

APPELLATE COURT CASE NO. A12-1257

State of Minnesota
In Court of Appeals

CITIZENS STATE BANK NORWOOD YOUNG AMERICA,
 a Minnesota Banking Corporation,
Respondent,

vs.

GORDON BROWN AND JUDY BROWN a/k/a
 JUDY KAY BROWN,
Appellants.

**BRIEF, ADDENDUM AND APPENDIX OF RESPONDENT
 CITIZENS STATE BANK NORWOOD YOUNG AMERICA**

District Court File No. 10-CV-11-1607, Judge: Kevin W. Eide

BRIGGS AND MORGAN, P.A.
 Eric J. Magnuson (#66412)
 Amie E. Penny Sayler (#389874)
 2200 IDS Center
 80 South Eighth Street
 Minneapolis, Minnesota 55402
 (612) 977-8400

GAVIN, WINTERS, TWISS,
 THIEMANN & LONG, LTD.
 Alan M. Albrecht (#887)
 1017 Hennepin Avenue North
 Glencoe, Minnesota 55336
 (320) 864-5142

And

And
 McCLAY AND ALTON, PLLP
 Robert M. McClay (#69620)
 951 Grand Avenue
 St. Paul, Minnesota 55105
 (651) 290-0301

JOHN A. HALPERN
 & ASSOCIATES
 John A. Halpern (#0039913)
 500 Plymouth Building
 12 South Sixth Street
 Minneapolis, Minnesota 55402
 (612) 375-1980

Attorneys for Appellants
Gordon Brown and Judy Brown
a/k/a Judy Kay Brown

Attorneys for Respondent
Citizens State Bank Norwood
Young America, a MN Banking Corp

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF ISSUES.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS.....4

ARGUMENT.....7

- STANDARD OF REVIEW 8
- II. THE DISTRICT COURT CORRECTLY DETERMINED THAT THE MATERIAL FACTS ARE UNDISPUTED AND PROVE FRAUD **9**
- III. THE STATUTORY AUTHORITY FOR EXECUTION ON THESE ASSETS HAS BEEN MET **10**
- IV. GORDON BROWN AND JUDY BROWN ENGAGED IN ACTUAL FRAUD 11
- V. GORDON BROWN AND JUDY BROWN ENGAGED IN CONSTRUCTIVE FRAUD 17

CONCLUSION 19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>In re Bessler,</u> 2003 WL 22247166 (Bankr. DND, 2003)	17
<u>Minneapolis Stock Yards and Packing Co. v. Halonen,</u> 56 MN 469, 57 NW 1135 (MN, 1894)	14
<u>Offerdahl v. University of Minn. Hosp. & Clinics,</u> 426 NW2d 425 (MN, 1988)	8
<u>Seitz v. Mitchell,</u> 94 US 580, 24 L.Ed. 179 (S. Ct., 1876)	14
<u>State Bank of New London v. Swenson,</u> 197 MN 425, 267 NW 366 (MN, 1936)	14
<u>Thiele v. Stich,</u> 425 NW2d 580 (MN, 1988)	8, 14
<u>Wagner vs. Schwegmann’s South Town Liquor,</u> 485 NW2d 730 (MN. App., 1992)	8
 <u>STATUTES AND REGULATIONS</u>	
Minn. Stat. §510	10
Minn. Stat. §513.41 to 513.51	11
Minn. Stat. §513.44	1, 11, 14, 19
Minn. Stat. §513.45	1, 16, 17, 18, 19
Minn. Stat. §513.47	11
Minn. Stat. §513.48	11

STATEMENT OF ISSUES

1. Did Appellants Gordon Brown and Judy Brown engage in actual fraud?

DISTRICT COURT HELD:

The District Court granted Summary Judgment in favor of Citizens State Bank Norwood Young America against Gordon Brown and Judy Brown because they had engaged in actual fraudulent transfers under Minn. Stat. §513.44. The Court concluded that Citizens State Bank Norwood Young America was therefore entitled to collect its judgment against Gordon Brown from certain assets now held by Judy Brown (Order Granting Motion for Summary Judgment dated June 5, 2012, P. 4 - 5; RADD.1)¹

APPOSITE AUTHORITIES:

Minnesota Statute §513.44

2. Did Appellants Gordon Brown and Judy Brown engage in constructive fraud?

DISTRICT COURT HELD:

The District Court did not expressly reach this question but by implication, it found constructive fraud.

APPOSITE AUTHORITIES:

Minnesota Statute §513.45

¹“RADD.” refers to Respondent’s Addendum; “RA” refers to Respondent’s Appendix; “A” refers to Appellant’s Appendix; “ADD” refers to Appellant’s Addendum. “SRA” refers to Sealed Respondent’s Appendix.

STATEMENT OF THE CASE

This appeal follows a judgment in litigation involving fraudulent transfers evidencing both actual and constructive fraud.

On June 29, 2010, Respondent Citizens State Bank Norwood Young America, a Minnesota Banking Corporation (“Citizens State Bank”) was awarded judgment in the amount of \$294,825.52 against Appellant Gordon Brown. Appellant Judy Brown was not a party.

On October 8, 2010, Gordon Brown and Judy Brown dissolved their marriage without a hearing based on a stipulated Marital Termination Agreement.

The decree of dissolution awarded substantial assets to Judy Brown. Gordon Brown was left with a negative net worth in the millions.

Citizens State Bank brought this action alleging that Gordon Brown engaged in both actual and constructive fraud in transferring substantial assets to Judy Brown and keeping large liabilities and exempt assets for himself. The Browns did this by using an agreed Marital Termination Agreement which, through the administrative process, became a decree of dissolution without a hearing.

Citizens State Bank filed a motion for Summary Judgment which was granted on June 6, 2012 by the district court, the Honorable Kevin W. Eide presiding. Citizens State Bank was allowed to levy execution on certain assets of Judy Brown to the extent necessary to satisfy the judgment, thereby avoiding the fraudulent transfer.

Judge Eide found that the Browns engaged in actual fraud. Judge Eide also found

that the Brown's intended to hinder, delay and defraud Citizens State Bank and that Gordon Brown failed to receive reasonably equivalent value for the transfers to his wife, Judy Brown.

The Browns have appealed the Summary Judgment.

STATEMENT OF FACTS

This appeal is from a summary judgment in collection litigation alleging a fraudulent transfer involving both actual and constructive fraud.²

On February 2, 2007, Appellant Gordon Brown guaranteed a corporate loan made by Respondent, Citizens State Bank Norwood Young America (hereinafter “Citizens State Bank”).³ At that time Brown had a net worth of almost 3 million dollars.⁴

In August 2009, Gordon Brown defaulted on his debt to Citizens State Bank.⁵

On October 22, 2009, Gordon Brown attempted to transfer his house valued at \$421,900 to his wife Judy Brown.⁶

On January 8, 2010, Citizens State Bank sued Gordon Brown and others on the debt.⁷

On March 15, 2010, Gordon Brown brought an action to dissolve his marriage with his wife, Judy Brown.⁸

On June 29, 2010, Citizens State Bank was awarded judgment against Gordon

²Verified Complaint, Citizens State Bank Norwood Young America v. Gordon Brown, et al, 10-CV-10-106 (Carver County Dist. Ct.). (RA.1)

³Ibid, Verified Complaint, (RA.1)

⁴Financial Statement of Gordon Brown (SRA.1)

⁵Supra @ 2, Verified Complaint (RA.1)

⁶Deed dated October 22, 2009 (RA.8); Property Tax Statement (RA.10)

⁷Supra @ 2, Verified Complaint (RA.1)

⁸Divorce Decree, In re Marriage of Gordon Furu Brown and Judy Kay Brown, 19HA-FA-10-267 (Dakota Cnty. Dist. Ct.) (RADD.11)

Brown for \$294,825.52.⁹

On October 5, 2010, Gordon Brown and Judy Brown signed a Marital Termination Agreement.¹⁰

Based on the Brown's Marital Termination Agreement, a decree of dissolution was entered on October 13, 2010.¹¹

Immediately prior to the marital dissolution, Gordon Brown had \$3,670,900 in assets (\$1,100,000 were pledged), \$550 in debts and \$8,807,040 in guarantees.

Judy Brown had \$21,420 in assets and \$200 in debts. There were \$161,000 in joint assets and \$271,500 in joint debt.

After the marriage dissolution, Gordon Brown had \$144,900 in non-exempt assets, \$500,000 in exempt assets, \$271,850 in debts and \$8,807,040 in guarantees.

After the marriage dissolution Judy Brown had \$3,226,420 in assets (\$1,100,000 of the assets were pledged), \$26,000 in exempt assets and \$200 in debts.¹²

As a result of the self serving dissolution of marriage, Judy Brown ended up with in excess of 10 million dollars more than Gordon Brown.¹³

Citizens State Bank filed a motion for Summary Judgment which was granted on June 6, 2012 by the District Court, the Honorable Kevin W. Eide presiding. Citizens

⁹Order and Judgment, Citizens State Bank Norwood Young America v. Gordon Brown, et al, 10-CV-10-106 (Carver Cnty. Dist. Ct.) (A.22)

¹⁰Supra @ 7, Divorce Decree (RADD.11)

¹¹Supra @ 7, Divorce Decree (RADD.11)

¹²Divorce Decree Compilation (RADD.6)

¹³\$2,126,220 less negative (\$8,434,890)

State Bank was allowed to levy execution on certain assets of Judy Brown to the extent necessary to satisfy the judgment, thereby avoiding the fraudulent transfer.¹⁴

Judge Eide found that the defendants engaged in actual fraud. He further found, that Defendants intended to hinder, delay and defraud Citizens State Bank and that Gordon Brown failed to receive reasonably equivalent value for the transfers under the dissolution of marriage to his wife, Judy Brown.¹⁵

¹⁴Judgment and Order Granting Motion for Summary Judgment, Citizens State Bank Norwood Young America v. Gordon Brown and Judy Brown, 10-CV-11-1607, (Carver Cnty. Dist. Ct.) (RADD.1)

¹⁵Ibid, Judgment and Order Granting Motion for Summary Judgment.

ARGUMENT

SUMMARY OF ARGUMENT

Gordon Brown had indicated a net worth of almost three million dollars when the Citizens State Bank made the loan.¹⁶ The bank has a judgment against Gordon Brown for \$294,825.52.¹⁷ Gordon Brown has fraudulently transferred or attempted to transfer almost all of his non-exempt assets to Judy Brown and the bank should be allowed to execute on them, to-wit:

1. \$1,200,000 in an RBC account;
2. \$84,000 in a Minnesota Bank and Trust account;
3. \$80,000 in the Pontoon Partnership.

Gordon Brown has fraudulently transferred assets. After the fraudulent transfers, his net worth was a negative (\$8,434,890). Judy Brown's net worth was \$2,126,220.¹⁸

Gordon Brown and Judy Brown engaged in actual fraud as well as constructive fraud under Minnesota Statutes and in particular Minnesota Statutes §513.44 and §513.45:

- 1) The material facts are undisputed and show fraud.
- 2) The statutory authority for execution on these assets has been met.
- 3) Gordon Brown and Judy Brown engaged in actual fraud.

¹⁶Financial Statement (SRA.2)

¹⁷Order and Judgment, Citizens State Bank Norwood Young America v. Gordon Brown, et al, 10-CV-10-106 (Carver Cnty. Dist. Ct.). (A.22). See also Notice of Entry and Docketing of Judgment (RA.19)

¹⁸Divorce Decree Compilation. (RADD.6)

4) Gordon Brown and Judy Brown engaged in constructive fraud.

I. STANDARD OF REVIEW

Upon review of summary judgment, the Court of Appeals must determine whether any genuine issues of material fact exist and whether the Trial Court erroneously applied the law. Wagner v. Schwegmann's South Town Liquor, 485 NW2d 730 (MN. App., 1992).

A party requesting summary judgment, under the Rules of Civil Procedure, must demonstrate that no genuine issue of material facts exists. Thiele vs. Stich, 425 NW2d 580 (MN, 1988).

On motion for summary judgment, when the moving party makes out a prima facie case, the burden of producing facts that raise a genuine issue of material fact shifts to the opposing party. Thiele v. Stich, supra.

The District Court's substantive ruling that summary judgment was required on the undisputed facts based on controlling Minnesota Law is reviewed by this Court *de novo*. The Court examines (1) whether there is any genuine issue of material fact, and (2) whether the District Court erred in its application of Minnesota law. Offerdahl v. University of Minn. Hosp. & Clinics, 426 NW2d 425, 427 (MN 1988).

II. THE DISTRICT COURT CORRECTLY DETERMINED THAT THE MATERIAL FACTS ARE UNDISPUTED AND PROVE FRAUD.

The Findings of Fact in the Divorce Decree¹⁹ give us the exact values of the Brown's assets at the time of transfer. In addition, the attempted deed to Judy Brown of the Brown homestead also shows intent to defraud.²⁰

The following specific actions by Gordon Brown constitute "fraudulent transfers":

- 1) \$1,200,000 in RBC Account. This account was transferred to Judy Kay Brown on October 8, 2010. This account was pledged to Minnesota Bank and Trust to secure a loan of \$1,100,000. Minnesota Bank and Trust also had a mortgage on land worth \$1,700,000 securing the same loan. Minnesota Bank and Trust was over secured in the amount of \$1,800,000. Therefore, the account had a net value of \$1,200,000.²¹
- 2) Transfer of \$421,900 Home. Shortly after the loan became delinquent in August of 2009, Gordon Brown transferred his house to Judy Brown (transfer date October 22, 2009). On his financial statement given to the bank he showed the value of the home as \$565,000.²² Presently the value of the home is \$421,900.²³ The current exemption for homestead is

¹⁹Divorce Decree, In re Marriage of Gordon Furu Brown and Judy Kay Brown, 19HA-FA-10-267. (Dakota Cnty. Dist. Ct.) (RADD.11)

²⁰Deed dated October 22, 2009. (RA.8)

²¹Supra @ 8, Divorce Decree, Finding 4 and Conclusions IV (11). (RADD.11)

²²Supra @ 4, Financial Statement.

²³Property Tax Statement (RA.10).

\$360,000.²⁴ Gordon Brown and Judy Brown continue to live in the home.²⁵

Therefore, the majority of the asset is exempt from creditors.

- 3) \$84,000 in Minnesota Bank and Trust Account. This joint account was transferred to Judy Kay Brown. While this account is also allegedly pledged to Minnesota Bank and Trust to secure a loan, Minnesota Bank and Trust also has a mortgage on land valued at \$1,700,000. Therefore, the account has a net value of \$84,000.²⁶
- 4) \$80,000 interest in Pontoon Partnership. This interest was transferred to Judy Kay Brown in October of 2010²⁷, after the judgment against Gordon Brown (June 29, 2010).²⁸

III. THE STATUTORY AUTHORITY FOR EXECUTION ON THESE ASSETS HAS BEEN MET.

The statutory authority for the Plaintiff to levy execution on the assets of Gordon Brown transferred to Judy Kay Brown has been met.

²⁴Homestead Exemption, Minn. Stat. §510.02(1), (RA.18).

²⁵They were both served at the home, “their usual place of abode...”, Affidavit of Service (RA.11).

²⁶Supra @ 8, Divorce Decree, Conclusion IV. (RADD.11).

²⁷Supra @8, Divorce Decree, Finding D and Conclusion VIII. (RADD.11).

²⁸Supra @ 8, Judgment.

Minnesota Statute 513.47 provides:

“513.47 REMEDIES OF CREDITORS.

(a) In an action for relief against a transfer or obligation under sections 513.41 to 513.51, a creditor, subject to the limitations in section 513.48, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor’s claim;...

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.”

IV. GORDON BROWN AND JUDY BROWN ENGAGED IN ACTUAL FRAUD.

Transfers are fraudulent as to present or future creditors if actual fraud is proved. The Minnesota Uniform Fraudulent Transfer Act sets out the guidelines (UFTA).²⁹ Here Gordon Brown was found to have intended to hinder or delay Citizens State Bank, and to be the perpetrator of actual fraud. Minn. Stat. §513.44(a)(1).

To analyze “intent to defraud” the “Badges of Fraud” have been developed [Minn. Stat. §513.44(b)]. Gordon Brown exhibited 8 of the 11 factors:

1. The transfers were to a relative or insider (wife, Judy Kay Brown)³⁰
2. Gordon Brown continued to retain control and possession of the property (Brown homestead). Gordon continues to live in the property. Gordon’s name was still on the accounts³¹;

²⁹Minn. Stat. §513.41 to 513.51.

³⁰Supra @ 8, Divorce Decree. (RADD.11)

³¹Supra @ 25, Service Affidavit shows Gordon Brown was served at his “usual

3. The transfers were never disclosed to the Citizens State Bank and therefore were concealed. Citizens State Bank was not aware nor a party to the Brown's divorce action;³²
4. Before the transfers were made, Gordon Brown had been sued by Citizens State Bank on January 8, 2010;³³
5. Gordon Brown transferred substantially all of his assets leaving himself with a negative net worth in excess of -\$8,400,000.³⁴ Gordon Brown kept substantially all of the Brown's debt;³⁵
6. Gordon Brown failed to receive reasonably equivalent value for the transfers to Judy Brown. After the transfers, Judy Brown had a net worth of over 10 million dollars more than Defendant Gordon Brown³⁶;
7. Gordon Brown became insolvent upon transferring the assets. He had a negative net worth of -\$8,434,890.00.³⁷ Gordon has failed to pay his debts such as the Citizens State Bank judgment; and

place of abode.” (RA.11). The RBC Account was still in his name in December, 2010.

(SRA.3)

³² Supra @ 8, Divorce Decree.

³³ Verified Complaint, Citizens State Bank Norwood Young America v. Gordon Brown, et al, 10-CV-10-106 (Carver Cnty. Dist. Ct.) (A.15)

³⁴ Divorce Decree Compilation (RADD.6).

³⁵ Supra @ 34, Divorce Decree Compilation.

³⁶ Ibid, Divorce Decree Compilation.

³⁷ Ibid, Divorce Decree Compilation.

8. The transfers occurred shortly after the substantial debt to Citizens State Bank became delinquent. Gordon Brown transferred his assets to Judy Brown through the divorce decree on October 8, 2010, almost 3 months after entry of Citizens State Bank's judgment against Gordon Brown on June 29, 2010. Citizens State Bank commenced its action against Gordon Brown on January 8, 2010.³⁸ Gordon Brown began the divorce proceeding on March 15, 2010.³⁹

The presence of these numerous "Badges of Fraud" substantiate actual fraud.

- 1) Historically the burden of proof had been on husbands and wives to prove their transfers were not fraudulent.

Many cases have been before Minnesota courts involving this issue, and the courts have said:

"It is well settled that such is the community of interest between husband and wife, and purchases and conveyances are so often made as a cover for a debtor's property, are so frequently resorted to for the purposes of withdrawing his property from the reach of his creditors and preserving it for his own use, and furnish such temptations for fraud, that they require close scrutiny.

In a contest between the wife and the creditors of a husband there is, and there should be, a presumption against her which she must overcome by affirmative proof. Such has always been the rule of the common law, and the rule continues, through statutes have modified and changed the relations which at common law existed between husband and wife as to the property

³⁸Supra @ 33, Verified Complaint.

³⁹Supra @ 8, Divorce Decree, Finding 1.

of the latter. Seitz vs. Mitchell, 94 U.S. 580, 24 L.Ed. 179 (S.C.T. 1876).⁴⁰

This is the rationale behind the Minnesota Uniform Fraudulent Transfers Act (UFTA) where it concerns a husband and wife.

2) The “Badges of Fraud” determine actual fraudulent intent. This is a major thrust of the UFTA.⁴¹

3) The Browns must make some showing of specific facts, and cannot rely on just a general denial.⁴² They made no specific factual showing in opposition to the undisputed material facts.

These Badges of Fraud have been clearly demonstrated:

1) The transfers were to a relative or an insider. The Browns were husband and wife when their divorce stipulation was signed on October 5, 2010.⁴³

The Stipulation was a contract to convey the assets which was entered into prior to the decree. Therefore, they put the transfers in motion when they were husband and wife. Judy Brown, as Gordon Brown’s wife, was an insider in every sense of the word. The Browns should not be allowed to use the Dissolution Decree to defraud creditors.

2) Gordon Brown continued to retain possession or control of the Browns’

⁴⁰State Bank of New London v. Swenson, 197 MN 425, 267 NW 366 (MN, 1936); Minneapolis Stock Yards and Packing Co vs. Halonen, 56 MN 469, 57 NW 1135 (MN, 1894). Seitz v. Mitchell as cited in the State Bank of New London Case.

⁴¹Minnesota Statute §513.44(b)

⁴²Thiele v. Stich, 425 NW2d 580 (MN, 1988).

⁴³Supra @8, Divorce Decree (Finding 16)

property. He lives in the homestead. His name was still on the financial accounts after the divorce.⁴⁴

- 3) The transfers were concealed. The dissolution proceeding was not begun until after Gordon Brown defaulted on his debt (August, 2009)⁴⁵. The bank was not a party to the dissolution proceeding nor did it have knowledge of the proceeding.⁴⁶
- 4) Before the transfers occurred, Gordon Brown had been sued by Citizens State Bank.⁴⁷
- 5) Gordon Brown then transferred to Judy Brown substantially all of his assets that he couldn't claim as exempt.⁴⁸ Brown's now claim that Gordon was insolvent at the time of the transfers.⁴⁹ The transfer by an insolvent person of almost all of his non-exempt assets is another "Badge of Fraud" and a cornerstone of Constructive Fraud.
- 6) Gordon Brown did not receive reasonably equivalent value. Gordon controlled the content and the date of the court order (decree). Gordon had to sign the stipulation, which gave him control over the content. The timing

⁴⁴Supra @ 25, Affidavit of Service at Usual Abode.

⁴⁵Brandenburg Affidavit (RA.24).

⁴⁶Supra @ 8, Divorce Decree.

⁴⁷Supra @ 33, Verified Complaint.

⁴⁸Supra @ 34, Divorce Decree Compilation.

⁴⁹Appellant's Brief, P. 10, 12 and 13.

of his signature on the Stipulation controlled the timing of the decree. Defendants cannot argue that the decree was forced on them. Their attorney admitted in court that the decree was done administratively and there was no court appearance.⁵⁰ Defendants cannot claim that reasonably equivalent value is an undecided question of fact. The values are set out in the dissolution decree and the date of the decree sets the time of the valuation. The valuation of the Brown's assets is a public record. It is impossible to believe that the obligation to support Judy Brown is over ten million dollars.

- 7) Nor can the Browns argue that Gordon Brown could not become insolvent by virtue of the transfers, because he was insolvent prior to the transfers. The UFTA prevents insolvent individuals from transferring all of their assets and keeping only "exempt assets and liabilities". Minnesota Statute §513.45 dealing with Constructive Fraud uses the insolvency of the individual making the transfer as one of its cornerstones.⁵¹
- 8) The Brown transfers occurred after the debt to Citizens State Bank became delinquent. The debt became delinquent long before the decree was entered, or the dissolution proceeding was begun (August 2009)⁵². Gordon Brown controlled the timing of the decree of distribution because he

⁵⁰T.5.

⁵¹Appellant's Brief, P. 10, 12, 13.

⁵²Supra @ 45, Brandenburg Affidavit.

brought the action to dissolve the Brown marriage and through his signature controlled the timing of the decree and the content of the decree.

V. GORDON BROWN AND JUDY BROWN ENGAGED IN CONSTRUCTIVE FRAUD.

Defendants also engaged in constructive fraud under Minn. Stat. §513.45.

Constructive Fraud does not require a showing of intent.⁵³

Defendant Gordon Brown transferred substantially all of his assets to Judy Kay Brown leaving him insolvent. Gordon Brown and Judy Kay Brown divorced on October 13, 2010. She is 36 years younger than he is. It was a mutually agreed to stipulated divorce. However, it was extremely lopsided. Gordon Brown kept \$140,000 in non-exempt assets and \$9,078,890 in debt, while Judy Brown received \$2,126,420 in unencumbered assets and \$200 in debt.⁵⁴

The dissolution proceeding was designed to hinder, delay and defraud Citizens State Bank one of Gordon Brown's creditors.

The Stipulated divorce decree is an agreement to transfer the Brown assets. The Marital Termination Agreement occurred when the Browns were still husband and wife.

The Citizens State Bank was not a party to the dissolution proceeding and as a result the bank is not bound by the Decree of Dissolution. Nor is the Bank bound by res judicata, collateral estoppel or judicial estoppel.⁵⁵

⁵³See, In re Bessler, 2003 WL 22247166 (Bankr. DND, 2003).

⁵⁴Supra @ 34, Divorce Decree Compilation.

⁵⁵Supra @ 53, In re Bessler.

After the fraudulent transfers Gordon Brown's net worth was a negative -\$8,434,890. Judy Brown's net worth was a positive \$2,126,220. This is a disparity of over 10 million dollars. Gordon Brown is insolvent proven by his inability to repay the bank. These numbers are based on the values given in the divorce decree (Findings of Fact and Conclusions of Law). In addition \$360,000 of Gordon Brown's assets are exempt as homestead and \$140,000 is exempt as Gordon's 401k.⁵⁶

The Browns claim in their Brief that Gordon was insolvent prior to the transfer, which is clearly a cornerstone for Constructive Fraud under Minn. Stat. §513.45:

“513.45 TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.”

It is constructive fraud whether he is insolvent before or after the transfers. The material facts are undisputed.

- 1) The Browns cannot argue that the district court made unfounded assumptions about the nature of the divorce proceedings. The Browns' attorney admitted in court that the dissolution proceeding was done administratively and without any court appearance.⁵⁷

⁵⁶Using values from the Divorce Decree and Property Appraisal from the County for the house. See also, Divorce Decree Compilation (RADD.6)

⁵⁷T.5

- 2) The District Court based on undisputed material facts, made a determination that there was not reasonably equivalent value in the Browns division of assets. The transaction cannot be disproportionate in the extreme. No facts were presented by the Browns to show the division was fair. The district court finding about the decree was entirely supported by undisputed material facts.
- 3) The Browns cannot dispute the timing of the valuation of the assets, or the actual value of the assets. The Browns represented to the divorce court that the values in the decree were true and correct as of the date of the decree.

CONCLUSION

Gordon Brown has fraudulently transferred assets and the Citizens State Bank should be allowed to levy on them.

- a. Gordon Brown did not receive a reasonably equivalent value for the transfers to Judy Brown.
- b. Gordon Brown was rendered insolvent. Gordon Brown reasonably could have believed that he would incur debts beyond his ability to pay them as they became due.
- c. The divorce was an agreed upon stipulated divorce and entered into voluntarily by both defendants who had entered a stipulated agreement as to the transfer of property prior to the divorce. The divorce decree was therefore a transfer within the meaning of Minnesota Statutes §513.44 and 513.45.

- d. The valuation of the assets is contained in the divorce decree and the valuation of Gordon Brown's home is contained in the appraised value by Dakota County on the property tax statement.
- e. Gordon Brown transferred property to his wife to avoid the loss of the property to creditors and therefore Judy Brown engaged in the fraud as a participant.

The Brown's divorce was engineered to transfer almost all non-exempt assets to Judy Brown. Judy Brown received value at least 10 million dollars more than Gordon Brown received evidencing a clear attempt to defraud creditors.

The District Court's grant of Summary Judgment should be affirmed.

Dated this 14th day of November, 2012.

Respectfully submitted,

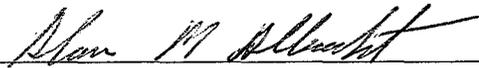

Alan M. Albrecht #887
Gavin, Winters, Twiss,
Thiemann & Long, Ltd.
1017 Hennepin Avenue North
Glencoe, MN 55336
(320)864-5142
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

The undersigned counsel for Respondent, certifies that this brief complies with the requirements of Minn. R. App, P. 132.01 in that it is printed in Times New Roman 13-point font, proportionately spaced typeface utilizing Wordperfect 11 and contains **4580** words, including headings, footnotes and quotations.

Dated: November 15, 2012

Gavin, Winters, Twiss, Thiemann & Long, Ltd.

By: 
Alan M. Albrecht #887
1017 Hennepin Avenue North
Glencoe, MN 55336
Phone: (320)864-5142

**Attorneys for Respondent
Citizens State Bank Norwood Young America**