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DIVISION II
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STATE OF WASHINGTON
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NO. 46235-4-II

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

SHELCON CONSTRUCTION GROUP, LLC,
a Washington Corporation,

Respondent/Plaintiff

v.

SCOTT HAYMOND, et al.

Appellants/ Defendants

REPLY BRIEF OF APPELLANT ODENWALDER

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I. ARGUMENT IN REPLY

A. If, as Respondent now concedes, Odenwalder, as Trustee of the Darra Marie Odenwalder Trust is not a party to this case, then how did the trial court divest the trust of its corpus?

On February 5, 2014, Respondent Shelcon obtained and later served an Order on Darra Odenwalder requiring her to show cause before the Superior Court as to “why the court should not void the transfers of (1) Scott M. Haymond’s house and personal residence located at 21218 Island Parkway East, #4 Sumner, Washington 98390....and (2) Scott M. Haymond’s membership interest in the East End Lake Tapps Rod and Gun Club”. It is undisputed that neither Ms. Odenwalder nor the trust were ever named or added as parties to the underlying action. CP 723-724. This was the primary objection made by Ms. Odenwalder at the underlying hearing and the relief obtained in the Court’s order avoiding the respective transfers. CP 203-204. Ms. Odenwalder has a right to a trial on the merits in a case such as this.

Neither the order to show cause, nor any other pleading or memoranda filed in connection with the motion (or thereafter) has provided any legal authority whatsoever for Shelcon or the court to order a non-party to show cause for the relief sought in this matter¹. Simply put,

¹ As a non-party Ms. Odenwalder is subject to subpoena, but not a show cause order.

the court never had jurisdiction over Ms. Odenwalder or the trust in the first place to require her to “show cause” in this matter, let alone grant the relief that was requested. She simply was never a party properly before the court.

Notwithstanding this unorthodox approach to this matter, the court commissioner signed the order to show cause, and thus Ms. Odenwalder did appear, not risking an order of contempt should she not comply with the court’s order. At the show cause hearing, the court granted the relief requested by Shelcon, and voided the transfer of real property owned by the trust as a result of a transfer of sale made originally on May 6, 2006 (a full two years before the parties even entered into a contract with each other on the matter which is the subject matter of this litigation). CP 194-196.

Now, amazingly enough, Respondent argues (for the first time ever) that Ms. Odenwalder had no right to appeal the court’s order because Ms. Odenwalder is not a party to this action. Respondent’s brief page 10. Of course, Respondent never argued this at the trial court level. Respondent cannot have it both ways. If Ms. Odenwalder and the trust are not parties to the action, then the court had no jurisdiction to deprive the trust, without due process, under **Article 1, section 3 of the Washington State Constitution**, of its ownership interest in the property owned by the

trust since 2006. Furthermore, if Ms. Odenwalder and the trust are not *necessary* parties to this action, then why did Respondent order Odenwalder to appear and show cause why relief sought by the Respondent should not be granted?

Respondent cites **RAP 3.1** for the contention Odenwalder's appeal of the trial court's order was frivolous. RAP 3.1 provides as follows:

"RULE 3.1. WHO MAY SEEK REVIEW

Only an aggrieved party may seek review by the appellate court"

While Odenwalder vigorously argued (and was permitted to argue by the trial court), that the trust was not a party and that the court therefore lacked jurisdiction to void property owned by the trust, the court nonetheless granted the relief sought by Respondent, and set aside the transfers. Thus, Odenwalder and the Trust *are* aggrieved parties, at this point, at least until this court reverses the trial court decision by saying that they were not named to the action, and were necessary parties to the grant of relief being appealed by this action. Again, Respondent cannot have it both ways. Appellant's position is not frivolous. Rather, Respondent's disingenuous 'cake and eat it' argument is frivolous. If attorney fees are to be awarded, they should be awarded to Appellant, based on this 'flip flop argument now made by the Respondent.

B. Respondent now admits that it cited absolutely no legal authority to support its position that the property transfer should have been voided by the trial court.

Respondent in its response memorandum now indicates that it did not seek, nor did the court void the transfer of the Haymond Residence into trust based on the Fraudulent Transfers Act, **RCW 19.40**.

Respondent's brief at 14. This is an amazing revelation considering the fact that **RCW 19.40** is literally the only legal authority cited by Respondent in either its underlying motion or in its response brief in support of the relief obtained before the trial court. CP 723-732; CP 1-8; Respondent's Response Brief. If not obtained pursuant to **RCW 19.40**, on what basis did the court have to set aside the transfers?

Respondent now stands before this court having cited absolutely no substantive or procedural legal authority whatsoever to divest a trust of its corpus held since 2006, other than remarks such as "the transfer was faked". Respondent's brief page 13. Again if the trial court did not void the transfer of the residence into the trust under the Fraudulent Transfer's Act, then on what (legal) basis did it void it?

C. Respondent should have added the trust as a party. Trust is not required to add itself to an action to void a transfer of property into it.

Under UFTA a fraudulent transfer is valid until annulled. Associates Housing Finance L.L.C. v. Stredwick, 120 Wash.App. 52, 59, 83 P.3d 1032, 1036 (Wash.App. Div. 3,2004). Ms. Odenwalder had absolutely no affirmative duty to thrust herself into a legal action to prove the trust validly owned property. It cannot be disputed that the residence (personal property) that is the subject of this action was transferred clear back in 2006, before there was even a contractual relationship between the parties. CP 194-196. The property in question was not a subject matter of the underlying matter and therefore the court had absolutely no jurisdiction over the property itself (either). Notwithstanding that fact, the court never obtained any jurisdiction over that property or the trust that owns it. Now, for the first time, Respondent argues that Odenwalder “could have intervened” to become a party. Respondent’s brief, page 11.

Respondent argues that “*Odenwalder seems to presume that a party’s interest in properly joining other parties is greater than an interested party’s interest in becoming a party by intervention*”. Respondent’s brief, page 12. While the Trust did not itself take a position with respect to the possibility of intervention in this matter in any of its prior briefing, the fact is that the court rules do, in fact, place a “greater obligation” on a party needing to join another party, over a party wishing to intervene.

COURT RULE 19 provides in pertinent part as follows:

“JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

CR 19 could not be more clear on how this case should have been handled. If Respondent wants to attack a transfer of property belonging to a nonparty, that party clearly must be joined.

CR 24, on the other hand, is clearly an elective rule, allowing a party to intervene either as its own matter of right or permissively, if it so desires.

Respondent’s position that Odenwalder should have chosen to (affirmatively) intervene and subject itself to an action to void property which it owns defiles logic. Respondent cannot pass its responsibility to properly join a non-party owning property to an action in which it wishes to divest that property from the non-party’s ownership.

II. CONCLUSION

For the above reasons, this court should reverse the trial court's order invalidating the transfers to the trust and invalidating the trust itself, and should award attorney fees and costs to Darra Odenwader, as Trustee of the Darra Odenwalder Living Trust, and should remand the matter back to the trial court for further proceedings, if necessary, consistent with its opinion.

Respectfully submitted this 24th day of October, 2014.



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I declare under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Dated this 24 day of October 2014, at Tacoma, Washington.


Susan G. Pierce