

2001

Lakeside Lumber Products Inc. v. Dan R. Evans : Brief of Appellee

Utah Court of Appeals

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450 South State Street, Salt Lake City, Utah 84111

Court of Appeals
Case No. 20010334-CA

FILED
UTAH APPELLATE COURTS
AUG 17 2004

IN THE UTAH COURT OF APPEALS

450 South State Street, Salt Lake City, Utah 84111

LAKESIDE LUMBER PRODUCTS, INC. :

Plaintiff/Appellant, :

v. :

DAN R. EVANS, et al. :

RespondentAppellee. :

Court of Appeals

Case No. 20010334-CA

APPELLEE BRIEF

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JURISDICTION

Jurisdiction of the Court of Appeals is under § 78-2a-3(2)(j).

STATEMENT OF ISSUES AND STANDARD FOR REVIEW

Issues:

1. Does Appellant, Lakeside Lumber Products, Inc. (“Lakeside”), have any legal right to take Farmington, Utah real property (the “Farmington Property”) from Renee Evans (“Renee”) to satisfy Lakeside’s judgment against her husband, Dan Evans (“Dan”)?
2. Did the written 1989 Trust Agreement create three valid trusts: the DaRe Family Trust, Dan’s trust (the “Daymond Trust”) and Renee’s trust (the “Revans Trust”)?
3. Did the 1989 Deed of transfer of the Farmington Property to Renee as trustee and sole beneficiary of the Revans Trust, violate the Uniform Fraudulent Transfer Act?
4. After 1989 did Dan retain authority over property in the Revans Trust?
5. After 1989 did Dan have a present vested legal or beneficial interest in the Farmington Property or any other property held in the Revans Trust?
6. Did a 1997 resignation or removal of Dan as a trustee of the Revans Trust constitute a transfer in violation of the Uniform Fraudulent Transfer Act?
7. Did the trial court err in granting Summary Judgment to Renee?

Standard for Review:

The case of **Banks v. Means**, 2002 UT 65; 52 P.3d 1190 ¶7, established a clear Standard of Review in matters of appeal of Summary Judgment:

When reviewing the trial court's ruling in a motion for summary judgment, we consider all facts and inferences to be drawn therefrom in the light most favorable to the nonmoving party. We review the trial court's grant of summary judgment for correctness, according no deference to that court's legal conclusions. In addition, we may affirm a grant of summary judgment on any ground available to the trial court, even if it was not relied upon below. (Citations omitted.)

Citation to Record Showing Preservation of Issue Presented for Review:

Appellant objected to trial court's Order¹ of summary judgment. That Order incorporated the trial court's own AMENDED MEMORANDUM.²

**CONSTITUTIONAL ISSUES, STATUTES RULES and CASES
INTERPRETATION OF WHICH ARE OF CENTRAL IMPORTANCE**

This matter has raised no constitutional issue. Statutes need not be construed, as this matter may be determined upon the wording of the Uniform Fraudulent Transfer Act. Certain cases are cited herein but Appellant has no reason to believe that this matter rises to the magnitude that requires interpretation of any case of central importance.

¹ Record, 01706

² Record, 01708-01729

STATEMENT OF THE CASE

Nature of the Case:

Dan and Renee purchased the Farmington Property on July 29, 1986.³

On March 6, 1989⁴ the Farmington Property was transferred to Renee Evans (“Renee”) in accordance with the provisions of Dan and Renee’s 1989 written Trust Agreement.⁵ A Deed of transfer to Renee was signed, sealed and delivered on March 6, 1989. That Deed was recorded on March 10, 1989.⁶

It wasn’t until ten years later that Lakeside first brought this action against Renee to take the Farmington Property away from her in an attempt to satisfy Lakeside’s judgment that it had just then recently obtained against Dan.

Course of Proceedings:

On March 10, 1998, Lakeside obtained Judgment against Dan in the State of Arizona.⁷ On June 16, 1998, Lakeside filed its Arizona Judgment in Utah as the basis for bringing this present action against Dan and Renee in Farmington, Utah.

Lakeside claims that what Dan and Renee did in 1989, ten years earlier, violated the Uniform Fraudulent Transfer Act because the 1989 transfer was made for the intent to hinder, delay, and defraud Lakeside.

³ Record, 01259, line 7

⁴ Record, 00463

⁵ Record, 00362

⁶ Record, 00463

⁷ Record, 00184

Lakeside also claimed that it had a cause of action against Renee, claiming that in the 1989 Trust Agreement Dan retained vested rights of ownership in the Farmington Property sufficient to nullify the 1989 Trust Agreement and Deed of transfer.

Attempting to rely upon the case of **Butler v. Wilkinson**, 740 P.2d 1244 (Utah 1987), Lakeside asked the trial court to set aside a ten-year old Trust Agreement and Deed or to find one or both the 1989 Trust Agreement and Deed to be defective. Lakeside's claim is that the wording of the 1989 Trust Agreement and Deed of transfer left Dan with an interest upon which Lakeside could levy judgment against Renee.

Lakeside's objective was to take the Farmington Property away from Renee to satisfy Lakeside's newly obtained personal Judgment against Dan.

The trial court ruled against Lakeside and entered its Order denying Lakeside's claims.⁸ Consequently, Lakeside filed this Appeal.

Disposition in the Court Below:

The trial courts opinion and Order was that:

1. The 1989 Trust Agreement created a valid Revans Trust.⁹
2. The 1989 Deed, being signed by both Dan and Renee, constituted a transfer of the Farmington Property to Renee in trust under the Revans trust.¹⁰
3. Dan and Renee's 1989 actions did not violate the Uniform Fraudulent Transfer Act.¹¹

⁸ Record, 01706, Order

⁹ Record, 01716, last paragraph

¹⁰ Record, 01717, lines 11-12

4. The 1997 Amendment only clarifies language in an already valid trust and makes no substantial changes reflecting “actual intent” to hinder delay, or defraud Lakeside as a creditor of the Dan.¹²
5. Dan “is a beneficiary” of all three trusts.¹³
6. Dan, although a beneficiary, has no power of revocation.¹⁴
7. Dan is entitled to partial summary judgment dismissing him from the case as to the issue of fraudulent transfer of property interests to Renee.¹⁵
8. On November 22, 2000, the trial court dismissed all of Lakeside’s alleged causes of action against Renee personally,¹⁶
9. The trial court ruled that Renee is entitled to summary judgment dismissing all claims against her in her capacity as trustee as they pertain to the transfer of the Farmington Property to Renee by Deed and under the provisions of the 1989 Trust Agreement that created the Revans Trust.¹⁷
10. Renee is also entitled to summary judgment dismissing all claims against Dan as they pertain to the transfer of the Farmington Property to Renee by Deed and under the provisions of the 1989 Trust Agreement that created the Revans Trust.

¹¹ Record, 01726, lines 8-11

¹² Record, 01726, lines 18-20

¹³ Record, 01720, lines 18-19

¹⁴ Record, 01724, line 3

¹⁵ Record, 01728, lines 17-19

¹⁶ Record, 01713, lines 10-12

¹⁷ Record, 01728, lines 6-9

STATEMENT OF FACTS

Dan & Renee —Background

1. In 1984 Dan was employed as District Sales Manager for Trusswall Systems, Inc., headquartered in Dallas Texas.¹⁸

2. Dan's District Sales Manager position required extensive travel in California, Idaho, Utah, and Nevada.¹⁹

3. Subsequently, Dan worked for Action Wholesale Truss, living mostly in Las Vegas.²⁰

4. On December 4, 1986, Dan and Renee borrowed money from Cache Mortgage. A Trust Deed and Trust Deed Note against the Farmington Property secured that loan. Dan and Renee bought the lot and built their own home on the lot. The Trust Deed Note obligation was for \$57,000.00.²¹

5. Dan continued employment outside Utah, living in Las Vegas,²² while Renee lived in the home that he and Renee had built on the Farmington Property.²³

6. Renee has been employed in retail sales and secretarial work since 1973.²⁴

7. Before 1992 Renee was employed at the women's clothing store in Salt Lake City named Classy Lady.²⁵

¹⁸ Record, 01227, lines 4-16

¹⁹ Record, 01227, lines 4-14

²⁰ Record, 01228, lines 1-21

²¹ Record, 01258, line 22 through 01259, line 11

²² Record, 01228, lines 22-23

²³ Record, 01228, lines 22-23

²⁴ Record, 00264, paragraph 7

8. In 1992, after Dan got E.S. Systems established and operating in Nevada, Renee moved to Nevada to live with Dan.²⁶

9. They purchased a condominium in Henderson,²⁷ a suburb of Las Vegas.

10. During Renee's absence from Utah, Renee had a daughter, her sister-in-law and brother-in law occupied the Farmington Property.²⁸ They maintained the home and paid the utilities.²⁹

11. Living in Las Vegas, Renee worked as a secretary at E.S. Systems.³⁰

12. After E.S. Systems failed, Renee's employment was at the Chevron Credit Union in North Salt Lake.³¹

13. On June 26, 1992, Dan organized and began managing E.S. Systems L.C. ("E.S. Systems"),³² a roof truss construction business³³ that he located and operated in Las Vegas, Nevada until 1998.³⁴

14. Renee held no management position or ownership in E.S. Systems.³⁵

15. E.S. Systems engaged in the business of manufacture and sale of both commercial and residential roof truss systems in Las Vegas, and grew to attain annual sales of six to eight million dollars.³⁶

²⁵ Record, 01166, lines 16-22

²⁶ Record, 01228, lines 22-25 and 00265, paragraph 8

²⁷ Record, 01218, line 22 through 01219, line 8; and 01225, lines 2-17

²⁸ Record, 01190-01191 and Record, 00265, paragraph 8

²⁹ Record, 01191-01192

³⁰ Record, 01167, lines 19; Record 01168, lines 1-5

³¹ Record, 01165, lines 11-19 and 01168, lines 16-19

³² Record, 00068

³³ Deposition of Dan Evans, 12/7/2000, Record, 01222, lines 15-16

16. Lakeside Lumber Products (“Lakeside”), an Arizona company, provided lumber products to E. S. Systems: Lakeside later required that Evans sign a personal guarantee dated September 20, 1996.³⁷

17. In 1998 E.S. Systems filed Bankruptcy in Nevada.³⁸

18. On May 27, 1997, Lakeside filed actions in Arizona against E.S. Systems and against Dan personally.³⁹

19. On March 10, 1998, Lakeside obtained judgment against E.S. Systems and a personal Judgment against Dan in Arizona.⁴⁰

20. On March 10, 1998, Lakeside filed its Arizona Judgment against Dan in Utah. Lakeside also filed its Complaint against both Dan and Renee before the Second Judicial District Court in Davis County.⁴¹

21. Lakeside’s Complaint sought to take the Farmington Property away from Renee to satisfy its personal Judgment against Dan by alleging that Dan and Renee had conspired to commit civil fraud against Lakeside as a creditor of Dan.⁴²

22. In Dan’s first deposition taken by Lakeside in Las Vegas, responding to a question of any interest he may have in the Revans Trust, Dan said:⁴³

³⁴ Brief of Appellant, page 11, paragraph 38

³⁵ Affidavit of Renee Evans, Record, 00264, also see Record, 01167, lines 18-19

³⁶ Brief of Appellant, Page 10, paragraph 34

³⁷ Record, 00145-00146

³⁸ Deposition of Dan Evans, 12/7/2000, Record, 01222, lines 17-19

³⁹ Record, 00148

⁴⁰ Record,

⁴¹ Record, 00168

⁴² Record, 00001-00009

Dan: I don't have any ownership in it." * * *
Mr. Bullock: Who is the beneficiary?
Dan: My wife I believe.
Mr. Bullock: Are you a beneficiary?
Dan: Not that I know of. I don't know. I don't believe so.

23. The trial judge permitted extended discovery, argument and hearings over a period of more than three years, beginning on June 16, 1998 through April 2, 2001, permitting additional time for discovery as Lakeside requested, including additional depositions. Under that extended discovery granted by the trial court, on December 7, 2000, Lakeside again took the deposition of Dan Evans.⁴⁴ On the same date Lakeside also took the depositions of Renee Evans⁴⁵ and Loren D. Martin.⁴⁶

24. At his second deposition in Salt Lake City, Dan was asked at if he had paid any expense, maintenance costs or utility fees for the Farmington Property since June of 1997. Dan said "No."⁴⁷

25. Dan was also asked what he did with his paychecks after 1998. Dan said, "I cashed them"⁴⁸ and gave the cash to Renee⁴⁹ because I didn't "have a bank account."⁵⁰ When Dan was asked, "Are you looking for a job now?" He said, "Yes."⁵¹

⁴³ Record, 00187, lines 6-7 and Record, 00188, lines 6-11

⁴⁴ Record, 01207

⁴⁵ Record, 01157

⁴⁶ Record, 01280

⁴⁷ Record, 01233

⁴⁸ Record. 01234, line 3

⁴⁹ Record, 01234, line 4

⁵⁰ Record, 01234, line 9

⁵¹ Record, 01233. line 6

26. At her deposition in Salt Lake City Renee was asked what assets she had in 1989. Renee responded, saying that, “My only asset was the home, my house,”⁵² the Farmington Property.

27. Renee was questioned extensively as to her interest in the Farmington Property, leading to its final questions in which Lakeside pointedly challenged Renee’s ownership and title to The Property, her home.⁵³

Mr. Bullock: You claim because this is your trust for your benefit - -

Renee: That’s my trust. That’s my home that’s in my trust. And I own it. That’s what I state.

Mr. Bullock: Individually?

Renee: Individually. [Whereupon Renee’s Deposition Ended.]

Dan and Renee’s 1989 Creation of the Three Trusts

28. Three years prior to organization of E.S. Systems, Dan and Renee created three Trusts within a single written Trust Agreement.⁵⁴

29. On March 6, 1989, by written Trust Agreement⁵⁵ and funding documents, Dan and Renee created and funded three separate trusts,⁵⁶ a Family Trust, Dan’s Trust and Renee’s Trust.

30. Dan’s Trust (the “Daymond Trust”) was funded with items of personal property. Under the terms of the Trust Agreement, the Daymond Trust exclusively held all right, title and interests in the property held under the Daymond Trust.⁵⁷

⁵² Record, 01197, line 11

⁵³ Record, 01200, lines 18-23

⁵⁴ Record, 00362-00387

⁵⁵ Record, 00364-00385

⁵⁶ Record, 01188, lines 9-11

31. Renee expressly waived all interest in all property held under the Daymond Trust, “including community property interest and separate property interests therein.”⁵⁸

32. And Dan continued his employment.⁵⁹

33. Lakeside has brought forth no evidence that Dan could not or did not pay his debts after his 1989 transfer of the Farmington Property to Renee. Consequently, Lakeside’s allegation that Dan was insolvent in 1989 fails, remaining as unfounded and unproved speculation.

34. Renee’s Trust (the “Revans Trust”) was funded with items of property. Upon funding, among the Revans Trust exclusively held all right, title and interest in the Farmington Property.⁶⁰

35. And Renee continued her employment.⁶¹

36. A Quitclaim Deed, transferring The Farmington Property into the Revans Trust, was signed, sealed and delivered on March 6, 1989.⁶²

37. On March 10, 1989 that Deed of transfer to Renee was recorded.⁶³

38. Thereafter, Renee held exclusive right, title and interest, both legal and beneficial, in the Farmington Property.⁶⁴

⁵⁷ Record, 00385

⁵⁸ Record, 00363, lines 6-8

⁵⁹ Record, 01228, lines 1-21

⁶⁰ Record, 00384

⁶¹ Record, 01166, lines 16-22

⁶² Record, 00463

⁶³ Record, 00463

39. Dan expressly waived all interest in property transferred to the Revans Trust, “including community property interest and separate property interests therein.”⁶⁵

40. Lakeside has brought forth no evidence that Renee could not or did not pay all her debts after 1989.

41. And Renee continued her employment.⁶⁶

42. The 1989 Trust Agreement⁶⁷ provided that:

Separate Trust. Each Grantor reserves and grants to the other the right and power to alter, amend, or revoke this Agreement, with respect to his or her separate trust, in whole or in part, at any time and from time to time without the consent of Trustee or any other person.

43. Initially,⁶⁸ from 1989 and until June 20, 1997,⁶⁹ Dan and Renee were both trustees of the Revans Trust.⁷⁰

44. On June 20, 1997, Renee amended the Revans Trust,⁷¹

45. On June 20, 1997, Renee also caused a second document to be signed, sealed, delivered and recorded; giving public notice that Dan was no longer a trustee.⁷² That document stated that, “The purpose of this document is to reflect

⁶⁴ Record, 00384

⁶⁵ Record, 00363, lines 8-11

⁶⁶ Record, 00264, paragraph 7

⁶⁷ Record, 00391, paragraph 4

⁶⁸ Record, 01453

⁶⁹ Record, 00-

⁷⁰ Record, 00391, paragraph 4

⁷¹ Record, 00441-00461

⁷² Record, 01255, lines 13-24; and Record, 01177, line 22

that Daniel R. Evans, was no longer a trustee.”⁷³ A copy of that document is included in the Addendum.⁷⁴

SUMMARY OF ARGUMENT

The 1989 Trust Agreement and Transfers Between Dan and Renee:

The 1989 Trust Agreement created a valid Revans Trust. 1989 Deed constituted a transfer of title of the Farmington Property to Renee in her capacity both as trustee and beneficiary. The merger of authority of trustee and beneficiary constitutes a transfer of all right, title and interest. After the 1989 transfer the Farmington Property was hers. The 1989 Deed of transfer was not revocable by Dan. Dan’s clear intent expressed in the Trust Agreement and the Deed of transfer to Renee was to transfer full title of the Farmington Property to Renee. Dan has no authority to call it back.

Lakeside has argued that in the 1989 Trust Agreement, Dan retained authority to revoke and amend the DaRe Family, thereby causing a revocation of the Revans Trust and return of the Farmington Property to him. Lakeside’s theory is that if Dan could somehow revoke the Trust Agreement then Lakeside, acting through Dan, may have the same right, including the right to revoke all three trusts and nullify the Trust Agreement.

Yet Lakeside has failed to argue that Dan had authority to nullify a specific written, signed, sealed, delivered and recorded Quitclaim Deed under which he transferred of all rights, both legal and beneficial, in the Farmington Property to Renee.

⁷³ Record, 01255, lines 13-24; and Record, 01177, line 22

⁷⁴ Record, 01255, lines 13-24; and Record, 01177, line 22

But revoke the Trust Agreement and the Deed would still stand. The law does not require that an agreement and transfer in trust must be reduced to writing.

Lakeside has failed to cite any facts or law upon which to rest its claim of legal authority to overturn established case law that holds that Renee's interest obtained in the Farmington Property in 1989 at that time constituted a presently vested interest.

Lakeside has also chosen to ignore that in the 1989 Trust Agreement Dan had expressly waived all right, title and interest to the Farmington Property.

Lakeside also tries to skirt another major issue — the Four-Year Statute of Limitations under the Utah Fraudulent Transfer Act. The limitation on bring an action under the Uniform Fraudulent Transfer Act is four years. So even if Dan's 1989 transfer to Renee did violate the Uniform Fraudulent Transfer Act, ten (10) years earlier is unquestionably beyond the four-year statute of limitations. Lakeside's allegations in regard to what happened ten-years ago are untimely and barred.

Lakeside cannot in good faith claim that in 1989 Dan or Renee conspired to defraud Lakeside. That is because in 1989 Dan and Renee did not even know that Lakeside existed. Lakesides' attempts at any such claim against either Dan or Renee cannot be brought in good faith. Mere speculation or accusation without facts or law does not constitute reasonable extension of the law or evidence Lakeside's good faith.

In 1989 Dan and Renee didn't even know that Lakeside existed. That being the case, what basis in law or fact would now support any allegation that in 1989 Dan and Renee conspired to defraud Lakeside. The 1989 transfer could not violate the Uniform

Fraudulent Transfer Act as to Lakeside as a creditor. Lakeside didn't even exist. If Lakeside's arguments were to prevail no statute of limitations would ever run on any transfer, even under business law where property is often transferred to or between corporations, business trust, limited partnerships and limited liability companies.

In a nutshell, Lakeside is asking this Court to effectively open the door to any unknown future creditor, giving that unknown future creditor or claimant the right to litigate any previous transfer made by any person. It may even be argued that what Lakeside is attempting to do is to use the courts as if the courts would unwittingly concur in giving all creditors the power to litigate everything forever. That must not be permitted because granting power to litigate is power to destroy.

Finally, the 1997 removal or resignation of Dan as a trustee did not constitute a transfer. Before Dan resigned or was removed, Renee held both legal and beneficial interest. After Dan's resignation or removal, Renee remained holding both legal and beneficial interest in the Farmington Property. Nothing changed. Consequently, any argument that there was a 1997 transfer must fail.

ARGUMENT

POINT 1

The 1989 Trust Agreement created a valid Revans Trust.

The validity of a trust is an issue of law to be reviewed for correctness. **Flake v. Flake**, 2003 UT 17, 71 P.3d 589, ¶8.

The well established law of trusts followed in **Flake v. Flake**, at ¶11, is that,

A trust is an arrangement for the ownership of property. The nature of the arrangement is such that the legal title of the property is held by the trustee, but the benefit and enjoyment of the property resides with the beneficiaries. It is well settled that [a] trust . . . is a fiduciary relationship with respect to property, subjecting the person by whom the [legal record] title to the property is held [the trustee] to equitable duties to deal with the property for the benefit of another person [the beneficiary], which arises as a result of a manifestation [by the settlor, or trustor] of an intention to create it. [Emphasis added.]

In re Estate of West, 948 P.2d 351, 353 (Utah 1997) (citing *Restatement (Second) of Trusts* § 2 (1959)). There must be an intent by the settlor to confer a beneficial interest in the property in some other person. To create an inter vivos trust,

[a] settlor must have an intent to create a presently enforceable trust, . . . the trust property must be clearly specified and set aside, . . . and the essential terms of the trust must be clear enough for the court to enforce the equitable duties that are the sine qua non of a trust relationship.

Sundquist v. Sundquist, 639 P.2d 181, 183-84 (Utah 1981) (citations omitted).

"A trust is a form of ownership in which the legal title to property is vested in a trustee, who has equitable duties to hold and manage it for the benefit of beneficiaries." *Cont'l Bank & Trust Co. v. Country Club Mobile Estates, Ltd.*, 632 P.2d 869, 872 (Utah 1981) (citing *Restatement (Second) of Trusts* § 2 (1959)). The trustee has exclusive control of the trust property, subject only to the limitations imposed by law or the trust instrument, and "once the settlor has created the trust he is no longer the owner of the trust property and has only such ability to deal with it as is

expressly reserved to him in the trust instrument." *Id.* (citation omitted). A trust must have an identifiable beneficiary who is capable of enforcing the equitable duties of the trustee. The transfer of property interests to the beneficiaries "cannot be taken from them except in accordance with a provision of the trust instrument" George G. Bogert & [***12] George T. Bogert, *Trusts & Trustees* § 998 (2d ed. rev. 1983).

Both Dan's and Renee's 1989 actions that in creation of a 1989 Trust Agreement and Deed of transfer met all of the requirements of **Flake** and **Sundquist**.

Acting as a settler in 1989, Dan executed a written Trust Agreement and Deed of transfer. Execution of the Trust Agreement, the Deed and the facts of this case leave no doubt of Dan's intent. Dan's intent in 1989 was to transfer all legal and beneficial right, title and interest in the Farmington Property to Renee.

Joining with Renee in creating the Revans Trust, Dan evidenced his intent in writing and with his signature on the Trust Agreement and his signature on the Deed — signed, sealed, delivered and recorded. Dan's intent is clear. Dan's intent was to transfer all right, title and interest in the Farmington Property to Renee.

The Farmington Property was clearly set aside and transferred to Renee by a recorded Deed.

The essential terms of the Trust Agreement and establishment of the Revans Trust and the transfer by Deed of the Farmington Property are clear enough for the courts to enforce, even against Dan.

After the Deed was recorded in 1989 the Property was Renee's. Renee held both legal and equitable title. After 1989 Dan had no right under law or authority of any kind to take the Farmington Property back or to transfer it from Renee to anyone else.

Lakeside has failed to bring forward any basis under law or fact that it has any right to the Farmington Property superior to Dan's. Lakeside has never made any claim that it has any contractual right to the Farmington Property except through its judgment against Dan. In other words, if Dan cannot get it back neither can Lakeside.

POINT 2

Lakeside's accusation that Dan and Renee concealed the 1989 transfer is false, both as a matter of fact and as a matter of law.

Lakeside states in its Brief that it,⁷⁵

Brought its claim of action against Dan Evans within one year of the Plaintiff's discovery of the transfer of the Farmington Property to the trustees of the Revans Trust. The transfer was discovered by Plaintiff in March of 1998. Plaintiff within three months of this discovery filed the complaint and served the complaint on Defendants. Plaintiff met the time limitation of Utah Code Ann. §25-6-10(1) (1995) by bringing its action within one year after the transfer or obligation was or could reasonably have been discovered by Plaintiff.

As a matter of law, any such inference or allegation is false. Transfer of the Farmington Property in trust to Renee was made in 1989. The Deed of transfer was signed, sealed, delivered and recorded as a public document in 1989. As a matter of law the recording of the Deed that transferred the Farmington Property to Renee constitutes notice to all, including Lakeside. Any claim or inference otherwise is just false.

⁷⁵ Appellant's Brief, page 48, lines 24-26

Lakeside knew or must have known that there is no basis in fact or law to make any such allegation.

Making any such allegation flies in the face of the well-established state of the law. See: **Berenda v. Langford**, 914 P.2d 45 , at 52; 287 (Utah 1996)

The creditors claimed that the statute did not begin to run until they had actual notice of the facts constituting the fraud. *Baldwin*, 850 P.2d at 1197. We held that the creditors would have discovered the conveyance had they conducted a normal search of property upon which to levy when they received their judgment against the debtor. *Id.* Lacking allegations that the debtor had concealed the deed effecting the fraudulent conveyance, we held that the creditors were on constructive notice of the conveyance, and therefore its fraudulent nature, because "the means of knowledge were available" to the creditors.

It is not an unreasonable extension of the law to impose the same standard of due diligence and obligation to inquire upon Lakeside. There is no evidence that Lakeside ever asked Dan for any credit statement or asset disclosure before extending its credit.

Any attempt to answer why Lakeside made never asked for a credit report or made any inquiry as to Dan's assets will only lead to speculation. But, maybe there is someone within the Lakeside organization that may have just dropped the ball and is just trying to use this extended and expensive litigation to cover his or her tracks. Who knows? Maybe this action is nothing more than just following Lakesides written company policy.

But it is certain that the 1989 recorded Deed speaks loudly against Lakeside's accusation that either Dan or Renee concealed the 1989 transfer.

The fact is that when Lakeside demanded that Dan sign a personal guarantee or belatedly discovered that it had no personal guarantee, Lakeside made no inquiry and completely neglected its obligation of due diligence. What Lakeside is trying to do is blame Dan and Renee for its own neglect.

The Fraudulent Transfer Act prohibits and provides a remedy for malevolent intent to defraud. Inherent in the nature of the Uniform Fraudulent Transfer Act is the prohibition against “actual intent” directed toward some real, immediate, imminent, imminently anticipated, perceived or envisioned creditor. The Uniform Fraudulent Transfer Act does not apply either forever into the future are in favor of an unknown and entirely unanticipated potential future creditor.

POINT 3

Resignation or removal of a Trustee does not constitute a transfer.

Resignation or removal of a Trustee of property held in trust does not constitute a transfer. The Farmington Property was transferred to Renee in 1989. The 1989 Trust and Deed to Renee did constitute a transfer to Renee in trust.

But neither a 1997 recorded document or any of the 1997 acts of Dan nor Renee constituted a “transfer” as defined under the Uniform Fraudulent Transfer Act.

The written text of Uniform Fraudulent Transfer Act, UCA 25-6-2(12), does specifically define a transfer:

25-6-2. In this chapter:

* * *

(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. [Emphasis added.]

Resignation or removal of a Trustee in trust does not constitute a transfer of title in real property any more than the resignation or removal of a President of a corporation, General Partner or Manager of a limited liability company. Resignation or removal of the Trustee, General Partner, Manager or a President does not effectuate a transfer of title to property held in trust or under a State of Utah or any other State business franchise governed under law.

Finally, Lakeside's major difficulty is that it has no case unless it can somehow avoid the four-year statute of limitations imposed by law under the Uniform Fraudulent Transfer Act. But in Lakeside's attempt and underlying Lakeside's arguments, there appears to be a broad brush claim that any person who makes any attempt to limit personal liability is committing fraud under the Uniform Fraudulent Transfer Act in continuum and forever after against any future creditor. But if such were the law there would be no corporations. In fact, history reflects that the same argument was once used against corporate organizations and business trusts.

It just may be appropriate at this moment to slightly modify and paraphrase the famous quote from the 1934 tax case opinion authored by Judge Learned Hand. Judge Hand wrote that,⁷⁶ "No person is required to so arrange their affairs in such a manner as to make themselves the most vulnerable to the vicissitudes of life."

⁷⁶ The "quote" from Judge Hand is substantially changed for this present situation.

The Utah Uniform Fraudulent Transfer Act, § 25-6-2(12) UCA, defines the word “Transfer.”

(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. [Emphasis added.]

Appellant’s claim is that Dan’s June 20, 1997, removal or resignation as a trustee constituted a “Transfer”. It appears from the record that Lakeside is doing nothing more than attempt to expand upon what was a trial court error.

POINT 4

Renee’s June 27, 1997 Amendment of the Revans Trust and her removal or the resignation of Dan as a trustee did not constitute a transfer.

Dan and Renee’s 1989 Trust Agreement provided that:

Property held as “The Revans Trust” is the exclusive property of Renee Poulsen Evans and Daniel Raymond Evans hereby expressly waives all interests, including community property interests and separate property interest therein.

In expressly waiving all interest in the Farmington Property contained in the Revans Trust, Dan waived his right to revocation of the Revans Trust. The rule of estoppel, if necessary, must be applied should Dan ever look to claim otherwise.

To the contrary, as a trustee Dan accepted and is bound by his duty as a trustee to defend and protect the corpus of the Revans Trust for the benefit of Renee.

Lakeside, having no right superior to Dan’s, may claim no legal right or duty other than that held by Dan.

Lakeside has no right to claim any greater authority or less responsibility to protect Renee as she is the sole beneficiary of the Revans Trust.

Under the 1989 Trust Agreement and 1989 Deed of transfer, Renee received a “presently vested interest” in the Farmington Property in 1989. From that moment the Deed was signed, sealed and delivered, Renee held both legal and beneficial title. From that moment to the present the Farmington Property has been hers. Renee was and is the sole beneficiary of the Revans Trust. In arguing otherwise, Lakesides must ignore the principles of two previously cited and controlling cases of recent date: **Flake v. Flake**, 2003 UT 17, 71 P.3d 589; and **Banks v. Means**, 2002 UT 65; 52 P.3d 1190.

CONCLUSION — RELIEF SOUGHT

Recognizing that Lakeside had previously obtained judgment against Dan Evans in Arizona and that such judgment had been previously filed with the Second Judicial District Court, it is prayed that the Court of Appeals enter its ruling that this matter be remanded to the Second Judicial District Court directing that:

1. This matter be dismissed upon the merits with prejudice, no cause of action, as to Renee Evans in her capacity as trustee of the DaRe Family Trust, the Daymond Trust and the Revans Trust;
2. This matter be dismissed upon the merits with prejudice, no cause of action, as to Renee Evans personally;

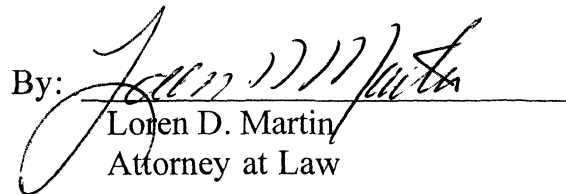
3. This matter be dismissed upon the merits with prejudice, no cause of action, as to Dan Evans in his capacity as trustee or former trustee acting under authority of any provision of the 1989 Trust Agreement;

4. This matter be dismissed upon the merits with prejudice, no cause of action, granting Dan partial summary judgment dismissing him from any matter related to the issue of transfer of the Farmington Property to Renee; and

5. That the trial court conduct such other and additional proceedings and enter such additional orders as the trial court may deem just.

DATED this 16th day of August, 2004.

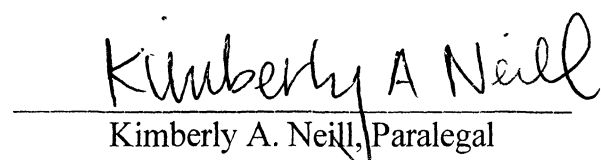
LOREN D. MARTIN, PC
Counsel for Appellee

By: 
Loren D. Martin
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that two copies of the bound version of the foregoing Appellee's Brief was lodged with the Court of Appeals and placed in the US Mail, postage prepaid on the 17th day of August, 2004, addressed to:

Bullock Law Firm
353 East 300 South
Salt Lake City, Utah 84111


Kimberly A. Neill, Paralegal

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of
ADDENDUM DOCUMENTS

Quitclaim Deed, March 6, 1989	
Dan Evans and Renee Evans to trustees of The Revans Trust	1
Articles of Organization, June 26, 1992	
E. W. Systems, L.C.	2
Deed of Reconveyance, May 18, 1995	
Farmington Property – Trust Deed Note, paid	3
Guarantee Agreement, dated September 20, 1996	
Signed by Dan Evans	4
Quitclaim Deed, June 20, 1997	
Dan & Renee Evans, trustees to Renee Evans as sole Trustee	5
This document bears the wording —	
“The purpose of this document is to reflect that	
Daniel R. Evans no longer serves as a trustee”	

ADDENDUM

Brief of Appellant – Court of Appeals – Case No. 20010334-CA

RECORDED
MAR 10 1989

WHEN RECORDED, MAIL TO:
Dan R. Evans & Renee Evans, Trustees
The DaRe Family Trust
138 E. Paracle Circle
Bountiful, Utah 84010

EX 851674 BK 1281 PG 1001
CAROL DEAN PAGE, DAVIS CNTY RECORDER
1989 MAR 10 8:58 AM FEE 7.00 DEP MEC
REC'D FOR EVANS, RENEE

(Space Above for Recorder's Use)

QUIT CLAIM DEED

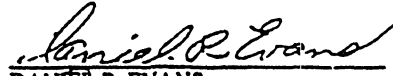

DANIEL R. EVANS and RENEE EVANS, grantors of Bountiful, County of Davis, State of Utah, hereby QUIT CLAIM to Dan R. Evans and Renee Evans Trustees of THE REVANS TRUST, dated the 6th day of March, 1989, grantee of Davis County, Utah, for the sum of Ten and 00/100 (\$10.00) DOLLARS and other good and valuable consideration, the following described tract of land located at 138 East Paracle Circle, Farmington, Davis, County, State of Utah, more particularly described as:

07-017-0005

All of Lot 5, HIGHT SUBDIVISION, according to the official plat thereof, on file and of record in the Davis County Recorder's Office.

THE SUCCESSOR TRUSTEE(S) HAVE FULL RIGHTS TO SELL OR ENCUMBER THE PROPERTY DESCRIBED HEREIN.

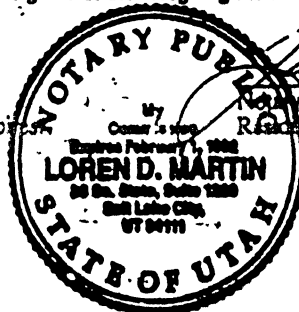
WITNESS the hand of said grantor, this 6th day of March, 1989.


DANIEL R. EVANS

RENEE EVANS

STATE OF Utah)
County of Davis) ss.

On the 6th day of March, 1989, personally appeared before me DANIEL R. EVANS and RENEE EVANS the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

My Commission expires



Notary Public
Residing at:

00463

I hereby certify that the foregoing has been filed
and approved on the 26 day of June, 1992
in the office of this Division and hereby issue
this Certificate thereof

000475

Examiner

Gary R. Hansen Date 6-26-92



Gary R. Hansen

Gary R. Hansen
Division Director

ARTICLES OF ORGANIZATION
OF
E.S. SYSTEMS, L.C.
A Utah Limited Liability Company
Organized under the Laws of the State of Utah

The undersigned persons, each being more than eighteen years of age, hereby establish a limited liability company pursuant to the Utah Limited Liability Company Act, and adopt the following articles of organization:

- A. The name of the limited liability company is E.S. SYSTEMS, L.C.
- B. The period of duration shall be thirty-five (35) years.
- C. The limited liability company is organized for any legal and lawful purpose pursuant to the Utah Limited Liability Company Act.
- D. The address of the registered office of the limited liability company is 138 East Paracle Circle, Farmington, Utah 84025. The name of its registered agent at such address is Dan R. Evans.
- E. The director of the Division of Corporations and Commercial Code is appointed the agent of the limited liability company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence.
- F. Management of the Company is vested in a Manager. The Manager is: Dan R. Evans, 138 East Paracle Circle, Farmington, Utah 84025.

Dated June 26, 1992.

Dan R. Evans Manager

Dan R. Evans, Manager,
Attorney-in-Fact for all Members

Dan R. Evans

Dan R. Evans, Registered Agent

RECEIVED
2178010132
1992 JUN 26 PM 2:09
DIVISION OF CORPORATIONS
STATE OF UTAH

WHEN RECORDED MAIL TO:

Daniel R. & Renee Evans
698 S. Racetrack Rd. #1521
Henderson, NV 89011

Order/Loan No. _____

E 1179854 8 1875 P 823
CAROL DEAN PAGE, DAVIS CTTY RECORDER
1995 MAY 18 11:30 PM FEE 10.00 DEP REC
REC'D FOR ASSOCIATED TITLE COMPANY

PULL RECONVEYANCE

ZIONS FIRST NATIONAL BANK, N.A., a UTAH corporation, as duly appointed Trustee under Deed of Trust herein-after referred to, having received from holder of the obligations thereunder a written request to reconvey, reciting that all sums secured by said Deed of Trust have been fully paid, and said Deed of Trust and the note or notes secured thereby having been surrendered to said Trustee for cancellation, does hereby RECONVEY, without warranty, to the person or persons legally entitled thereto, the estate now held by it thereunder.

Said Deed of Trust was executed by DANIEL R. EVANS AND RENEE EVANS, as Trustor, and recorded in the official records of DAVIS County, Utah, as follows:

Date: DEC. 4, 1986, as Instrument No. 0763094, in Book 1128, at Page 120.

Description:

ALL OF LOT 5, NIGHT SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE DAVIS COUNTY RECORDER'S OFFICE.

07-047-0005

In Witness Whereof, ZIONS FIRST NATIONAL BANK as Trustee, has caused its corporate name to be hereto affixed this 18TH, day of MAY, ~~1990~~ 1995.

ZIONS FIRST NATIONAL BANK, N.A.

By: Richard E. Warr
as Trustee
RICHARD E. WARR

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On the 18TH, day of MAY, ~~1990~~ 1995, personally appeared before me, the said RICHARD E. WARR, who being duly sworn did say that he is the COMMERCIAL LOAN OFFICER of ZIONS FIRST NATIONAL BANK, and that the within and foregoing Instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said RICHARD E. WARR does duly acknowledge to me that said corporation executed the same.

My Commission Expires:

10-05-98



Bonnetts Huntington
Notary Public, residing at:
SALT LAKE CITY, UTAH

00464

GUARANTY AGREEMENT

In consideration of Lakeside Lumber Products, Inc., and any of its subsidiaries or affiliates (hereinafter "Lakeside Lumber") advancing credit to E.S. Systems, L.C. (hereinafter "Debtor"), and also in consideration of Lakeside Lumber entering into other transaction of any kind with Debtor, with or without security, the undersigned, (hereinafter called "Guarantor"), does hereby guaranty and agree to pay Lakeside Lumber, upon demand, all obligations of Debtor to Lakeside Lumber, including all past and future attorney's fees, and breaches of warranty arising from transactions between Lakeside Lumber and Debtor.

The liability of Guarantor shall be unlimited. This guaranty shall continue until Lakeside Lumber shall receive from the Guarantor notice of revocation, which revocation shall be effective only as to subsequent obligations or transactions between Debtor and Lakeside Lumber.

This guaranty is absolute and unconditional, and shall take effect immediately upon its execution by the Guarantor. This guaranty shall be enforceable as a primary obligation of the Guarantor without Lakeside Lumber first having to pursue any of its remedies against the Debtor. The undersigned hereby waives notice of acceptance hereof, notice of any transactions between Debtor and Lakeside Lumber, or of any other charge or liability of Debtor to Lakeside Lumber, and further waives presentment, demand, protest, and notice of protest, or notice of default. Guarantor authorizes Lakeside Lumber to renew or extend the time for any guaranteed payment or obligation, to deal with the Debtor without notice to the Guarantor, and without the Guarantor's consent, in all respects at Lakeside Lumber's discretion, without affecting Guarantor's obligations hereunder. If Lakeside Lumber hires an attorney to enforce the terms of this guaranty, Guarantor shall pay reasonable attorney's fees incurred; if legal proceedings are filed, the prevailing party shall be entitled to reasonable attorney fees incurred in both the trial and appellate courts.

Nothing contained in this guaranty agreement, or any action taken to enforce the terms of this guaranty shall constitute a waiver of any claims, lien rights, or other remedies Lakeside Lumber may have against the debtor, or any third party.

In the event the Guarantor is a corporation, each of the persons executing this agreement on behalf of the Guarantor covenant and warrant that they are duly authorized to execute this Guaranty on behalf of the corporation, and that the corporation is duly authorized to execute this guaranty. In the event there is more than one Guarantor, their liabilities under this agreement shall be joint and several, and the revocation or release of any liability under this agreement as to one Guarantor shall not affect the liabilities of the other Guarantors. In construing this agreement, the singular shall include the plural and the plural shall include the singular. It is understood and agreed that this guaranty is delivered in the State of Arizona and shall be interpreted under the laws of the State of Arizona.

Dated this 20 day of Sept, 1996.

Dan R Evans
Mr. Dan R. Evans, as an individual

Lo Ann Perry
Witness

WHEN RECORDED BY MAIL TO

Renee Evans, Trustee
The Revans Trust
138 East Paracle Circle
Farmington, Utah 84025

RETURNED

JUN 20 1997

E 1330206 3 2144 P 504
JAMES ASHMEYER, DAVIS CNTY RECORDER
1997 JUN 20 4:00 PM FEE 10.00 DEP REC
REC'D FOR EVANS, DAN R.

Space above for Recorder's Use

QUITCLAIM DEED

Dan R. Evans and Renee Evans, acting as Trustee of THE REVANS TRUST dated March 6, 1989, grantor of Farmington, County of Davis, State of Utah, hereby QUITCLAIMS to:

Renee Evans, Trustee of
THE REVANS TRUST,
dated March 6, 1989, as amended June 20, 1997,

grantee of Davis County, Utah, for the sum of Ten and 00/100 (\$10.00) DOLLARS and other good and valuable consideration, the following described tract of land located at 138 East Paracle Circle, Farmington, Davis County, State of Utah, more particularly described as:

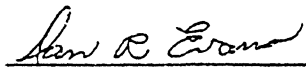
All of Lot 5, Hight Subdivision, according to the official plat thereof, on file and of record in the Davis County Recorder's Office.

07-047-0005

(The purpose of this document is to reflect that Daniel R. Evans, no longer serves as a trustee.)

THE GRANTOR AS TRUSTEE AND THE SUCCESSOR TRUSTEE(S) HAVE FULL POWER AND AUTHORITY TO PROTECT, CONSERVE, SELL, LEASE, ENCUMBER, OR OTHERWISE MANAGE AND DISPOSE OF THE PROPERTY DESCRIBED HEREIN.

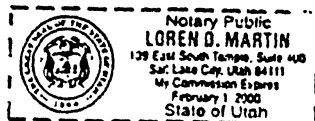
WITNESS the hand of said grantor on June 20, 1997.

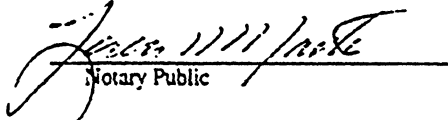

Dan R. Evans, Trustee (former)


Renee Evans, Trustee

STATE OF UTAH)
SS.
County of Salt Lake)

On June 20, 1997, personally appeared before me Renee Evans, Trustee, and Dan R. Evans, Trustee (former), the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.




Notary Public