

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

JAMES WELLS,	)	<b>FILED WITH THE CLERK OF COURT</b>
	)	<b>1/8/08 4:04PM</b>
Plaintiff,	)	
	)	EQUITY NO. 106635
vs.	)	
	)	
DOROTHY JANSSEN, Individually,	)	
and as Trustee of the D.A.J.	)	
REVOCABLE LIVING TRUST and	)	RULING
THE D.A.J. REVOCABLE LIVING	)	
TRUST,	)	
	)	
Defendants.	)	

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This case came on for a contested trial on November 15, 2007. The plaintiff was present and represented by Attorneys Craig A. Levien and Thomas J. Yeggy. The defendant was present and was represented by Attorney Michael J. McCarthy. The Court has jurisdiction of the parties and the subject matter. After considering the testimony, the exhibits, arguments by counsel, and applicable law, the Court enters the following Ruling.

CASE SUMMARY

The plaintiff, James N. Wells (hereinafter referred to as Wells), sued his uncle, James Janssen (hereinafter referred to as Janssen), for damages caused by Janssen's sexual abuse of Wells when he was a minor and Janssen was a Catholic priest. In that case, the jury on June 16, 2005, returned a verdict in favor of Wells for \$1,421,771.20.

In this case, Wells seeks to recover from Janssen's sister, Dorothy Janssen's (hereinafter referred to as Dorothy) assets totaling \$712,648 alleging fraudulently

transferred from Janssen to Dorothy in order to render him insolvent and unable to pay the judgment Wells lawfully obtained.

It is clear from Dorothy's testimony she is not capable of believing her brother is the monster he is. While serving as a Catholic priest James Janssen preyed on innocent boys by sexually abusing them, including their mutual nephew, James Wells. She has a right to her opinion. She does not have a right to prevent Wells from collecting on his judgment. The Court finds Dorothy did knowingly participate in a fraud masterminded by Janssen to prevent Wells from collecting on his judgment. By Dorothy's actions, the Court finds together with Janssen she violated Iowa common law regarding fraud and Iowa Code Chapter 648, fraudulent transfers. The Court enters judgment transferring assets in her name purchased by her brother, who was trying to hide his money from Wells.

#### STATEMENT OF FACTS

Defendant Dorothy Janssen has a birth date of October 9, 1924. She has an older brother named James Janssen, who served as a priest in the Diocese of Davenport from 1948 until 1990. James Janssen purchased 236 U.S. treasury bonds in the 1970s, 1980s and early 1990s. All of the bonds were issued in joint registration with James Janssen and Dorothy Janssen as joint owners. The bonds all had James Janssen's social security number on the face of them. The Court finds from the exhibits introduced and the testimony of James Janssen and Dorothy Janssen that all of the money used to purchase these 236 U.S. treasury bonds came from James Janssen.

How Janssen accumulated bonds amounting to cash value of \$712,648 while serving as a Catholic priest is a dark mystery. The plaintiff claims Janssen stole money from offering plates and misled parishioners into making personal gifts to him. Janssen claims the money came from “gifts” but declines to provide specifics. How Janssen obtained the money is not a question the parties request the court to rule on, only if money was fraudulently transferred to Dorothy to prevent Wells from collecting on his judgment.

After Janssen would purchase the bonds, he would put them in a secret trick drawer in his sister’s house. He had a key to his sister’s house and access to the drawer. Dorothy knew the bonds were in there but had no knowledge of how many and what amounts.

These bonds sat there accumulating, untouched and uncashed by both Dorothy and James Janssen until May 23, 2003. The significance of May 23, 2003, date is that May 22, 2003, the Quad City Times printed an article captioned “Former Davenport Diocese Priest Accused of Sex Abuse. Clinton County Man Says Abuse Began in 1967.” The article contained the following paragraph, among other information, “The plaintiff known only in court records as ‘John Doe’ accused retired Reverend James Janssen of beginning the refuted abuse in 1967 when Janssen was assigned to St. Joseph Parish in Sugar Creek. The plaintiff was younger than 14 at the time.” The article has been introduced in court as Plaintiff’s Exhibit 4.

From May 23, 2003, over the next five months, Dorothy and James Janssen in seventeen different transactions, cashed in and negotiated the bonds for a total amount of money of \$712,647.80. When Dorothy Janssen was asked during her testimony why the

U.S. treasury bonds sat dormant for three decades untouched until May 23, 2003, she had no answer. She denied any connection to the Quad City Times article that appeared only the day before. The Court finds this testimony disingenuous and not credible.

Janssen admitted that he was cashing in the bonds in order to get everything out of his name and claimed he was advised by an attorney to do so. Total proceeds by the endorsers were divided as follows: James Janssen cashed in \$248,676 and Dorothy cashed in \$463,788. The total amount negotiated was the \$712,647.80 with the difference being \$2,960.40 were received in cash on September 10, 2003, and no identifiable endorser on that particular instrument is shown. Dorothy did testify that she cashed the bonds in at James' suggestion but insisted that the \$463,788 she cashed in belonged to her. But she admits the bonds were purchased with Janssen's money and cashed in at his direction. There was no credible explanation given by either Janssen or Dorothy how the bond amounts were divided between the two of them.

The plaintiff's expert witness, Gary Shapley, CPA, testified the amounts were divided in order to minimize income tax consequences for the two parties, that the division between the two of them was the most favorable way to limit income tax paid by the two of them. James Janssen dissipated the \$248,676 he cashed in. The proceeds from the 236 bonds in the amount of \$712,647.80 was spent in the following manner:

<u>Items Deducted</u>	<u>Balance</u>
Starting Balance	\$712,647.80
a. Cashed out \$2,960.40	\$709,687.40
b. Wells Fargo 065 (James Janssen account) \$5,182.40	\$704,504.60
c. Wehr \$62,940	\$641,564.60
d. Internal Revenue Service \$128,782.70	\$512,781.90
e. Auto \$11,000 (James)	\$501,781.90
f. Gifts \$20,000	\$481,781.90

g. Cash \$45,833	\$435,948.90
h. Miscellaneous * \$55,123.13	\$380,825.77
i. Miscellaneous ** \$8,000	\$372,825.77
j. House \$173,900	\$198,925.77
k. Auto - Strieter Motors \$29,154 (Dorothy)	\$169,771.77
l. Purchase of Bearer Bonds \$102,500	\$ 67,271.77
m. Treasury Direct Account 8286 \$10,000	\$ 57,271.77

\* Out of this total of \$55,123.13, payments may have been made to Ned Wehr or to Citicard for bonds.

\*\* Out of this \$8,000, \$1,000 was used to repay a loan that James Janssen had to a bishop and \$7,000 was deposited in Valley Bank account number last 3 digits ending in 888.

On June 1, 2006, the treasury direct account ending in the last four digits 8286 was transferred to the Dorothy A. Janssen Revocable Living Trust. After the bonds were cashed, the cashier's checks were often held for significant delays. These delays as stipulated to the parties and outlined in Exhibit No. 1 were often lengthy, many of them over one year. One cashier's check was held in a drawer uncashed for 546 days. The Court agrees with Shapley that this long holding of cashier's checks is indicia of an attempt to hide the funds. Janssen nor Dorothy can give any reasonable explanation for why cashier's checks in the amount of hundreds of thousands of dollars would be held and not deposited in a bank account.

The house purchased at 4315 West High Street, Davenport, Iowa, and legally described as Lot 8 (Eight), Pioneer's Fourth Addition, City of Davenport, Scott County, Iowa, was bought by funds obtained from cashing in the jointly held U.S. treasury bonds. The house was purchased in the name of Dorothy Janssen and later transferred to the Dorothy Janssen Revocable Living Trust. Janssen lives there with his sister, Dorothy. Dorothy Janssen had never owned a piece of real estate and never owned a house until this purchase when she was 82 years old. During the previous 20 years, she lived in a modest apartment that she rented. Additionally, Janssen lived there nine months before

Dorothy even moved in. The Court finds the house was purchased with James Janssen's money and was for James Janssen's benefit. The Court also notes that there was never any consideration between Dorothy to Janssen for the house, the car purchased with the savings bonds, or any other funds she received as a result of cashing in these savings bonds.

An automobile was purchased and put in the names of Dorothy Janssen with \$29,154 of the U.S. treasury bond money. A cashier's check from a treasury bond was endorsed straight over to Strieter's Motor Company for the 2004 Mercury Grand Marquis. The plaintiff seeks in this lawsuit to have both the car and house purchased with the bonds transferred in his name based on a constructive trust argument. In addition, he seeks judgment against Dorothy Janssen in the amount of \$571,007.60 offset by items the Court awards to the plaintiff in constructive trust. He seeks to be placed in constructive trust for the plaintiff the aforementioned house, car, bare bonds totaling \$102,500 and the treasury direct account ending in 8286.

Both Janssen and Dorothy state in their testimony they did not believe James Wells was entitled to any money because his claim had no merit. Janssen admitted to putting all of his money into his sister's name in order to avoid judgment creditors. James now has no money of his own. This is not a coincidence. His expenses are paid by his sister out of her bank account. She signs blank checks for him and large checks for "cash" made out to him, all for no consideration. An important factor is this was not their financial arrangement before the law suits were filed against Janssen. All new bonds purchased after 2002 were issued in Dorothy's name only, again a departure from their usual practice. It is obvious from all of these actions that there is clear, convincing and

substantial evidence of a fraud was underway between Janssen and Dorothy to prevent Wells from getting any money. This transparent fraud was masterminded and directed by Janssen. Both Janssen and Dorothy admit that Janssen is her financial advisor. He tells her what car to buy, what house to buy, who to use to file her taxes, what money to put in what accounts, what money to give him, the list goes on and on. Janssen puts forth he has spent a life time providing for his sister. More like a life time of manipulating his sister.

Dorothy Janssen admits that the house was put in her name because Janssen didn't want the house to go to Wells.

Janssen has an established history of attempting not to pay the Wells judgment, including being found in contempt by another judge for his failure to disclose assets. At the time this ruling is filed, he is serving a contempt jail sentence ordered by Chief Judge Alpers for concealing assets in case 101220. The Court finds he was untruthful in sworn items regarding his assets, including his deposition taken for this case and case 101220 wherein he denies transferring any assets into a relative's name and misstates his assets. He has consistently shown refusal to not pay Wells a dime though dissipation of assets, transfer of assets to his sister, and continually being untruthful about where his money is going and how much he has.

## LEGAL DISCUSSION

### I. OWNERSHIP OF BONDS

It is the defendant's position that there is no fraudulent transfer regarding funds from the bonds because Dorothy was co-owner of all the bonds, and thus, had equal right to all the funds obtained by negotiation of the bonds. The defendant points out a savings

bond in co-ownership will be paid during the lives of both co-owners to either upon their request. The only exception to this is if the bond is re-issued upon surrender for re-registration. See United State v. Chandler, 410 U.S. 257, 35 L.Ed.2d 247, 93 Supreme Ct. 880 (1973).

Treasury regulations in their judicial interpretation are determinative of ownership and interest in the 236 U.S. treasury bonds involved in this case. The Code of Federal Regulation (hereinafter C.F.R.) contains the treasury regulations that govern the issuance, ownership, and re-issuance of U.S. treasury bonds. 31 C.F.R. Section 315.5 provides that, “Savings bonds are issued only in registered form. The registration used on issue or re-issue must express the actual ownership of an interest in the bond and except as otherwise specifically provided in subpart (E)... will be considered as conclusive of such ownership and interest.”

The Court finds that the law does allow the Court to decide property interest in the bonds between the two co-owners. In the case of United States v. Stock Yards Bank of Louisville, 231 F. 2d 628, 631 (6<sup>th</sup> Cir. 1956), the Court stated “As between two co-owners. . . the regulations as well as judicial decision have recognized that the extent of the property interest of each is a question of fact, not of law. One co-owner may as a matter of fact be the sole owner of the bond; he may be a half owner, he may have some other fractional ownership. Thus, the regulations provide that a claim against an owner or co-owner of a savings bond and conflicting claims as to ownership of or interest in such bond as between co-owners . . . will be recognized when established by valid judicial proceedings. . . . They further provider that if a debtor or a bankrupt or insolvent is not the sole owner of the bond, payment will be made only to the extent of his interest

therein, which must be determined by the Court or otherwise validly established. 31 C.F.R. Section 315.13. See Barrett v. Barrett, D.C.N.D. Ohio 1950, 91 F. Supp. 680, 684; United States v. Ridley, D.C.N.D. GA. 1954 120 F. Supp. 530, 537; Guldager v. United States, 6<sup>th</sup> Cir., 1953, 204 F.2d 487, 488.” See The Kentucky Company v. Grace Hayes, 407 F. 2d 1031 at page 1035 (6<sup>th</sup> Cir. 1969).

Subpart E- Judicial Proceedings provides in Section 353.20 and Section 353.21 as follows:

“Section 353.20 General.

- (a) The Department of the Treasury will not recognize a judicial determination that gives effect to an attempted voluntary transfer inter vivos of a bond, or a judicial determination that impairs the rights of survivorship conferred by these regulations upon a co-owner or beneficiary. All provisions of this subpart are subject to these restrictions.
- (b) The Department of the Treasury will recognize a claim against an owner of a savings bond and conflicting claims of ownership of, or interest in, a bond between co-owners or between the registered owner and the beneficiary, if established by valid judicial proceedings, but only as specifically provided in this subpart. Section 353.23 specifies the evidence required to establish the validity of the judicial proceedings.
- (c) The Department of the Treasury and the agencies that issue, reissue, or redeem savings bonds will not accept a notice of an adverse claim or notice of pending judicial proceedings, nor undertake to protect the interests of a litigant not in possession of a savings bond.”

“Section 353.21, Payment to judgment creditors.

- (a) Purchase or officer under levy. The Department of the Treasury will pay (but not reissue) a savings bond to the purchaser at a sale under a levy or to the officer authorized under appropriate process to levy upon property of the registered owner or co-owner to satisfy a money judgment. Payment will be made only to the extent necessary to satisfy the money judgment. The amount paid is limited to the redemption value 60 days after the termination of the judicial proceedings. Except in a case of a levy by the Internal Revenue

Service, payment of a bond registered in co-ownership form pursuant to a judgment or a levy against only one co-owner is limited to the extent of that co-owner's interest in the bond. That interest must be established by an agreement between the co-owners by judgment, decree, or order of a court in a proceeding to which both co-owners are parties. Payment of a bond registered in co-ownership form pursuant to levy by the Internal Revenue Service will be made if the levy is against either co-owner on the bond.

- (b) Trustee in bankruptcy, receiver, or similar court officer. The Department of Treasury will pay, at current redemption value, a savings bond to a trustee in bankruptcy, a receiver of an insolvent's estate, a receiver in equity, or a similar court officer under the provisions of paragraph (a) of this section."

[44 FR 76441, Dec. 26, 1979, as amended at 63 FR 64551, Nov. 20, 1998]

The idea that a Court can decide ownership of bonds between co-owners is important to prevent fraud such as Janssen is trying to accomplish. The Court finds the bonds were exclusively for Janssen's use during his lifetime, and Dorothy had only a testamentary interest. The Court assigns 100 percent of the ownership in the 236 U.S. treasury bonds in question as between the parties to be Janssen's. The Court bases this on the following facts:

1. Janssen purchased the bonds.
2. Janssen decided to list himself and Dorothy as co-owners. Dorothy did not participate in that decision.
3. All the money used for the bonds was Janssen's exclusively.
4. Janssen had control of the bonds, physically placed them in the secret drawer at Dorothy's house that he had a key to.
5. Dorothy testified she had no idea how much money was in the bonds, nor was kept appraised of when her brother purchased them.
6. Dorothy lived modestly on her own funds and never cashed a bond without Janssen's direction and not until Janssen was sued in 2003.

7. Dorothy never used the bonds for personal use until Janssen started liquidating his assets to avoid judgment creditors such as Wells.

Thus, although Dorothy claims ownership of the \$463,788 bonds that she cashed in, Dorothy herself has no rationale argument for why those bonds were hers or how the amount of the bonds that she cashed in was chosen.

This case is similar to the *Chandler* case, because Janssen retained the right to retain each of the bonds in question, the right to decide how the proceeds were distributed, and the right to veto any attempt to have a bond re-issued. In *Chandler*, the court determined ownership of bonds for federal and estate tax purposes. There were a couple of bonds during this time period that Dorothy purchased with her own funds which are separate from the 236 that the plaintiff seeks to recover funds from. The bonds that Dorothy purchased herself, as is an example in Plaintiff's Exhibit 12, listed her as the first owner and then has "or James M. Janssen" at the bottom. This is further evidence that the 236 bonds were Janssen's and not his and Dorothy's.

## II. CONSTRUCTIVE TRUST

The plaintiff requests the Court award the house, car and other property to the plaintiff under the equitable principles of constructive trust. A constructive trust is an equitable remedy the Court is supplied to provide restitution and prevent unjust enrichment. See Regal Ins. Co. v. Summit Guarantee Corp., 324 N.W.2d 697, 704 (Iowa 1982). A constructive trust is a remedial device under which the holder of legal title to property is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest. *Id.* at 704-05 (quoting Loschen v. Clark, 256 Iowa 413, 419, 127 N.W.2d 600, 603 (1964)). Courts have held three types of constructive trusts

exist: 1. Those arising from actual fraud; 2. Those arising from constructive fraud; and 3. Those based on equitable principals other than fraud. See Regal Insurance at 324 N.W.2d at 705. The party seeking the remedy of constructive trust due to fraud must establish the right by clear, convincing and satisfactory evidence. See Regal Insurance at 705. The Court here finds that the principles of constructive trust in equity should be applied in this case as a remedy for Wells to obtain the property fraudulently transferred. The Court follows the principles set out in Benson v. Richardson, 537 N.W.2d 748 (1995). In that case, the Iowa Supreme Court held that the lower court correctly found fraud and placed a constructive trust on various bank accounts and the personal house of a debtor who placed earnings in his wife's personal bank account and then had his wife write him checks. Just as in this case there, the debtor placed his earnings in his wife's personal bank account immediately after creditors obtained judgment. The transfers were without consideration and the debtor knew he was insolvent. Additionally, just like in this case, the husband effectually retained full access to and possession of his money because the wife provided him with signed checks at his request. The court affirmed a constructive trust is an equitable remedy courts apply to provide restitution and prevent unjust enrichment. This Court finds that the plaintiff has proved by clear, convincing and satisfactory evidence that an actual fraud was perpetrated against the creditor, James Wells. Thus, the Court finds that in addition to the remedies available under Iowa Code Chapter 684, they are also entitled to a constructive trust on property based on equitable principles well established in Iowa law regarding the doctrine of fraudulent conveyances.

### III. FRAUDULENT CONVEYANCES

Plaintiff alleges that the transfers of the bonds and the subsequent purchase of the house and the car were fraudulent under Iowa Code Chapter 684. Iowa Code Section 684.4, Transfers fraudulent as to present and future creditors, states as follows:

“1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation under any of the following circumstances:

- a. With actual intent to hinder, delay, or defraud any creditor of the debtor.”

In this case, Dorothy Janssen herself admitted that the house which was purchased with the bonds was put in her name only so that James Wells couldn’t get at the house.

Clearly, intent to hinder delay or defraud a creditor of the debtor.

The Code Section goes on to state:

“In determining actual intent under subsection 1, paragraph ‘a’, consideration may be given, among other factors, to any or all of the following:

- a. Whether the transfer or obligation was to an insider.
- b. Whether the debtor retained possession or control of the property transferred after the transfer.
- c. Whether the transfer or obligation was disclosed or concealed.
- d. Whether, before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
- e. Whether the transfer was of substantially all the debtor’s assets.
- f. Whether the debtor absconded.
- g. Whether the debtor removed or concealed assets.
- h. Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

- i. Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
- j. Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.
- k. Whether the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

The Court finds that of these 11 factors to be used in determining fraudulent intent, that nine of them apply directly to this case which proves by clear and convincing evidence James Janssen's intent to commit a fraud upon the plaintiff, James Wells, and the defendant, Dorothy Janssen's complicity in that fraudulent scheme.

The Court discusses those nine factors below.

1. **Whether the transfer or obligation was to an insider.** Iowa Code Chapter 684 has a definition section and 684.17 states the following:

“Insider’ includes all of the following:

a. If the debtor is an individual, all of the following:

(1) A relative of the debtor or of a general partner of the debtor. . .”

Obviously, Dorothy was an insider position to James being his younger sister. This factor is important because the transfer was to an insider instead of an uninvolved third party. The fact that the transfer of the bonds, if he did not cash it himself, were cashed in and transferred over to his sister means that Janssen still knew he could keep control of the funds and the bonds. His sister lived in a modest apartment on her teacher's pension, and there was never any mention of any gifts Janssen made to her until he was sued by the victims of his sexual abuse and anticipating large judgments against him personally.

**2. Whether the debtor retained possession or control of the property**

**transferred after the transfer.** The Court finds it is obvious in this case that Janssen as a debtor retained possession or control of the property after the transfer of the savings deposit funds. For example, although the house at 4315 West High Street, Davenport, Iowa, was placed in Dorothy's name only, James Janssen selected the house. He lived there nine months before Dorothy moved in without payment a dime of rent. He continues to live there with his sister. His sister never bought a piece of real estate until this purchase was made at her brother's direction. She testified the house was placed in her name only so that James couldn't get the house. Regarding the U.S. treasury bonds money that ended up in the house account, that had Dorothy's name only on it, but the money was hers in name only. She wrote checks for Janssen at his direction. She gave him cash at his direction out of the house account.

**3. Whether the transfer or obligation was disclosed or concealed.**

The Court agrees with the plaintiff's allegation that the long delay in doing anything with cashier's checks from negotiating the bonds lead to a concealment effort. There is no reasonable explanation for allowing cashier's checks in hundreds of thousands of dollars to sit around in a desk drawer for over a year, unless you are hoping the money goes undetected. In addition, in Scott County Case No. 101220, which the Court took judicial notice of contempt proceedings as agreed by the parties, James Janssen spends a great deal of time trying to conceal his transfers of assets. He admitted during his testimony in this case that he lied during his deposition as to the transfer of funds to his sister. Lying at a sworn deposition where a creditor is trying to discover assets is certainly evidence of concealment. Janssen further admits that Plaintiff's Exhibit 9, a sworn testimony of his

financial condition in an application to the Court was a false document. Janssen, in his testimony in this case, admitted that every penny he could get his hands on, he put in Dorothy's name. He justifies this on his attorney's advice when he began to get sued by the victims of sexual abuse. The important factor is that he engaged in this pattern of liquidating and dissipating his assets and transferring them to his sister to avoid judgment creditors. The fact that he blames it on his attorney's advice doesn't mean that (a) it didn't happen and (b) he didn't do it.

**4. Whether, before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.** The facts of this case are that the Quad City Times article on the lawsuit against James Janssen by John Doe started a five-month run on these 236 bonds at the bank. The Court considers the cashing in of these bonds and placing them into accounts that had Dorothy's name on them only, purchasing the car, and purchasing the house all in Dorothy's name is the transfer of the funds, not the original purchase of the bonds that Janssen kept control of starting back in the 1970s. Additionally, Janssen has known for a long time that Wells was seeking redress for the abuse perpetrated on him by Janssen. Plaintiff's Exhibit 15 is a letter dated February 25, 1987, from his attorney at the time to Janssen regarding a potential lawsuit by Wells. Thus, Janssen was on notice as early as 1987 that Wells was planning a lawsuit against him. Thus, it is very possible that the bonds were purchased in his name and his sister's name both for a testamentary interest of his sister and as a potential fallback to avoid future judgment creditors.

**5. Whether the transfer was of substantially all the debtor's assets.** Before John Doe and James Wells filed their lawsuit against James Janssen, he owned these 236

U.S. Treasury bonds in his name as principal owner. After the judgment was rendered against him and Wells was seeking to recover on the judgment, Janssen went into a deposition and stated he was without assets and completely broke. He lived in a house owned by his sister. His sister gave him spending money and paid his bills. His sister had some \$400,000 in assets that used to be in his name also.

**6. Whether the debtor removed or concealed assets.** This factor has already been discussed by the Court of the lying of Janssen regarding the treasury bonds in his depositions. Further, that a cashier's check from the bonds was signed over directly to an automobile company for a car titled in Dorothy's name. The Court considers this transaction an attempt to conceal assets.

**7. Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.** There was no consideration ever given by Dorothy to Janssen for the purchase of the house and the car and the bare bonds placed in her name only. She considers these items like the bare bonds placed in her name only, the house and the car to be purchased with "her money" so no consideration was necessary. The odd thing about this statement by Dorothy contradicts her other statements that prior to the lawsuit being filed by John Doe 1-A, she didn't spend a dime of the bond money, and it is obvious from her testimony, she didn't consider it to be an option for her to spend that bond money.

**8. Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.** This was discussed above that this whole scheme of transfers, cashing in of the bonds and the disbursements of the funds

from the bonds, was in order to render James Janssen insolvent. The Court notes he was insolvent in name only having liberal use of his "sister's" funds.

**9. Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.** All of these transfers occurred in 2003 after Janssen had been sued by James Wells and John Doe 1-A, and Janssen was on notice the plaintiffs were seeking large amounts of money. Although the judgment against James Janssen in Case No. LA101220 for \$1,426,771.20 didn't occur until the 16th day of June, 2005, the Court finds that the transfer did occur shortly before that based on the fact it was during the pendency of the million-dollar lawsuit. After that five-month period, Janssen became insolvent. Thus, his insolvency was achieved shortly after the transfer.

In conclusion, the Court finds that the plaintiff has proved fraudulent transfer from James Janssen to his sister, Dorothy Janssen, in order to avoid creditors under Iowa Code Section 684.4.

Pursuant to the above discussion, the Court finds that the defendant, Dorothy Janssen, participated knowingly and actively in a scheme masterminded by her brother, James Janssen, to prevent James Wells from collecting on his lawful million-dollar judgment in Case No. 101220. Thus, the Court finds he is entitled to relief under Iowa Code Section 684.7, remedies of creditors. This Code Section provides as follows:

- "1. In an action for relief against a transfer or obligation under this chapter, a creditor. . . may obtain any of the following:
  - c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, any of the following:
    - (3) Any other relief the circumstances may require."

The Court finds that the circumstances here require a transfer of the house located at 4315 West High Street, Davenport, Iowa, as being a purchase done by the defendant and James Janssen to thwart Wells collecting on his judgment as even admitted by these parties in court, into the name of James N. Wells directly. There is no reason to burden this case with the appointment of a receiver because the house is owned free and clear by Dorothy Janssen thanks to the cash purchase from the bond money.

Further, Wells is entitled to have the Grand Marquis car transferred into his name which was purchased with the bond money, and again, was a fraudulent purchase to hide assets from Wells as a judgment creditor. This car is owned free and clear by Dorothy and it wouldn't present too much of a hardship on her because she doesn't drive it according to her testimony anymore anyway, and the court file reflects she has been attempting to sell it.

Also, the barer bonds and the treasury account, less the \$40,000.00 that is traceable to Dorothy's money should be awarded to the plaintiff also. .

This Court sits as a court in equity, and also finds under the common law principals of Constructive Trust the plaintiff is entitled to the assets the court awards him. And the Court under Chapter 684 of the Iowa Code, finds this relief to the plaintiff is the appropriate one under the circumstances.

Subsection 2 of Chapter 684.8 provides plaintiff, in this case Wells, may have a judgment against the defendant for the value of the assets transferred as adjusted under subsection 3, or the amount necessary to satisfy his claim, which is less. Wells claim in this case is approximately \$1.4 million. Thus, the Court finds that judgment will be for the value of the asset transferred less any adjustments allowed under subsection 3. The Court finds

that of the \$712,648 transferred fraudulently from James Janssen to the defendant, Dorothy Janssen, \$5,182.40 was not directly controlled by the defendant. Therefore, the Court starts with a gross amount of \$707,465.60 with the following deductions: minus payments to the Internal Revenue Service in the amount of \$37,539.00 for Janssen and \$98,919. for Dorothy; minus the house at 4315 West High Street awarded to the plaintiff in the amount of \$173,900; minus the Grand Marquis auto in the amount of \$29,000; minus the treasury direct account ending in 8386 in the amount of \$10,000; minus the bare bonds now in Dorothy Janssen's name only in the approximate amount of \$102,500. This leaves an adjusted judgment figure that the defendant owes the plaintiff for fraudulent transfer in the amount of \$255,607.00.

The Court relies and agrees with the testimony of Gary Shapley, CPA, the plaintiff's expert that the defendant's conduct along with Janssens shows a scheme of attempting to hide assets from creditors of Janssen.

#### JUDGMENT ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered against Dorothy Janssen, individually, and Dorothy Janssen as trustee of the D.A.J. Revocable Living Trust for an amount of \$255,607.00 plus interest as provided by law, the costs of this case, including any court reporter fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the real estate owned by Dorothy Janssen individually or the D.A.J. Revocable Living Trust located 4315 West High Street, Davenport, Iowa, by operation of a constructive trust in favor of the plaintiff, be transferred and titled into the name of James N. Wells, and the defendant

is to provide any legal documents necessary to effectuate this transfer within 30 days of the filing of this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Dorothy Janssen and James Janssen have 45 days from the filing of this order to vacate said property located at 4315 West High Street, Davenport, Iowa.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant's 2004 Mercury Grand Marquis be transferred and be titled in the name of James N. Wells.

IT IS FURTHER ORDERED that the defendant cooperate in signing over any and all legal papers needed to effectuate this re-titling and transfer within 30 days of this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that \$10,000 from the treasury direct account with numbers ending in the last four digits of 8286 owned by the defendant be transferred and re-titled in the name of James N. Wells, within 30 days of this date. The defendant is to cooperate in effectuating all legal documents necessary for this transfer. It is the Court's intent that the judgment entered against the defendant will be lowered by any interest that has accumulated in that account.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the barer bonds in the amount of \$102,500 held in the defendant's name be transferred over to James N. Wells. The defendant shall cooperate in any signing of any legal documents required and that this be accomplished within 30 days of today's date.

The Clerk to notify attorneys by mail.

Dated this 8th day of January, 2008.

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MARY E. HOWES, DISTRICT COURT JUDGE

