an assisted living facility. *See* Ex. D204; CP 1228.

Also, the trial court determined in 2010 that Mr. Johansson is a party that has an extreme interest in this litigation, and thus his testimony was not reliable. CP 1229. Mr. Johansson was an interested party because he would benefit if Ms. Johnson were to receive money from the execution sale of the ranch. CP 1229 & n.12. The trial court also determined that Mr. Cook was an interested party because he is currently living "rent-free" at the ranch in question and has been continuously with his wife (Adeline Johnson's daughter, Arlene Cook) ever since 1998. *Id.*

At trial in 2010, the court found that, while Ms. Johnson is not competent at this time, she was not a vulnerable adult at the time of the transaction in 1999. CP 1233-1234. She participated in the transactions obviously to assist Mr. Cook with severe creditor problems, and she subsequently participated in covering up the transactions when they were investigated. CP 1234. The trial court found that she had been evasive, contradictory and self-serving in her testimony. CP 1228 n.9. She once claimed during her deposition that she "loaned" or gave the money used to buy the ranch to Mr. Cook, but at trial and now on appeal claims

(inconsistently through her guardian ad litem) that she owns the property outright as an investment. CP 1228.

As the trial court noted, this "investment" claim is not easily believed, as Ms. Johnson has never attempted to obtain any rent from Mr. Cook for living on the property, and the property was "sold" for less than half of the purchase price only two years after Mr. Cook obtained it and even that heavily discounted price was never paid. CP 1230. No value exchanged hands with respect to this subsequent sale in December 2001. CP 1231. Nor did Ms. Johnson ever make efforts to *get* paid or put record title back into her name after it was fraudulently transferred a second time for no value to this off-shore company. CP 1229; Ex. P8; RP 247-248. The lower court found that the initial transaction of deeding the ranch to Ms. Johnson (instead of recording it in the name of the true purchaser, Mr. Cook) was a fraudulent transaction. CP 1233-1234.

Ms. Johnson now appeals, claiming that at the time of the 1999 transaction she was a vulnerable adult. Johnson App. Brief at 14-17. She also claims that the transaction was not fraudulent because she acted in good faith and was exploited by Mr. Cook. *Id.* at 18-27. Therefore, she contends that whether the transaction was a loan or an outright purchase, she is entitled to her proportional recovery. *Id.* at 27-30. Since Ms. Johnson claims that she "paid" \$200,000 of the \$230,000 purchase price,

she asserts that she is entitled to 86.96 percent of the recovery, and that the Guhlkes should only be entitled to 13.04 percent. *Id.* at 29. The Guhlkes disagree and request that the findings and ruling of the trial court be upheld so that they may finally collect on their judgments.

In short, this ranch was purchased by Mr. Cook using borrowed funds and then fraudulently put in Ms. Johnson's name with her full knowledge and consent in an effort to deceive Mr. Cook's creditors. Ms. Johnson fully participated in that scheme, and she has not met her burden of showing that she was a vulnerable adult in 1999 when the funds were loaned to Mr. Cook and the property was purchased.

IV. **ARGUMENT.**

A. **Standard of Review.**

Regarding the vulnerable adult issues, the Court of Appeals reviews the record to see if substantial evidence supports the trial court's findings. *Endicott v. Saul*, 142 Wn.App. 899, 921 (2008). Under the Uniform Fraudulent Transfer Act ("UFTA"), RCW §§ 19.40.011-.903, the same standard applies. The appellate court is limited to determining whether substantial evidence supports the findings of the lower court, and if those findings support the court's conclusions of law and the judgment. *Clearwater v. Skyline Constr. Co.*, 67 Wn.App. 305, 321-22 (1992).

B. Ms. Johnson was Not a Vulnerable Adult at the Time of the 1999 Transaction.

At the trial court level, whether an individual is a vulnerable adult must be established by clear, cogent, and convincing evidence. *Endicott*, 142 Wn.App. at 910. It must be proven that the individual was vulnerable at the time of the transaction in question. *Id.* at 921. Ms. Johnson's guardian ad litem has not even come close to establishing that she was a vulnerable adult in 1999, let alone with clear, cogent, and convincing evidence. Therefore, this Court should uphold the trial court's finding that Ms. Johnson was not a vulnerable adult.

Under RCW 74.34.020(16):

"Vulnerable adult" includes a person: (a) sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or (b) Found incapacitated under chapter 11.88 RCW; or (c) Who has a developmental disability as defined under RCW 71A.10.020; or (d) Admitted to any facility; or (e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or (f) Receiving services from an individual provider.

Ms. Johnson relies on the *Endicott* case to support her assertions that she was a vulnerable adult, and therefore she could not have intelligently participated in the transaction. In that case, the court invalidated a transaction based mostly on the testimony of neighbors. *Endicott*, 142 Wn.App. at 912-13. The testimony indicated that Ms. Endicott would drop lit cigarettes on the floor without noticing, was

unable to make her own food, did not recognize people she had known for years, and persisted in going through dumpsters even after being warned that they contained used needles. *Id.* Ms. Endicott was also found wandering around in a ditch holding a toothbrush in 2003. *Id.* at 912. In light of all of this evidence, the court determined that she was a vulnerable adult. *Id.* at 921.

Ms. Endicott had made several transfers to different parties between 2001 and 2005. *Id.* at 906. Yet, the court only invalidated one isolated transfer that occurred in 2005 or 2004 (it was unclear from the record exactly when the transfer had occurred). *Id.* at 929. It was "undisputed" that Ms. Endicott was unable to care for herself or her finances as of June 2004. *Id.* at 921. All of the other transfers were unaffected by the court ruling. *See id.* at 929.

In this case in contrast, while the trial court agreed that Ms. Johnson met the definition of a vulnerable adult at the *time of trial* in August of 2010, the court found, and the Guhlkes continue to assert, that she did *not* meet that standard in 1999. CP 1233-1234. Ms. Johnson has been evaluated by several doctors in order to determine her mental status at the request of her children. Exs. D202, D203. Not a single report claims that Ms. Johnson was vulnerable or unable to manage her own finances prior to 2008. *Id.* The record shows:

- Ms. Johnson was able to manage her own finances as late as 2008 as determined by Clark Ashworth, PhD and her primary care physician. Exs. D202, D203.
- Judge Bastine thoroughly considered Dr. Daniel Husky's report from 2002, which stated that Ms. Johnson would suffer anxiety if deposed in the supplemental proceeding. *See* Ex. D201 ¶¶ 5-6. However, even Dr. Husky concluded that she would be able to answer questions in a supportive environment, *id.* ¶ 8, and the court ordered her to appear.² Ex. P44 ; CP 78-79. Ms. Johnson never appealed that ruling, and she appeared for her garnishment deposition in March 2002. *See* RP 231-255.
- The testimony of her son, Kenneth Johansson, who was called as a defense witness at trial, RP 369-370, and the assertions of her attorney during closing arguments about mini-strokes, depression, and memory issues were completely vague as to the degree of these issues and the time period.
- Mr. Johansson was found to be an interested party by the trial court and was not found to be a credible witness. CP 1229 n.12.

² Judge Bastine observed Ms. Johnson testify at trial months earlier in July 2001 and had already found her to lack credibility. He found: "The trial testimony of Adeline Johnson regarding timber harvest from her property was contradicted by her deposition testimony. At best, her testimony at trial was self-serving." Ex. P1 ¶ 7.

- Neither Mr. Johansson nor Mr. Delay are physicians. Mr. Johansson provided no medical foundation for his statements, and attorney Delay's arguments are not evidence.

- It would be completely speculative on this record to conclude that either: (1) Ms. Johnson had capacity issues between 1999 and 2002; or (2) that she was a vulnerable adult during any portion of that time period. RP 369, CP 1323, 1229 & n.12.

- It was not until 2008 that Ms. Johnson had competency testing regarding cognitive deficits. Ex. D202. Even then, the report notes that "[S]he is able to manage her own funds." In talking about various transactions, "[s]he seems to understand those well." *Id.* at 3.

- And another medical report from 2008 also notes that "she is able to manage her finances." Ex. D203.

Given the record, Ms. Johnson did not prove with clear, cogent, and convincing evidence that she was a vulnerable adult in 1999 when she loaned Mr. Cook \$200,000 in cash to buy the ranch. The trial court's finding that she was not a vulnerable adult is supported by substantial evidence and should be upheld.

C. **Ms. Johnson was Not a Good Faith Purchaser or Transferee.**

Ms. Johnson also argues that she was a good-faith participant in the 1999 transaction buying the ranch. Johnson App. Brief at 19-26. Therefore, she contends that she is entitled to her proportional interest in the anticipated execution sale of the ranch.³ *Id.* at 27-31.

1. **Ms. Johnson merely served as a lender and strawperson.**

As an initial matter, Ms. Johnson was not a good faith *purchaser* of the property as a matter of law; she was simply a *lender*.

Mr. Cook and Ms. Johnson admitted during their depositions that the money used to close on purchasing the ranch was money that Ms. Johnson had loaned to Mr. Cook. However, they were both evasive and made efforts to conceal the transaction during their depositions.

Mr. Cook admitted that in January 1999, Adeline Johnson loaned him \$200,000 in cash. RP 97-98. To document the loan, he gave her a promissory note, RP 98; Ex. P10, and a second deed of trust on his property on Deer-Park Milan Road in Deer Park, Washington. RP 99-100; Ex. P11. At trial, Mr. Cook attempted to alter his testimony and claim that the \$200,000 promissory note was really an accumulation of debt that had

³ Following trial in August 2010 Judge Eitzen issued an injunction that has been recorded prohibiting any further transfer or waste of the ranch property pending plaintiffs' anticipated execution sale. CP 1390-1392.

built up over the years from "*previous* money that she had lent." *See* RP 105 (emphasis added). However, Mr. Cook was impeached with his prior deposition testimony where he explained that the \$200,000 loan was paid to him in two checks of \$80,000 and \$120,000, *see* RP 101, that the two checks were given to him "[r]ight about the *same time*" that the January 11, 1999 trust deed was recorded, *see id.*; Ex. P11, and he had "no idea" what he spent the money on. RP 104. Mr. Cook's deposition testimony was unbelievable at the time, and it not believed at trial by the trial court.

Adeline Johnson, who was similarly evasive during her deposition testimony, weaved an unbelievable story about the loan and what the proceeds were used for. Ms. Johnson confirmed that she had loaned Mr. Cook \$200,000, *see* RP 227, and she remembered specifically that the loan proceeds were paid to him in two checks. *Id.*; *accord* Exs. P4, D102, D107. She claimed that she had the money saved up all her life, *see* RP 228, but she refused to reveal why he needed the money.

Q. Why did you give him the \$200,000?

A. I don't know. I don't think it's anybody's business, is it?

Q. Unfortunately, it's our business in this lawsuit to know that, so I would ask you under the subpoena power and that's the power the court has to compel you to be here today to answer the question if you recall, what you please recall and tell me why you gave your son-in-law \$200,000?

A. He needed some money so I had it and I lent it to him.

Q. Did he tell you what the money was for?

A. I didn't ask.

Q. Has your son-in-law paid any of that back?

A. No.⁴

RP 228.

Further, at trial plaintiffs proved that Ms. Johnson did not have *other* funds available to both loan \$200,000 to Mr. Cook *and* come up with another \$200,000 buy the property herself. In other words, Johnson did not have \$400,000 in resources. RP 293-294. Thus, the \$200,000 loan referred to in their depositions and the funds used to close in buying the ranch were necessarily the *same* \$200,000. The trial court found that Mr. Cook's attempted new story at trial that there was a *separate* \$200,000 loan "incredible." CP 1231 n.17.

In light of both of their testimony and clear efforts to conceal the truth, the trial court judge easily concluded that the purchase price for the

⁴ Mr. Cook also testified that he had never paid any of the \$200,000 loan back to Ms. Johnson. RP 111. Yet at trial, Mr. Cook produced a never-seen-before "Receipt" and tried to change his testimony by explaining that Ms. Johnson had actually given him \$30,000 *credit* towards the \$200,000 promissory note. RP 109. This "credit" was supposedly to account for the amount Mr. Cook initially put down toward the property, but it hopelessly conflicted with both of their deposition testimony. CP 1226 n.5.

ranch was paid for with funds loaned from Ms. Johnson to Mr. Cook. CP 225-1234. The judge found that Mr. Cook had engaged in fraud and deceit, and that Ms. Johnson had testified "less than credibly" regarding the loan and "apparently willingly participated" in the transactions as a straw person. CP 1234.

A person who loans money toward the purchase of property is not the owner of the property; they are simply a financier. *Carey v. Interstate Bond & Mortgage*, 4 Wn.2d 632, 635 (1940).

Since she was merely a *lender*, Ms. Johnson was not a good faith *transferee*. She was simply a strawperson used to hold title to property so that Mr. Cook could deceive creditors. CP 1233-1234. In allowing title to be placed in her name, the record does not support good faith. In fact, allowing her name to be used in that manner is deceptive.

2. Ms. Johnson had the burden of establishing good faith.

Under the UFTA, if a transferee receives property in good faith, then that transferee is permitted to retain their interest even if the transfer is later found to be fraudulent. *Thompson v. Hanson*, 168 Wn.2d 738, 752 (2009). The Washington Supreme Court has laid out three "indicia" of good faith: (1) an honest belief in the propriety of the activities in question; (2) no intent to take unconscionable advantage of others; and (3)

no intent that the activities in question will hinder, delay or defraud others. *Tacoma Assoc. of Credit Men v. Lester*, 72 Wn.2d 453, 458 (1967).

In addition, the Court has held several times that the burden of proving good faith is on the defendant, especially in situations where the transfer involves two closely related individuals. *See Clayton v. Wilson*, 168 Wn.2d 57, 69 (2010) (when transfers between spouses are challenged, the spouses must prove that it was in good faith); *Lester*, 72 Wn.2d at 458 (in transfers between two businesses owned by the same individuals, it is on the individuals to prove good faith); *Workman v. Bryce*, 50 Wn.2d 185, 189 (1957) (plaintiff must prove fraud, and then the burden shifts to the defendant to show that the transaction was in good faith when consideration is shown to be grossly inadequate).

Ms. Johnson is Mr. Cook's mother-in-law. RP 227. Mr. Cook married Ms. Johnson's daughter, Arlene Cook. RP 226. As relatives, Ms. Johnson had the burden of demonstrating that she acted in good faith as a transferee. This she failed to do, nor under the facts could she. At trial, the Gohlkes established that Ms. Johnson could not have had an honest belief in the propriety of her actions, that she acted with intent to take advantage of others, and that she acted with intent to delay, hinder or defraud Mr. Cook's creditors.

3. **Ms. Johnson did not act in good faith.**

Where a transfer involves relatives, the burden of proof is on *them* to prove that the transfer was in good faith. *Sparkman & McLean Co.*, 4 Wn.App. 341, 351 (1971). Ms. Johnson has failed to prove any, let alone all, of the three good faith "indicia."

First, Ms. Johnson has not shown that she acted with an honest belief in the propriety of her activities. In loaning \$200,000 to Mr. Cook in 1999, Ms. Johnson claims that she never knew about the reasons for the loan and never asked Mr. Cook about why he needed the money. RP 228. As an initial matter, such a position is completely unbelievable – that a person would loan another \$200,000 and not even *ask* what the money was for. Since, in her view, she had a complete *lack* of knowledge about the transaction and what it entailed, then she could not have had an honest belief that it was proper because she claims she never even inquired into the propriety of the transaction. To believe that it was proper, she would need *some* base knowledge of the transaction itself.

Second, Ms. Johnson participated in concealing the loan. Her deposition testimony was evasive, and she was flat out untruthful about her knowledge of what the transaction involved. Ms. Johnson testified during her deposition that that it wasn't "anybody's business" why she gave her son-in-law \$200,000. RP 228. After being informed that she had

to answer the question, she stated that Mr. Cook "needed some money, so I had it and I lent it to him," and that she "didn't ask" what the money was for. *Id.* She also stated that the money loaned came from money she had saved up "all my life." *Id.*

Third, Ms. Johnson was untruthful about the source of the funds for the loan. Her deposition testimony that she had saved up the money she loaned to Mr. Cook "all [her] life" was untrue. At trial, plaintiffs' expert testified that Ms. Johnson did not have that amount of money saved up, and that the source of the \$200,000 she loaned to Mr. Cook in 1999 was determined to be an inheritance she was entitled to receive just *months* earlier. RP 294-295.

Fourth, Ms. Johnson's position at trial that she paid for the property with her own money is demonstrably wrong. At trial, the Guhlkes established (also through their expert forensic fraud expert Marie Rice) that Ms. Johnson did not have access to \$400,000 in assets. The only assets of significance she had were the funds she loaned to Mr. Cook. Thus, Ms. Johnson could not have loaned Mr. Cook \$200,000 in January 1999 *and* paid for the property herself by coming up with an additional \$200,000. RP 293-294. The evidence therefore established that Mr. Cook bought the property with loaned funds, and they both attempted to conceal that fact under oath.

Fifth, when questioned about her travels north to close on the subsequent sale of the property – when the deed was recorded in the name of Hard Rock Control, LLC in December 2001 – Ms. Johnson was evasive about who orchestrated the trip and arranged for the deal. She testified in her deposition that her "*friends*" picked her up and drove her hours north to sign all of the papers, and that she went to lunch with her "*friends*" who helped her with all of these closing details. CP 1226 n.4. Yet, it was later revealed that these "*friends*" were actually her daughter and her son-in-law, Raymond Cook, Jr. *Id.* This was during a time Mr. Cook and Mr. Sorensen were being investigated by the SEC for promising investors returns of up to 50% interest per week. RP 279-285.

Sixth, Ms. Johnson and Mr. Cook concealed documents relating to the loan transaction and whether funds were ever paid back. The Guhlkes served an outstanding subpoena duces tecum for relevant loan, closing, and real property documents about this ranch back in 2002 – eight years earlier. CP 1337-1340; Ex. P44. Responsive documents were not produced until July 2010 – *ten days before trial* to set aside the fraudulent transfers. RP 111-114; CP 1227. Mr. Cook finally produced a "Receipt" purporting to be a document signed by Ms. Johnson indicating that she had received "partial payment" in the form of a \$30,000 credit (the amount of Mr. Cook's initial down payment to the seller). This "Receipt" for

"partial payment" states that it is credited against the January 1999 promissory note in the amount of \$200,000 in connection with Ms. Johnson's loan to Mr. Cook. CP 1226 n.5; Ex. D104. Ms. Johnson's signature is on this "Receipt" dated April 15, 1999.

Ms. Johnson and Mr. Cook, however, apparently forgot their deposition testimony from 2001 and 2002 where they both confirmed that *none of the \$200,000 had ever been paid back*. RP 228; RP 111. The upshot of this "Receipt" is that it was either fabricated, or their deposition testimony on this point was coordinated and untruthful. In any event, the trial judge correctly found that both witnesses lacked credibility.

Finally, the evidence supports that Ms. Johnson helped Mr. Cook evade creditors and conceal assets. She has not proven that she had no intent to take advantage of others, or that she lacked intent or knowledge that her activities would hinder or defraud his creditors. The evidence shows just the opposite.

- At the time of the loan and 1999 closing, Ms. Johnson was aware that Mr. Cook was in financial difficulties. RP 228. She had loaned him money in the past without ever receiving any money back. RP 227-228; CP 1229. Mr. Cook was severely in debt.⁵ CP 1227 n.6. He

⁵ Mr. Cook had a judgment against him for \$110,312 in a suit brought by Petrocard Systems, Inc. RP 122. A suit had also been filed against him in

had several judgments against him, and his separate personal residence was already over-encumbered with security interests. CP 1227, 1229, 1231; RP 128.

- Yet, Ms. Johnson loaned him \$200,000 anyway and claims that she never asked a *single question* about what it was for. She then allowed him to coordinate putting the ranch in her name as record owner.

- Ms. Johnson testified that "*she*" bought the ranch as an "investment." CP 1230. However, the facts demonstrate that the purchase price was loaned to Mr. Cook, and that even under the duo's "story" that she bought the property, the evidence hardly suggests it was for investment purposes. Ms. Johnson never attempted to get any return on this "investment." She signed documents agreeing to sell the ranch at a significant loss only two years later.⁶ CP 1231. The ranch was purchased for \$230,000, CP 1226, and it was "sold" for \$100,000, CP 1229, which is 43 percent of the purchase price.

- No money ever exchanged hands, however, as part of the subsequent sale during December 2001. CP 1231. Nor did Ms. Johnson

the amount of \$620,000 by another company, Inland Financial. RP 124-126. And Mr. Cook's company, Deer Park Transfer, Inc., coincidentally filed for bankruptcy during 1999 as well. RP 268, 309-310.

⁶ Mr. Cook also paid the property taxes in the years after closing, which, if he was merely a tenant, would make no sense. RP 277-278.

ever do a single thing to get paid – despite signing closing documents purporting to transfer the property to the new buyer. The subsequent "buyer" – offshore West Indies company Hard Rock Control, LLC and its manager Elden Sorensen, failed to appear for trial. In light of their failure to appear, Mr. Cook once again changed his story and maintained that the ranch belonged to his mother-in-law.

- Ms. Johnson was added at the last minute at the April 1999 closing, and her name was inserted on the closing documents as "purchaser." CP 1226. Whereas Mr. Cook and his wife Arlene B. Cook were the parties that signed the Earnest Money Agreement binding themselves under contract to close back in 1998. Ex. P3.

- Mr. Cook paid the settlement fee and buyers' portion of the city and county taxes in connection with the April 1999 closing, not Ms. Johnson. CP 1226; Ex. P5.

- Between 1999 and trial in 2010, Ms. Johnson never charged Mr. Cook a dime of rent. RP 72.

- Mr. Cook, during his 11 plus years living on the ranch with Arlene Cook, made real property improvements, which would be irrational unless he was the true owner. CP 1225 n.2.

- Knowing Mr. Cook's financial woes, to document the 1999 loan for \$200,000, Ms. Johnson recorded a deed of trust on Mr. Cook's

personal residence (not the ranch), which caused the personal residence to be mortgaged beyond its worth. RP 128. The over-encumbered residence was later repossessed by the bank. RP 307-308.

- Over-encumbering Mr. Cook's personal residence set up two alternate arguments to hinder creditors –if the \$200,000 used to buy the ranch was in reality Ms. Johnson's and *not* a loan, then Mr. Cook's residential real property was being protected from further liens by a sham second deed of trust recorded by Ms. Johnson. And if the \$200,000 used to buy the ranch was, in reality, a loan as both Ms. Johnson and Mr. Cook testified it was (and the Guhlkes proved it was), then Ms. Johnson's act of allowing titled placed in her name was a sham. Clearly, the convenience and flexibility of these alternative arguments at a time when Mr. Cook was facing upwards of \$1 million in potential judgments did not escape Mr. Cook and Ms. Johnson.

Ms. Johnson assisted Mr. Cook in hiding the true nature of the transaction from his creditors by being evasive, contradictory, and lying about the facts when she was questioned under oath. Given her actions, Ms. Johnson did not have an honest belief in the propriety of putting the deed in her name.

Moreover, Ms. Johnson acted with intent to take advantage of others. Although she argues she could not have formed the requisite

"intent" and was a "vulnerable adult," as previously shown, Ms. Johnson failed to meet that burden. She was within her faculties and fully able to handle her own finances. *See* Ex. D202; Ex. D203. Any other conclusion based on the evidentiary record at trial would be completely speculative.

Thus, Ms. Johnson failed to establish that she was acting in good faith, and the ruling of the lower court should be affirmed.

D. Ms. Johnson was Not Exploited by Mr. Cook Due to any Condition as a Vulnerable Adult.

Under RCW 74.34.020, "exploitation" means "an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is *inconsistent* with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another." RCW 74.34.020(2)(d) (emphasis added).

First, as previously stated, Ms. Johnson was not a vulnerable adult at the time of the alleged "exploitation" and so could not have been "exploited" within the meaning of RCW 74.34.020. Yet, even assuming that she was a vulnerable adult, she was not "exploited" by Mr. Cook. In order to be exploited, Ms. Johnson's guardian would have needed to prove that Mr. Cook exerted influence on Ms. Johnson that caused her to act inconsistently with past behavior. However, Ms. Johnson's guardian called Mr. Johansson as a witness, and Mr. Johansson testified that Ms.

Johnson had lent Mr. Cook money over the years. RP 375. Mr. Cook also testified that Ms. Johnson had lent him money several times, starting in the 1970s. CP 1231 n.17. Thus, even if Mr. Cook was exerting "influence" on Ms. Johnson, he did not cause her to act inconsistently with her prior behavior. Rather, she acted consistently in that she continued to lend Mr. Cook money. Since, according to the evidence presented by her guardian, Ms. Johnson's behavior remained consistent, she was not exploited.

Second, "[f]inancial exploitation" means "the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage." RCW 74.34.020(6). Mr. Cook obtained the loan from Ms. Johnson. CP 1228 n.8. Ms. Johnson was fully within her abilities and made the decision on her own to lend Mr. Cook money to purchase the ranch. Thus, Mr. Cook did not use Ms. Johnson's property in an illegal or improper manner; his purchase of the ranch was legal. However, placing the property into Ms. Johnson's name was a sham. It was the transfer of Mr. Cook's interest to Ms. Johnson that was fraudulent, illegal, and improper, not Mr. Cook's *use* of financing to purchase the property. Thus, there was no financial exploitation.

E. Ms. Johnson is Not Entitled to Recover the Proportional Amount of her Loan from a Sale of the Ranch.

Under the UFTA, Ms. Johnson is only allowed to recover her proportional interest in the property if she was a good faith transferee. *See Thompson*, 168 Wn.2d at 738. As previously stated, Ms. Johnson was not a good faith transferee. Furthermore, once Ms. Johnson loaned the money to Mr. Cook and he bought the ranch, the ranch belonged to Mr. Cook, notwithstanding the fraudulent nature of how title was recorded. By loaning the \$200,000 purchase price, Ms. Johnson did not acquire a real property interest in the ranch. She obtained contract rights to be paid back only as a *lender*. Therefore, she is not entitled to any proportional recovery by way of reimbursement for money loaned.

V. CONCLUSION

The decision of the trial court should be upheld, and Ms. Johnson should not be entitled to any proceeds following the anticipated execution sale of the ranch.

Dated this 28th day of November, 2011.

Respectfully Submitted,

HAGLUND KELLEY JONES & WILDER, LLP

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FILED

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

NOV 30 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

A&W Farms, WILLIAM GUHLKE, and ALEX
GUHLKE,

Respondents,

v.

SUNSHINE LEND LEAD, INC., a Nevada
Corporation; RAYMOND COOK, JR., and ARLENE
B. COOK,

Appellants;

v.

HARD ROCK CONTROL, a West Indies
limited liability company, ELDEN
SORENSEN, and ADELINE JOHNSON,

Appellant.

Case No. 296725

Superior Court Case No. 00-2-04021-5

DECLARATION OF MAILING

I, Shay S. Scott, state the following under penalty of perjury:

On November 28, 2011, I mailed:

1. Respondents' Brief In Opposition To Appellant Adeline Johnson's Opening Brief; and
2. Respondents' Brief In Opposition To Appellant Raymond E. Cook, Jr.'s Opening Brief; and

which were sent out for filing with the Washington Court of Appeals, Division III on the same day, to the following via first-class mail, postage pre-paid:

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DATED this 28th day of November, 2011.

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