BY LAWRENCE SAVELL

The Conveyed Chevelle

IN HIS POSTHUMOUSLY PUBLISHED, translated diary of notes, observations, and verse, *Markings*, the peacemaker and second Secretary General of the United Nations Dag Hammarskjöld wrote, "He who has nothing can give nothing."

In a sense, the legal concept of "fraudulent transfers" (also called "fraudulent conveyances") is consistent with that sentiment. It prohibits a sale or other transfer of property that is made for the purpose of defrauding, hindering or delaying a creditor, or to put the property beyond the creditor's reach.

An allegation of fraudulent transfer of a classic car was involved in *Raidna v. Anderson*, decided on February 10, 2011, by the Superior Court of Connecticut, Judicial District of Waterbury.

According to the court, Paul Raidna gave William Anderson and/or Anderson's business entity, Classic Car Restoration Parts (CCRP), a $40,000 deposit toward the purchase of a 1970 Chevelle LS6 convertible. When Raidna requested the deposit be returned, Anderson and CCRP refused. Raidna then sued Anderson and CCRP for the money and won in a November 2008 ruling.

When Raidna then tried to collect on his court judgment, he discovered that William Anderson had transferred title to the Chevelle to his mother, Mary.

Raidna then sued William, Mary, and Mary's business, Classic Car Restoration (CCR), under the Uniform Fraudulent Transfer Act, claiming that the transfer of the Chevelle was improper. The Act states: "A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, if the creditor's claim arose before the transfer was made or the obligation was incurred and if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation…"

The Act thus covers two situations. The first ("actual intent") is where the very purpose of the transaction is to negatively affect creditors. The second is where the circumstances (such as an extremely low price—less than "reasonably equivalent value") are so extreme that the law deems the transaction to be fraudulent.

The Act gives examples of things to look for to tell if "actual intent" may exist. "In determining actual intent…consideration may be given, among other factors, to whether: (1) the transfer or obligation was to an insider [which could include a family member], (2) the debtor retained possession or control of the property transferred after the transfer, (3) the transfer or obligation was disclosed or concealed, (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit, (5) the transfer was of substantially all the debtor's assets…"

In its decision, the court ruled in favor of the defendants, William, Mary and CCR.

The court noted that "[a] party who

seeks to set aside a transfer as fraudulent bears the burden of proving fraudulent intent by clear and convincing evidence." As this case will illustrate, that can be a pretty heavy burden.

The case turned on the evidence presented. "At the trial…Mary testified that her son, William, had borrowed money from her for his parts business, CCRP. Commencing in 2006, Mary had extended money to him by checks which through November 2007 totaled $68,365… In January 2008, William conveyed the 1970 Chevelle to Mary to repay her for the money she had extended to him… This fact also was confirmed by Mary's testimony at trial. The motor vehicle bill of sale indicated a sales price of $60,000… There was a second bill of sale executed in March 2008 which related to the car being placed for auction. The auction in March was not fruitful for sale of the car. Mary, through her d/b/a/ Classic Car Restoration, sold the car on March 15, 2010, for $58,000.

"The court finds the testimony of the defendant, Mary Anderson, to be credible. Her testimony regarding the transfer of the 1970 Chevelle to her by William in repayment for the debt he owed her for the monies she had advanced to him was substantiated by the transcript testimony of William from the November 4, 2008, trial."

Given such testimony and documentation providing the defendants' explanation of the background and circumstances of the transaction between Mary and William, the court found that clear and convincing evidence had not been presented to prove that the transfer was fraudulent.

"Therefore, based on the credibility of the defendant Mary Anderson's testimony, which was the only testimony the court heard regarding the transfer of the 1970 Chevelle, the court finds that the plaintiff has failed to sustain his burden of proof. The plaintiff (1) failed to prove actual intent to defraud him as a creditor and (2) also failed to prove that the transaction between Mary and William was not for 'reasonably equivalent value.'"

As Raidna failed to prove either of those two situations existed, the court concluded: "Judgment shall enter for the defendants."

Although in this case, the person to whom the Chevelle was transferred won, she had to go through the effort and expense of defending litigation. How can a prospective purchaser reduce such risks? It may be prudent—perhaps with the help of legal counsel where appropriate—to find out a prospective seller's (individual or entity) situation, to assess whether a contemplated transaction could conceivably raise fraudulent conveyance/fraudulent transfer claims or issues. Then the potential risks can be weighed against the anticipated benefits. Is the seller having serious financial problems or is he on the verge of bankruptcy? If a deal sounds too good—and a price too low—to be true, it may be, and may ultimately expose the buyer to delay, further expense, and even loss. Caveat emptor!

Lawrence Savell is a litigator with Chadbourne & Parke LLP. This article provides general information and cannot substitute for consultation with an attorney.