

**No. 98-0925. [9-188] GENEVA CORPORATE FINANCE v. G.B.E.
LIQUIDATION CORP.**

Appeal from the Iowa District Court for Des Moines County, William S. Cahill, Judge. **AFFIRMED.** Heard by Sackett, C.J., Vogel, J., and Schlegel, S.J. Opinion by Sackett, C.J. (8 pages \$3.20)

This appeal addresses the preclusive effect in a second lawsuit of an arbitration award reduced to a judgment in a previous lawsuit. In the first suit, plaintiff obtained a judgment against defendant G.B.E. Liquidation Corp. for breach of a contract. Defendants contend the judgment on the arbitration award is res judicata in this suit where plaintiff makes claim against defendant corporation and defendants Darla and Richard Lane alleging the Lanes fraudulently transferred assets from defendant corporation to avoid paying a judgment rendered on the arbitration award. The district court held this claim was not precluded and rendered judgment against the Lanes. They appeal. We affirm. The Lanes were the sole officers, shareholders, and directors of defendant corporation. Richard, as president, signed a contract with plaintiff. Plaintiff agreed to seek a buyer for defendant corporation in exchange for a "success fee." Defendant corporation contracted to sell its assets to a corporation plaintiff claims it had identified to defendants as a prospective buyer. Following the sale, the sum of \$1,149,433 was transferred to Richard and Darla Lane's personal account, leaving defendant corporation insolvent. Plaintiff demanded its "success fee" and invoked the binding arbitration clause. Plaintiff's arbitration demand named defendant corporation and Richard; Darla was not named. The arbitrator awarded plaintiff \$109,810, including attorney fees, only against defendant corporation. The district court affirmed the award and entered judgment against defendant corporation. Plaintiff next brought this suit contending defendant corporation's distribution of its assets to the Lanes was a fraudulent conveyance and an illegal distribution to shareholders. The district court found the current claims of plaintiff are not barred by claim preclusion and the transfer from defendant corporation to the Lanes void to the extent necessary to pay the judgment entered on the arbitration award and entered judgment against both the Lanes.

The Lanes on appeal contend plaintiff's claims in this action are barred by the judgment entered in the arbitration action. Plaintiff advances the first action established defendants' liability to plaintiff and this action is based on collecting it. Plaintiff contends the evidence necessary for the judgment in the two cases was not the same. The facts necessary to establish liability under the contract are different facts than those necessary to show a fraudulent transfer made to defeat the collection of the judgment in the contract suit. Further events after the judgment in the arbitration award, including the failure of defendant to pay the judgment, were subsequent facts necessary to establish this claim. We agree with the district court the judgment on the arbitration award is not res judicata. Defendants contend the district court's decision was not equitable. The issue is not preserved for review. The judgment of the district court is affirmed.