FILED

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
PROBATE DIVISION
2000 DEC -4 AM 8:55

RICHARD R. ROOKER, CLERK

IN RE: _____ D.C.

W.R. PERKINS, JR. TRUST NO. 2 CREATED UNDER WILL OF W.R. PERKINS, JR.	)	NO. 99P 839
CHARLOTTE S. DEAN, HELEN SEATON CASTLEMAN, HENRY EDWARD SEATON, III, Petitioners,	)	
v.	)	
NEILL S. BROWN, LYTLE BROWN, III, Respondents.	)	

Davidson County JDGMT
Recvd: 12/11/00 09:26 13pgs
Fees:54.00 Taxes:0.00
20001211-0121573

PICK-UP

FINAL JUDGMENT

This cause came on to be heard on the 17th day of November, 2000 before Honorable Frank G. Clement, Jr., Judge, Seventh Circuit Court for Davidson County, Tennessee, Probate Division, upon the Motion for Summary Judgment of the Petitioners, Charlotte S. Dean, Helen Seaton Castleman and Henry Edward Seaton, III. Upon consideration of that Motion, the Briefs, Affidavits, depositions and other discovery materials filed in support of and in opposition to that Motion, the arguments of counsel in open Court and the entire record in this cause, the Court announced its findings and conclusions with respect to this Motion in open Court. The Court's announcement with respect to its findings and conclusions has been transcribed, and that transcript is attached to this Judgment as Exhibit A hereto and is incorporated herein by reference.

As set forth with greater specificity in that transcript, the Court finds and concludes that there is no genuine issue as to any material fact and that the Petitioners are entitled to judgment as a matter of law upon those claims before the Court.

In that regard, the Court finds that the Petitioners are entitled to recover from the Defendant, Neill S. Brown, the sum of One Hundred Eighty-Nine Thousand Sixty-Two and 65/100 Dollars ($189,062.65), together with pre-judgment interest upon that

amount at the rate of Ten Percent (10%) per annum from January 18, 1998 through and including the date of entry of this Judgment the total amount of such pre-judgment interest being Fifty Four Thousand One Hundred Twenty Six And 37/100 Dollars ($54,126.37). It is, accordingly, ORDERED that judgment be and the same hereby is entered in favor of the Petitioners, Charlotte S. Dean and Helen Seaton Castleman, and against the Defendant, Neill S. Brown, in the amount of Two Hundred Forty Three Thousand One Hundred Eighty Nine and 02/100 Dollars ($243,189.02).

The Court finds as a matter of law that the conveyances from the Defendant, Neill S. Brown to the Defendant, Lytle Brown, III, of those residential properties located, respectively, at 6105 Gardendale Drive, Nashville, Tennessee 37215 and 3828 Bedford Avenue, Nashville, Tennessee 37215 by means of quitclaim deeds dated December 1, 1998 were carried out with an intent and purpose to hinder, delay or defraud the Petitioners, Charlotte S. Dean and Helen Seaton Castleman, with respect to the enforcement of their just and lawful claims of damages and rights of action against the Defendant, Neill S. Brown. The Court further finds as a matter of law, that the unrecorded quit-claim deeds allegedly executed by the Defendant, Neill S. Brown in 1996 and purportedly conveying these same properties to the Defendant, Lytle Brown, III, are null and void insofar as the rights of the Petitioners are concerned. In making this finding the Court assumes for the sake of this Motion only that the 1996 deeds were in fact executed by the Defendant Neill S. Brown in 1996 and delivered to the Defendant Lytle Brown, III at or about the time of their execution, as alleged by the Defendants. The Court accordingly finds and concludes that said December 1, 1998 conveyances are fraudulent conveyances as that phrase is defined by the provisions of T.C.A. §§66-3-101, et seq. and that the Petitioners are accordingly entitled to the imposition of a constructive trust in their favor upon said properties, the full legal description of which is as follows:

> Land in Davidson County, Tennessee, being Lot No. 69 on the Plan of Hillsboro Park, Section II, as of record in Book 2331, pages 61 and 62, Register's Office for said County.
>
> Said Lot No. 69 fronts 176.2 feet on the north side of Gardendale Drive, and runs back 286 feet on the west line and 307.2 feet on the east line, which is a broken line, to a dead line in the rear on which it measures 160 feet.

Being the same property conveyed to Neill S. Brown and wife, Julia V. Brown, of record in Book 104, Page 550, Register's Office for Davidson County, Tennessee, the said Julia V. Brown having since died.

Being the same property conveyed to Lytle Brown, III by a Quitclaim Deed of record in Book 11226, Page 612, Register's Office for Davidson County, Tennessee.

This is improved property known as 6105 Gardendale Drive, Nashville, Tennessee 37215.

Being in the northerly part of Lots Nos. 24 and 25 of Block "C" on the Map of Hillsboro View Development Company's Plan of Lots, of record in Book 974, pages 64 and 65, Register's Office for Davidson County, Tennessee, and more particularly described as follows:

Beginning at a point in the easterly margin of Bedford Avenue, at the common corner of Lots 23 and 24 of said Block; and thence with the line between said lots, and with the line between Lots 23 and 25, easterly 187 feet to a stake in the westerly line of Lot 26, thence with the line between Lots 26 and 25, southerly 85 feet to a stake which is 86 feet 6 inches northerly from the northerly margin of Abbott-Martin Road; thence westerly 187.7 feet to a stake in the easterly margin of Bedford Avenue; thence with a margin of the same northerly 100 feet to the point of beginning.

This conveyance is subject to the restrictions of record in Book 1181, page 149, said Register's Office.

Being the same property conveyed to Neill S. Brown and wife, Julia V. Brown, of record in Book 89, Page 120, Register's Office for Davidson County, Tennessee, the said Julia V. Brown having since died.

Being the same property conveyed to Lytle Brown, III by a Quitclaim Deed of record in Book 11226, Page 614, Register's Office for Davidson County, Tennessee.

This is improved property known as 3828 Bedford Avenue, Nashville, Tennessee 37215.

The Court accordingly holds that: (a) the above described properties are impressed with and held subject to a constructive trust for the benefit of the Petitioners, Charlotte S. Dean and Helen Seaton Castleman and (b) the Defendant, Lytle Brown, III holds title to this property as a trustee for the Petitioners, Charlotte S. Dean and Helen Seaton Castleman, and the Court further hereby enjoins the Defendants, Neill S. Brown and Lytle Brown, III, from transferring or attempting to transfer title to, or any interest in those parcels of real property described hereinabove

and further orders that, upon the finality of this Judgment and if the full amount of this judgment is not discharged upon its becoming final, the Petitioners will be immediately entitled upon application therefor to have the property described hereinabove sold at a judicial sale by the Clerk of this Court with the proceeds from such sale, after the expenses of that sale, being applied toward satisfaction of the Judgment being entered herein in favor of the Petitioners, Charlotte S. Dean and Helen Seaton Castleman and against the Defendant, Neill S. Brown.

The costs of this cause are adjudged against the Defendants, Neill S. Brown and Lytle Brown, III, jointly and severally, for which let execution issue if necessary.

Enter this 4 day of Dec, 2000.

JUDGE

APPROVED FOR ENTRY:

Joel M. Leeman

Joel M. Leeman, #3318
Gareth S. Aden, #2371
Marty S. Turner, #18977
GULLETT, SANFORD, ROBINSON
& MARTIN, PLLC
230 Fourth Avenue North, 3rd Floor
P.O. Box 198888
Nashville, TN 37219-8888
(615) 244-4994

Tammy L Irons
By Permission Joel M. Leeman

Tammy L. Irons, #13837
The Irons Law Firm
215 West Alabama Street
Florence, AL 35630
Florence, AL T/P No. (205) 766-9201
Memphis, TN T/P No. (901) 526-9200

Attorneys for Petitioners, Charlotte S. Dean, Helen Seaton Castleman and Henry Edward Seaton, III

CERTIFICATE OF SERVICE

This is to certify that a copy of this Final Judgment has been served by first-class mail, postage pre-paid, upon James C. McBroom, Esq., Finch & McBroom, 211 Printers Alley, Suite 502, Nashville, TN 37201 and upon Stewart F. Kresge, Esq., 2300 21st Avenue South, Second Floor, Nashville, TN 37212, this 28TH day of NOVEMBER, 2000.

GULLETT, SANFORD, ROBINSON
& MARTIN, PLLC

Joel M. Leeman

Joel M. Leeman

FILED
2000 DEC -4 AM 8:55
D.C.

IN THE SEVENTH COURT FOR DAVIDSON COUNTY, TENNESSEE
(PROBATE DIVISION)

IN RE:	)	
	)	
W. R. PERKINS, JR. TRUST NO. 2 CREATED UNDER THE WILL OF W. R. PERKINS, JR.,	)	
	)	
CHARLOTTE S. DEAN, HELEN SEATON CASTLEMAN, HENRY EDWARD SEATON, III,	)	
	)	
Petitioners,	)	
v.	)	NO. 99P-839
	)	
NEILL S. BROWN, LYTLE BROWN, III,	)	
	)	
Respondents.	)	

PARTIAL TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE FRANK CLEMENT

November 17, 2000

RENEE LOWERY
Court Reporter
7410 Valley Road
Fairview, TN 37062
(615) 799-8564

FORM CSR - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

APPEARANCES:

For the Petitioners:
Mr. Joel M. Leeman
Gullett Sanford Robinson & Martin, PLLC
3rd Floor
230 Fourth Avenue North
P. O. Box 198888
Nashville, TN 37219-8888

For Neill S. Brown:
Mr. Stewart F. Kresge
Attorney at Law
2300 21st Avenue South
Nashville, TN 37212

For Lytle Brown, III:
James C. McBroom
Finch & McBroom
Suite 502
211 Printers Alley
Nashville, TN 37201

FORM OR-325 REPORTERS PAPER & MFG. CO. 800-626-6313

(WHEREUPON, the following proceedings were held in the Probate Court of Davidson County, Tennessee, at Nashville, on November 17, 2000, before the Honorable Frank Clement, as follows:)

* * *

THE COURT: There is no dispute of material fact as to the fact that the hundred and eighty-nine thousand dollars has not been dealt with by the former trustee and therefore he clearly is liable for that hundred eighty-nine thousand dollar figure, whatever it is that amount is. And I find as a matter of law that the beneficiaries were entitled to that money, I believe it was January 1 of '98, and that pre-judgment interest from that date would ultimately apply.

I also find that this is the most obvious case of actual and constructive fraud I've seen in five years up here. You've got two gentlemen with law degrees, one who practiced law. Neill Brown may or may not have had diminished capacity, but

FORM CR-325 REPORTERS PAPER & MFG. CO. 800-626-6313

the whole thing just stinks to high heaven. I need a mask to avoid the obvious stench of these transactions. The alleged deed in 1996, I don't think there's much dispute that it was signed and that Lytle Brown may have possessed the piece of paper, but it was a legal nullity as far as it applies to the plaintiffs here. Therefore, the only deed that would have any legal effect as far as this issue is concerned is the 1998 deed, which was executed at a time that Neill Brown had few, if any, assets, that the transfer without consideration of the realty, both tracts, however many tracts there were, made him insolvent; that it was a transaction between two gentlemen with law degrees and that they absolutely knew what they were doing and the effect of what they were doing.

The argument that Neill Brown had diminished capacity in '98 is an interesting argument because that makes the judgement for fraud against Lytle Brown even more convincing and more compelling because if Neill Brown was of diminished capacity,

FORM OR-325 REPORTERS PAPER & MFG. CO 800-626-6313

Lytle Brown was an even more active culprit and conspirator in the fraud that was perpetrated on the beneficiaries. As a legal conclusion, that's just -- that's so obvious it's amazing.

The factors in the Stevenson v. Hix case of Neill Brown being in a precarious financial situation, that he knew that he was in trouble with the trust and the beneficiaries of the trust, that there was no consideration for the transfer, that it was a transfer to a family member, one who he thought of as a son, that he continue to divest the benefits of the property, not only actually possession, but the rent and income of the properties. The arguments that the transfers were for the purposes of estate planning is really just without any factual basis. Number one, it did not have a taxable estate. Number two, it was actually to the detriment of Lytle Brown to accept this property from an 88-year-old man, because if he waited -- could have waited until his death, he would have gotten a stepped up basis for tax purposes for when

FORM OR-325 REPORTERS PAPER & MFG. CO. 800-626-6313

he sold it to the next person, not for an estate planning purpose but for an income tax planning purpose. And even if he was last in his class, he ought to know some of these things.

So for all those reasons, I find it's just so obvious that we'd be wasting everybody's time for this case to go to trial. Summary judgment is granted. Thank you all.

FORM OR-325 REPORTERS PAPER & MFG. CO 800-626-6313

REPORTER'S CERTIFICATE

STATE OF TENNESSEE)
) ss
COUNTY OF DAVIDSON)

I, RENEE LOWERY, Court Reporter and Notary Public at Large, hereby certify that I reported the foregoing partial transcript of proceedings on the Stenograph shorthand machine and I thereafter reduced the same to typewritten form. The foregoing partial transcript consisting of Pages 1 through 6 is an accurate account of the proceedings in the hearing of this cause on November 17, 2000.

I further certify that I am not related to any of the parties named herein, nor to their counsel, and have no interest, financial or otherwise, in the outcome of these proceedings.

Renee Lowery, Court Reporter
and Notary Public at Large for
the State of Tennessee

My Commission Expires: 3/22/2001

FORM OR-325 REPORTERS PAPER & MFG CO. 800-626-6313

STATE OF TENNESSEE

I, RICHARD R. ROOKER, Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Order heretofore entered in the SEVENTH Circuit Court for Davidson County, Tennessee, on the 04 day of DECEMBER , 2000 , in the Case Number 99P839 between DEAN, CHARLOTTE S. ET.AL Petitioner, and PERKINS JR., W.R. (TUW) Respondent, as same remains of record in Vol. 1539 , Page 282825 of the Minutes of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 11 day of DECEMBER in the year two thousand and in the 225th year of American Independence.

RICHARD R. ROOKER, Clerk,

By _____
Deputy Clerk

SEAL

