

1970

W. Smoot Brimhall, Commissioner Of Financial Institutions of the State of Utah v. D. Spencer Grow; Arta L. Grow; Steven L. Grow; First Fidelity Thrift And Low Association; Western Land Corporation; Grow Investment And Mortgage Company, Town And Country Real Estate Company : Respondent's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

W. SMOOT BRIMHALL, Commis-
sioner of Financial Institutions of the
State of Utah,

Plaintiff and Respondent,

vs.

D. SPENCER GROW, ARTA L.
GROW, FIRST FIDELITY
THRIFT AND LOAN ASSOCIA-
TION, WESTERN LAND CORPO-
RATION, GROW INVESTMENT
AND MORTGAGE COMPANY,
and TOWN AND COUNTRY
REAL ESTATE COMPANY,

Defendants and Appellants.

Case No.
12103

RESPONDENT'S BRIEF

Appeal from Order of the District Court of the
Fourth Judicial District in and for Utah County, State of Utah,
Honorable Ferdinand Erickson, Judge

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RESPONDENT'S BRIEF

STATEMENT OF FACTS

The respondent does not accept the Statement of Facts as made by the defendants and deems it necessary to make its own Statement of Facts.

The complaint alleges and the answer admits that the plaintiff is the Commissioner of Financial Institutions of the State of Utah in charge of the business and assets of Utah Savings and Loan Association. The Commissioner took charge of the business and assets of Utah Savings and Loan on December 5, 1966.

The complaint alleges and the answer admits that D. Spencer Grow was President and controlling and managing agent of each of the corporate defendants.

The judgment from which the defendants now appeal is a judgment in favor of the Commissioner as a result of his action to set aside certain conveyances from the corporate defendants and from D. Spencer Grow and Arta L. Grow to a child of D. Spencer Grow and Arta L. Grow. The conveyances were represented by plaintiff's Exhibits 1 through 10 and were executed on the following dates and for the consideration shown:

Exhibit 1:

March 11, 1967, for \$10.00 and other valuable consideration.

Exhibit 2:

March 20, 1967, for \$10.00 and other good and valuable consideration.

Exhibit 3:

October 25, 1966, for \$10.00 and other considerations.

Exhibit 4:

January 26, 1968, for \$10.00 and other valuable considerations.

Exhibit 5:

October 30, 1967, for no consideration expressed.

Exhibit 6:

January 6, 1968, for \$10.00 and other valuable considerations.

Exhibit 7:

March 11, 1967, for \$10.00 and other valuable considerations.

Exhibit 8:

September 21, 1966, for \$10.00 and other good and valuable considerations.

Exhibit 9:

December 28, 1966, for \$10.00 and other good and valuable considerations.

Exhibit 10:

October 25, 1966, for \$10.00 and other considerations.

Plaintiff's theory is that corporate defendants were insolvent as of the date of the conveyances in question. By reason of their insolvency the provisions of Title 25-1-8, Utah Code Annotated 1953 as amended, the conveyances from the corporate defendants to Steven Grow were fraudulent and void. The claims of the plaintiff against the corporate defendants were matured claims represented by existing debts. The debts owed by the defendant corporations were evidenced by judgments in fourteen civil actions marked as Exhibit No. 20, which are summarized below.

The summary set forth below shows the date that the notes and mortgages were executed, the dates on which actions to foreclose them were commenced in the District Court of Utah County, the date on which judgments of foreclosure were entered, and the dates on which deficiency judgments were entered. In each case there is a return of execution unsatisfied against the debtor corporation. That evidence is as follows:

File Number:	31,210
Defendant:	Town & County, Western Land
Date of Note:	May 31, 1956
Date of Mortgage:	May 31, 1956
Date Action Commenced to Foreclose Mortgage:	September 5, 1967
Date of Original Judgment:	February 29, 1968
Date of Deficiency Judgment:	April 1, 1968
Amount of Deficiency Judgment:	\$7,424.90
Date of Return of Execution Unsatisfied:	May 23, 1969

File Number:	31,429
Defendant:	Western Land Corporation
Date of Note:	March 19, 1956
Date of Mortgage:	March 19, 1956
Date Action Commenced to Foreclose Mortgage:	November 3, 1967
Date of Original Judgment:	May 17, 1968
Date of Deficiency Judgment:	June 18, 1968
Amount of Deficiency Judgment:	\$5,023.84
Date of Return of Execution Unsatisfied:	May 23, 1969

File Number:	31,208
Defendant:	Western Land Corporation
Date of Note and Mortgage:	May 31, 1956
Date Action Commenced to Foreclose Mortgage:	September 5, 1967
Date of Original Judgment:	February 29, 1968
Date of Deficiency Judgment:	April 1, 1968

Amount of Deficiency Judgment: **\$2,345.13**
 Date of Return of Execution
 Unsatisfied: **May 23, 1969**

File Number: **31,209**
 Defendant: **Grow Investment and Mortgage
 Co. & Property Investment Corp.**

Date of Note and Mortgage: **July 31, 1956**
 Date Action Commenced to
 Foreclose Mortgage: **September 5, 1967**
 Date of Original Judgment: **February 29, 1968**
 Date of Deficiency Judgment: **April 1, 1968**
 Amount of Deficiency Judgment: **\$17,086.10**
 Date of Return of Execution
 Unsatisfied: **May 23, 1969**

File Number: **31,213**
 Defendant: **Grow Investment & Mortgage
 Co.**

Date of Note and Mortgage: **July 31, 1956**
 Date Action Commenced to
 Foreclose Mortgage: **September 5, 1967**
 Date of Original Judgment: **April 11, 1968**
 Date of Deficiency Judgment: **May 15, 1968**
 Amount of Deficiency Judgment: **\$7,424.90**
 Date of Return of Execution
 Unsatisfied: **May 23, 1969**

File Number: **31,301**
 Defendant: **Grow Investment & Mortgage
 Co.**

Date of Note and Mortgage: **February 25, 1957**
 Date Action Commenced to
 Foreclose Mortgage: **September 27, 1967**
 Date of Original Judgment: **May 28, 1968**
 Date of Deficiency Judgment: **July 8, 1968**
 Amount of Deficiency Judgment: **\$8,380.03**
 Date of Return of Execution
 Unsatisfied: **May 23, 1969**

File Number: **32,800**
 Defendant: **Grow Investment & Mortgage
 Co.**

Date of Note and Mortgage: **August 12, 1957**
 Date Action Commenced to
 Foreclose Mortgage: **January 13, 1969**
 Date of Original Judgment: **February 28, 1969**

File Number:	31,343
Defendant:	Grow Investment & Mortgage Co.
Date of Note and Mortgage:	February 25, 1957
Date Action Commenced to Foreclose Mortgage:	October 9, 1967
Date of Original Judgment:	February 29, 1968
Date of Deficiency Judgment:	April 1, 1968
Amount of Deficiency Judgment:	\$9,475.37
Date of Return of Execution Unsatisfied:	May 23, 1969
File Number:	31,226
Defendant:	Grow Investment & Mortgage Co.
Date of Note and Mortgage:	February 25, 1957
Date Action Commenced to Foreclose Mortgage:	September 8, 1967
Date of Original Judgment:	April 11, 1968
Date of Deficiency Judgment:	May 15, 1968
Amount of Deficiency Judgment:	\$9,393.08
Date of Return of Execution Unsatisfied:	May 23, 1969
File Number:	31,212
Defendant:	Grow Investment & Mortgage Co.
Date of Note and Mortgage:	May 18, 1956
Date Action Commenced to Foreclose Mortgage:	September 5, 1967
Date of Original Judgment:	April 11, 1968
Date of Deficiency Judgment:	May 15, 1968
Amount of Deficiency Judgment:	\$9,039.60
Date of Return of Execution Unsatisfied:	May 23, 1969
File Number:	31,264
Defendant:	Allied Properties, Inc.
Date of Note and Mortgage:	May 1, 1957
Date Action Commenced to Foreclose Mortgage:	September 19, 1967
Date of Original Judgment:	June 4, 1968
Date of Deficiency Judgment:	July 8, 1968
Amount of Deficiency Judgment:	\$6,549.49
Date of Return of Execution Unsatisfied:	May 23, 1969

File Number: 31,224
Defendants: Allied Properties, Inc., D.
Spencer Grow and Arta L. Grow
Date of Note and Mortgage: November 13, 1952
Date Action Commenced to
Foreclose Mortgage: September 8, 1967
Date of Original Judgment: June 21, 1968
Date of Deficiency Judgment: July 19, 1968
Amount of Deficiency Judgment: \$5,439.29
Date of Return of Execution
Unsatisfied: May 23, 1969

File Number: 31,284
Defendant: Allied Properties, Inc.
Date of Note and Mortgage: December 31, 1956
Date Action Commenced to
Foreclose Mortgage: September 22, 1967
Date of Original Judgment: February 29, 1968
Date of Deficiency Judgment: April 1, 1968
Amount of Deficiency Judgment: \$12,471.07
Date of Return of Execution
Unsatisfied: May 23, 1969

File Number: 31,225
Defendant: Allied Properties, Inc.
Date of Note and Mortgage: December 30, 1956
Date Action Commenced to
Foreclose Mortgage: September 8, 1967
Date of Original Judgment: February 29, 1968
Date of Deficiency Judgment: May 1, 1968
Amount of Deficiency Judgment: \$19,879.16
Date of Return of Execution
Unsatisfied: May 23, 1969

The record shows that D. Spencer Grow owned all of the type of stock necessary to control the operation of Utah Savings and Loan Association. The transcript, page 86, reflects the following answers of David S. Grow, Jr. in response to questions put to him by Mr. Young:

Q. There is such a thing as permanent guaranteed capital stock; isn't that true?

A. That's true.

Q. And it was necessary to have one thousand shares of permanent guaranteed capital stock before a person could be an officer of Utah Savings and Loan Association, that's true, isn't it?

A. I believe that's correct.

Q. Your father and his companies owned all of the permanent guaranteed stock of Utah Savings and Loan Association, that's true too, isn't it?

A. Except for qualifying shares, which officers from time to time hold.

Q. Yes, which your father would convey to them and take back from them when they ceased to be an officer?

A. Yes.

Each of the files in the civil action referred to above are in evidence. These files show that each note and mortgage was executed in behalf of the debtor corporation by D. Spencer Grow acting as president of each of the mortgage debtors and now judgment debtors. The defendant corporations and D. Spencer Grow knew that the loans of Utah Savings and Loan Association to the defendant corporations were undersecured in June of 1966. At page 121 of the transcript David S. Grow testified as follows:

Q. And in 1965 and 1966, was there Board (Board of Directors of Utah Savings and Loan Association) consideration of the fact that your father was delinquent on his debts?

A. Yes.

Q. Of the Corporation?

A. Yes.

Q. And that was almost a monthly affair with the Board of Directors to try to get your father's corporations to pay their bills, wasn't it?

A. I believe that's an exaggeration.

Q. But they were delinquent during most of the time?

A. There were some mortgages that were delinquent, there were many which were current.

The fears of the Bank Commissioner and the Board of Directors of Utah Savings and Loan Association, which fears were announced to D. Spencer Grow and the defendant corporations before June 30, 1966, were well founded. The obligations owed in 1966 by the defendant corporations described in the Civil Actions set forth in this memorandum were indeed undersecured. The mortgages were foreclosed with resultant deficiencies.

The properties conveyed had substantial value. David Grow testified with respect to Exhibits 1 and 2, page 132 of the transcript, where the following appears:

Q. Do you know what the value of the Oak Dale property was in 1967?

A. I would estimate it was worth \$8,000.00.

With respect to Exhibits 6 and 7, his testimony was as follows:

Q. And the Kaleel property, Exhibits 6 and 7?

A. I would say, 1966, \$2,500.00 an acre.

Q. And there are how many acres, do you know?

A. I believe just under 7.

Pages 13, 14, 15, 16, 17, 18, and 19 of the transcript contain testimony and a stipulation as to the value of each of the properties in question. It was stipulated that the plaintiff's witness would testify that the following exhibits would have the following gross value:

Exhibits 1 and 2: \$10,000.00
Exhibits 3 and 10: \$15,000.00
Exhibit 4: stricken
Exhibit 5: \$35,000.00
Exhibits 6 and 7: \$23,000.00
Exhibits 8: \$10,600.00
Exhibit 9: \$47,152.00

Plaintiff's claim against the individual defendants is based upon Section 25-1-16 UCA 1953 as amended. As evidence of plaintiff's unmaturred claim, plaintiff introduced Exhibits 11 and 12. These exhibits consist of the complaint and an injunction filed in the District Court of Utah County in civil no. 32,027 against the personal defendants D. Spencer Grow and Arta L. Grow and the defendant corporations. That matter was transferred to the District Court of Salt Lake County where it is civil no. 181,123.

As part of the lower court's decision, the finding was made that the corporate defendants were the alter ego of the defendant D. Spencer Grow. Furthermore, at the

time of the conveyances in question, the "grantors were insolvent." Judge Erickson, October 17, 1969. As part of the Findings of Fact and Conclusions of Law, the lower court held that, as to Section 7-7-5 UCA 1953 as amended, D. Spencer Grow and Arta L. Grow are individually liable for the deficiency judgments as set forth in the Findings of Fact.

DISPOSITION IN THE LOWER COURT

A decision was rendered by the lower court granting the plaintiff relief as prayed for in the complaint. The court found, as recited in its decision, that

the record recites that since January 22, 1947, the Grow family owned and controlled the permanent guarantee stock of Utah Savings and Loan and had the sole right to elect the managing officers of the Association. The record further discloses that the various corporations named as grantors in the Exhibits 2 through 10 were likewise controlled by the Grow family. As early as 1953 the Association made loans to some 16 corporations dominated by the Grow family, and by 1957 these loans totaled in excess of \$3,000,000. From this date on, the transactions covered a wide field involving millions of dollars. In many instances, the money was loaned to one of many corporations controlled by the Grow family, but in each instance the Association provided the required money. The money thus used was, of course, provided by the men and women who sought a safe port for their investments.

The court went on to find that the conveyances made

were fraudulent as against the plaintiff. The court further found that there was no fair and valuable consideration given by the grantees to the grantors for the conveyance of the property. A further finding was made by the court stating that the grantors were insolvent at the time of the conveyances in question. Therefore, the court granted the relief as prayed for by the plaintiff and set aside the conveyances on the property in question.

RELIEF ON APPEAL

The respondent requests the Court to affirm the judgment of the lower court.

The following portion of the respondent's brief will deal with the issues which were set out in the appellant's brief in the order of their presentation.

ARGUMENT

I. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WAS PROPERLY DENIED BY THE COURT.

With respect to the defendant's Motion for Summary Judgment, at transcript page 40, line 28, the court's attention is called to Rule 56 of the Utah Rules of Civil Procedure dealing with summary judgment and the requirements set forth in that rule. The record is devoid of any notice having been served on the plaintiff or of any other requirement of Rule 56 having been met

by the defendants prior to the motion for such judgment. Consequently, the motion was not well taken and was properly denied by the Court.

A. Plaintiff offered evidence as well as stipulations to substantiate and support the allegations of its complaint. The defendants stated that no evidence was introduced, prior to resting of the defendants' case, which showed any relationship between the personal defendants and the corporate defendants. [I.A.(1)] The defendants overlook the fact that in their answer in paragraph number 1, they acknowledge that the defendant corporations were managed and controlled by D. Spencer Grow and Arta L. Grow. They further ignore the evidence adduced at trial that D. Spencer Grow and Arta L. Grow owned the controlling interest of those corporations.

The defendants further state that the financial condition of the grantors at the time of the subject conveyances was not shown. [I.A.(2)] The record reflects numerous unsatisfied executions returned against the corporate defendants herein.

The defendants allege that no evidence was offered by the plaintiff showing the circumstances by which the properties in question were acquired by the defendants. [I.A.(3)] The record reflects numerous statements made by the witness David S. Grow, Jr. setting forth the fact that monies were borrowed from Utah Savings and Loan Association by the defendant corporations

with the approval of D. Spencer Grow, acting as the manager and controlling director of the Association.

The defendants contend that the conveyances were not voluntary, but were made in exchange for valuable consideration. [I.A. (4)] The record reeks with evidence and testimony pertaining to the lack of valuable consideration. With respect to Exhibit number 8, the Martinez home, no money and no property were conveyed by the defendant Steven Grow. See page 55, transcript, line 21. The witness David Grow testified concerning the Martinez property on page 59 of the transcript and there is no recital of any consideration having been paid by Steven to the grantor. With respect to Exhibit 5, it is admitted that no consideration was paid. It appears at page 65 of the transcript where Mr. Poelman questioned David Grow with the following question and answer:

Question: Do I understand there was no consideration paid by Steven for this transfer, it was transferred only to him for development?

Answer: Yes.

It was further admitted by the witness David S. Grow, Jr. at pp. 71-72 of the transcript that plaintiff's exhibits 1, 2, 6 and 7 were gifts by D. Spencer Grow and Arta L. Grow to Steven Grow.

The defendants represent to the court that no evidence was offered by the plaintiff in support of the allegations that actual fraudulent intent was involved or that Steven L. Grow had knowledge with respect to

matters covered by this action. [I.A.(5)] The record shows that Steven Grow was indebted to Western Land Corporation in 1966 in the amount of \$220.00; to Town and Country Real Estate Company in the amount of \$90.00; to First Fidelity Thrift and Loan in the amount of \$500.00; and to Grow Investment and Mortgage Company in the amount of \$1,322.00. Furthermore it appears at page 156 of the transcript that Steven L. Grow, in response to questions from Mr. Young, stated the following:

Question: 1966. Did you know at that time that all of these mortgages were delinquent that were owed by your father's corporation?

Answer: Mr. Young, I had an understanding. I think I realized that there were delinquencies on the part of some companies to Utah Savings and Loan Association.

On page 155 of the transcript, line 18, Mr. Young questioned Steven L. Grow with the following questions and answers:

Answer: I paid \$2,300.00 cash to Utah Savings and Loan Association to bring that mortgage current. I paid \$730.00 to the County Recorder to bring taxes current. I also paid an assessment for sewer to Provo City in a certain amount.

Question: Where did you get the \$2,300.00?

Answer: Just from my personal funds.

Question: How did that money find its way into your personal funds?

Answer: This is money which I borrowed.

Question: From?

Answer: I borrowed this from Valley National Builders.

Question: Valley National Builders? Do you know if that corporation is indebted to Utah Savings and Loan?

Answer: Yes?

Question: Indebted in approximately \$600,000.00 to Utah Savings and Loan?

Answer: I believe that's right.

B. UNDER THE UNIFORM FRAUDULENT CONVEYANCE ACT, SECTION 25-1-16, UCA 1953 AS AMENDED, A REMEDY IS PROVIDED WHEREBY A CREDITOR WITH AN UNMATURED CLAIM CAN SEEK TO SET ASIDE A CONVEYANCE WHICH IS FRAUDULENT AS AGAINST HIM.

The Uniform Fraudulent Conveyance Act is applicable to all defendants, corporate or individual. Under our statute and in most jurisdictions where such cases have been heard, the right is afforded a tort claimant whose claim has not matured to judgment to attack conveyances as being fraudulent. 73 A.L.R.2d 749. Reference is made to the State of Arizona and its highest court's ruling under the fraudulent conveyance statute wherein the court in *Babcock vs. Tam*, 156 F.2d 116, in recognizing the statute referred to above, held that a tort claimant may attack a conveyance in fraud of creditors prior to the entry of judgment since such right is grant-

ed him by the statute against fraudulent conveyances. One having a claim in tort is a creditor from the moment the claim arises and has a right to attack a fraudulent conveyance prior to judgment. The appellants contend that the plaintiff is required to prove actual intent to defraud before the fraudulent conveyance statute is applicable. Section 25-1-4, UCA 1953 as amended deals with conveyances by insolvents. That statute states that every obligation incurred by a person who is insolvent or who may be rendered insolvent by the conveyance is fraudulent without regard to the actual intent on the part of the individual, if the conveyance is made without a fair consideration. The record is clear, as will be shown, that fair consideration was not received nor was one paid for the conveyance of the properties in question. Plaintiff can thereby rely on a shift of the burden of proof by way of presumption of fraud from the circumstances surrounding the conveyance of the properties.

The court's attention is drawn to the fact that every obligation incurred by the corporate defendants predated the conveyances in question even though the judgments referred to in the transcript postdated the conveyances. The appellants contend that there is no evidence relating to the assets or liabilities of the individual grantors at the time of the conveyances. The question then becomes whether D. Spencer Grow and Arta L. Grow were insolvent on March 11 and March 20, 1967.

It is plaintiff's view that plaintiff is entitled to the presumption, and in this case it is a presumption, that an

obligor will pay a lawfully obligated debt if such payment is within his power. Generally the presumption is, in the absence of any showing to the contrary, that a debt lawfully due and not paid is not paid because of the inability of the debtor to pay the debt.

The appellants attempt to distinguish *Enright vs. Grant*, 4 Utah 334, 15 P. 268 (1887) and *Ogden State Bank v. Baker*, 12 Utah 13, 40 P. 765 (1895) on the basis that a return of execution *nulla bona* may show evidence of insolvency of a debtor subsequent to the return, but no inference or evidence of the insolvency prior to the unsatisfied return. Also, the appellants state that the two cases require that the plaintiff prove that the defendants had no other properties belonging to them which could be used to satisfy the deficiency judgments.

The appellants argue that the defendants were prevented from paying the deficiency judgments by civil no. 181,123 in the District Court of Salt Lake County. Furthermore, the plaintiff is forbidden to invoke the doctrine of executions returned *nulla bona* because he has knowledge of the fact that the defendants have other properties which can be used to satisfy the outstanding judgments. The trouble with this argument is that every deficiency judgment against the defendants was entered prior to the issuance of the preliminary injunction in the Salt Lake County case. Those deficiency judgments comprise part of the evidence upon which the preliminary injunction was based in civil case no. 30,027. The argument of appellant's counsel and of appellants that

the appellants were prevented from satisfying these judgments by the existence of the preliminary injunction must be regarded as facetious and not made in good faith.

There is not one action involving a deficiency judgment referred to by the appellants which was not filed months before May 17, 1968, the date of the filing of the *Lis Pendens* in civil action no. 32,027.

The existence of the judgments against the grantor corporations and the existence of the claims against the grantor individuals certainly justify the setting aside of the conveyances and the reestablishment of the title in the names of the grantors so as to make the property subject to the lawful claims of the grantors' creditors.

Times have not changed the felling of the courts in dealing with conveyances between members of families, for the Supreme Court of this state still abides by the common law rule that transactions between near relatives are subject to rigid scrutiny when under attack by creditors of the grantor. *Givan vs. Lambeth*, 10 U.2d 287, 351 P.2d 959 (1960); *Lund vs. Howell*, 92 Utah 232, 67 P.2d 215; *Paxton vs. Paxton*, 80 Utah 540, 15 P.2d 1051.

In *Ned J. Bowman Co. vs. White*, 13 U.2d 173, 369 P.2d 1962, the Utah court again made reference to the general rule of subjecting conveyances between close relatives to rigid scrutiny and went on to state that the facts surrounding each transaction determine whether it is a fraudulent conveyance.

The relationship which existed between Steven L. Grow and the defendants D. Spencer Grow and Arta L. Grow and the defendant corporations created a condition of suspicion respecting the conveyances involved. These circumstances, coupled with the prior information as to the grantors' heavy indebtedness and obligations, is sufficient to hold that the conveyances involved herein were fraudulent. Furthermore, the respondent contended in the lower court and the court found that the obligations of the defendant corporations were in law the obligations of D. Spencer Grow. The lower court found that the corporate defendants were the alter ego of the defendant D. Spencer Grow. The record in this case clearly shows that D. Spencer Grow and the corporations controlled by him owned all of the permanent guarantee stock in the Utah Savings and Loan Association. The record also shows that ownership of permanent guarantee stock in the amount of 1,000 shares is necessary in order to become an officer of Utah Savings and Loan Association. The record is very clear that each and every evidence of indebtedness executed by the various corporations to Utah Savings and Loan Association were executed by D. Spencer Grow and Arta L. Grow. Thus, the owner of all of the stock necessary to be an officer of Utah Savings and Loan Association was the same person who was the president and controlling and managing agent of all the corporate defendants.

The obligations of the defaulting debtor corporations being, in law, the obligations of D. Spencer Grow, and being unpaid, certainly evidence the fact that the

defendants cannot pay their debts and are therefore insolvent.

11. In *Neal vs. Clark*, 251 P.2d 903, 906 (Ariz. 1952), the Arizona court made reference to fair and valuable consideration in dealing with a fraudulent conveyance case. The court stated that a fair and valuable consideration cannot be determined by a comparison of the things sold or the price received by the grantor. Rather, all circumstances are to be considered in arriving at a "reasonable and fair proportion between the one and the other." Therefore, the mere presence of a consideration clause in a deed is not evidence that the deed was founded on fair and valuable consideration or any consideration at all, and a deed made for a nominal consideration is nothing more than a voluntary conveyance without consideration. *Ogden State Bank vs. Baker*, 12 Utah 13, 40 P. 765 (1895).

CONCLUSION

Unquestionably the record shows that the corporate defendants were insolvent. Equally certain is the fact that no fair consideration was received by the grantors.

The record fully justifies the court in holding D. Spencer Grow and Arta L. Grow personally liable for the judgments of the defendant corporations. Clearly

the court was correct in making the assets of D. Spencer Grow and Arta L. Grow and the defendant corporations available to the Association for the benefit of the defrauded savers.

Respectfully submitted,

DALLAS H. YOUNG, JR.
Attorney for Respondent