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2016

Steve Brazell, the Armer Texas Trust (Aka Texas Armer Trust), a.t. Family Investment, LLC (Fka Thomas Family Limited Partnership), the Arvin Investment Group, the Beals Revocable Trust, Lawrence P. Benkes, Victoria Townsend (Fka Victoria Benkes), Suzanne Billingsly, Mark A. And Alexis C. Brausa, Jeffrey De. Brazell, the Brooks Family Trust, Scott Day, Howard N. Esbin, June K, Esbin, Ronald Finken, David A. French, Piotr Gorodetsky, Vasily Gorodetsky, Scott and Cindy Hambrecht, Hitman, Inc., Craig S. Kagel, Jakl Industries, Tyler and Lindsey Labrum, Tiffany Lowry, Tom Mack, Jeff and Jennifer Mallas, Gary L. Mills, Peter J. McLaughlin, Michelle Nieto, Jeffery Scott Reineche, Flint Richardson, the Rusch Family Trust, Richard Schlesinger, the Cccm Living Trust, Red Rock Properties Group, Jeff and Tina Rogers, Quinn Smith, S. Kevin Smith, Philip J. Stoddart, Jason Straub, Ray A. Stokes, Anthony Tegano, Mark M Truncle, and Scott Warner, Appellants/Plaintiffs, v. Robert Brazell, In-Store Broadcasting Network, LLC, In-Store Broadcasting Holdings, LLC, Ibn Media, LLC, In-Touch LLC, In-Touch Media, LLC, Talos

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 **Partners, LLC, Von Whitby, Robert W. Kasten, Jr., Robert E. Wiley, and Robin Nebels, Appellees/Defendants**

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

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IN THE UTAH COURT OF APPEALS

STEVE BRAZELL, THE ARMER TEXAS TRUST (AKA TEXAS ARMER TRUST), A.T. FAMILY INVESTMENT, LLC (FKA THOMAS FAMILY LIMITED PARTNERSHIP), THE ARVIN INVESTMENT GROUP, THE BEALS REVOCABLE TRUST, LAWRENCE P. BENKES, VICTORIA TOWNSEND (FKA VICTORIA BENKES), SUZANNE BILLINGSLY, MARK A. AND ALEXIS C. BRAUSA, JEFFREY D. BRAZELL, THE BROOKS FAMILY TRUST, CAMPBELL FAMILY TRUST, SCOTT DAY, HOWARD N. ESBIN, JUNE L. ESBIN, RONALD FINKEN, DAVID A. FRENCH, PIOTR GORODETSKY, VASILY GORODETSKY, SCOTT AND CINDY HAMBRECHT, HITMAN, INC., CRAIG S. KAGEL, JAKL INDUSTRIES, TYLER AND LINDSEY LABRUM, TIFFANY LOWRY, TOM MACK, JEFF AND JENNIFER MALLAS, GARY L. MILLS, PETER J. MCLAUGHLIN, MICHELLE NIETO, JEFFERY SCOTT REINECKE, FLINT RICHARDSON, THE RUSCH FAMILY TRUST, RICHARD SCHLESINGER, THE CCCM LIVING TRUST, RED ROCK PROPERTIES GROUP, JEFF AND TINA ROGERS, QUINN SMITH, S. KEVIN SMITH, PHILIP J. STODDART, JASON STRAUB, RAY A. STOKES, ANTHONY TEGANO, MARK M. TRUNCLE, AND SCOTT WARNER,

APPELLANTS/PLAINTIFFS,

FILED  
UTAH APPELLATE COURTS

MAR 18 2016

ERRATA TO BRIEF  
OF APPELLEES

Case No. 20150140-CA

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ROBERT BRAZELL, IN-STORE  
BROADCASTING NETWORK, LLC,  
IN-STORE BROADCASTING  
HOLDINGS, LLC, IBN MEDIA, LLC,  
IN-TOUCH LLC, IN-TOUCH MEDIA,  
LLC, TALOS PARTNERS, LLC, VON  
WHITBY, ROBERT W. KASTEN, JR.,  
ROBERT E. WILEY, AND ROBIN  
NEBELS,

APPELLEES/DEFENDANTS.

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**BRIEF OF APPELLEES**

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Appeal from the Third District Court, Salt Lake County  
District Civil Case No. 130900740

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The Brief of Appellees Robert Brazell, In-Store Broadcasting Network, LLC, In-Store Broadcasting Holding, llc, IBN Media, LLC, InTouch, LLC, InTouch Media, LLC, Talos Partners, LLC, and Robert W. Kasten, Jr., dated March 11, 2016, contains typographical errors.


On Page i of the Table of Contents, the “STATEMENT IF AOOEKKATE JURISDICTION” should read “STATEMENT OF APPELLATE JURISDICTION”. A corrected Page i is attached

In the ADDENDUM INDEX the statute “Uniform Fraudulent Transfer Act, Utah Code §§ 25-5-1” should read “Utah Code Ann. §§ 25-6-1 *et seq.*” A corrected Addendum Index is attached.

Attached are the missing Utah Code Ann. §§ 25-6-1 through 25.6.4.

DATED this 18<sup>th</sup> day of March, 2016.

PRINCE, YEATES & GELDZAHLER



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Michael N. Zundel  
John S. Chindlund  
Florence M. Vincent

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4823-1298-2831, v. 2



**25-6-1 Short title.**

This chapter is known as the "Uniform Fraudulent Transfer Act."

Enacted by Chapter 59, 1988 General Session

**25-6-2 Definitions.**

In this chapter:

- (1) "Affiliate" means:
  - (a) a person who directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:
    - (i) as a fiduciary or agent without sole discretionary power to vote the securities; or
    - (ii) solely to secure a debt, if the person has not exercised the power to vote;
  - (b) a corporation 20% 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, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:
    - (i) as a fiduciary or agent without sole power to vote the securities; or
    - (ii) solely to secure a debt, if the person has not exercised the power to vote;
  - (c) 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
  - (d) 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 does not include:
  - (a) property to the extent it is encumbered by a valid lien;
  - (b) property to the extent it is generally exempt under nonbankruptcy law; or
  - (c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (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:
  - (a) if the debtor is an individual:
    - (i) a relative of the debtor or of a general partner of the debtor;
    - (ii) a partnership in which the debtor is a general partner;
    - (iii) a general partner in a partnership described in Subsection (7)(a)(ii);
    - (iv) a corporation of which the debtor is a director, officer, or person in control; or
    - (v) a limited liability company of which the debtor is a member or manager;
  - (b) if the debtor is a corporation:
    - (i) a director of the debtor;
    - (ii) an officer of the debtor;
    - (iii) a person in control of the debtor;
    - (iv) a partnership in which the debtor is a general partner;
    - (v) a general partner in a partnership described in Subsection (7)(b)(iv);
    - (vi) a limited liability company of which the debtor is a member or manager; or
    - (vii) a relative of a general partner, director, officer, or person in control of the debtor;
  - (c) if the debtor is a partnership:
    - (i) a general partner in the debtor;
    - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
    - (iii) another partnership in which the debtor is a general partner;
    - (iv) a general partner in a partnership described in Subsection (7)(c)(iii);

- (v) a limited liability company of which the debtor is a member or manager; or
- (vi) a person in control of the debtor;
- (d) if the debtor is a limited liability company:
  - (i) a member or manager of the debtor;
  - (ii) another limited liability company in which the debtor is a member or manager;
  - (iii) a partnership in which the debtor is a general partner;
  - (iv) a general partner in a partnership described in Subsection (7)(d)(iii);
  - (v) a person in control of the debtor; or
  - (vi) a relative of a general partner, member, manager, or person in control of the debtor;
- (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (f) 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, limited liability company, 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 or an individual related to a spouse, related by consanguinity within the third degree as determined by the common law, or a spouse, and includes an individual in an adoptive relationship within the third degree.
- (12) "Transfer" means every mode, direct or indirect, absolute or conditional, or 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.

Amended by Chapter 168, 1992 General Session

**25-6-3 Insolvency.**

- (1) 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.
- (2) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.
- (3) A partnership is insolvent under Subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.
- (4) 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.
- (5) 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.

Enacted by Chapter 59, 1988 General Session

**25-6-4 Value -- Transfer.**

- (1) 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. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.
- (2) Under Subsection 25-6-5(1)(b) and Section 25-6-6, 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.
- (3) 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.

Enacted by Chapter 59, 1988 General Session

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of March, 2016, a true and correct copy of the foregoing ERRATA TO BRIEF OF APPELLEES was served via U.S. Mail, postage prepaid, on the following:

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