



The factual issues to be decided are (1) whether E. C. Rood and E. B. Rood engaged in a course of fraudulent conduct with respect to the conveyance of a piece of real estate and, (2) whether E. C. Rood and E. B. Rood knowingly submitted false affidavits to the court in order to defeat a motion for summary judgment in a lawsuit filed against them seeking to set aside the real estate conveyance. The key to understanding this case is close attention to dates.

In June, 1974, E. B. Rood purchased a piece of property in Lakeland (hereafter, the Lakeland property) from Mr. and Mrs. Barber for approximately \$157,000. The Barbers were directed to execute a warranty deed in favor of E. C. Rood, who is E. B. Rood's son. The deed contains no reservation of rights to any party. E. B. Rood testified that this was a conditional gift to his son.

In July, 1980, Mr. and Mrs. Nance consulted with E. C. Rood about certain birth-related problems their daughter, Chelsey, was experiencing. The Nances were concerned about possible negligence on the part of the physicians attending at Chelsey's birth. E. C. Rood was practicing personal injury law as an associate in his father's law firm. The events following this meeting are set out in The Florida Bar v. Edward C. Rood, 569 So.2d 750 (Fla. 1990) and do not need to be repeated here, except to say that on November 6, 1986, a jury in a federal district court in Michigan found that E. C. Rood had committed fraud and conspiracy to defraud a doctor, Dale C. Alverson, M. D., and an insurance company, Physicians Insurance Company. Damages were set by the jury at approximately \$196,000.00. Edward B. Rood's law firm had been joined in that lawsuit and had filed an answer. The firm was later dismissed on motion. After the trial, the Michigan trial judge granted a motion for judgment notwithstanding the verdict as to a portion of the verdict against E. C. Rood. That decision was later reversed on appeal and the original verdict was reinstated on January 26, 1989. Hereafter, this will be referred to as the Michigan Alverson v. Rood case.

At the time of the jury verdict, November 6, 1986, E. C. Rood owned or had an interest in the following non-exempt assets: the Lakeland property, a condominium on Dale Mabry in Tampa, a lot on Lemon Street in Tampa, a mortgage on a property owned by Shedrick in Tampa, and a mortgage on a property owned by Cornett in Gainesville.

E. C. Rood sold the Shedrick mortgage on September 30, 1987, and used the money to pay bills. On August 1, 1988, he sold the Cornett mortgage to his brother, Clay Rood, and used the money to pay more bills. Eighteen days after the Michigan Alverson v. Rood judgment, on November 24, 1986, he

mortgaged the Dale Mabry condominium to the Bank of Tampa for \$32,000. His interest in the condominium was ultimately sold for \$3,000 at a U. S. Marshall's sale caused by the judgment holders in the Michigan Alverson v. Rood case.

Regarding the Lakeland property, at the time of the Michigan Alverson v Rood judgment it was owned by E. C. Rood and encumbered with a mortgage held by Southeast Bank. After the judgment, entered on 11/6/86, the following occurred:

- 1/20/87 E. B. Rood paid off the Southeast mortgage. He also paid delinquent property taxes for the preceeding three years.
- 3/27/87 E. C. Rood presented a financial statement to First Florida Bank claiming that he owned the property free of any encumbrances, that he was not involved in any lawsuits, and that the property was valued at 1.95 million dollars. The bank lent E. C. Rood approximately one hundred thousand dollars but did not encumber the property as a result of this transaction.
- 9/20/87 E. C. Rood conveyed the property to E. B. Rood. No consideration was paid by E. B. Rood directly to E. C. Rood. The deed reflects that documentary stamps totaling 55 cents were paid. Both testified that E. C. Rood was simply returning the conditional gift E. B. Rood had made in June, 1974.
- 11/4/87 E. B. Rood submitted a loan offering sheet to First Florida Bank reflecting that he owned the property free and clear and that it was valued at 1.9 million dollars. The bank established for E. B. Rood a line of credit for up to one million dollars and took back a mortgage on the property. Ultimately, E. B. Rood stopped making payments on this note. The bank foreclosed and took title to the property sometime in 1991.
- 1/4/88 E. B. Rood further encumbered the property by agreeing to assume E. C. Rood's debt to First Florida Bank dated 3/27/87. This obligation was secured by a second mortgage on the property dated 2/17/88.
- 3/31/89 E. B. Rood entered into an option to purchase agreement

with Walter Wright which called for Wright to purchase the property for 1.7 million dollars. The option was contingent on Wright obtaining rezoning, which he was unable to accomplish, so the option was never exercised.

11/4/91 First Florida conveyed the property back to E.B. Rood in exchange for \$564,299.00. E.B. Rood presently owns the Lakeland property.

On March 28, 1989, Dr. Alverson and Physicians Insurance Company filed a lawsuit entitled Complaint for Creditors Bill in Polk County, Florida. The Polk County Alverson v. Rood case involved allegations that E. C. Rood, with the knowledge and assistance of E. B. Rood, fraudulently conveyed the Lakeland property to E. B. Rood to avoid paying the Michigan judgment. This case will hereinafter be referred to as the Polk County Alverson v. Rood case.

During the course of the Polk County Alverson v. Rood case, E. C. Rood and E. B. Rood filed separate affidavits with the court in response to plaintiff's motion for partial summary judgment. In pertinent part, the affidavit of E. C. Rood states:

4. That during relevant times herein the Affiant owned an interest in real property in fee simple which had sufficient value to satisfy the subject judgment in that such property had a non-exempt tax assessment value of \$223,435.

\* \* \*

6. That at the time of the transfer of the subject property from the Affiant to Edward B. Rood, the above-stated non-exempt assets owned by Affiant were sufficient to satisfy the subject judgment.

\* \* \*

8. That the Affiant did not inform Edward B. Rood of the entry of the judgment at the time of the conveyance of the subject property and that it was not until sometime substantially after the conveyance that the existence of a judgment was even discussed with Edward B. Rood.

In pertinent part, the Affidavit of E. B. Rood, states:

8. That EDWARD B. ROOD had no knowledge of the entry of the Subject

Judgment at the time of the conveyance of the Subject Property from Ed, Jr. to EDWARD B. ROOD. EDWARD B. ROOD first became aware of the Judgment sometime later after the conveyance.

E. C. Rood testified that in paragraphs number 4 and number 6 of his affidavit he thinks, but is not sure, that he is referring to his interest in the Lemon Street property. On the day of the conveyance of the Lakeland property, September 20, 1987, he held an undivided one-half interest in the Lemon Street property with his brother, Clay. E. B. Rood had given the Lemon Street property to his sons. At the evidentiary hearing of this cause, E. C. Rood testified that in 1987 the property was worth approximately four hundred and fifty thousand dollars. But in a deposition taken on October 4, 1988, in another Alverson v. Rood case, this one in the United States District Court, Middle District of Florida, he was asked and answered as follows:

Q. With regards to the property on Lemon Street, what's the value of that property?

A. I really wouldn't have any idea. I think it's on the tax roles for around 200,000. I think it has a value less than that, because it can't be sold.

Q. You say it can't be sold, what do you mean?

A. It's in the airport runway zoning and you can't do much with it.

Regardless, his interest in the property was ultimately sold by Alverson and Physicians Insurance Company at a U. S. Marshall's sale. E. C. Rood's interest in the Lemon Street property was purchased by Clay Rood for \$62,001. That and the \$3,000 received on the sale of the Dale Mabry condominium is all that Alverson and Physicians Insurance Company have been paid by E. C. Rood on the Michigan judgment.

As can readily be seen from the above chronology, at the time of the conveyance of the Lakeland property, E. C. Rood did not have sufficient non-exempt assets to satisfy the Michigan judgment. In fact, he owned the Shedrick mortgage, which he sold ten days later for \$15,500. He owned the Cornett mortgage, which he sold ten months later for \$22,500. He owned an interest in a condominium on Dale Mabry which was later sold at public sale for \$3,000. And he owned an interest in the Lemon Street property which was later sold at public sale for \$62,001. Excluding costs, attorney's fees and interest, the Michigan judgment was worth \$196,000 as of November 6, 1986.

Finally, on the question of whether E. B. Rood and E. C. Rood engaged in a course of fraudulent conduct with respect to the conveyance of the Lakeland

property, I find that they did. In Cleveland Trust Company v. Foster, 93 So.2d 112 (Fla. 1957), the Court set forth several facts and circumstances which have long been considered indicia or badges of fraud. Of those indicia, I find the following are present in this case. There is a close relationship between the judgement debtor and the transferee. There was a lack of adequate consideration for transfer. After the transfer, the debtor had insufficient assets to pay the judgment. There was a pendency or threat of litigation at the time of the transfer. In addition, the undersigned has studied the transcript of the trial of the Polk County Alverson v. Rood, which has been made a part of this proceeding, and I conclude that every single finding of fact made by Circuit Judge E. Randolph Bentley was proved by clear and convincing evidence. Judge Bentley's Amended Final Judgment is attached to this Report of Referee, marked exhibit "A", and made a part hereof.

Both E. B. and E. C. Rood are consistent in their testimony about when E. B. Rood came to know about the "entry" of the "judgment" in the Michigan Alverson v. Rood case. They both claim that neither of them knew about a "judgment" until a Michigan appellate lawyer sent a copy of the judgment along with the decision of the appellate court to E. C. Rood. This occurred sometime between June and September, 1988. Also, they claim that the judgment was not "entered" until it was registered in a Florida court. This occurred January 26, 1989. They both insist that a jury verdict is not a judgment. Both admit that they knew about the jury verdict immediately after it was returned, but they knew nothing about any judgment. When asked what they thought was being appealed in Michigan, neither could answer, citing lack of appellate experience.

There are at least two problems with this testimony. First, what they refer to as merely a jury verdict is in fact entitled "JUDGMENT IN A CIVIL CASE". Second, in December, 1986, during a criminal jury trial held in Tampa wherein E. C. Rood was the defendant and E. B. Rood was co-counsel, E. B. Rood successfully objected to the State of Florida's attempt to introduce a certified copy of the Michigan judgment in evidence. Finally, it is just not believable that two board certified civil trial lawyers would be confused about the difference between a jury verdict and judgment. Also, it is not believable that two board certified civil trial lawyers would be ignorant of the fact that an appeal from an adverse jury verdict is actually an appeal from the judgment entered pursuant to the jury verdict. Notwithstanding both their efforts to obfuscate a simple issue, it is pellucidly clear that both of them lied when they testified that at the time of the transfer of the Lakeland property E. B. Rood was unaware of the Michigan judgment.

On the overall question of the credibility of both respondents, I wish to draw the Court's attention to the following comments of Federal District Judge Wendall A. Miles, the trial judge in the Michigan Alverson v. Rood case, in his Opinion on Defendants' Motion for Judgment Notwithstanding the Verdict (Bar exhibit #16):

Because this is a fraud case, the jury, of necessity, had to formulate opinions on the credibility of the key actors in this drama. The Court can only speculate as to what thoughts were shared among the members of the jury concerning the various individuals who testified. Of special interest, no doubt, was the lengthy testimony of Mr. Rood. I sat through the embarrassing, tangled examination of Mr. Rood, and can well image how the jury would be worried, or troubled, by his performance on the witness stand. His fencing with counsel over even the most simple "yes-or-no" questions was not becoming of a skilled litigation practitioner. His evasiveness of direct questions, and his long, drawn-out "explanations" of simple matters could not have made a favorable impression upon the jury.

Judge Miles was commenting upon the believability of Edward C. Rood, but I find his observations equally applicable to both of the respondents in this case.

### III. Recommendation as to Whether or Not the Respondents Should Be Found Guilty:

I recommend that the respondents be found guilty and specifically that they be found guilty of violating the following Rules of Professional Conduct: Rule 4-3.3(a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal) ; Rule 4-3.3(a)(4) (a lawyer shall not knowingly permit any witness to offer testimony or other evidence that the lawyer knows to be false) ; Rule 4-8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) ; Rule 4-8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) ; Rule 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

IV. Recommendation as to Disciplinary Measures to be Applied to Edward C. Rood: I recommend that the respondent be disbarred from the practice of law in Florida. Additional reasons for this recommendation may be found in the Report of Referee filed this date in case number 78,413.

V. Personal History and Past Disciplinary Record of Edward C. Rood: After a finding of guilt and prior to recommending discipline pursuant to Rule 3-

7.5(K)(4), Rules of Discipline, I considered the following personal history and prior disciplinary record of the respondent, to wit:

- (1) Age: 44 years old
- (2) Date Admitted to Bar: December 14, 1973
- (3) Prior Disciplinary Record: The Florida Bar v. Edward C. Rood, 569 So.2d 750 (Fla. 1990)
- (4) Aggravating Factors:
  - (a) a pattern of misconduct
  - (b) refusal to acknowledge wrongful nature of conduct
  - (c) dishonest or selfish motive
  - (d) substantial experience in the practice of law
  - (e) prior disciplinary offense
  - (f) indifference to making restitution
- (5) Mitigating Factors:
  - (a) substantial contributions to the legal and non-legal communities including committee work on Bar organizations, scout leader for Boy Scouts, coach and director of Little League, church related contributions, and being a candidate for political office.
  - (b) good husband and father

**VI. Recommendation as to Disciplinary Measures to be Applied to Edward B. Rood:** I recommend that the respondent be suspended for a period of one year and thereafter until respondent shall prove rehabilitation as provided in Rule 3-5.1(e), Rules of Discipline. Additional reasons for this recommendation may be found in the Report of Referee filed this date in case number 78,795.

**VII. Personal History and Past Disciplinary Record of Edward B. Rood:** After a finding of guilt and prior to recommending discipline pursuant to Rule 3-7.5(K)(4), Rules of Discipline, I considered the following personal history and prior disciplinary record of the respondent, to wit:

- (1) Age 76 years old
- (2) Date Admitted to Bar: 1941
- (3) Prior Disciplinary Record: none
- (4) Aggravating Factors:
  - (a) a pattern of misconduct
  - (b) dishonest or selfish motive
  - (c) substantial experience in the practice of law
  - (d) refusal to acknowledge wrongful nature of conduct
- (5) Mitigating Factors:
  - (a) lack of prior disciplinary action
  - (b) substantial contributions of time to Bar related activities



(c) substantial monetary contributions to various charitable and non-profit organizations

**VIII. Statement of Costs and Manner in Which Costs Should be Taxed:** I have reviewed the two Statement of Costs affidavits submitted by The Florida Bar. One is submitted for each respondent. I find that the costs were reasonably incurred by The Florida Bar. It is apparent that other costs have or may be incurred. It is recommended that all such costs and expenses, together with costs listed in the two affidavits, be charged to the respondents. The affidavits are attached to this Report, marked as exhibits "B" and "C", and made a part hereof.

Dated this 15 of July, 1992.

  
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Dennis P. Maloney, Referee

Certificate of Service

I hereby certify that a copy of the above report of referee has been mailed to Bonnie L. Mahon, Esq. and Joseph A. Corsmeir, Esq. at Suite C-49, Tampa Airport Marriott Hotel, Tampa, Fla. 33607, Richard T. Earle, Jr., Esq. at 150 Second Ave. North, Suite 1220, Bank of Florida Building, St. Petersburg, Fla. 33701, Donald A. Smith, Jr., Esq. at 109 N Brush Street, Suite 150, Tampa, Fla. 33602 and John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Fla., this 15 day of July, 1992.

  
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Dennis P. Maloney, Referee

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR POLK COUNTY, FLORIDA

DALE C. ALVERSON, M.D. and  
PHYSICIANS INSURANCE COMPANY,

Plaintiff,

vs.

Case No.: GC-G-89-900

EDWARD C. ROOD, EDWARD B.  
ROOD, FIRST FLORIDA BANKS, N.A.  
and the UNITED STATES OF  
AMERICA,

Defendants.

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**AMENDED FINAL JUDGMENT**

It has come to the Court's attention that the Final Judgment entered on August 23, 1990 contains scrivener's errors. This court hereby enters this Amended Final Judgment to correct those errors.

THIS MATTER having come before the Court upon a trial of this matter and the Court, having considered the testimony of the witnesses, the arguments of counsel, the written memoranda submitted by each party, the applicable law, and being otherwise fully advised, finds as follows.

**FINDINGS OF FACT**

1. A final judgment was entered on November 6, 1986, case number G-84-162-CA5, in the United States District Court for the Western District of Michigan, against Edward C. Rood<sup>1</sup> and Richard Gunderman, M.D., jointly and severally, in the amount of \$196,453.00, excluding interest.

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<sup>1</sup> Edward C. Rood is the son of Edward B. Rood and the middle initials of each party will be underlined in this order for emphasis, although this is not technically correct.

2. The Michigan court granted a Motion for Judgment Notwithstanding the Verdict on May 27, 1987. The judgment was then appealed to the Sixth Circuit Court of Appeals which affirmed the original jury verdict on June 21, 1988 and issued a mandate on September 8, 1988. The Michigan District Court reinstated the jury verdict by an order dated January 26, 1989. The parties have stipulated that a certified copy of the judgment was registered in the United States District Court, Middle District of Florida, on or after January 26, 1989, pursuant to case number 88-438-MISC-T.<sup>2</sup>

2. The registered judgment was recorded in Polk County, Florida, on April 7, 1989, at Official Record Book 2735, pg. 1837.

3. At the time of the trial, Edward C. Rood had paid \$65,000.00 toward satisfaction of the the outstanding judgment. As stipulated, the remaining outstanding judgment was approximately \$247,000.00 as of July 6, 1990. This amount includes pre- and post-judgment interest but does not include post-judgment costs and attorney's fees.

4. At the time the jury verdict was rendered, Edward C. Rood held legal title to the property<sup>3</sup> which is the subject of this creditor's bill instituted by plaintiffs on March 28, 1989, seeking to overturn the conveyance of that property by Edward C. Rood to his father, Edward B. Rood.

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<sup>2</sup> The record in this action contains a copy of the Michigan judgment which indicates that it was filed in the Florida District Court on September 7, 1988. This court questions whether registering the judgment on that date satisfies the technical requirements of 28 U.S.C. §1963. See In re Professional Air Traffic Controllers Org'n, 699 F.2d 539 (D.C. Cir.1983). However, this court has no jurisdiction to consider any objection to the propriety of the plaintiff's compliance with the federal registration statute. This court must therefore accept the judgment in the record as having been validly registered.

<sup>3</sup> The property is described as "the NE 1/4 of the NE 1/4 less the N 1/2 of the SE 1/4 of the NE 1/4 of the NE 1/4 of Section 23, Township 27 South, Range 23 East, less the North 25 feet thereof for road, less also easements and rights of way of record, Polk County, Florida, said parcel containing approximately 35 acres."

5. On June 15, 1974, Edward B. Rood purchased from Alan T. Barber the land in question, consisting of approximately thirty-five acres located on U.S. Hwy 98 in Polk County. The purchase price of \$157,000.00 was paid in full by Edward B. Rood and a warranty deed was executed by Barber to Edward C. Rood.

6. The June, 1974 conveyance was a gift from Edward B. Rood to Edward C. Rood, who paid no consideration for the property. There were no written conditions or restrictions on Edward C. Rood's ownership of the property.

7. The Roods contend that the gift was conditional in that Edward B. Rood could demand return of the property if his son mismanaged it. Despite the alleged condition, and despite the fact that, since at least 1982, Edward C. Rood had been unable to pay either the taxes on the property, or the principal due on a mortgage he had taken on the land, there was never any demand made by Edward B. Rood upon his son to return the property until the transfer in September of 1987. Edward B. Rood paid many of these items on behalf of his son.

8. The warranty deed from Edward C. Rood to Edward B. Rood recorded on October 8, 1987, reflects that documentary stamps totalling \$00.55 were paid. Expert testimony at the trial established that this indicates that a maximum of \$100.00 was paid for the property.

9. The fair market value of the property was \$1,450,000.00 at the time it was transferred to Edward B. Rood in 1987.

10. At the time of the 1987 conveyance, both Edward C. Rood and Edward B. Rood had personal knowledge of the debt that Edward C. Rood owed to the plaintiff as both were aware that a jury verdict in favor of the plaintiffs against Edward C. Rood had been rendered in the Michigan District Court. Edward B. Rood testified at trial that he expected the judgment to be reversed on appeal. The fact that the Michigan judgment had not been domesticated in a Florida court at the time of the transfer is not relevant.

11. Edward B. Rood and Edward C. Rood have a close personal relationship.

12. During the period from 1976 to present, Edward C. Rood and Edward B. Rood have shared office space; Edward C. Rood received a substantial salary from Edward B. Rood's law firm; and Edward B. Rood's firm paid Edward C. Rood's office expenses.

13. Edward C. Rood was insolvent at the time he transferred this property to his father in that his only remaining assets were held jointly with his wife and therefore could not be used to satisfy the judgment. At the time of the transfer, Edward B. Rood was aware of his son's financial status.

14. Edward C. Rood had previously taken out a loan at Southeast Bank secured by a mortgage on the property. The principal balance still owed by Edward C. Rood was \$126,600.82. The loan was paid in full on January 20, 1987. Edward B. Rood paid \$41,000.00 toward the satisfaction of the loan (\$26,600.82 was paid toward the principal and approximately \$16,000.00 was paid to satisfy interest and the bank's attorney's fees associated with collection of the debt). Edward C. Rood borrowed \$100,000.00 from his mother, Donna C. Rood to pay the remaining principal. This loan was verbally guaranteed by Edward B. Rood. Edward C. Rood eventually borrowed money from First Florida Bank to repay the debt to his mother.

15. Edward B. Rood verbally guaranteed his son's loan from First Florida Bank and the parties have stipulated that Edward B. Rood paid off this loan in 1990.

16. Edward B. Rood paid the delinquent taxes on the property for the years 1985 to 1987, which total \$24,387.24.

17. The court finds that the payment of taxes for those three years, along with the \$41,000.00 paid by Edward B. Rood to satisfy his son's outstanding mortgage on the property, was paid by Edward B. Rood in consideration for the

property. This court will reluctantly also accept the payment of Edward C. Rood's debt to First Florida Bank in the amount of \$100,000.00 as consideration paid by Edward B. Rood .

18. Any money expended by Edward B. Rood in payment of his son's debts prior to the 1987 transfer are gifts and therefore cannot be deemed as consideration paid to Edward C. Rood.<sup>4</sup> The money Edward B. Rood allegedly paid toward the satisfaction of his son's outstanding attorney's fees related to other matters is likewise not consideration.

19. Edward C. Rood conveyed the property to his father with the intent to hinder, delay or defraud the plaintiff-creditor.

20. Edward C. Rood had no legal obligation to repay his father and therefore, Edward B. Rood is not a creditor of Edward C. Rood.

#### CONCLUSIONS OF LAW

I. This court finds no merit to the defendants' argument that the plaintiff's herein were not "creditors" at the time of the conveyance. The fact that the Michigan judgment did not become final by appeal, and therefore was not subject to registration in Florida until after the 1987 conveyance does not defeat the plaintiffs' right to have the conveyance set aside if found to be fraudulent. The plaintiffs became judgment-creditors of Edward C. Rood at the very latest upon the entry of the jury verdict by the Michigan court on November 6, 1986. Plaintiffs were, therefore, known creditors of Edward C. Rood prior to the time that the property was conveyed to Edward B. Rood. The only consequence of the plaintiffs' inability to register the judgment in Florida until January of 1989 was that the plaintiffs could not obtain a lien against the property. See Money v. Powell, 139 So.2d 702

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<sup>4</sup> Edward B. Rood claims additional consideration was paid to his son for the conveyance including the original purchase price paid by him in 1974, and interest on that purchase price for the period when his son held title to the property. These claims are rejected as a matter of law.

(Fla. 2nd DCA 1962); Hurlbert v. Shackleton, 15 FLW 1100 (Fla. 1st DCA April 27, 1990).

II. This court finds that the conveyance is void under Florida Statutes Section 726.01. This statute provides that every conveyance made with intent to delay, hinder or defraud creditors is void. When the legal effect of the conveyance is to delay, hinder or defraud creditors, it is fraud in law regardless of the actual intention of the debtor. Stelle v. Dennis, 140 So. 194, 195 (1932); Matter of Acquafreddia, 26 B.R. 909, 912 (M.D. Fla. 1983). The court finds that the conveyance by Edward C. Rood to his father had such an effect and further finds that there was intent to defraud the plaintiff-creditors at the time of the conveyance.

In determining if Edward C. Rood had the requisite intent, the court considered the presence of any indicia of fraud as previously recognized by the Florida courts. These badges of fraud include (1) whether there is a relationship between the debtor and the transferee; (2) the lack of consideration for the conveyance; (3) the insolvency or indebtedness of the debtor; (4) the transfer of the debtor's entire estate; and (5) the pendency or threat of litigation at the time of the transfer. Cleveland Trust Company v. Foster, 93 So.2d 112 (Fla. 1949); Acquafreddia, 26 B.R. at 912. "Although the badges of fraud may be inconclusive to establish fraud when considered separately, if they exist in combination, they may by their number and joint consideration be sufficient to constitute conclusive proof." Acquafreddia, 26 B.R. at 913. Whether fraud exists in a particular conveyance is to be determined by the facts surrounding that conveyance. Stelle v. Dennis, 140 So. 194 (1932); Orlando Light Bulb v. Laser Lighting, 523 So.2d 740 (Fla. 5th DCA 1988); Headley v. Pelham, 366 So.2d 60 (Fla. 1st DCA 1987).

In Parts Depot, Inc. v. Bullock, 545 So.2d 468 (Fla. 2nd DCA 1989), a mother conveyed five lots to her son who thereafter mortgaged the lots. The plaintiff

obtained a judgment against the son who, in turn, conveyed two of the lots back to his mother the following day. No consideration was paid by the mother for the conveyance of the property. The value of the two lots was found to be \$145,000.00. The mother was aware of the son's debts to plaintiff, and had made payments to the plaintiff on her son's behalf although she claimed she had no specific knowledge of a judgment against her son in favor of the plaintiff. The remaining lots were conveyed to the father on the same date. The plaintiff brought a creditor's bill to set aside the conveyances. The Second DCA reversed a directed verdict in favor of defendant regarding the conveyance to the mother finding that the facts proved a prima facie case of fraudulent transfer in that particular instance. The court noted the existence of several of the badges of fraud, including the insufficient consideration, the recently obtained judgment against the transferor, the close relationship between the mother and the son, and the insolvency or substantial indebtedness of the transferor. *Id.* at 470 (citations omitted).

This court similarly finds that the badges of fraud present in the instant action show that Edward C. Rood intended to defraud the plaintiffs in that he intended to hinder plaintiffs' ability to collect on the judgment and that this intent existed at the time he transferred the property to his father in 1987. Specifically, Edward C. Rood and his father have a close personal relationship; Edward C. Rood was insolvent at the time of the transfer; Edward C. Rood transferred the entirety of his estate that could have been subjected to claims by the plaintiff-creditor; and there was an outstanding judgment against Edward C. Rood at the time of the transfer.

III. The defendants also argue that the conveyance is not fraudulent as to Edward B. Rood in that he paid consideration to his son. This court specifically holds that Edward B. Rood has not paid adequate consideration for the property. Even assuming that the consideration paid by Edward B. Rood was in fact adequate,



this court must still reject this contention since it was established that Edward B. Rood knew of the litigation against his son, that an unpaid judgment was still in existence at the time of the conveyance and, that his son was insolvent in that he had no other means with which to satisfy the judgment in full. When a purchaser is not a creditor, the purchase:

... is fraudulent and void as against creditors, even though the purchaser has paid an adequate consideration, where the seller has at the time a purpose or intent to defraud his creditors, or to hinder and delay them in the collection of their debts, and the purchaser knew of such purpose, or had knowledge of such facts or circumstances as would have induced an ordinarily prudent person to make inquiry...

Jackson v. Citizens' Bank & Trust Co., 44 So. 516, 522 (Fla. 1907)(emphasis added).

In In re Polar Chips Inter., Inc., 18 B.R. 480, (S.D.Fla. 1982), the court found that although the transferee gave valuable and adequate consideration and had no actual intent to hinder the transferors' creditors, the transferee nonetheless had full knowledge of the transferors' precarious finances, of the large amount of litigation in which the transferors were involved or threatened with, and of all of the circumstances which make it apparent that the effect of the transfer is to defraud the creditors. The court held that "with such reason to know, the conveyance must be considered fraudulent as to the transferor." Id. at 484.

IV. Finally, this court rejects Edward B. Rood's attempt to equate the rights allegedly retained by him when the land was initially conveyed to his son in 1974 to an antecedent debt. Edward B. Rood is clearly not an antecedent creditor of his son under the facts presented to this court. Even assuming that such an analogy is proper, an antecedent creditor is only protected "if the property is not worth materially more than than the debt." Vickers v. Glenn, 136 So. 326, 328 (Fla. 1931)(emphasis added). See also Jackson, 44 So. at 522. Such is not the case in the

instant action. The fair market value on the date of the transfer was \$1,450,000.00 which greatly exceeds any amounts paid by Edward B. Rood in consideration of the transfer. Edward B. Rood has failed to prove either the existence of a real debt or that he paid adequate consideration for the property. See also Nelson v. Cravero Constructors, Inc., 117 So.2d 764, 766 (Fla. 3rd DCA 1960).

V. Under section 57.115, Florida Statutes (1987), the plaintiffs are entitled to an award of reasonable attorney's fees and costs incurred in bringing this creditor's bill which was necessary to collect on the judgment.

VI. Jurisdiction is retained to enter any Orders that may be proper and necessary and to tax costs and fees.

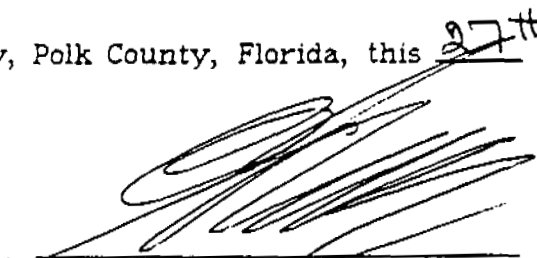
IT IS THEREFORE ORDERED AND ADJUDGED,

That the 1987 conveyance of the property described as:

the NE 1/4 of the NE 1/4 less the N 1/2 of the SE 1/4 of the NE 1/4 of the NE 1/4 of Section 23, Township 27 South, Range 23 East, less the North 25 feet thereof for road, less also easements and rights of way of record, Polk County, Florida, said parcel containing approximately 35 acres

from Edward C. Rood to Edward B. Rood is hereby set aside and that Edward B. Rood shall retain no interest in this property.

DONE AND ORDERED in Chambers at Bartow, Polk County, Florida, this 27<sup>th</sup> day of August, 1990.



E. RANDOLPH BENTLEY  
Circuit Judge

Copies to:  
James P. Hahn, Esq.  
Paul L. Huey, Esq.  
Warren A. Zimmerman, Esq.  
Edward C. Rood, Esq.

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

CASE NO. 78,742  
TFB No. 91-11,535(13E)

v.

EDWARD C. ROOD,  
Respondent.

---

**STATEMENT OF COSTS**

The following costs have been incurred by The Florida Bar in the above-referenced case at the Grievance Committee and Referee levels:

1. Administrative Costs ..... \$ 500.00
  
- I. GRIEVANCE COMMITTEE LEVEL:
  2. Assistant Staff Counsel: (GC Hearing)  
(Joseph A. Corsmeier) (9-11-91)  
Mileage: 20 miles X .32 = 6.40 (1/2 the cost) 3.20  
Parking: \$4.00 (1/2 the cost)..... 2.00
  
- II. REFEREE LEVEL:
  1. Court Reporting Service (Sclafani Williams)  
(Final Hearing - 1/21/92)  
Appearance Fee: .... 200.00 (1/2 the cost).. 100.00  
Transcript Fee: .. 1,156.00 (1/2 the cost).. 578.00  
Postage: ..... 4.10 (1/2 the cost).. 2.05
  
  2. Assistant Staff Counsel:  
Bonnie L. Mahon (11-8-91) Status Hearing  
Mileage:  
106 miles X .32 = 33.92 (1/2 the cost)..... 16.96  
  
Bonnie L. Mahon (6-12-92) Disciplinary Hearing  
Mileage:  
106 miles X .32..... 33.92  
  
Joseph A. Corsmeier  
(12-20-91) Meeting with witness Paul Huey  
Mileage:  
20 miles X .32 = 6.20 (1/2 the cost)..... 3.10

(1-13-92) Pre-Trial Conference  
Mileage:  
106 miles X .32 = 33.92 (1/2 the cost)..... 16.96

(1-21-92) Final Hearing  
Mileage:  
106 miles X .32 = 33.92 (1/2 the cost)..... 16.96

(6-12-92) Disciplinary Hearing  
Mileage:  
106 miles X .32..... 33.92

3. Staff Investigator Expenses:

(Martin S. Egan)  
Time Expended: 10 hrs. @ \$20.00 = \$200.00  
(1/2 the cost) ..... 100.00  
Mileage: 75 miles @ .32 = \$24.00  
(1/2 the cost)..... 12.00

(Joseph McFadden)  
Time Expended: 4.1 hrs. @ \$19.00 = \$77.90  
(1/2 the cost)..... 38.95  
Mileage: 72 miles @ .32 = \$23.04  
(1/2 the cost)..... 11.52

4. Miscellaneous Expenses:

MCI  
(1-6-92) Telephone hearing.....\$56.20  
(1/2 the cost)..... 28.01

(2-3-92) Hearing regarding enlargement of written  
closing argument  
\$25.76 (1/2 the cost)..... 12.88

Richard Ake, Clerk of Court Hillsborough County  
(copies) 1-14-92... \$7.00 (1/2 the cost).... 3.50

Bush, Ross, Gardner, Warren & Rudy, P.A.  
Copies (5-31-92)..\$47.85 (1/2 the cost)..... 23.93

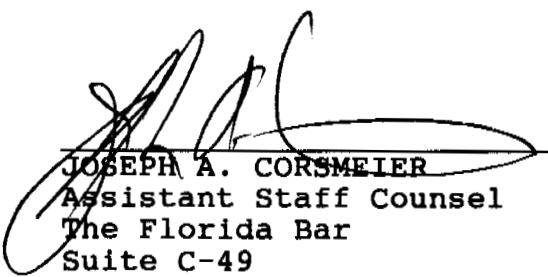
TOTAL ESTIMATED COSTS TO DATE: \$ 1,537.86\*

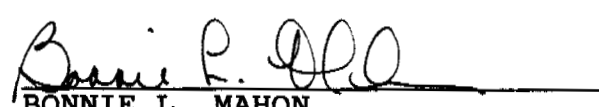
**\* Additional costs will be incurred at the Disciplinary Hearing regarding court reporter expenses.**

The foregoing costs have been incurred in the above-styled cause at the Grievance Committee and Referee level by The Florida Bar.

Dated this 11th day of June, 1992.

Respectfully submitted,

  
JOSEPH A. CORSMIEER  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, FL 33607  
(813) 875-9821  
Attorney No. 492582

  
BONNIE L. MAHON  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, FL 33607  
(813) 875-9821  
Attorney No. 376183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished by Hand Delivery to Donald A. Smith, Counsel for Respondent at 109 N. Brush Street, Suite 150, Tampa, FL 33602; and a copy to **John T. Berry**, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 11th day of June, 1992.

  
BONNIE L. MAHON

IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

CASE NO. 78,742  
TFB No. 91-11,535(13E)

v.

EDWARD C. ROOD,  
Respondent.

---

AMENDED  
**STATEMENT OF COSTS**

The following costs have been incurred by The Florida Bar in the above-referenced case at the Grievance Committee and Referee levels:

1. Administrative Costs ..... \$ 500.00

**I. GRIEVANCE COMMITTEE LEVEL:**

2. Assistant Staff Counsel: (GC Hearing)  
(Joseph A. Corsmeier) (9-11-91)  
Mileage: 20 miles X .32 = 6.40 (1/2 the cost) 3.20  
Parking: \$4.00 (1/2 the cost)..... 2.00

**II. REFEREE LEVEL:**

1. Court Reporting Service (Sclafani Williams)  
(Final Hearing - 1/21/92)  
Appearance Fee: .... 200.00 (1/2 the cost).. 100.00  
Transcript Fee: .. 1,156.00 (1/2 the cost).. 578.00  
Postage: ..... 4.10 (1/2 the cost).. 2.05

(6-12-92) Transcript of Disciplinary Hearing  
Appearance Fee:..... 35.00  
Transcript Fee:..... 272.80

2. Assistant Staff Counsel:  
Bonnie L. Mahon (11-8-91) Status Hearing  
Mileage:  
106 miles X .32 = 33.92 (1/2 the cost)..... 16.96

Bonnie L. Mahon (6-12-92) Disciplinary Hearing  
Mileage:  
106 miles X .32..... 33.92

Joseph A. Corsmeier  
(12-20-91) Meeting with witness Paul Huey  
Mileage:  
20 miles X .32 = 6.20 (1/2 the cost)..... 3.10

(1-13-92) Pre-Trial Conference	
Mileage:	
106 miles X .32 = 33.92 (1/2 the cost).....	16.96
(1-21-92) Final Hearing	
Mileage:	
106 miles X .32 = 33.92 (1/2 the cost).....	16.96
(6-12-92) Disciplinary Hearing	
Mileage:	
106 miles X .32.....	33.92

3. Staff Investigator Expenses:

(Martin S. Egan)	
Time Expended: 10 hrs. @ \$20.00 = \$200.00	
(1/2 the cost) .....	100.00
Mileage: 75 miles @ .32.= \$24.00	
(1/2 the cost).....	12.00
(Joseph McFadden)	
Time Expended: 4.1 hrs. @ \$19.00 = \$77.90	
(1/2 the cost).....	38.95
Mileage: 72 miles @ .32 = \$23.04	
(1/2 the cost).....	11.52

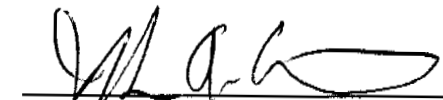
4. Miscellaneous Expenses:

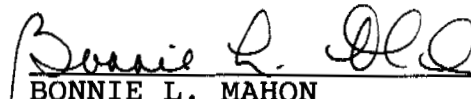
MCI	
(1-6-92) Telephone hearing.....\$56.20	
(1/2 the cost).....	28.01
(2-3-92) Hearing regarding enlargement of written closing argument	
\$25.76 (1/2 the cost).....	12.88
Richard Ake, Clerk of Court Hillsborough County	
(copies) 1-14-92... \$7.00 (1/2 the cost)....	3.50
Bush, Ross, Gardner, Warren & Rudy, P.A.	
Copies (5-31-92)..\$47.85 (1/2 the cost).....	23.93
TOTAL ESTIMATED COSTS TO DATE:	\$ <u>1,845.66</u>

The foregoing costs have been incurred in the above-styled cause at the Grievance Committee and Referee level by The Florida Bar.

Dated this 26th day of June, 1992.

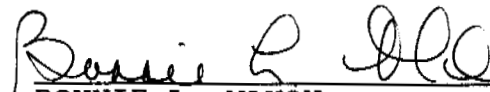
Respectfully submitted,

  
\_\_\_\_\_  
JOSEPH A. CORSMEIER  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, FL 33607  
(813) 875-9821  
Attorney No. 492582

  
\_\_\_\_\_  
BONNIE L. MAHON  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, FL 33607  
(813) 875-9821  
Attorney No. 376183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original Amended Statement of Costs has been furnished to the Honorable Dennis P. Maloney, P.O. Box 9000, Drawer J-115, Bartow, FL 33830; copy to Donald A. Smith, Counsel for Respondent at 109 N. Brush Street, Suite 150, Tampa, FL 33602; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 26th day of June, 1992.

  
\_\_\_\_\_  
BONNIE L. MAHON



IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

CASE NO. 78,741  
TFB No. 91-11,534(13E)

v.

EDWARD B. ROOD,  
Respondent.

---

**STATEMENT OF COSTS**

The following costs have been incurred by The Florida Bar in the above-referenced case at the Grievance Committee and Referee levels:

1. Administrative Costs ..... \$ 500.00

**I. GRIEVANCE COMMITTEE LEVEL:**

2. Assistant Staff Counsel: (GC Hearing)  
(Joseph A. Corsmeier) (9-11-91)  
Mileage: 20 miles X .32 = 6.40 (1/2 the cost) 3.20  
Parking: \$4.00 (1/2 the cost)..... 2.00

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1. Court Reporting Service (Sclafani Williams)  
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2. Assistant Staff Counsel:  
Bonnie L. Mahon (11-8-91) Status Hearing  
Mileage:  
106 miles X .32 = 33.92 (1/2 the cost)..... 16.96

Joseph A. Corsmeier  
(12-20-91) Meeting with witness Paul Huey  
Mileage:  
20 miles X .32 = 6.20 (1/2 the cost)..... 3.10  
(1-13-92) Pre-Trial Conference  
Mileage:  
106 miles X .32 = 33.92 (1/2 the cost)..... 16.96

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(Martin S. Egan)  
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(1/2 the cost)..... 12.00

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Mileage: 72 miles @ .32 = \$23.04  
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(1/2 the cost)..... 28.01

(2-3-92) Hearing regarding enlargement of written  
closing argument \$25.76 (1/2 the cost)..... 12.88

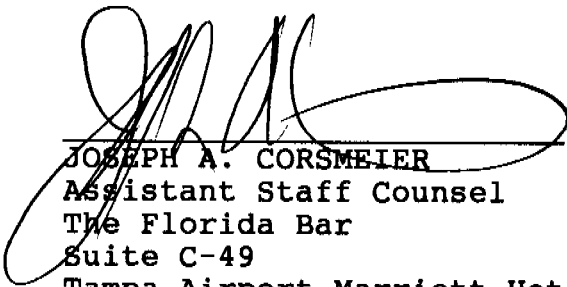
Richard Ake (Clerk of Courts Hillsborough County  
(copies) 1-14-92... \$7.00  
(1/2 the cost)..... 3.50

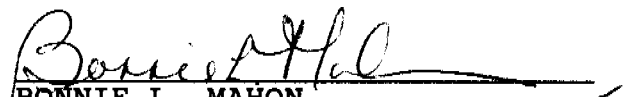
Bush, Ross, Gardner, Warren & Rudy, P.A.  
Copies (5-31-92)..\$47.85 (1/2 the cost)..... 23.93

TOTAL ESTIMATED COSTS TO DATE: \$ 1,470.02

The foregoing costs have been incurred in the above-styled  
cause at the Grievance Committee and Referee level by The Florida  
Bar.

Dated this 16th day of June, 1992.

  
JOSEPH A. CORSMEIER  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, FL 33607  
(813) 875-9821  
Attorney No. 492582

Respectfully submitted,  
  
BONNIE L. MAHON  
Assistant Staff Counsel  
The Florida Bar  
Suite C-49  
Tampa Airport Marriott Hotel  
Tampa, FL 33607  
(813) 875-9821  
Attorney No. 376183

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Costs has been furnished by regular U.S. Mail to Richard T. Earle, Jr., 150 Second Ave. North, Suite 1220, Bank of Florida Building, St. Petersburg, FL 33701; and a copy to John T. Berry, Staff Counsel, The Florida Bar, Legal Division, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, this 16<sup>th</sup> day of June, 1992.

  
BONNIE L. MAHON