

FILED
COURT OF APPEALS
DIVISION III

2014 OCT 24 PM 1:45

STATE OF WASHINGTON

DEPUTY

NO. 46235-4

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

SHELCON CONSTRUCTION GROUP, LLC, a Washington
Corporation,

Respondent,

vs.

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

Appellants.

SUPERIOR COURT FOR PIERCE COUNTY

HONORABLE FREDERICK W. FLEMING

HAYMOND'S APPELLANT REPLY BRIEF

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I. TABLE OF AUTHORITIES

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INTRODUCTION

Respondent's Shelcon position is simply that Haymond's transfer of property to a trust for his daughter was ineffective until after Shelcon's judgment was entered, and it was therefore void pursuant to RCW 19.40.041. Haymond's position is that the transfer was years earlier when Haymond was fully solvent. No testimony was submitted to support Shelcon's motion to void the transfer.

STATEMENT OF THE CASE

02/20/14 Shelcon files its motion for an order avoiding the transfers to the trust.

03/14/14 Order of trial court entered avoiding transfers to the trust.

04/08/14 Motion for Reconsideration denied.

05/09/14 Notice of Appeal filed.

TIME LINES OF TRANSFERS AND JUDGMENT

04/06/06 Haymond signs bill of sale transferring all of his interest in a club membership and house to the Darra Oldenwalder Living Trust. Darra Oldenwalder is trustee and is sister of Haymond. Haymond's minor daughter is beneficiary (CP 569-576).

11/14/08 Haymond records the bill of sale with the Pierce County Auditor (CP 581-584).

10/28/11 Shelcon obtains judgment in the amount of \$553,849.77 against Haymond.

02/20/14 Shelcon files motion for order avoiding transfers (CP 590-613).

ARGUMENT—WAS THERE EVIDENCE OF FRAUD

Shelcon contends that Haymond's transfer of the house by bill of sale to the trust on 04/04/06 was ineffective and that the Auditor's recording of it on 11/14/08 was also ineffective because the club membership was not approved for transfer to Oldenwalder until 03/12/12, after the judgment of 10/28/11.

Shelcon maintains that Odenwalder's depositions established that the trust was created to hinder or defraud creditors. She simply confirmed that it was to protect his assets for benefit of his minor daughter (CP 23-28).

Shelcon argues that because Haymond continued to live in the house after the transfer the transfer was ineffective. Haymond's teen aged daughter, the trust beneficiary, could not live alone in the house. The house could not be rented and obtain income so Haymond paid some of the expenses (CP 581-584).

WAS TESTIMONY NECESSARY TO ESTABLISH FRAUDULENT INTENT

"Where the debtor denies intent to defraud the issue cannot be conclusively determined by the trier of fact until it has heard testimony and assessed witness credibility." Sedwich v. Gwinn, 73 Wn. App. 879, 873 P.2D 528 (1994).

In this case Shelcon relies on the deposition of the trustee as to the intention of the trustor in creating the trust. A fair interpretation of her answers to slanted questions was an opinion of the purpose of trusts. (CP 23-28).

Testimony was required in this case.

WAS FRAUDULENT INTENT ESTABLISHED PER RCW 19.40.041.

Haymond's excellent financial condition at the time of the transfers was not in dispute. The real estate crash of 2009 et. seq. could not have really been foreseen (CP 581-584).

The eleven factors to determine intent in RCW 19.40.041 are variations on a theme.

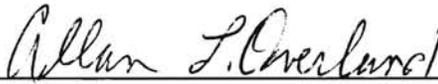
If a debtor was fully solvent and there was no judgment—not even a lawsuit—at the time of transfer there cannot be a finding of fraudulent intent. The trust was simply ordinary estate planning.

THE TRIAL COURT FAILED TO COMPLY WITH TEDRA RCW 11.96A.

CONCLUSION

The court should vacate the trial courts order of March
14,2014.

Respectfully Submitted:



Allan L. Overland WSBA #2648

Attorney for Appellant

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CERTIFICATE OF
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DIVISION II

THIS IS TO CERTIFY that on this 24th day of October,
2014, I did by fax, send true and correct copies of Appellants Scott
Haymond & A-1111 Venture, LLC's Reply Brief to the following:

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