

IN THE IOWA SUPREME COURT

JOHN C. MAREK JR.,
JOELLE C. MAREK, JASON MOATS,
AMBER F. MOATS, LEMAR D. FENTON,
KIMBERLY R. FENTON,
BEN B. JOHNSON, MARY P. JOHNSON,
SCOTT M. PFEIEFER,
DONNA J. PRESTON,
ANDREW GRIESSER, JESSE J. MULLIN,
AMANDA M. MULLIN,
SCOTT E. CRISTOFFERSON,
CANDY S. CRISTOFFERSON,
CLIFFORD A. MATHER,
WENDY L. MATHER,
PHILLIP C. BUFFINGTON,
ROBYN B. BUFFINGTON,
COREY S. STROTHMAN, and
SAMANTHA STROTHMAN, PRAIRIE
AG REAL ESTATE HOLDINGS, LLC,
Plaintiff/APPELLEES

Vs.
DAN JOHNSON, LINDA JOHNSON, and
THE CITY DEVELOPMENT BOARD OF
THE STATE OF IOWA, and
HENRY COUNTY, IOWA.
Defendant/APPELLANTS

SUPREME COURT NO.
19-0759

HENRY COUNTY NO.
CVEQ006115

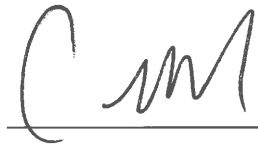
APPELLANTS FINAL BRIEF

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
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STATEMENT OF THE ISSUES

**I. THE TRIAL JUDGE ABUSED HIS DISCRETION AND
ERRED IN GRANTING THE PLAINTIFFS’ MOTION
FOR SUMMARY JUDGMENT**

Case Law

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STATEMENT OF THE CASE

PRIOR PROCEEDINGS.

On or about December 7, 2017, the Appellants, Dan Johnson and Linda Johnson obtained a Judgment against the City of Mount Union, An Iowa Municipal Corporation in the amount of \$70,000.00 for Dan Johnson and in the amount of \$35,000.00 for Linda Johnson in Case No. LALA011869 in the Iowa District Court in and for Henry County. App. Pg. 8. The Petitioner that resulted in this Judgment was filed on February 24, 2016. Id. App. pg 5

After the Appellants obtained their judgment, the Appellee's filed a Petition for Declaratory Judgment on or about March 26, 2018, which is the subject of this appeal. App. Pg. 11. Said Petition seeks to have the Appellant's judgment declared void for lack of jurisdiction, declare that the City Development Board is not bound by the Appellant's Judgment, that making the former citizens of Mt Union pay the Appellants' judgment would be a violation of the Due Process of these citizens as guaranteed by the Constitutions of the United States of America and the State of Iowa, as well

as other relief. Id at pp. 19-24. The Appellants filed their answer to this Petition or about August 1, 2018. App. 30.

On August 29, 2018, the Appellees filed a Motion For Summary Judgment along with a Statement of Material Facts Not in Dispute. App. Pp. 36-39. On September 30, 2018, the Appellants filed a Resistance to Summary Judgment and a Defendants' Statement of Disputed facts and on October 1, 2018, they filed an Affidavit in Support of Resistance to Motion For Summary Judgment. App. Pp 45-55.

On April 10, 2019, the Trial Court entered a Ruling On Plaintiff's Motion For Summary Judgment Sustaining the Appellee's Motion for Summary Judgment. App. Pp. 59-62.

On May 7, 2019, the Appellant filed a Notice of Appeal and on May 8, 2019, the Appellant filed a Certified Notice of Appeal. App pp. 63-69.

STATEMENT OF PERTINENT FACTS.

Many of the facts are undisputed herein. As noted above, on or about December 7, 2017, the Appellants, Dan Johnson and Linda Johnson obtained a Judgment against the City of Mount Union, An Iowa Municipal

Corporation in the amount of \$70,000.00 for Dan Johnson and in the amount of \$35,000.00 for Linda Johnson in Case No. LALA011869 in the Iowa District Court in and for Henry County. App. Pg. 9. The Petitioner that resulted in this Judgment was filed on February 24, 2016. App. pg 5

After the filing of the Petition on February 24, 2016, and before the entry of the Judgment on December 7, 2017, the City of Mt. Union filed and answer to the Petition and the case was set for trial in February 28, 2017, the City of Mt. Union adopted a resolution of intent to discontinue in an attempt to disband the City of Mt. Union. Appellee's Petition For Declaratory Judgment, paragraph 5-7, App pg. 13. The City of Mt. Union was discontinued on March 10, 2017. Id at paragraph 19, App pg. 15. The business of the former City of Mt. Union is now handled by a City Development Board. App. Pp, 14-18.

The Plaintiffs/Appellees' Petition For Declaratory Judgment is essentially seeking a court order that declares that the former citizens of Mt. Union, Iowa, are not responsible for the judgment against Mt. Union, Iowa, because they dissolved the city after the filing of the lawsuit. App. Pp. 19-24. Defendants/Appellants are arguing that the former citizens of Mt.

Union, Iowa, and the City Development Board should not be allowed to avoid a judgment against Mt. Union, Iowa, because they chose to disband the city of Mt. Union in the middle of a pending lawsuit. App. Pp. 47-50

ROUTING STATEMENT

The Appellant believes that this matter may be retained by the Iowa Supreme Court or transferred to the Iowa Court of Appeals, as this matter does not involve an issue set forth in Iowa Rule App. P. 6.1101(2).

SCOPE OF REVIEW

The Court has held that the standard of review a trial judge's ruling on summary judgment by stating: "In reviewing the grant of summary judgment ... the question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. An issue of fact is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law. The requirement of a 'genuine' issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party. [The Court's] task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was

correctly applied. [The Court] examines the record in a light most favorable to the party opposing the motion for summary judgment to determine if the movant met his or her burden.” *Bill Grunder’s Son Const., Inc. v. Ganzer* 688 N.W.2d 193, 196 (Iowa 2004).

ARGUMENT

I. THE TRIAL JUDGE ABUSED HIS DISCRETION AND ERRED IN GRANTING THE PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

The case being appealed here involves the former citizens of Mt. Union, Iowa, and the City Development Board which essentially is the remainder of the City of Mt. Union, Iowa, seeking to have a judgment against the City of Mt. Union, Iowa, declared void. Justice and the law both would require that this judgment not be held void and they should not be able to avoid responsibility for the judgment because they chose to disband the city after the filing of the lawsuit.

The Appellees in their Petition, in paragraphs 5-9, App pp. 13-14 assert that they were served the Appellants’ Petition and that the City of Mt Union

answered the said Petition approximately 90 days prior to the City seeking to discontinue or disband. *Id.* The unrefuted Affidavit of Appellant Dan Johnson in support of the Appellants' Resistance To Motion For Summary Judgment states that all of the Appellees were aware of the lawsuit filed against Mt. Union, Iowa, that the Appellees include the former mayor and city council members of Mt. Union, Iowa, and that said Appellees were aware of the pending trial date in the lawsuit. *App. Pg. 55.* Mr. Johnson goes on to assert that the citizens and leadership of the City of Mt. Union did not commence proceedings to dissolve until after the Appellants had commenced discovery and that the dissolution proceedings were taken with the intent of the citizens seeking to avoid any judgment that the lawsuit might bring and not in good faith. *Id.*

The City of Mt. Union, Iowa's dissolution is the equivalent of a fraudulent transfer to put the City's assets and the citizens' assets in the form of taxes out of reach of the Appellants should they be successful in their lawsuit. Iowa Code Chapter 684 governs fraudulent transfers and Iowa

Code Section 684.4(1) states that a fraudulent transfer includes those transfers made “with actual intent to hinder, delay, or defraud any creditor of the debtor”. The Court has held that when “a debtor disposes of property with the intent to delay or defraud creditors, we deem the disposition inequitable and will set it aside.” *See Benson v. Richardson*, 537 N.W.2d 748, 756 (Iowa 1995). “The rationale for the right to reclaim fraudulently conveyed property is, and always has been, to prevent a debtor from frustrate[ing] his creditor’s rights and avoid[ing] his obligations by changing titles to his assets.” *Schaefer v. Schaefer*, 795 N.W.2d 494, 498 (Iowa 2011). This is exactly what the citizens of Mt. Union were attempting to do when they disbanded the City and transferred its assets out of reach of the Appellants. Iowa Code Section 684.4(2) sets out the factors to be considered in determining the intent of the debtor. These include (b) whether the debtor retained possession or control of the property after the transfer, (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 of the debtor’s assets. These factors are badges of fraud. The City of Mt. Union disbanded to avoid the responsibility of the Appellant’s judgment. Their action was akin to a

corporation seeking to dissolve to avoid a corporate debt. The factors set out above that are included in Iowa Code 684.2 establish that the dissolution of the City is essentially a fraudulent transfer. The trial court should not have granted the summary judgment.

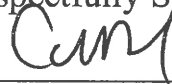
The Appellees also claim that their Due Process rights under the United States and Iowa Constitution would be violated if this judgment is not voided at least partially because the taxes that would be required to pay would constitute taxation without representation and that the citizens were not made aware of the allegations or the existence of the Appellant's lawsuit. The Appellant's affidavit and the fact that the City of Mt. Union suddenly decided to disband are both evidence of the fact that the citizens of Mt. Union were fully aware of the lawsuit and why the City was being sued. The citizens cannot use this argument to rebut the fact that the primary or sole purpose of the dissolution of Mt. Union was to avoid responsibility for any judgment arising out of the lawsuit. It is difficult to give merit to the Appellees' claims that their rights might be violated by enforcing the Appellants' judgment when the Appellees went to such extreme lengths,

including dissolving their own city, in order avoid having to be responsible for any judgment the Appellants' lawsuit would result in.

CONCLUSION

The Court also was in error and abused its discretion in granting the Appellees' Motion for Summary Judgment. For all the reasons and authority set out herein, the Appellants, Dan Johnson and Linda Johnson, respectfully asks the Court to reverse the trial court's ruling granting summary judgment herein and remand this matter for trial.

Respectfully Submitted,



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NOTICE OF REQUEST FOR ORAL ARGUMENTS

Notice is hereby given that upon submission of this appeal that the Appellant respectfully requests to be heard in oral argument.



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