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Supreme Court of Washington Case No. 81311-6  
BY RONALD R. CARPENTER

Court of Appeals Cause No. 5877-1-I  
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**IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON**

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CHAD A. THOMPSON and HEATHER M. THOMPSON,

Plaintiffs/Respondents,

v.

PAUL V. HANSON and JEANNINE HANSON,

Defendants/Petitioners.

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**RESPONDENTS' ANSWER  
IN RESPONSE TO  
PETITIONERS' PETITION FOR REVIEW**

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## **I. INTRODUCTION**

Respondents are Chad Thompson, a single person, and Heather Thompson, a single person. The Thompson's were the Plaintiffs below.<sup>1</sup>

The Petitioners have sought discretionary review of the Court of Appeals decision in *Thompson v. Hanson*, 142Wn.App. 53, 174 P.3d 120, Case No. 58577-1-I, a published opinion filed on December 3, 2007, by Division I of the Court of Appeals. The Court of Appeals denied reconsideration on January 14, 2008.

## **II. ISSUES PRESENTED FOR REVIEW**

1. Is there a true split between Division III and the other Courts of Appeal on the issue of whether a constructively fraudulent transferee is subject to personal liability under the Uniform Fraudulent Transfer Act?<sup>2</sup>

2. Did the Trial Court and the Court of Appeals err in rejecting the Petitioners' argument for a duplicative offset?

3. Did the Petitioners' give value for the assets they received thereby entitling them to an offset?

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1 Henceforth referred to as "Thompsons"

2 Henceforth referred to as "UFTA"

### III. STATEMENT OF THE CASE

The respondents herein, Chad A. Thompson, a single person, and Heather M. Thompson, a single person, filed the action below seeking enforcement of the judgment they received in King County Superior Court Cause No. 01-2-13252-1 KNT against Paul V. Hanson, Inc. That judgment in the amount of \$68,598.60 was entered on December 22, 2003.<sup>3</sup> In the present action the amount of the judgment, together with any accrued statutory interest, was sought to be assessed against the individual defendants herein, Paul V. Hanson and Jeannine Hanson.<sup>4</sup> After hearing the evidence, the trial court in the present action entered a judgment against the Hansons individually in the amount of \$89,121.49 on June 26, 2006.

The lawsuit and the Thompsons' claims in the prior case arose from facts and circumstances arising between April of 1999 and August 2000.<sup>5</sup> The prior lawsuit was a breach of contract action against Hanson Construction, Inc., because the company refused to sell the home the Thompsons had agreed to purchase from the Company for the agreed upon

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3 Ex 2, RP (March 21, 2006), p. 29

4 Henceforth the "Hansons"

5 RP (March 21, 2006), pp. 12-16, 26

price.<sup>6</sup> The Company instead sold the home to another buyer, netting approximately \$14,805.00 from the sale.<sup>7</sup>

In the Spring and Summer of 2000, the Company was collapsing as it was under constant assault from the creditors it could not pay. During the time period pertinent to the present lawsuit i.e., the spring and summer of 2000, Paul V. Hanson, Inc., was clearly insolvent and in a precarious financial position.<sup>8</sup> While the corporation was insolvent the Hansons arranged for the transfer of the last valuable assets of the corporation to themselves for no consideration.

The Trial Court in the present action, in its Findings of Fact and Conclusions of Law, determined that the value of the transferred property, Lots 66 and 68, was, at the time the transfers were recorded with the King County Recorder's Office on September 13, 2000, "*...approximately \$100,000.00 in excess of the corresponding financial undertaking by*

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6 Ex 2, RP (March 21, 2006), pp. 12-18

7 Ex 2, RP (March 21, 2006), p. 74

8 Ex 4, 5 RP (March 21, 2006), p.56-120, 164-166, RP (March 22, 2006), pp. 8-16, 36-42

*respondents.*"<sup>9</sup> (Finding of Fact No. 11 at Page 4.)

All of this valuable equity was transferred without any consideration by an insolvent corporation to the sole shareholder of the corporation and his wife at a time the Company was not paying its creditors.<sup>10</sup>

The UFTA was intended to address situations such as the fact pattern herein. The resolution of this case at trial depended upon a presentation of the financial status of the company on or about September 13, 2000, the date the Deed transferring the two Lots to the Hansons was filed with the King County Recorder's Office.<sup>11</sup>

At the time of the transfer of Lots 66 and 68 to Mr. and Mrs. Hanson, the corporation was insolvent. It was apparently not making payments to any of its creditors in the ordinary course of business.

There were numerous creditors who were pursuing Hanson Construction, Inc., prior to September 13, 2000. The transfer of the two Lots resulted in the Trial Court's conclusion of law that "There is substantial

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9 Finding of Fact No. 11

10 RP (March 21, 2006), pp. 56-120, 164-166

11 Ex 3

evidence that the Corporation, at a time when its remaining unencumbered assets were small in relation to the business transferred property to defendants and did not receive a reasonably equivalent value in exchange for the transfer.” (Conclusion of Law No. 3.)

#### IV. ARGUMENT

A. **Discretionary Review Is Not Appropriate Because of the Claimed Split in the Court of Appeals Is Based upon Division III’s Interpretation of a Superceded Statute.**

The case primarily relied upon by the Petitioners’ to establish a division in the Court of Appeals is *Park Hill Corp v. Sharp*, 60 Wn.App. 283, 803 P.2d 326 (1991). That case was decided pursuant to the Uniform Fraudulent Conveyance Act (henceforth referred to as “UFCA”), the predecessor statute to the statute at issue in this action, the UFTA. Thus, *Park Hill*, supra., has little, if any, applicability to the present case. For the same reason, the Petitioners’ reliance upon *DeYoung Management v. Previs*, 47 Wn.App. 341, is likewise misplaced.

Both *DeYong Management v. Previs*, 47 Wn.App. 341, 735 P.2d 79 (1987), and the case of *Park Hill Corp. v. Sharp*, 60 Wn.App. 283, 803 P.2d 326 (1991), were decided upon facts which occurred before the adoption of

UFTA and thus, they were decided upon the prior law, the UFCA.

The Petitioners' premise that *Park Hill*, supra., demonstrates a split in the Courts of Appeals is based upon unsupported dicta referencing the UFTA which was unfortunately gratuitously added by the court.

The *Park Hill*, supra., court did not discuss whether other equitable remedies or principals would compel a different result in that case. But the Trial Court had based its decision not to impose liability upon the transferees partially because of an extraordinary delay in prosecuting the lawsuit and a lack of diligence by the creditors. *Park Hill*, supra., 60 Wn.App. At 286, 803 P.2d at 328.

The UFTA, unlike the UFCA, specifically allows a court the ability "subject to applicable principles of equity" to award "any other relief the circumstances may require." RCW 19.40.071(a)(3)(iii). Equitable principles supplement the UFTA. RCW 19.40.081(b); RCW 19.40.902.

The Petitioner does acknowledge the holding in *Eagle Pacific Ins. Co. v. Christianson Motor Yacht, Inc.*, 85 Wn.App 695, 934 P.2d 715 (D.W. 2, 1997) aff'd 135 Wn.2d 894 (1998), a case interpreting the UFTA, which held that RCW 19.40.081(b) expressly authorizes the entry of judgment against a constructive transferee who was without intent to defraud, hinder or delay a

creditor, even where the transferred property had been disposed of by the transferee.

RCW 19.40.081(b) reads in pertinent part as follows:

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

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

The Hansons were both the first transferee and the persons for whose benefit the transfer was made. Had Lots 66 and 68 remained titled in the Company at trial the Trial Court would have, pursuant to RCW 19.40.071 (a), had the equitable and statutory power to void the transaction. The Hansons are not saved by their disposal of the property. As the first constructive transferee of fraudulently conveyed property, the Hansons are liable to the value of the transferred property they received, as the Trial Court properly found.

The UFTA, through RCW 19.40.081, has expanded and clarified a creditor’s remedies from those existing under the predecessor UFCA to expressly include the remedy granted to the Thompsons, i.e. a Judgment

against the Hansons, the transferees of the constructively fraudulent property to the value of the fraudulently conveyed property.

In addition to the specific statutory authority for a judgment against the first transferee pursuant to RCW 19.40.081, the UFTA provides the more general remedies of RCW 19.40.071(iii). The UFTA is also supplemented by the common law 19.40.902.

The current UFTA provides in section RCW 19.40.071 a general “catchall” remedy. RCW 19.40.071(3)(iii) allows the court to award “any other relief the circumstances may require.” Interpreting that same “catchall” provision other courts have held that the UFTA does allow a personal judgment against transferees in circumstances without any demonstration of the transferee’s intent. This is an additional reason to uphold the Court of Appeals result in the present case and this issue is so noted pursuant to RAP 13.4 to preserve it if discretionary review is granted..

Thus, additional statutory authority exists to support the Trial Court and the Court of Appeals conclusion in the present case. In *Shoel v. Lehmann*, 56 F.3d 750 (7<sup>th</sup> Cir. 1995) one of America’s most eminent Jurists, Judge Richard Posner of the United States Court of Appeals, Seventh Circuit, emphasized the purpose of the act i.e. to protect creditors from scheming

debtors. The court rejected the arguments of several innocent religious organizations who were the first transferees and who received constructively fraudulent donations. The charitable organizations were ultimately assessed with an in personam judgment. The court commented upon the religious organizations arguments as follows:

The religious corporations have a more direct route to their goal. For they argue that the statute does not authorize a money judgment, but only an order- with which they could not comply, having spent the money- directing the rescission of the transfer. The argument is not persuasive. E.g., *Tcherepnin v. Franz*, 489 F.Supp. 43, 45 (N.D.II1.1980) (interpreting Illinois law); *Spaziano v. Spaziano*, 122 R.I. 518, 410 A2d 113, 115 (1980). If accepted it would cause recipients (not limited to charities) of gifts and other transfers potentially voidable under the fraudulent conveyance statute to spend the money immediately, in an effort (perhaps doomed anyway, cf. *United States v. Ginsburg*, 773 F.2d 798 (7<sup>th</sup> Cir.1985) (embanc) to prevent tracing. The result would be the frustration of the statutory purpose.

*Schoel*, supra., 56 F.3d 750 at 761.

A similar result broadly interpreting the UFTA's "catchall" remedy and allowing in personam judgments as relief was reached in *Hansard Construction v. Rite Aid of Florida, Inc.* 783 So.2d 307 (2001) and in *Proteta v. Lombardo*, 75 Ohio App. 3d 621, 600 N.E. 2d 360, 362 Oh. Ct. App. (1991) see also Bruce Markell, *The Indiana UFTA Introduction*, 28 Ind. L. Rev. At 1223.

The respondents were entitled to a personal judgment against the defendants upon the Trial Court's finding of "constructive" fraud both under RCW 19.40.071(iii) and RCW 19.40.081. The Petitioners contrary claim is based upon the superceded UFCA and dicta from a case, *Park Hill*, supra., interpreting the superceded UFCA.

**B. The Hansons Are Not Entitled to Any Additional Offset Because Either They Gave Nothing of Economic Value to the Corporation in Return for the Lots or, to the Extent That They Did Give Value, the Claimed Offset Was Credited and to Allow Another Offset Would Be Duplicative.**

The Hansons claim that on September 13, 2000, they gave something of value in consideration for receiving Lots 66 and 68. Their argument is contrary to the law and the facts of this case. Nonetheless, the Court of Appeals in the present case determined that value was given by the Hansons but that the Hansons had properly been given credit for the value given. Thus, Respondent respectively disagrees with the Court of Appeals' conclusion in regard to the value received issue. The Respondents raise this issue as required by RAP 13.4 in order to preserve this issue if review is granted. But the Court of Appeals reasoning leads to the same result.

The more intellectually correct view may or may not be that the Hansons gave no value, but the Court of Appeals' conclusion that value was given yields a distinction without a difference between the no value was given and value was given concepts. That is because, if the Hansons gave nothing of value, then what they received was calculated at a net value by the Trial Court, i.e., the stipulated market value of the properties on September 13, 2000, less the mortgage indebtedness assumed. Thus, no additional offset should be given to the Hansons because the value of the asset transferred had already been reduced by crediting the mortgage indebtedness against the actual market value of the property.

The Court of Appeals concluded that the Hansons did give value by assuming the secured indebtedness against the property. The Court of Appeals then offset the value of the assumed indebtedness from the market value of the property leaving the same result as that which would have occurred had the Court of Appeals concluded that the Hansons had not given value for the property received. The equity subject to the Thompsons' lien remains the same. Either route to the same end is consistent with RCW 19.40.081.

Thus, the Hansons claim they are entitled to a duplicative credit

against the judgment, despite already being given a credit for the assumed indebtedness. The Trial Court did, in fact, give credit against the value of the assets transferred by deducting the value of the assumed indebtedness upon the two Lots and limiting the judgment amount to something less than the net value of the transferred assets. This is as RCW 19.40.081(b)(1) and (c) contemplates. The Trial Court properly calculated the actual net economic value of the transferred Lots at the time of transfer and limited the judgment to that amount. Thus, the “value” claimed to be given by the Hansons was, in effect, credited and offset by the Trial Court and by the Court of Appeals. Any further effort to subtract the same mortgage indebtedness a second time, this time from a judgment already diminished once by the claimed and allowed offset, would result in a duplicative windfall to the Hansons and deny economic reality. Such a result would also stretch the facts established below. It should be noted that only one of the Lots, Lot 68, had a loan that was funded on or about September 13, 2000. The other lot, Lot 66, did not have a loan funded until many months later on March 21, 2001. Thus, for Lot 66 not even loan refinancing was given at or near the time of the transfer. The seven month delay in loan funding further undermines Mr. Hanson’s argument that on September 13, 2000, he gave value for the property by

assuming indebtedness. Clearly, he did not as to Lot 66 and any statement to the contrary is a falsehood. The argument is fallacious anyway because either no real value was given for either Lot or, to the extent it was, the Trial Court offset the amount against the judgment as ultimately entered.

The Hansons gave no value because there was no economic utility from the creditor's point of view to justify the transaction. A questioned transaction's validity under the UFTA is to be judged from the creditor's point of view, not the debtor's. *In re, Prejean*, 994 F.2d 706 (9<sup>th</sup> Cir. 1993) interpreting California's version of RCW 19.40.031 (which is Washington's statutory definition of value). It has been held that any consideration not involving utility to the creditors does not meet with the statutory definition of value. *In re, Agricultural Research and Technology Group, Inc.*, 916 F.2d 528 (9<sup>th</sup> Cir. 1990). "Consideration having no utility from a creditor's viewpoint does not satisfy the statutory definition." Official Comment, UFTA, §3.

Courts of equity will follow fraudulently conveyed property into the hands of transferees and subject it to payment of the debtor's/transferor's debt and the transferee is liable to the debtor's/transferor's creditors to the value of the fraudulently conveyed asset. *U.S. v. Brown*, 820 F.Supp. 374 (N.D. Ill.

1993). See also RCW 19.40.081.

The Washington Courts are in accord. It was held in *Clearwater v. Skyline Constr. Co.*, 67 Wn.App. 305, 835 P.2d 257 (1992) review denied, 121 Wn.2d 1005, 848 P.2d 1263 (1993), that consideration having no utility from the viewpoint of the creditor trying to avoid a fraudulent conveyance is not adequate consideration pursuant to the UFTA. In *Clearwater, supra.*, a construction company's President conveyed corporate real property to herself and then paid the corporation's lender who was secured on the property before and after the conveyance. A creditor sought to reach the equity of the conveyed real property. The court held that the corporate President did not give any value for the property despite assuming the corporate indebtedness encumbering the property. The Corporate president made the same argument as the Hansons have made in the present case and the Appellate Court rejected that argument. The corporate President was held personally liable for her fraudulent conveyance. That should be the result in the present case, as well.

The facts of *Clearwater, supra.*, are nearly identical to the facts of the present case. In that case, the appellate court directed entry of a judgment against the transferee construction company owner based upon the finding of

“constructive fraud.” In that case, the owner of a small construction company, while facing the threat of litigation, conveyed a lot owned and entitled in the incorporated construction company to herself, who happened to be the sole shareholder of the corporation. The construction company owner argued that she had paid “reasonably equivalent value” by assuming the indebtedness that the corporation had taken out and secured with the lot and, thus, had not committed fraud under the UFTA. That argument was demolished by the appellate court.

[T]he conveyance was constructively fraudulent under RCW 19.40.041(a)(2)(ii). Panasiuk conveyed the property from Skyline to herself without receiving reasonably equivalent value in return and while believing that Skyline would incur a debt, i.e., a judgment against it, which it would be unable to pay. See RCW 19.40.041(a)(2)(ii). The quitclaim deed recited no consideration, and Panasiuk did not pay any amount to Skyline as consideration for the conveyance. Further, Panasiuk acknowledged that at the time she executed and recorded the deed, she was aware of the Clearwaters’ letter advising of their intention to commence legal action against Skyline. Panasiuk does not dispute these facts, but asserts that Skyline received adequate consideration in return for the conveyance by virtue of her repayment of the promissory note held by her lender. Under the UFTA, “reasonably equivalent value” is required in order to constitute adequate consideration. RCW 19.40.041(a)(2). Furthermore, the 1985 comment to the UFTA states that: “Value” is to be determined in light of the purpose of the act to protect a debtor’s estate from being depleted to the prejudice of the debtor’s unsecured creditors. Consideration having no utility from the creditor’s view point does satisfy

the statutory definition. UFTA 3 comment 7A U.L.A. 650 (1984). Panasiuk's repayment of the note benefitted her lender, but was of no benefit to the Clearwaters. Thus, we conclude that Panasiuk's repayment of the note did not constitute adequate consideration under the UFTA as a matter of law.

*Clearwater*, supra., 67 Wn.App. at 322.

The court then remanded the case back to the trial court for entry of judgment against the transferee.

In whether you arrive at the result by concluding the Hansons gave no value for the property or that they did give value and they were entitled to an offset to the extent of the value given, the result is the same. That is the Thompsons can only reach the net value of the property conveyed to the first constructive transferee, the Hansons. Indeed, that is what RCW 19.40.081 explicitly states. Therefore, as the result would be the same in either event, discretionary review is not appropriate.

To accept the Hansons' argument would be to give a duplicative offset against the same already diminished judgment which would result in a windfall to the Hansons and an uncollectible judgment for the Thompsons. That is not an equitable result and would undermine the intent of the UFTA.

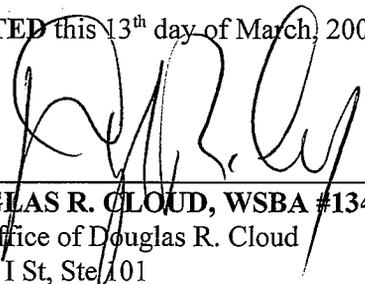
## V. CONCLUSION

The Petitioners in the present case seek discretionary review based upon an inaccurate claim that the Court of Appeals are in conflict as the case law relied upon, *Park Hill v. Sharp*, supra., and *DeYong Management Ltd. v. Previs*, supra., interpreted the UFCA, not the UFTA, which is the statute at issue in the present case.

The Petitioners did not challenge the Trial Court's finding that they did not give reasonably equivalent value for Lot 66 and Lot 68. Yet, they demand a duplicative offset for the value that they supposedly gave for the property they received. This argument is not worthy of discretionary review as it is not a significant issue of law. To accept the Hansons' argument, one would have to ignore the clear intent of RCW 19.40.081. The result the Hansons desire would ignore economic reality because the \$100,000 in equity received by Hansons, having already been reduced by the mortgage indebtedness, must, according to the Hansons, be reduced once again by the same mortgage indebtedness already credited against the gross value of the

transferred property. That result would be inequitable.

**RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of March, 2008.

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