

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-9096;&2011-CP-10-8840

Frank Gordon, Jr., Individually and as Trustee
 of the Dorothy S. Gordon Trust
 PLAINTIFF(S)

Donald W. Lancaster
 DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

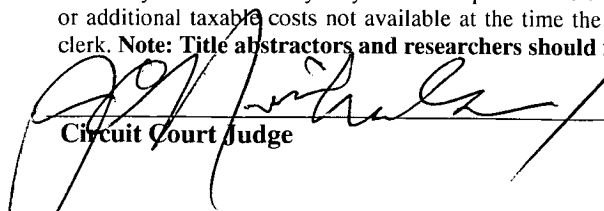
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff Frank Gordon, Jr.	Defendant Donald W. Lancaster	\$211,677.30
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2117
 Judge Code

8/16/2013
 Date

FILED
 2013 AUG 19 PM 3:47
 JULIE J. ARMSTRONG
 CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Frank Gordon, Jr., Individually and as
Trustee of the Dorothy S. Gordon
(Deceased) Trust,

Plaintiff,

vs.

Donald W. Lancaster,

Defendant.

Frank Gordon, Jr., Individually and as
Trustee of the Dorothy S. Gordon
(Deceased) Trust,

Plaintiff,

vs.

Donald W. Lancaster,

Defendant.

CASE NO: 2010-CP-10-9096

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2013 AUG 19 PM 3:47

FILED

CASE NO: 2011-CP-10-8840


ORDER & JUDGMENT

THIS MATTER came before me on June 13-14, 2013, for a non-jury trial. This action was commenced by Plaintiff to aid in executing on a Judgment he obtained against now-deceased Judgment Debtor Rudolph Robert Drews ("Drews"). Plaintiff initiated this action against Defendant Donald W. Lancaster ("Lancaster"), nephew of Judgment Debtor Drews, alleging that Defendant Lancaster received fraudulent *inter vivos* transfers from Drews that should be set aside and the property/monies received by Lancaster under those fraudulent transfers (and/or the proceeds thereof) should be awarded to Plaintiff in satisfaction of Plaintiff's Judgment and accrued interest. Plaintiff appeared and was represented by counsel, Justin Lucey and Stephanie Drawdy. Defendant appeared and was represented by counsel, John Dodds.



PROCEDURAL/HISTORICAL BACKGROUND

In September 1996, the underlying claim accrued for the illegal sale of stock under S.C. Code § 35-1-1490. On April 16, 1999, suit was filed in *Gordon v. Drews, et al.* In December 2001, a three-day jury trial was held in *Gordon v. Drews, et al.*, Case No. 1999-CP-1001407, that culminated in a Judgment in the amount of \$50,000.00, plus \$15,789.12 in interest. By Order dated March 14, 2002, Plaintiff was awarded attorney fees of \$42,693.50, for a total Judgment of \$108,482.62. From April 2002 until September 2005, Drews appealed the Judgment. The Court of Appeals issued an opinion affirming the Judgment; and in September 2005, Drews' Petition for Writ Certiorari was denied. On September 28, 2005, Gordon was additionally awarded \$1,467.21 in appellate fees and expenses.


 In August 2006, the Circuit Court entered an order for supplemental proceedings to be opened to aid Gordon in satisfaction of the Judgment. On September 26, 2006, a hearing was held in the supplemental proceedings, which were left open due to Drews' failure to produce financial records, in contravention of the order for supplemental proceedings.

On September 25, 2007, Drews died; Drews' Estate was opened on or about October 26, 2007 under Case Number 2007-ES-10-1518. Disputes occurred regarding the opening and the administration of the estate. Shirrese Brockington was later named the Special Administrator of the estate of Rudolph Robert Drews. On February 8, 2010, an inventory and appraisal was filed in Drews' Estate, which indicated the estate had no assets.

On February 26, 2010, Drews' nephew, Defendant Lancaster, was deposed in the Supplemental Proceedings. During Lancaster's deposition, Plaintiff became aware of the fraudulent transfers between Drews and Lancaster that rendered Drews insolvent and that are the subject of this suit.

On February 27, 2010, the Judgment Debtor's wife, Effie D. Drews, also died. This occurred two days before her scheduled deposition. On March 30, 2010, Effie Drews' Estate was opened with her sister, former Defendant Jessie B. Atkinson ("Atkinson"), thereafter being named as Personal Representative. On June 29, 2010, an inventory and appraisal was filed in Effie Drews' Estate, which indicated a net worth of \$55,460.04.

On November 2, 2010, Gordon filed this action against the Drews' Estate, Effie Drews' Estate, and Donald Lancaster; an amended complaint was then filed on November 30, 2010. On December 2, 2010, Gordon filed a similar Petition in Effie Drews' Estate against former Defendant Atkinson (individually and as the Estate's Personal Representative), Drews' Estate, and Donald Lancaster.

 In November 2011, Gordon settled with Defendant Atkinson, Individually and as Personal Representative of Effie Drews' Estate, with the funds from Effie Drews' Estate paid to Plaintiff in partial satisfaction of the foregoing judgment. Also in November 2011, Gordon settled with Shirrese Brockington as Special Administrator of the Drews' Estate. Both Estates have assigned to Plaintiff all rights of recovery against Lancaster relating to the matters herein. On June 13, 2013, the Court took judicial notice of Plaintiff's Judgment and Assignments.

LEGAL DISCUSSION

To bring a Statute of Elizabeth claim, a creditor need not show that the debt was reduced to judgment by the time of the transfer. "One who is in debt cannot make a voluntary conveyance which will prevail against existing debts." *First Citizens Bank and Trust Co. of S.C. v. Scofield*, 286 S.C. 520, 522, 335 S.E. 2d 248 (Ct. App. 1985)(court held son's transfer of residence to his mother while indebted to others and while continuing to live in same was a fraudulent conveyance). Moreover, "[s]ubsequent creditors may have conveyances set aside where: (i) the conveyance was 'voluntary,' that is, for no consideration, and (ii) it was made with

a view toward future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors.” *Judy v. Judy*, 403 S.C. 203, 742 S.E.2d 672, 675 (Ct. App. 2013)(quoting *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406, 408 (Ct.App.1995)). Furthermore, where a conveyance is to a family member, under the Statute of Elizabeth, even nominal consideration will not save such a conveyance that effectively defeats creditors. *First Citizens*, 286 S.C. 520, 522.

“With a voluntary inter-family transfer, the burden shifts to the transferee to establish the transfer was valid.” *Judy*, 742 S.E.2d 672, 675 (citing *Windsor Props., Inc. v. Dolphin Head Constr. Co.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998) (“Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.”). Moral fraud is shown by evidence that a party acted with intent to delay, hinder and/or defeat creditors. *Judy*, 742 S.E.2d 672, 675.

FINDINGS OF FACT AND CONCLUSIONS

A. \$100,000 Transfer

1. From circa 1990, Judgment Debtor Drews was in financial trouble; Lancaster testified that by early 1992, the IRS was closing in on collecting taxes from Drews.
2. In early 1992, Lancaster received \$100,000 from Drews on the alleged condition that Lancaster buy Drews a house for Drews and his wife, Effie Drews, to live in for the remainder of their lives.
3. Lancaster testified he treated the \$100,000 from Drews as a gift at the time of the gift and for eighteen or more years thereafter, including during his 2010 deposition. Lancaster testified that it was important to Lancaster that it be a gift so that Lancaster’s tax basis in the

property would be higher. He further testified that he prepared a gift tax return for Drews to report this gift to the Internal Revenue Service; and that he assisted in mailing the gift tax return, all to protect himself, while failing to keep a copy of the return.

4. Confronted with the anomaly of the failure to keep a copy of any tax return, let alone an important one that he had required to be filed, Lancaster attempted to claim that Drews' copier was broken that day. This testimony was impeached by his 2010 deposition testimony, when he testified that he had kept an eye out for the return when he inspected the Decedent's desk immediately before the deposition. Obviously, he would not have kept an eye out for the return if he knew it did not exist due to the copier allegedly being broken.

5. At trial, Lancaster deviated from his deposition testimony that the \$100,000 transfer was a gift, claiming it was a binding, bargained for consideration for the life estate. This changed testimony occurred after nineteen (19) years of contrary representations to the public and to the U.S. Government, including deposition testimony.

6. The uncontested evidence was that at the time the \$100,000 transfer was made, and for the remainder of his life, the Judgment Debtor had pending creditor claims, including IRS assessments and liens during most of the '90s, and a 1999 demand on a bank loan guarantee due to the failure of the business investment (the hardware store "Builders Station") that had given rise to Gordon's original stock fraud claim.

i. Lancaster Purchased the Bainbridge Property for Drews

7. On or about May 22, 1992, Lancaster purchased 17 Bainbridge Drive in Charleston, South Carolina (the "Bainbridge Property") for \$160,000. Pl. Ex. A.

8. In May 1992, Lancaster executed an agreement whereby he purportedly gave Judgment Debtor Drews and Effie Drews a life estate in the Bainbridge Property.

9. In contravention of typical practices, Lancaster did not create the Bainbridge

Property life estate by deed and did not record the life estate in the public record, thereby avoiding notice of the life estate's existence (and the \$100,000 transfer) to Drews' creditors.

10. As seen below, from 1992 until the Drewses' deaths, Lancaster held the Drews' residence(s) in his name while allowing the Drews full use, control, and enjoyment of the residence(s) (including use of money obtained through equity lines of credit secured by the residence) in contravention of customary business practices.

11. Shortly after the Bainbridge purchase, on or about June 12, 1992, Lancaster obtained a \$40,000 open-end mortgage (equity line) from South Carolina National Bank on the Bainbridge Property (the "\$40,000 SC National Line of Credit"), secured by the equity that had been substantially created by Judgment Debtor Drews' funds. Pl. Ex. B.

12. From 1993 to 1995, Lancaster provided Drews \$40,000 in checks drawn from South Carolina National Bank.

13. Lancaster was effectively using the equity line of credit to return to Drews part of the \$100,000 Transfer, with Drews paying the interest incurred on the South Carolina National line of credit secured with the equity that Drews had created.

ii. Nuffield Property Substitution Made By Drews and Lancaster

14. In 1995, Drews and Lancaster allegedly agreed to substitute a different, single-level house for the two-story Bainbridge house due to medical issues with Drews' knees.

15. On April 27, 1995, Drews acted as the alleged Power of Attorney for Defendant Lancaster and signed an Agreement of Purchase and Sale of Real Property for a residence located at 2 Nuffield Road in Charleston, South Carolina (the "Nuffield Property"). Pl. Ex. C.

16. No evidence exists that Lancaster ever executed a Power of Attorney for Drews to act on Lancaster's behalf. Lancaster could not produce one and could not explain the absence of any such document in the RMC office.

17. Drews' acting as a Power of Attorney when no such authority exists is a departure from typical legal and financial practices and is evidence of his continued control of the monies he had transferred to Lancaster.

18. On May 15, 1995, Lancaster increased the \$40,000 SC National Line of Credit on the Bainbridge Property to \$79,250. Pl. Ex. D.

19. One day later, on May 16, 1995, Lancaster purchased a residence located at 2 Nuffield Road in Charleston, South Carolina (the "Nuffield Property") for \$125,000. Pl. Ex. E.

20. The timing of Lancaster's purchase of the Nuffield Property in conjunction with the increase in the Bainbridge Property's equity line of credit by Drews evidences that the Nuffield Property purchase was funded with monies from the Bainbridge Property's equity line of credit secured by the equity that Judgment Debtor Drews created.

21. In May 1995, Lancaster executed a Memorandum of Lease and Subordination Agreement whereby he purportedly gave Drews and Effie a life estate in the Nuffield Property. Pl. Ex. F.

22. The purported Nuffield Property life estate Lancaster gave Drews and Effie was allegedly in substitution for the purported Bainbridge Property life estate.

23. In contravention of typical business and legal practices, Lancaster did not create the Nuffield Property life estate by deed.

24. Further, the misleading title of the Nuffield Property's Memorandum of Lease and Subordination Agreement and its initial text creates the impression that Drews had a lease (not a life estate) for his residence, thereby again avoiding notice of the existence of the life estate in the public record (showing another departure from normal business methods). The misleading document is in and of itself a further deviation from typical business or legal practices.

25. Following Drews' death in September 2007, Effie Drews continued to live at the

Nuffield Property until her death in February 2010.

26. On April 29, 2010, Lancaster sold the Nuffield Property residence for \$246,000 (receiving \$121,000 in profits from its sale). Pl. Ex. G.

27. Based on the evidence as a whole, this Court finds no legitimate reason exists for Lancaster to have purchased Drews' residence for Drews with Drews' monies and then incrementally pass those monies back to Drews with the multiple, convoluted steps demonstrated here; rather, the evidence presented shows the only reason for Lancaster to have done this was to allow Drews to distance himself from ownership of his residence, thereby giving Drews the appearance of having no assets in order to defraud his creditors.

B. The Meeting Street Mortgages

i. \$40,000 Meeting Street Mortgage (the First Mortgage)

28. In March 1995, Drews granted Lancaster a \$40,000 mortgage on Drews' property located at 1705 Meeting Street (the "\$40,000 Meeting Street Mortgage"). Pl. Ex. H.

29. Lancaster did not give Drews any contemporaneous consideration for the \$40,000 Meeting Street Mortgage.

30. Moreover, in contravention of typical business practices and Defendant Lancaster's detailed records of the transaction, no note was ever executed on the \$40,000 Meeting Street Mortgage.

31. In further contravention of typical business practices, the \$40,000 Meeting Street Mortgage was not recorded until November 1995, approximately eight months after it was executed. Pl. Ex. H.

32. Additionally, Defendant Lancaster produced amortization schedules (Pl. Exs. I and J) that include the \$40,000 Meeting Street Mortgage with the same revision date (February 3, 1997) but contradictory information regarding interest paid in 1995, resulting in a 1996

balance-forward discrepancy of \$6,081.60 (Pl. Ex. I indicates a balance forward at the end of 1996 of \$44,211.20 while Pl. Ex. J indicates a balance forward of \$50,292.80).

33. The contradictions in Defendant Lancaster's amortization schedules (Pl. Exs. I and J) impeach Defendant Lancaster's claim that his detailed, personally maintained schedules were contemporaneously made and recorded.

ii. \$100,000 Meeting Street Mortgage (the Second Mortgage)

34. On April 15, 1998, Drews granted Lancaster a \$100,000 mortgage on Drews' property located at 1705 Meeting Street (the "\$100,000 Meeting Street Mortgage"). Pl. Ex. K.

35. Lancaster did not give Drews any contemporaneous consideration for the \$100,000 Meeting Street Mortgage.

36. Moreover, in contravention of typical business practices and Defendant Lancaster's detailed records of the transaction, no note was ever executed on the \$100,000 Meeting Street Mortgage.

37. Lancaster presented contradictory testimony that he was not contemporaneously aware of the \$100,000 Meeting Street Mortgage while also testifying that the \$100,000 Meeting Street Mortgage was intended to replace the \$40,000 Meeting Street Mortgage, and that he cooperated with Drews in filing this excessive mortgage.

38. Further, Lancaster testified that no satisfaction of the \$40,000 Meeting Street Mortgage was filed contemporaneous with creation of the \$100,000 Meeting Street Mortgage. The failure to satisfy the First Mortgage when the Second Mortgage was granted was in contravention of typical business practices. The failure to satisfy the First Mortgage when the Second Mortgage was granted also impeached Lancaster's testimony that the Second Mortgage was granted to replace the First Mortgage.

39. This excessive mortgage created the impression that Drews' Meeting Street

Property was encumbered in excess of its actual debt by at least \$100,000.

40. Further, the Defendant's claim that the excess amount of the Second Mortgage was to create a line of credit for future advances is impeached by the execution of a new (Third) Mortgage on the next advance (see below).

iii. \$20,000 Meeting Street Mortgage (the Third Mortgage)

41. In July 1999, Drews granted Lancaster a \$20,000 mortgage on Drews' property located at 1705 Meeting Street (the "\$20,000 Meeting Street Mortgage"). Pl. Ex. L.

42. Lancaster did not give Drews any contemporaneous consideration for the \$20,000 Meeting Street Mortgage.

43. In contravention of typical business practices and Defendant Lancaster's detailed records of the transaction, no note was ever executed on the \$20,000 Meeting Street Mortgage.

44. Lancaster gave contradictory testimony that he was not contemporaneously aware of the \$20,000 Meeting Street Mortgage while later testifying that he did participate in its genesis and that the purpose of the Third Mortgage was to fund a settlement on a bank guarantee.

iv. Excessive Mortgages

45. These excessive mortgages created the impression that Drews' Meeting Street Property was encumbered in excess of its actual debt by at least \$100,000.

46. Based on the evidence as a whole, the Court finds Lancaster did have knowledge of the Meeting Street Mortgages at the time they were executed and actively participated with Drews in his scheme to create the impression that Drews' Meeting Street Property was encumbered in excess of any actual debt so as to avoid creditors.

47. Moreover, based on the evidence as a whole, this Court finds no legitimate business reason exists for the Meeting Street Mortgages to Lancaster; rather, the evidence presented shows the only reason for Drews to grant Lancaster the excessive Meeting Street

Mortgages was for Drews to appear as having encumbered assets in order to conceal his true assets from his creditors, and Defendant Lancaster was an active participant in Drews' scheme to defraud his creditors by this concealment.

48. Importantly, at the time the Second and Third Mortgages were granted, Gordon's cause of action had already accrued. It was in large part the satisfaction of these fraudulent mortgages that was used to justify the later Assignment that occurred a month before the *Gordon* trial (see below).

49. Further, the completely fraudulent Second Mortgage (\$100,000) occurred after the failure of Builders Station, while a bank claim on Drews' guarantee was pending, further evidencing a general fraud on creditors.

C. Judgment Debtor Drews' Assignment of the \$190,000 Meeting Street Mortgage to Defendant Lancaster

50. On November 5 and 6, 2001, Defendant Lancaster executed satisfactions for the three existing alleged Meeting Street Mortgages (\$40,000, \$100,000, \$20,000). Pl. Ex. L, M and N.

51. On November 7, 2001, Drews sold the Meeting Street Property and took back a \$190,000 note and mortgage from the buyer, Charleston's Antiques, on the Meeting Street Property (the "\$190,000 Meeting Street Note and Mortgage"). Pl. Ex. O.

52. On November 7, 2001, simultaneously, Drews allegedly assigned the \$190,000 Meeting Street Note and Mortgage to his wife, Effie. Pl. Ex. P.¹

53. On November 7, 2001, simultaneously, Effie allegedly gave Lancaster a \$50,912 note on the Meeting Street Property (the "\$50,912 Meeting Street Note"). Pl. Ex. Q.

¹ The evidence establishes that Drews and his wife acted in concert with one another to shield Drews' assets. Defendant Lancaster testified that he dealt with his uncle and aunt as a group. He further testified that he never dealt individually with his aunt, Effie Drews, despite allegedly having received an assignment of the Meeting Street Property's \$190,000 Mortgage from her as well as a \$50,912 Note on the Meeting Street Property. Rather, Lancaster admitted that monies received were for the joint benefit of the Drewses.

54. No evidence was presented that Lancaster gave any contemporaneous consideration for the \$50,912 Meeting Street Note.

55. On November 7, 2001, simultaneously, Effie purportedly assigned the \$190,000 Meeting Street Mortgage to Lancaster in full (the "\$190,000 Meeting Street Assignment") as security for the \$50,912 Meeting Street Note. Pl. Ex. R.

56. Lancaster testified he was not contemporaneously aware of the \$190,000 Meeting Street Assignment at the time it was executed on his behalf.

57. No evidence was presented that Lancaster gave any contemporaneous consideration for the \$190,000 Meeting Street Assignment.

58. Notably, Lancaster did not receive an assignment of the \$190,000 Meeting Street Note.

59. The assignment of the Meeting Street mortgage receivable from the Drewses to Lancaster occurred a month before the *Gordon* trial.

60. Drews' assignment of the \$190,000 Meeting Street Mortgage allowed Drews to give the impression in the public record that Drews did not own the debt that was encumbering the now sold Meeting Street Property.

61. From 2001 to 2005, Drews (by way of Effie Drews) received payments on the \$190,000 Meeting Street Note and Mortgage for the joint benefit of the Drewses, purportedly passing a portion of these payments on to Lancaster for the alleged \$50,912 Meeting Street Note.

62. In September 2005, Drews (by way of Effie) received the final payment of \$130,293.37 on the \$190,000 Meeting Street Note and Mortgage.

63. On September 26, 2005, Lancaster received final payment on the \$50,912 Meeting Street Note, issued a satisfaction for same and assigned back to Effie the alleged \$190,000 Meeting Street Property Mortgage. Pl. Ex. Q.

64. As the facts above show, the 2005 payoff was an event of economic significance for Lancaster and Drews due to Drews' sale of the Meeting Street Property and satisfaction of Lancaster's alleged \$50,912 Meeting Street Note. However, see the below omissions by both parties to this transaction.

65. In Lancaster's 2005 federal tax return (Pl. Ex. S), Lancaster filed an itemized return but failed to report interest income from the alleged \$50,912 Meeting Street Note on Schedule B, despite receiving more than \$40,000 in payments from the sale of the Meeting Street Property and reporting other less significant interest income in that year.

66. In Drews' 2005 federal tax return (Pl. Ex. T), Drews also filed an itemized return and failed to report a deduction for interest expense on the alleged \$50,912 Meeting Street Note on Schedule A.²

67. The failure by Lancaster and Drews to report the alleged \$50,912 Meeting Street Note's interest income and interest expense (respectively) on their itemized tax returns for 2005 evidences Lancaster and Drews did not treat the \$50,912 Meeting Street Note as a legitimate loan and continued to hide evidence of the transaction.

68. Based on the evidence as a whole, the Court finds Lancaster did have knowledge of the \$190,000 Meeting Street Assignment at the time it was executed and actively participated with Drews in his scheme to create the impression that Drews' Meeting Street Property was encumbered in excess of any actual debt so as to avoid creditors.

69. Moreover, based on the evidence as a whole, this Court finds no legitimate business reason exists for Lancaster receiving the \$50,912 Meeting Street Note from Effie Drews

² Drews also failed to report a deduction for interest expense on the alleged \$50,912 Meeting Street Note for prior years when it was available as well. For 2001, Drews filed an itemized return but failed to report an interest expense deduction on the alleged \$50,912 Meeting Street Note. For 2002 and 2003, Drews took a standard deduction but the Schedule A included with each of his returns shows Drews failed to list this interest expense in either year.

or the \$190,000 Meeting Street Assignments; rather, the evidence presented shows the only reason for Drews to grant Lancaster the \$50,912 Meeting Street Note and the \$190,000 Meeting Street Assignment was for Drews to conceal his true assets from his creditors, and Defendant Lancaster was an active participant in Drews' scheme to defraud his creditors by this concealment.

D. Judgment Debtor Drews' Transactions With Other Family and Close Friends

70. Plaintiff further alleges additional pattern evidence that Judgment Debtor Drews conspired with sister-in-law Jessie Atkinson and close friend Dorsey Biller to conceal approximately \$50,000 from Drews' creditors.³ Plaintiff offered evidence of Drews' transfer of \$50,000 to Atkinson and Biller to show Drews' pattern of concealing assets with family members and/or close friends. However, the Court does not need to reach this evidence in light of the sufficient evidence directly involving Defendant Lancaster, which shows Judgment Debtor Drews' pattern of concealment.

E. Amount of Transfers and Judgment


71. The evidence presented by Plaintiff at trial establishes that the following monies were received by Defendant Lancaster from these fraudulent transfers:

- (i) The initial \$100,000 Transfer from Judgment Debtor Drews to Defendant Lancaster for purchase of a residence for Drews and his wife, Effie, to live in the remainder of their lives;

³ On February 7, 2007, Effie (with Drews present) gave \$50,000 in checks to her sister Jessie Atkinson to hold for the Drewses. On February 13, 2007, Atkinson gave a \$50,041.69 check back to Effie (returning the \$50,000 plus interest). On February 22, 2007, Drews gave the \$50,041.69 Atkinson check to friend and former business associate Dorsey Biller to hold for Drews and Effie. From March 2007 to July 2007, Drews requested Biller give \$14,000 of the \$50,041.69 back, which Biller did. Following Drews' death in September 2007, Effie Drews began requesting payments back of the \$50,000 from Biller. From October 2007 until October 2009, Effie requested Biller give \$29,500 of the \$50,041.69 back, which Biller did. On March 25, 2010 (following Effie Drews' death on February 27, 2010), Dorsey Biller gave Atkinson (Personal Representative of Effie's Estate) a \$7,084.12 check for final payment on the return of the \$50,041.69 Drews gave Biller.

- (ii) Ninety-Six Thousand Eight Hundred Dollars (\$96,800) in profits received on the sale of the residence purchased with the proceeds of Drew's initial \$100,000 Transfer to Lancaster; and
- (iii) Eighty-Nine Thousand Three Hundred and Thirty Dollars and Seventy-Five Cents (\$89,330.75) in purported payments from Judgment Debtor Drews to Defendant Lancaster for the alleged Meeting Street Mortgages.

72. Interest is due on the judgment at the post judgment rate of 14% per annum under the then existing version of S.C. Code 34-31-20(B)(Supp.1999). After accrual of interest and a \$60,000.00 credit for the Atkinson payment, the balance owed on the Judgment is \$211,677.30.



73. Defendant Lancaster's profits from the sale of the Drews' residence and the Meeting Street Mortgage payments together total \$186,130.75, which has a present value as of commencement of trial of \$222,262.21.⁴ Adding to this total the \$100,000 Drews originally transferred to Lancaster, Lancaster has received a total of at least \$322,262.21 to date from Judgment Debtor Drews – an amount that exceeds the balance of Plaintiff's Judgment.

F. Credibility of Witnesses

74. Defendant Lancaster's testimony at trial regarding these transfers lacked credibility and evidenced that the transfers in question were indeed inter-family transfers for no consideration that were made in furtherance of Drews' scheme to conceal his assets from present and subsequent creditors. In response to questioning by Plaintiff's counsel, Defendant Lancaster gave contradictory testimony regarding his transactions with Drews and claimed to have no contemporaneous knowledge of these transactions, which was not believable. Moreover, his claimed lack of knowledge regarding these transactions as well as typical business practices was

⁴ The Present Value Calculations presented by Plaintiff and relied on by this Court are based on a conservative 2.67 per cent rate of return.

not credible in light of his forthright responses and demonstrated knowledge in answering Defense Counsel's questioning on these issues; and his detailed records and amortization schedules (and complicated, detailed, self-prepared tax returns). The foregoing is compounded when it is recognized that Defendant Lancaster is a very experienced corporate internal auditor, and, as evidenced by his tax returns, a very successful and apparently sophisticated investor.

G. Expert Testimony

75. Plaintiff presented the expert testimony of accountant Richard Livingston, who was duly qualified as an expert in forensic accounting, valuation analysis and fraud examination by the Court.

76. Mr. Livingston had reviewed extensive financial records relating to all of the above and other records.

77. Mr. Livingston aptly explained and substantiated the foregoing evidence and analysis.

78. Mr. Livingston further explained that not only were the foregoing transactions deviations from normal business and accounting principles, but they did not make family or favor sense either, as the parties had consistently chosen to accomplish the transactions in multiple convoluted steps what could have been accomplished in one or two simple steps.

79. Based upon his analysis, Mr. Livingston opined that the only reasonable explanation for the subject transactions was to hide assets from creditors.

80. The Court found Mr. Livingston to be both knowable and credible.

CONCLUSIONS

This Court finds in favor of Plaintiff Gordon and against Defendant Lancaster under Plaintiff's first cause of action for fraudulent conveyances under the Statute of Elizabeth, South

Carolina Code § 27-23-10 *et seq.*⁵ This Court finds that:

(i) Drews and Lancaster structured the life estates, mortgages, assignments, and transfers as convoluted, multi-step transactions in contravention of typical business practices in order to defraud Drews' creditors;

(ii) None of the major transactions were supported by contemporaneous consideration;

(iii) All or substantially all of the transfers were for inadequate consideration;

(iv) At the time each of the transfers was made, Judgment Debtor Drews was facing claims from other creditors;

(v) At the time each of the transfers was made, Judgment Debtor Drews failed to retain sufficient assets to pay his debts as they became due;

(vi) At the time the original transfer, the \$100,000 mortgage, and the assignment occurred, Judgment Debtor Drews was transferring all or substantially all of his assets;

(vii) The *inter vivos* transfers (including mortgages and assignments) were made by Judgment Debtor Drews to Defendant Lancaster in a concerted effort to conceal Judgment Debtor Drews' assets and defraud his current and subsequent creditors. While some of the transfers between Drews and Lancaster occurred prior to the September 1996 accrual of the underlying action resulting in Judgment, Plaintiff has presented evidence that the transfers between Drews and Lancaster involved actual moral fraud as is required to set aside transfers that occurred before Gordon became a creditor;

(viii) Not only has Plaintiff proved the fraudulent nature of these transfers, Defendant Lancaster had failed to meet his burden. Given the familial relationship between the transferor

⁵ These transfers also constituted preferential transfers in violation of the South Carolina Anti-Assignment Act, §§ 27-25-10 and 27-25-30. At the close of Plaintiff's case and at the close of evidence, both parties timely moved for directed verdict/judgment as a matter of law; and both motions were denied.

Additionally, Plaintiff's other causes of action are being denied by a separate, supplemental Order.

and transferee, and the lack of or inadequate consideration for the transfers, the burden shifted to the transferee to establish that the transfers from Drews were bona fide and for valuable consideration. Defendant Lancaster failed to meet this burden; and

(ix) The evidence showed that Defendant Lancaster acted in concert with his uncle, Judgment Debtor Drews, to conceal Drews' assets from Drews' current and subsequent creditors with an intent to defraud those creditors.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT Plaintiff Gordon is granted judgment against Defendant Lancaster in the amount of \$211,677.30, and

~~Defendant Lancaster is ordered to tender to Plaintiff \$211,677.30 from the proceeds of the Judgment Debtor's transfers.~~ *JCN*

AND IT IS SO ORDERED!

JCN
Honorable J. C. Nicholson, Jr.
Circuit Court Judge

Charleston, South Carolina
6/10, 2013