

IN THE COURT OF APPEALS OF IOWA

C. MAC CHAMBERS COMPANY, INC.,)

Plaintiff-Appellee,)

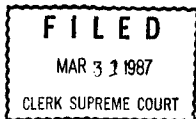
vs.)

IOWA TAE KWON DO ACADEMY, INC.,)

ACTA FITNESS CENTER, LTD.,)

IN MOOK KIM and KI TAE KIM,)

Defendants-Appellants.)



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Filed March 31, 1987

6-435
86-135

KRAGIE-NEWELL ADVERTISING, INC.,)

Plaintiff-Appellee,)

vs.)

IOWA TAE KWON DO ACADEMY, INC.,)

ACTA FITNESS CENTER, LTD.,)

IN MOOK KIM and KI TAE KIM,)

Defendants-Appellants.)

Appeal from the Iowa District Court for Polk County (Nos. CL58-33982 & 58-33980) - M. C. Herrick, Judge.

Defendants appeal from certain judgments entered in plaintiffs' suit on open account and fraud. **AFFIRMED IN PART AND REVERSED IN PART.**

Mark Godwin, of Isaacson, Clarke, Vernon & Hodge, P.C., Des Moines, for the defendants-appellants.

Kevin M. Reynolds, of Whitfield, Musgrave, Selvy, Lelly & Eddy, Des Moines, for the plaintiff-appellee C. Mac Chambers Company, Inc.

Robert M. Holliday, of Erickson, Miller & Lytle, P.C., Des Moines, for the plaintiff-appellee Kragie-Newell Advertising, Inc.

Heard by Schlegel, P.J., and Hayden, and Sackett, JJ.

SACKETT, J.

Defendant-Appellant Iowa Tae Kwon Do Academy, Inc., (Iowa) is a corporation owned by Defendant-Appellant In Mook Kim. Defendant-Appellant ACTA Fitness Center, Ltd., (ACTA) is a corporation owned by Defendant-Appellant Ki Tae Kim. The Plaintiffs-Appellees C. Mac Chambers Co., Inc. (Chambers) and Kragie-Newell Advertising, Inc. (Kragie), extended credit on open account to Iowa. Chambers extended credit in the amount of \$2,861.43; Kragie extended credit in the amount of \$9,711.95. Chambers and Kragie sued Iowa, ACTA, In Mook and Ki Tae on the open accounts and on allegations of fraud. A bulk sales count was filed. It apparently was dismissed and does not form a basis for this appeal.

After hearing the trial court entered judgment in favor of Chambers and against all four defendants in the amount of \$2,861.43 and in favor of Kragie and against all defendants in the amount of \$9,711.95. The trial court also rendered judgments for punitive damages in favor of Chambers and against all four defendants in the amount of \$5,000 each and in favor of Kragie and against all four defendants in the amount of \$5,000 each.

This appeal challenges all judgments entered against ACTA and Ki Tae. It challenges the punitive damages assessed against all defendants.

The undisputed facts show Kragie extended Iowa credit from January, 1981 to February, 1983. Chambers extended Iowa credit from March, 1981, to the latter part of 1982. Both claims are open accounts. Neither account was secured nor personally guaranteed by either In Mook or Ki Tae. There is no evidence either Kragie or Chambers relied on Ki Tae or his assets in extending credit. ACTA was not incorporated until January, 1984.

On January 28, 1984, Iowa was insolvent. Its assets exceeded its liabilities. All available assets were encumbered by secured claims in amounts exceeding

their value. On February 1, 1984, Iowa transferred certain assets including inventory and accounts receivable to ACTA. The assets that were transferred were all encumbered by secured claims. The secured claims were in excess of the assets' value. ACTA assumed some but not all of Iowa's liabilities. It is very clear at this point Iowa had no assets which would have been available to pay the plaintiff's accounts.

In entering judgment, the trial court determined the new and old corporations were undercapitalized and did not keep separate books. The court determined In Mook treated the business as his own and when the new corporation was set up Ki Tae was nominally the only stockholder and president. The court found the corporation continued to do business as it had before, ACTA took over the accounts receivable, the good will and what little inventory there existed and there was no attempt to liquidate the prior business and turn the assets over to creditors.

In their challenges to the judgments, defendants claim the plaintiffs failed to show they were damaged or prejudiced by the transfers and the trial court failed to consider this issue in making its award.

We must determine whether this is substantial evidence to support the trial court's findings. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence. Meade v. Roller, 212 N.W.2d 426, 429 (Iowa 1973). In evaluating the sufficiency of evidence, it is viewed in its light most favorable to sustaining the court's judgment. Grefe v. Ross, 231 N.W.2d 863, 865 (Iowa 1975). We need only consider evidence favorable to the judgment, whether or not it is contradicted. Id.

The trial court's findings failed to address the issue of prejudice or damage at the time of transfer. The issue we first address is not what was done but were plaintiffs damaged or prejudiced. At the time of the alleged fraudulent transfer plaintiffs' accounts were without value. The transfer or conveyance did not deprive either plaintiff of one dollar. It doesn't matter what the intent of the parties to the transfer was. If the transfer did not in fact hinder or delay creditors, it was not fraudulent as to them. Willey v. Hite, 175 Iowa 670, 673, 149 N.W. 250, 255 (1916); Veeder v. Veeder, 141 Iowa 492, 495, 120 N.W. 61, 62 (1909). No creditor is entitled to have a conveyance set aside on the ground it was executed with fraudulent intent, when it affirmatively appears he was not prejudiced by the act complained of as constituting the fraud. Goddard & Sons v. Guittar, 80 Iowa 129, 131, 45 N.W. 729, 730 (1890); Willey, 175 Iowa at 670, 149 N.W. at 255.

In Hall Roberts' Son, Inc. v. Plaht, 253 Iowa 862, 866-67, 114 N.W.2d 548, 550 (1962), plaintiff sought to set aside a deed executed by one Walter as fraudulent. The Iowa court said:

We are satisfied it was plaintiff's burden to prove the interest Walter conveyed was of substantial value on May 6, 1957 (the date of the conveyance). Unless it was, plaintiffs were not harmed or prejudiced by the deed in question. Fraud without resulting injury does not give rise to a cause of action such as this.

Id. Fraud without injury is not enough. Id.

The plaintiffs have failed to present substantial evidence of any prejudice or damage they suffered by the transfer.

We affirm the judgment in favor of C. Mac Chambers and against Defendant Iowa Tae Kwon Do Academy, Inc., and In Mook Kim for \$2,861.43, and affirm the judgment in favor of Kragie-Newell Advertising, Inc., and against Iowa Tae Kwon Do Academy, Inc., and In Mook Kim for \$9,711.95. We reverse the

judgments against ACTA Fitness Center, Inc , and Ki Tae Kim for \$2,861.43 and \$9,711 95

We reverse all punitive damages.

AFFIRMED IN PART AND REVERSED IN PART