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Court of Appeals Cause No. 58577-1-I

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IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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PAUL AND JEANNINE HANSON,

Defendants/Petitioners,

v.

CHAD AND HEATHER THOMPSON,

Plaintiffs/Respondents.

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**PETITION FOR REVIEW**

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**A. IDENTITY OF PETITIONER**

Petitioners are Paul and Jeannine Hanson, Defendants below (the “Hansons”).

**B. CITATION TO COURT OF APPEALS DECISION**

The Hansons seek review of the decision in *Thompson v. Hanson*, \_\_\_ Wn. App. \_\_\_, 174 P.3d 120, Case No. 58577-1-I, a published opinion filed on December 3, 2007, by Division One of the Court of Appeals (the “Decision”). The Court of Appeals denied reconsideration on January 14, 2008. Copies of the Decision and the Order Denying Reconsideration are presented in the Appendix.

**C. ISSUES PRESENTED FOR REVIEW**

1. The Washington Court of Appeals has split on the issue of whether a transferee is subject to personal liability under the Uniform Fraudulent Transfer Act (“UFTA”) when accepting a constructively fraudulent transfer of property with no actual intent to hinder or delay any creditor. In *Park Hill Corp. v. Don Sharp*, 60 Wn. App. 283, 803 P.2d 326 (1991), Division Three held that such a transferee could not be held personally liable under the UFTA. In the present case, however, Division One refused to follow *Park Hill*, and instead held that, under the plain language of the UFTA, a transferee could suffer a personal judgment even when accepting a constructively fraudulent transfer free of any intent to hinder or delay a creditor. A 1997 Division Two opinion also contains dicta indicating disagreement with the *Park Hill* holding.

Thus, the issue presented is whether this Court should reverse the decision below, or instead overrule *Park Hill*, on the issue of whether a transferee with no actual intent to hinder or delay a creditor is personally liable for a debtor's constructively fraudulent transfer.

2. If *Park Hill* is overruled because the plain language of the UFTA allows for entry of judgment against a transferee, does the plain language of the UFTA's judgment offset provision nevertheless entitle such transferee to "a reduction in the amount of liability on the judgment" to the extent of the value given for the transfer? If so, did the Court of Appeals misapply the plain language of the UFTA in this case by refusing to allow the Hansons to take an offset?

#### **D. STATEMENT OF THE CASE**

Paul Hanson has been a builder for over 30 years.<sup>1</sup> For much of that time, he has done that work as the self-employed owner of Paul V. Hanson, Inc. (the "Corporation").<sup>2</sup> His wife, Jeannine, is a Montessori school teacher with no involvement in the Corporation's business.<sup>3</sup> In 1998, the Corporation purchased and began developing several lots in a subdivision known as Lakeland Hills. The Corporation borrowed between \$150,000 and \$157,200 on each lot and secured each loan with a separate deed of trust on each lot.<sup>4</sup> In March 1999, the Corporation entered into a contract

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<sup>1</sup> RP (March 21, 2006), p. 121.

<sup>2</sup> *Id.*

<sup>3</sup> RP (March 22, 2006), p. 60.

<sup>4</sup> Exhibits 10–17; RP (March 21, 2006), p. 124–25.

with Chad and Heather Thompson to construct a home on Lakeland Hills Lot 62.<sup>5</sup>

By early July 2000, the Corporation had sold three of its Lakeland Hills lots. The initial construction financing was coming due on two of the remaining unsold lots — Lots 66 and 68. Therefore, on July 6, 2000, the Hansons applied for two new loans to be secured by Lots 66 and 68. Mortgage broker Peter Carrington facilitated the loan applications and testified that in order to convert the construction financing to conventional financing, the lenders required that the Hansons take out the loans in their name, rather than in the name of the Corporation, and this required the two lots be conveyed from the Corporation to the Hansons.<sup>6</sup>

Unrelated to the refinancing of Lots 66 and 68, the Corporation and the Thompsons were scheduled to close the sale of Lot 62 on July 31, 2000. The sale failed to close on that day, however, because of a dispute between the parties.

On September 13, 2000, in conjunction with the previously-applied-for refinance on Lots 66 and 68, the Corporation conveyed Lots 66 and 68 to Paul and Jeannine Hanson, as required by their lender. As a result, the Corporation's debt of over \$330,000 owed on these two lots was satisfied and the new financing obligations on these two Lots — amounting to over \$365,000 — were assumed by the Hansons personally.<sup>7</sup>

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<sup>5</sup> RP (March 21, 2006), p. 127; Ex. 2.

<sup>6</sup> RP (March 21, 2006), pp. 38–44.

<sup>7</sup> RP (March 21, 2006), pp. 137–38. Per the closing statements, the total amount of the Corporation's pre-existing liens discharged by the Hansons' assumption of the new loans was \$344,758.97 (Exs. 4–5).

Eight months later, on May 11, 2001, the Thompsons sued both the Corporation and the Hansons personally over the failure to close the sale of Lot 62 (*Thompson v. Paul V. Hanson, Inc., et al*, Cause No. 01-2-13252-1 KNT). On December 23, 2003, the trial court entered judgment for \$68,598.60 against the Corporation, finding that the Corporation breached its contract on July 31, 2000, by failing to convey Lot 62 to the Thompsons. The court specifically did not enter judgment against the Hansons personally. As a result, that claim has been adjudicated with prejudice, and it has been determined that the Hansons are not personally liable to the Thompsons for the Corporation's breach of the contract to sell Lot 62.<sup>8</sup>

Several months after obtaining judgment against the Corporation, the Thompsons initiated the present action against the Hansons personally on March 26, 2004, alleging that the September 2000 refinance conveyance of Lots 66 and 68 from the Corporation to the Hansons violated the UFTA. The parties tried the case for two days beginning on March 21, 2006. Five witnesses testified: Mr. and Mrs. Hanson, Mr. and Mrs. Thompson, and Peter Carrington, the mortgage broker.

On April 7, 2006, the parties filed post-trial briefs, in which the Hansons again argued, as they had in their trial brief,<sup>9</sup> that no judgment was available against the Hansons under the *Park Hill* holding, or, alternatively, under the UFTA's judgment offset provision<sup>10</sup>

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<sup>8</sup> Ex. 2; RP (March 21, 2006), pp. 31-32; 155-56.

<sup>9</sup> CP 281-84.

<sup>10</sup> CP 385-86.

The trial court issued Findings of Fact and Conclusions of Law on May 3, 2006, finding that the transfer was not made with actual intent to hinder or delay the Thompsons, but that the transfer was constructively fraudulent under RCW 19.40.041(a)(2), because of the overall financial condition of the Corporation at the time of the conveyance.<sup>11</sup> In response, the Hansons filed a Motion for Reconsideration or for Offset Under RCW 19.40.081(d)(3).<sup>12</sup> The trial court denied the motion for reconsideration and for offset, and the Hansons moved again for reconsideration on the offset issue, which the trial court also denied.<sup>13</sup> The trial court entered judgment against the Hansons personally in the amount of \$89,129.41, which amount included pre-judgment interest from 2003.<sup>14</sup>

The Court of Appeals affirmed, holding that Division Three's opinion in *Park Hill* was contrary to the plain language of RCW 19.40.081, which expressly authorizes entry of judgment against a transferee. At the same time, however, the Court of Appeals rejected the Hansons' "literal interpretation" of the very same statute's judgment offset provision and affirmed the trial court's refusal to apply that provision to offset the amount of the judgment.<sup>15</sup> The Court of Appeals denied the Hansons' motion for reconsideration of the judgment offset issue.

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<sup>11</sup> CP 399 – 403.

<sup>12</sup> CP 404–15.

<sup>13</sup> CP 429–32; CP 436–43; and CP 471.

<sup>14</sup> CP 469.

<sup>15</sup> Opinion, pp. 13–16.

**E. ARGUMENT**

**1. This Court Should Accept Review Because the Decisions of the Court of Appeals are in Conflict Regarding the Personal Liability of a Transferee of a Constructively Fraudulent Transfer under the UFTA**

Before Division One's decision in this case, Washington case law construing the UFTA precluded a judgment against transferees of an allegedly fraudulent conveyance absent a showing of actual intent to defraud. In other words, where a transfer was constructively fraudulent based upon an analysis of relative value given in exchange for value received, but was not actually fraudulent because there was no malicious intent, a judgment could not be entered against the transferee.

a. *DeYong and Park Hill*

The UFTA was adopted in 1987 to replace the Uniform Fraudulent Conveyance Act (UFCA). In *DeYong Management v. Previs*, 47 Wn. App. 341, 735 P.2d 79 (1987), the Court of Appeals considered, as an issue of first impression, whether under the UFCA "the transferee of a fraudulent conveyance may be held personally liable to the transferor's creditors." *Id.* at 346. In its analysis, the *DeYong* court considered at least two out-of-jurisdiction cases that required a finding of actual intent to support a judgment against a transferee. *See Flowers and Sons Dev. Corp. v. Municipal Court*, 86 Cal. App. 3d 818, 825 (1978) (requiring transferee's knowing participation in the fraudulent conveyance with the intention of defrauding creditors); *State v. Nashville Trust Co.*, 190 S.W.2d 785 (Tenn. App. 1945) (requiring transferee's participation in the fraud); *see also DeYong*, 47 Wn. App. at 346-47 (discussing cases).

Immediately after its review of these cases, the court held that a judgment against a transferee under the UFCA was available in the following circumstances:

We hold that a creditor may recover a money judgment from a transferee of a fraudulent conveyance who has knowingly accepted the property with an intent to assist the debtor in evading the creditor and has placed the property beyond the creditor's reach.<sup>16</sup>

Any potential uncertainty in this holding's application to the UFTA was settled by *Park Hill Corp. v. Sharp*, 60 Wn. App. 283, 803 P.2d 326 (1991), where the court held that a judgment against the transferee of a constructively fraudulent transfer is unavailable under the UFTA when the transferees "had no actual intent to defraud, hinder or delay the creditors." *Id.* at 288. *Park Hill* also noted that the *DeYong* requirement survived the passage of the UFTA and specifically stated that RCW 19.40.081(b) — the provision expressly allowing, with limitations, judgment to be entered against transferees — "acknowledges the remedy set forth in *DeYong*." *Id.* at 287. The *Park Hill* court summarized its holding as follows:

The trial court found that the Chambers children had no actual intent to defraud, hinder or delay the creditors of Mr. and Mrs. Chambers. The Sharps do not assign error to this finding. An unchallenged finding is a verity on appeal. [citation omitted]. Therefore, even if the transfer were fraudulent, the remedy prayed for by the Sharps is unavailable.<sup>17</sup>

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<sup>16</sup> *Id.* at 347.

<sup>17</sup> 60 Wn. App. at 288.

b. Eagle Pacific

A subsequent decision issued by Division Two, *Eagle Pacific Insurance Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 934 P.2d 715 (1997), *aff'd* 135 Wn.2d 894 (1998), contains dicta questioning the holding of *Park Hill*. In *Eagle Pacific*, the trial court entered a personal judgment against a transferee under the UFTA. *Id.* at 701. Division Two reversed on the ground that there was an issue of fact regarding whether the UFTA even applied to the transaction in the first place. *Id.* at 704. After so holding, the court went on to observe that judgments are available against transferees under the express language of RCW 19.40.081(b), despite contrary holdings of *DeYong* and *Park Hill*. *Id.* at 705. But, because this issue was not necessary to the decision to reverse, it is dicta only. This Court affirmed the Court of Appeals in *Eagle Pacific*, but the issue of the availability of a judgment against a transferee was not reviewed. 135 Wn.2d 894 (1998).

The *Eagle Pacific* court also, correctly, recognized that while the plain language of the UFTA authorizes judgment against a transferee, the extent of such judgments is expressly limited by that same statutory language. *Id.* at 705 (noting that RCW 18.40.081(b) limits creditor's judgment remedy to lesser of amount of creditor's claim or value of asset transferred).

c. Division One's Opinion in This Case

In the present case, Division One agreed with the dicta in *Eagle Pacific* and concluded that "[w]e disagree with Division Three's conclusion

in *Park Hill*. Even in the absence of intent to defraud, the plain language of RCW 19.40.081(b)(1) authorizes judgment against the transferee.”

Decision at 7. Courts in other jurisdictions have recognized the split of authority in our Court of Appeals. See *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) (“In light of these split authorities, and because the Supreme Court of Washington has not interpreted the provision of the UFTA at issue in the instant case, we must make an “*Erie* guess” as to how Washington would interpret the provision at issue”); *Herup v. First Boston Financial LLC*, 162 P.3d 870, 875 (Nev. 2007) (noting split).

Although Division One based its refusal to apply the holding of *Park Hill* on the plain language of the UFTA, it simultaneously refused to apply the statute’s plain language when it held the Hansons were not entitled to a judgment offset in the amount of value they provided for the transfer. Either *Park Hill* contains the correct statement of the law, in which case the Hansons are entitled to a judgment in their favor as a matter of law, or Division One is correct and the statutory language controls, in which case the Hansons are entitled to a judgment offset as provided by the plain language of the statute.

d. If *Park Hill* is Overruled, This Court Should Reverse Division One’s Misapplication of the UFTA’s Judgment Offset Provision

The Court of Appeals correctly concluded that the Hansons gave “value” to the Corporation in the amount of \$330,000 in debt relief, because the UFTA defines “value” as including the satisfaction of antecedent debt.<sup>18</sup>

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<sup>18</sup> Decision at fn.4 (“We reject the Thompsons’ assertion that the Hansons gave no value. The UFTA clearly defines “value” to include satisfaction of debt”).

The misapprehension in the Court of Appeal's analysis of the UFTA's judgment offset provision, however, lies in its statement that the trial court had already reduced the value of the asset the Hansons received "by the amount of the debt they assumed" thus resulting in a unwarranted "second offset of \$325,000" if the plain language of the judgment offset provision was followed. Opinion at p. 15. This is incorrect and misconstrues the statute in a manner that essentially reads the judgment offset provision out of the statute.

Because the Thompsons' claim of \$89,129 is less than the value of the asset transferred, the value of the asset transferred has no bearing on the amount of the judgment the Thompsons are entitled to, and no impact on the availability of an offset. The statute states that judgment can be entered up to the value of the asset transferred, or the amount necessary to satisfy the creditor's claim, *whichever is less*. RCW 19.40.081(b).

The UFTA defines "asset" as property of a debtor (in this case the Corporation), but does not include "property to the extent it is encumbered by a valid lien." RCW 19.40.011. Thus, the "asset" transferred from the Corporation to the Hansons was simply the equity in Lots 66 and 68 above and beyond the monetary liens encumbering the property, if any. One can value this asset in several ways, but each way leads to a valuation that *is greater* than the amount of the Thompsons' claim. Thus, one can view the value of the asset transferred at \$465,000 assuming that, at the moment of transfer, the lots were free of all pre-existing liens and new liens only encumbered the property at the moment the Hansons came into title.

Alternatively, one can reduce this value by the amount of the encumbrances on only one lot because the refinance of the remaining lot actually did not close until some months after the transfer.<sup>19</sup> This would result in a valuation of approximately \$300,000. Finally, one can value the asset transferred as the trial court and Court of Appeals did, i.e., by looking at the value of the equity received by Hansons *after they took on the new loans encumbering the property*. Under this latter valuation, the value of the asset transferred is approximately \$100,000.

In any event, each of these values exceeds the amount of the Thompsons' claim of \$89,129. Thus, contrary to Division One's analysis, the trial court did not give the Hansons any offset whatsoever in arriving at the amount of the Thompsons' judgment. The trial court's calculation of the value of the asset transferred has no bearing on the amount of the judgment the Thompsons are entitled to because under any valuation methodology, the value of their claim is less than the value of the asset transferred.

Once the amount of the judgment available to the Thompsons is set by the amount of their claim, the ultimate "liability on the judgment" is reduced by the amount of value given by the Hansons to the Corporation. Here, that value (\$330,000) exceeds the value of the Thompsons' claim (\$89,129). As the statute plainly states, the Hansons are "entitled" to this reduction in liability:

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<sup>19</sup> Ex. 4.

**19.40.081. Defenses, liability, and protection of transferee.**

\* \* \* \* \*

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

- (1) The first transferee of the asset or the person for whose benefit the transfer was made.

\* \* \* \* \*

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

\* \* \* \* \*

- (3) A reduction in the amount of liability on the judgment.<sup>20</sup>

A transfer can violate the UFTA's constructive fraud provisions even if the creditor's claim does not arise until up to four years *after* the transfer. See RCW 19.40.041(a) (transfer can be constructively fraudulent even as to creditors whose claim arose after date of transfer); RCW 19.40.091 (claims under RCW 19.40.041(a)(2) extinguished four years after transfer). To ameliorate the potential unfairness of this result, RCW 19.40.081 provides for the "protection of transferee" and places the foregoing limits on the amount of the judgment that may be entered against

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<sup>20</sup> RCW 19.40.081 (emphasis added).

a transferee who had no actual intent to defraud the creditor, and who gave actual value for the transfer.

Division One's construction of the judgment offset provision essentially deletes the provision from the statute. Because the value of an asset is always determined based upon its equity above liens, courts attempting to apply Division One's decision below will simply hold that the transferee's right to offset is already included as a matter of law in the calculation of the value of the asset, so no need for further offset exists. This has the effect of reading the offset provision completely out of the statute.

The trial court found that the transfer from the Corporation to the Hansons was not made with the intent to defraud the Thompsons. This finding is correct, borne out by the evidence, and a verity on appeal. The idea that Mr. Hanson would personally take on \$365,000 in new debt to hinder or delay the Thompsons out of collecting on a \$10,000 construction deposit claim reduced to judgment over three years later is outlandish and economically nonsensical, especially when the Corporation still had other assets after the transfer for the Thompsons to reach. Because there was no actual intent to defraud, and the Hansons undeniably gave value for the transfer, they are entitled to offset the value they gave to the Corporation against any judgment entered against them.

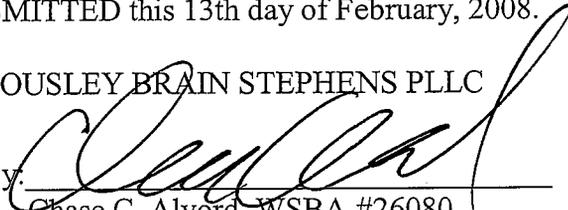
**F. CONCLUSION**

The Court should accept review to resolve the split of authority among different divisions of the Court of Appeals. As things stand now,

trial courts whose orders are appealed to Division Three will feel bound to follow *Park Hill*, while other trial courts may not, resulting in the danger of inconsistent results for litigants in this state. If *Park Hill* is upheld, the Hansons are entitled to a reversal of the judgment below. If *Park Hill* is overruled, the Hansons, and all future litigants in this State, are entitled to the benefit of having the UFTA's judgment offset provision applied according to its plain language, and not according to Division One's erroneous interpretation.

RESPECTFULLY SUBMITTED this 13th day of February, 2008.

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By: 

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**APPENDIX TO PETITION FOR REVIEW**

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ORIGINAL

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1. Published Opinion and Order Denying Motion for Reconsideration  
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# **APPENDIX 1**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

Heather and Chad Thompson,	)	No. 58577-1-1
	)	
Respondents,	)	
	)	
v.	)	PUBLISHED OPINION
	)	
Paul and Jeannine Hanson,	)	
	)	
Appellants.	)	
_____	)	FILED: <u>December 3, 2007</u>
—	)	

Schindler, A.C.J. — Paul and Jeannine Hanson (the Hansons) appeal the trial court's determination that they are personally liable for the judgment Heather and Chad Thompson (the Thompsons) obtained against the Hansons' construction company, Paul V. Hanson, Inc. (PVH). Before the Thompsons filed their breach of contract lawsuit against PVH, PVH transferred property it owned to the Hansons. After obtaining a judgment against PVH for breach of the purchase and sale agreement, the Thompsons sued the Hansons under the Uniform Fraudulent Transfer Act, chapter 19.40 RCW (UFTA), for the value of the property that was transferred. Following trial, the court ruled the Thompsons proved constructive fraud and that Paul

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and Jeannine Hanson were liable for the judgment against PVH to the extent of the equity they received from the transfer. We affirm the trial court's decision and the judgment against Paul and Jeannine Hanson.

#### FACTS

Paul Hanson is the sole shareholder and president of a construction company, Paul V. Hanson, Inc. (PVH). In March 1999, Heather and Chad Thompson entered into a purchase and sale agreement with PVH and agreed to provide a construction retainer of \$10,000 to build a house on a lot PVH had an option to buy, Lot 62. On June 5, 2000, after multiple addenda to the purchase and sale agreement and a number of other delays, the parties agreed to a purchase price of \$208,490. On July 31, 2000, the Thompsons signed the closing documents to buy the house. PVH refused to sign the closing documents and demanded additional compensation.

On September 13, 2000, PVH transferred Lots 66 and 68 to Paul Hanson and his spouse Jeannine to facilitate obtaining refinancing construction loans for the two lots. In exchange for the transfer, the Hansons assumed \$325,000 in construction loan debt on the two lots. In October 2000, PVH sold the home it built for the Thompsons on Lot 62 to another buyer for \$235,500.

In May 2001, the Thompsons sued PVH and the Hansons for breach of the purchase and sale agreement. At the conclusion of trial, the court found PVH breached the purchase and sale agreement by refusing to sign the closing documents on July 31, 2000. The court entered judgment against PVH for the construction

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retainer and breach of contract damages. With prejudgment interest and attorney fees, the judgment against PVH was \$68,598.60.<sup>1</sup>

In March 2004, the Thompsons sued the Hansons individually and on behalf of their marital community under the Uniform Fraudulent Transfer Act, chapter 19.40 RCW (UFTA). The Thompsons sought a declaratory judgment allowing attachment and foreclosure against the two lots, or, in the alternative, a judgment against the Hansons for the value of the two lots PVH transferred to them.

At trial, the Hansons stipulated that the lots PVH transferred to them, Lots 66 and 68, were worth \$465,000 and that the Hansons assumed \$325,000 in debt. The court ruled the Thompsons did not carry their burden of proving actual intent to defraud under the UFTA. But based on the evidence that PVH did not receive reasonably equivalent value for Lots 66 and 68, and that the company's remaining assets were unreasonably small in relation to the business, the court concluded the Hansons were liable for constructive fraud under the UFTA to the extent of the \$100,000 in equity that they received. The court entered judgment against the Hansons for \$89,129.41, the outstanding amount PVH owed the Thompsons. The Hansons appeal.

### **ANALYSIS**

The Hansons contend the trial court erred in entering judgment against them

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<sup>1</sup> Although the Thompsons sued the Hansons individually and on behalf of their marital community, the trial court's findings do not address their liability and judgment was not entered against them.

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under the UFTA because (1) the Thompsons did not prove intent to defraud; (2) the court improperly admitted evidence related to the remaining assets of PVH after the transfer; (3) the Thompsons did not establish that PVH did not receive reasonably equivalent value in exchange for the transfer and that the company's remaining unencumbered assets were unreasonably small in relation to the business; (4) the Hansons were entitled to an offset against the judgment; and (5) the court impermissibly shifted the burden of proof and required the Hansons to justify the transfers.

#### Standard of Review

This court reviews the trial court's decision following a bench trial to determine whether the findings are supported by substantial evidence and whether those findings support the conclusions of law. Dorsey v. King County, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true.

Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). An appellate court defers to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. Burnside v. Simpson Paper Co., 123 Wn.2d 93, 108, 864 P.2d 937 (1994); Boeing Co. v. Heidy, 147 Wn.2d 78, 87, 51 P.3d 793 (2002). In determining the sufficiency of evidence, an appellate court need only consider evidence favorable to the prevailing party. Bland v. Mentor, 63 Wn.2d 150, 155, 385

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P.2d 727 (1963).

Questions of law are reviewed de novo. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879-880, 73 P.3d 369 (2003). Statutory interpretation is a question of law. Western Telepage, Inc. v. City of Tacoma, 140 Wn.2d 599, 607, 998 P.2d 884 (2000). "The primary goal of statutory construction is to carry out legislative intent."

Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001).

Legislative intent is determined primarily from the statutory language, viewed "in the context of the overall legislative scheme." Collection Servs. v. McConnachie, 106

Wn. App. 738, 741, 24 P.3d 1112 (2001). Unambiguous statutory language is accorded its plain meaning. Davis v. Dep't of Licensing, 137 Wn.2d 957, 964, 977

P.2d 554 (1999). Each provision of a statute should also be read together with other provisions to achieve a harmonious and unified statutory scheme. In re Estate of Kerr, 134 Wn.2d 328, 336, 949 P.2d 810 (1998). "[T]he legislature is presumed to know the existing state of the case law in those areas in which it is legislating."

Woodson v. State, 95 Wn.2d 257, 262, 623 P.2d 683 (1980). A court should avoid an absurd result when interpreting statutes. See Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 802, 808 P.2d 746 (1991).

#### Constructive Fraud

Relying on Deyong Management, Ltd. v. Previs, 47 Wn. App. 341, 735 P.2d 79 (1987), and Park Hill Corp. v. Sharp, 60 Wn. App. 283, 803 P.2d 326 (1991), the Hansons contend that the trial court erred in concluding they were personally liable

under the UFTA. The court found that the Thompsons did not prove “[a]ctual intent to defraud . . . by clear and satisfactory proof[.]” under the UFTA. But based on the determination that the Thompsons proved the transfer of Lots 66 and 68 was constructive fraud, the court concluded the Thompsons were entitled to judgment against the Hansons under RCW 19.40.081 to the extent of the \$100,000 in equity that they received from the transfer.

In 1987, the legislature repealed the Uniform Fraudulent Conveyances Act (UFCA) and enacted the UFTA, chapter 19.40 RCW, based on the model Uniform Fraudulent Transfer Act 7A U.L.A. 2 (1987). Under both the UFCA and the UFTA, actual or constructively fraudulent transfers are voidable. But the UFTA expressly allows for a judgment against a transferee for the value of the assets transferred absent proof that the transferee acted in good faith and gave reasonably equivalent value. Uniform Fraudulent Transfer Act, 7A U.L.A. 6 (1984).

RCW 19.40.081 of the UFTA addresses the liability and defenses of transferees. RC 19.40.081 provides in pertinent part:

(a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made . . . .

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

The Hansons' reliance on Deyong to argue that the UFTA requires proof of actual intent to defraud is unpersuasive. Deyong was decided under the superseded UFCA, which did not address obtaining a judgment against a transferee. In Deyong, a debtor concealed assets by transferring them to his parents. The court awarded judgment against the parents as transferees. While the court in Deyong noted that the UFCA did not address awarding a judgment against a transferee, the court held that it was "equitable" to do so, but only if the transferee "knowingly accepted the property with an intent to assist the debtor in evading the creditor and has placed the property beyond the creditor's reach." 47 Wn. App. at 347.

The Hansons also rely on Park Hill to argue that even after the UFTA replaced the UFCA, proof of the intent to defraud is required. In Park Hill, despite the plain language of RCW 19.40.081(b)(1), without analysis, Division Three held that the Deyong decision controlled and absent proof of an intent to defraud, transferees could not be held personally liable. In Park Hill, the guarantor assigned certain annual lease payments to her children. The lessor's assignee sued the guarantor and her children for the payments. The court held that under either the UFCA or the UFTA, a judgment against the transferee children was "unavailable" because there was no proof of actual intent to defraud creditors. 60 Wn. App. at 288. According to the

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court, the UFTA merely “acknowledges the remedy set forth in Deyong . . .” Deyong, 60 Wn. App. at 288.

We disagree with Division Three’s conclusion in Park Hill. Even in the absence of intent to defraud, the plain language of RCW 19.40.081(b)(1) authorizes judgment against the transferee. The official comments to the model UFTA also note that a constructively fraudulent transfer must be determined “without regard to the actual intent of the parties . . .” Uniform Fraudulent Transfer Act, 7A U.L.A. 5 (1984).

We agree with the analysis of Division Two in Eagle Pacific Insurance Co. v. Christensen Motor Yacht Corp., 85 Wn. App. 695, 934 P.2d 715 (1997). In Eagle Pacific, Division Two squarely addressed whether proof of intent to defraud is required under the plain language of the UFTA. In Eagle Pacific, the debtor corporation transferred assets and security interests to its president and sole shareholder, David Christensen, and to the other companies Christensen owned. The trial court entered a judgment against Christensen and the other companies as transferees under the UFTA. On appeal, Division Two held that the UFTA expressly authorizes judgment against a transferee without proof of intent to defraud, but remanded to determine whether there were any unencumbered assets subject to the UFTA. The court in Eagle Pacific rejected the conclusion reached by Division Three in Park Hill because “the plain language of the UFTA permits entry of judgment even in the absence of the Deyong requirements, and . . . Park Hill should not be applied to impose those requirements.” Eagle Pacific, 85 Wn. App. at 705.

Because the plain language of the UFTA does not require proof of a transferee's intent, we conclude the trial court did not err in entering judgment against the Hansons under RCW 19.40.081(b)(1).

#### Post-Transfer Evidence

The Hansons argue that the trial court abused its discretion in admitting evidence that the company's remaining assets were either foreclosed on or sold at a loss after PVH transferred Lots 66 and 68 to the Hansons in September 2000.<sup>2</sup>

A trial court's evidentiary rulings are reviewed for abuse of discretion. State v. Finch, 137 Wn.2d 792, 810, 975 P.2d 967 (1999). A trial court abuses its discretion only when its decision is manifestly unreasonable or based on untenable grounds. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Relevant evidence has some tendency to make a fact at issue more or less probable. ER 401. Relevant evidence is excluded if its probative value is substantially outweighed by prejudice. ER 403.

Under the UFTA, the trial court must determine whether "the debtor made the transfer . . . [w]ithout receiving a reasonably equivalent value in exchange for the transfer . . . and the debtor [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction . . . ." RCW 19.40.041(a)(2)(i). Consistent with

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<sup>2</sup> The Hansons apparently do not give credence to their own argument, as they use post-transfer evidence also. See, e.g., Appellants' Brief at 24-25 ("in fact, the lot sold one month later for this price"; "the Corporation's ultimate profit . . . was approximately \$30,000").

the plain language of the statute, we conclude that the later disposition of PVH's remaining assets provides relevant circumstantial evidence of the value of the company's assets at the time of the transfers. See Chase v. City of Tacoma, 23 Wn. App. 12, 19, 594 P.2d 942 (1979).

Other courts also agree that in determining whether assets are unreasonably small, evidence of the value of the assets after the date of transfer is admissible. In In re Jackson, 459 F.3d 117 (1st Cir. 2006), the First Circuit held that a bankruptcy court's "conclusion [that the debtor's assets were unreasonably small] is borne out by the evidence of how the debtor attempted to pay his business debts and living expenses after the transfer of the majority of his income-generating properties to the defendant." In re Jackson, 459 F.3d at 125. In In re Mama D'Angelo, Inc., 55 F.3d 552 (10th Cir. 1995), the Tenth Circuit concluded that courts "may consider information originating subsequent to the transfer date if it tends to shed light on a fair and accurate assessment of the asset . . . ." In re Mama D'Angelo, 55 F.3d at 556.

In the alternative, the Hansons argue that if evidence of the later disposition of assets is admissible, then the court erred in not considering the evidence that the Hansons only recovered \$24,000 from the transferred properties and limiting their liability to that amount.<sup>3</sup> But because the parties stipulated that the value of the transferred properties was \$465,000 and the amount of debt was \$325,000, the Hansons' argument fails.

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<sup>3</sup> The Hansons report that one property was foreclosed, yielding them no gain, and the other yielded approximately \$24,000.

We conclude the trial court's admission of evidence concerning the disposition of the company's assets after the September 2000 transfers was not an abuse of discretion.

Unreasonably Small Assets

The Hansons challenge the trial court's conclusion that PVH transferred lots 66 and 68 to them "at a time when its remaining unencumbered assets were unreasonably small in relation to the business . . . and did not receive a reasonably equivalent value in exchange for that transfer."

Under RCW 19.40.041, a transfer is constructively fraudulent if the debtor makes a transfer without receiving reasonably equivalent value and the company's remaining assets are unreasonably small in relation to the business. RCW 19.40.041 provides in pertinent part:

- (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
  - (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
  - (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
    - (i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
    - (ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

The Hansons do not dispute that reasonably equivalent value was not given.

But the Hansons assert that because PVH was able to continue to conduct some business, substantial evidence does not support the court's finding that PVH's remaining assets were unreasonably small. We disagree. Because virtually all of PVH's remaining assets were foreclosed on shortly after the transfer of Lots 66 and 68, substantial evidence supports the trial court's conclusion that PVH had unreasonably small assets in relation to its business.

Under the UFTA, "[a]sset" means property of a debtor, but the term does not include: (i) [p]roperty to the extent it is encumbered by a valid lien . . . ." RCW 19.40.011(2). Foreclosure, or sale of an asset for no net profit, means the asset was fully encumbered and therefore not an "asset" for purpose of the UFTA. The UFTA does not define "unreasonably small." Because an explicit purpose of the UFTA is uniformity among the States that have adopted it, the interpretation of other courts also provides guidance. RCW 19.40.903; Sedwick v. Gwinn, 73 Wn. App. 879, 887 n.8, 873 P.2d 528 (1994).

In In re Jackson, the First Circuit held that evidence of the debtor's ability to generate enough cash from the business and remain financially stable is relevant evidence that the transfer left the debtor with remaining assets that were unreasonably small. In re Jackson, 459 F.3d at 123-124. And in Tiger v. Anderson, 976 P.2d 308, 310 (Colo. Ct. App. 1998), the court held that a debtor's "exposure to liability [that is] far in excess of" his net worth supports finding unreasonably small remaining assets. Tiger, 976 P.2d at 310.

Here, Paul Hanson was the only witness who testified about the assets and debts of PVH at the time of the transfer in September 2000. Hanson testified that, except for a \$30,000 profit on a construction contract and approximately \$15,000 in profits that PVH received for the sale of the house on Lot 62, all of the property PVH owned was foreclosed or sold for no profit. In September 2001, twenty lots were foreclosed and a remaining lot, Lot 69, was later sold for no net profit. In addition, in 2002, the property PVH owned in Kirkland was lost to foreclosure. Hanson also testified that the company's other assets were either lost to liens or donated to charity.

Substantial evidence supports the trial court's finding that PVH faced financial difficulties likely to lead to insolvency and the company's assets were unreasonably small. The trial court did not err in concluding the Hansons were liable under RCW 19.40.041(a)(2).

#### Judgment Offset

Next, the Hansons claim that under RCW 19.40.081(d)(3), they are entitled to an "offset" to the judgment in the amount of the "value" they gave PVH by assuming \$325,000 in construction debt.<sup>4</sup>

PVH stipulated that the transferred properties were worth \$465,000. And the parties do not dispute that the Hansons assumed \$325,000 of PVH's debt. In

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<sup>4</sup> We reject the Thompsons' assertion that the Hansons gave no value. The UFTA clearly defines "value" to include satisfaction of debt. "Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied . . . ." RCW 19.40.031(a) (emphasis added).

calculating the value the Hansons received, the trial court reduced it by the amount of the debt they assumed and concluded that “the amount of up to \$100,000, representing the value received by defendants above the liability incurred as a result of the transfer of the properties at issue in this case[ ] shall be subject to plaintiffs['] claims for damages.”

Relying on a literal interpretation of the language in RCW 19.40.081(d)(3) stating that a good-faith transferee is entitled to a reduction in the amount of the liability to the extent of the value given, the Hansons argue the trial court erred in not reducing the judgment amount by \$325,000. RCW 19.40.081 provides in pertinent part:

Defenses, liability, and protection of transferee

...  
(b) [T]o the extent a transfer is voidable in an action by a creditor under [this chapter], the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. ...

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith<sup>5</sup> transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) A lien on or a right to retain any interest in the asset

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<sup>5</sup> The Thompsons do not challenge the Hansons' claim to good-faith transferee status based on lack of proof of intent to defraud. The UFTA does not define good faith, but official comments to the model act state that “[k]nowledge of the facts rendering the transfer voidable would be inconsistent with the good faith that is required of a protected transferee.” Uniform Fraudulent Transfer Act, 7A U.L.A. § 8. Here, we do not address good faith because the judgment against the Hansons is less than the value of the property with or without the offset.

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transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

RCW 19.40.081.

While the UFTA contains no legislative findings, the prefatory note to the model UFTA states that the purpose of the provisions in RCW 19.40.081 is to “prescribe[] the measure of liability of a transferee or obligee under the Act and enumerate[] defenses.” Uniform Fraudulent Transfer Act, 7A U.L.A. 6 (1984) (emphasis added). The prefatory note further explains that “[a] good faith transferee or obligee who has given less than a reasonable equivalent is nevertheless allowed a reduction in a liability to the extent of the value given.” Id. (emphasis added). These comments clarify that the purpose of RCW 19.40.081(d)(3) is to reduce the transferee’s exposure to liability by the amount of value given and not to simply subtract the value given in calculating the judgment amount.

Here, the trial court reduced the Hansons’ liability “to the extent of the value given” — the \$325,000 in construction debt that the Hansons assumed. The Hansons’ demand for another “offset” in the same amount would result in deducting the amount of value given twice. Such a result is contrary to the statutory purpose and would eviscerate the intent of the UFTA. While the statute is not a model of clarity, “[t]he purpose of an enactment should prevail over express but inept wording.” Whatcom, 128 Wn.2d 527, 546, 909 P.2d 1303 (1996). The statute expressly limits liability to the value received. Here, there is no dispute that the properties were worth

\$465,000, that the Hansons assumed \$325,000 in construction debt and that the Hansons received \$100,000 in equity after the transfer. The intent of the UFTA is not to grant the Hansons a second "offset" of \$325,000.

The Hansons' interpretation of the UFTA is also inconsistent with the structure of the statute. RCW 19.40.081 protects a transferee's legitimate interest in the transferred property. Transferees are liable only for the amount they receive, which is determined based on the value received minus the value given. Subsection (b) limits liability to the value of the property received, and subsection (d) further limits liability to the net value received. Subsection (c) also requires the value to be determined at the time of transfer and subject to equity. We conclude the trial court's interpretation and application of RCW 19.40.081 correctly effectuated the intent of the statute.

#### Burden of Proof

Relying on finding of fact 7, the Hansons also argue that the trial court erred in placing the burden of proof on them to justify the transfers.<sup>6</sup> Finding of fact 7 states:

On September 13, 2000, ostensibly to facilitate the refinance of Lots 66 and 68 from construction financing to permanent financing, the Corporation conveyed Lots 66 and 68 to defendants. While testimony was given that this conveyance would result in a somewhat more favorable rate of interest on the loan, this conveyance was not of significant financial benefit to the Corporation. There was not sufficient evidence presented that this conveyance was necessary for the Corporation to refinance the two properties.

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<sup>6</sup> The Thompsons interpret this assignment of error as related to the conclusion that reasonably equivalent value was not given, but that conclusion was not challenged.

But contrary to the Hansons' argument, the court's conclusions of law clearly indicate that the burden was on the Thompsons to prove the transfers were fraudulent. In conclusion of law 2 the court holds that because "[a]ctual intent to defraud has not been demonstrated by clear and satisfactory proof[.]" the Thompsons did not carry their burden to show actual fraud. And, in conclusion of law 3 the trial court states that "[t]here is substantial evidence that the Corporation . . . transferred property to defendants and did not receive a reasonably equivalent value in exchange for that transfer." The trial court's findings of fact and conclusions of law clearly indicate the Thompsons had the burden to prove the transfers were constructively fraudulent under the UFTA.

We affirm the trial court's decision that the Hansons violated the UFTA and entry of judgment against the Hansons for \$89,129.41.

Schindler, ACS

WE CONCUR:

Edenfor, J

Baker, J

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

HEATHER AND CHAD THOMPSON, )

Respondents, )

v. )

PAUL AND JEANNINE HANSON, )

Appellants. )

No. 58577-1-1

ORDER DENYING MOTION FOR  
RECONSIDERATION

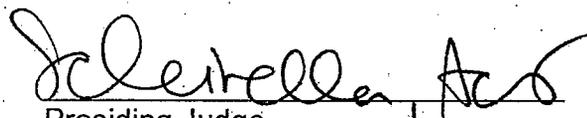
Appellants, Paul and Jeannine Hanson filed a motion for reconsideration of the opinion filed December 3, 2007. A majority of the panel has determined this motion should be denied.

Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

DATED this 14<sup>th</sup> day of January 2008.

FOR THE PANEL:

  
Presiding Judge

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STATE OF WASHINGTON  
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# **APPENDIX 2**

## Chapter 19.40 RCW Uniform fraudulent transfer act

### Chapter Listing

#### **RCW Sections**

- 19.40.011 Definitions.
- 19.40.021 Insolvency.
- 19.40.031 Value.
- 19.40.041 Transfers fraudulent as to present and future creditors.
- 19.40.051 Transfers fraudulent as to present creditors.
- 19.40.061 When transfer is made or obligation is incurred.
- 19.40.071 Remedies of creditors.
- 19.40.081 Defenses, liability, and protection of transferee.
- 19.40.091 Extinguishment of cause of action.
- 19.40.900 Short title.
- 19.40.901 Captions not law.
- 19.40.902 Supplementary provisions.
- 19.40.903 Uniformity of application and construction.

#### **Notes:**

Assignment for benefit of creditors: Chapter 7.08 RCW.

Conveyances of property to qualify for public assistance: RCW 74.08.331 through 74.08.338.

Disposal of property to defraud creditors, etc.: RCW 9.45.080 through 9.45.100.

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#### **19.40.011 Definitions.**

As used in this chapter:

(1) "Affiliate" means:

(i) A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities;

(A) As a fiduciary or agent without sole discretionary power to vote the securities; or

(B) Solely to secure a debt, if the person has not exercised the power to vote;

(ii) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(A) As a fiduciary or agent without sole power to vote the securities; or

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

- (i) Property to the extent it is encumbered by a valid lien; or
- (ii) Property to the extent it is generally exempt under nonbankruptcy law.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(i) If the debtor is an individual:

- (A) A relative of the debtor or of a general partner of the debtor;
- (B) A partnership in which the debtor is a general partner;
- (C) A general partner in a partnership described in subsection (7)(i)(B) of this section; or
- (D) A corporation of which the debtor is a director, officer, or person in control;

(ii) If the debtor is a corporation:

- (A) A director of the debtor;
- (B) An officer of the debtor;
- (C) A person in control of the debtor;
- (D) A partnership in which the debtor is a general partner;
- (E) A general partner in a partnership described in subsection (7)(ii)(D) of this section; or
- (F) A relative of a general partner, director, officer, or person in control of the debtor;

(iii) If the debtor is a partnership:

- (A) A general partner in the debtor;
- (B) A relative of a general partner in, or a general partner of, or a person in control of the debtor;
- (C) Another partnership in which the debtor is a general partner;
- (D) A general partner in a partnership described in subsection (7)(iii)(C) of this section; or
- (E) A person in control of the debtor;

(iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) A managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental

subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

[1987 c 444 § 1.]

**Notes:**

**Effective date -- 1987 c 444:** "This act shall take effect July 1, 1988." [1987 c 444 § 16.]

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**19.40.021  
Insolvency.**

(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

[1987 c 444 § 2.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.031  
Value.**

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of RCW 19.40.041(a)(2) and 19.40.051, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to

be contemporaneous and is in fact substantially contemporaneous.

[1987 c 444 § 3.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.041**

**Transfers fraudulent as to present and future creditors.**

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

[1987 c 444 § 4.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.051**

**Transfers fraudulent as to present creditors.**

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

[1987 c 444 § 5.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.061**

**When transfer is made or obligation is incurred.**

For the purposes of this chapter:

(1) A transfer is made:

(i) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred;

(5) An obligation is incurred:

(i) If oral, when it becomes effective between the parties; or

(ii) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

[1987 c 444 § 6.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.071**

**Remedies of creditors.**

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RCW 19.40.081, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 6.25 RCW;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

[2000 c 171 § 54; 1987 c 444 § 7.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.081**

**Defenses, liability, and protection of transferee.**

(a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under RCW 19.40.041(a)(2) or 19.40.051 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9A of Title 62A RCW (62A.9A).

(f) A transfer is not voidable under RCW 19.40.051(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

[2001 c 32 § 1; 1987 c 444 § 8.]

**Notes:**

**Effective date -- 2001 c 32:** See note following RCW 62A.9A-102.

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.091**

**Extinguishment of cause of action.**

A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(a) Under RCW 19.40.041(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under RCW 19.40.041(a)(2) or 19.40.051(a), within four years after the transfer was made or the obligation was incurred; or

(c) Under RCW 19.40.051(b), within one year after the transfer was made or the obligation was incurred.

[1987 c 444 § 9.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.900**

**Short title.**

This chapter may be cited as the uniform fraudulent transfer act.

[1987 c 444 § 12.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.901**

**Captions not law.**

Section headings as used in this chapter do not constitute any part of the law.

[1987 c 444 § 13.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.902**

**Supplementary provisions.**

Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

[1987 c 444 § 10.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.

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**19.40.903**

**Uniformity of application and construction.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

[1987 c 444 § 11.]

**Notes:**

**Effective date -- 1987 c 444:** See note following RCW 19.40.011.