

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR VOLUSIA
COUNTY, FLORIDA

CASE NO.:

R.K. COMPANY, INC., a foreign corporation,

Plaintiff,

vs.

STEVEN B. FISH, DIANE C. FISH, PETER J.
FISH, STEVEN B. FISH, II, KVAR ENERGY
SAVINGS, INC., a Florida corporation, and
FISH FAMILY ENTERPRISES, LLC, a Florida limited
liability company,

Defendants.

COMPLAINT

Plaintiff hereby sues defendants, STEVEN B. FISH (“Steven”), DIANE C. FISH (“Diane”), PETER J. FISH (“Peter”), STEVEN B. FISH, II (“Steven II”), KVAR ENERGY SAVINGS, INC. (“KVAR”), and FISH FAMILY ENTERPRISES, LLC (“FFE”), and alleges:

1. This is an equitable action to set aside the transfer of real and personal property with the intent to defraud creditors.
2. Plaintiff is a foreign corporation operating and doing business in Sun Valley, California.
3. Upon information and belief, at all time material hereto, Steven, Diane, Peter, and Steven II, were residents of Volusia County, Florida.
4. KVAR is a Florida corporation operating and doing business in Daytona Beach, Volusia County, Florida.
5. FFE is a Florida limited liability company operating and doing business in Port Orange, Volusia County, Florida.

6. On March 12, 2009, plaintiff obtained a judgment against Steven in an action in the General Court of Justice, Superior Court, of Iredell County, North Carolina, entitled R.K. Co., Inc. v. Steven B. Fish, Diane C. Fish, and Peter J. Fish, No. 07 CVS 163, which judgment was in the sum of \$257,450.00, plus costs, and is recorded in Book 6374, Page 2911, of the Public Records of Volusia County, Florida. A copy of the judgment is attached hereto as Exhibit "A."

7. On and before March 12, 2009, Steven and Diane were the owners in fee simple and possessed a certain parcel of real estate located in Volusia County, Florida, described as follows (hereinafter the "Town Park Property"):

Lot 13, A Plat of Town Park P.U.D. – Phase 1A, according to the plat thereof, recorded in Map Book 47, Page(s) 5 through 7, inclusive, of the Public Records of Volusia County, Florida.

8. At all times material hereto, the Town Park Property was subject to homestead exemption.

9. On or about May 17, 2010, Steven and Diane, as husband and wife, purchased, by a Trustee's Deed recorded in Book 6482, Page 703, of the Public Records of Volusia County, Florida, a copy of which is attached hereto as Exhibit "B," a certain parcel of real estate located in Volusia County, Florida, described as follows (hereinafter the "Palm Harbor Property"):

Lot 64, of PALM HARBOR ESTATES THIRD ADDITION, according to the Plat thereof, as recorded in Map Book 27, at Page 158, of the Public Records of Volusia County, Florida.

10. On or about June 11, 2010, Steven and Diane transferred the Town Park Property to Steven II, by a Warranty Deed recorded in Book 6485, Page 2452, of the Public Records of Volusia County, Florida, a copy of which is attached hereto as Exhibit "C."

11. Upon information and belief, Steven II knew or should have known that the purpose of the transfer of the Town Park Property to him was to defraud Steven's creditors.

12. Both the Town Park Property and the Palm Harbor Property are currently subject to homestead exemption.

13. Upon information and belief, Steven and Diane conveyed the Town Park Property without receiving fair consideration for it.

14. Upon information and belief, Steven and Diane purchased the Palm Harbor Property and applied for homestead exemption to convert their assets to exempt assets.

15. Additionally, upon information and belief, since the accrual of the liability to plaintiff, Steven has transferred ownership interest in KVAR, converted personal property to exempt assets, and transferred personal assets to Diane, Peter, Steven II, KVAR and FFE in an effort to defraud his creditors, including plaintiff.

16. Steven and Diane made such conveyances with the intent to hinder, delay and defraud Steven's creditors, including plaintiff, to protect and preserve for Steven and Diane's own use and benefit such real estate and personal property, and to prevent and hinder plaintiff from collecting and receiving from the proceeds of any sale of the property, on execution or otherwise, the amount due plaintiff on plaintiff's judgment against Steven.

17. Steven has no property, not subject to exemption, out of which plaintiff can satisfy plaintiff's judgment.

WHEREFORE, plaintiff requests judgment against defendants for the following:

- a. Declaring that the fraudulent conveyances be set aside and annulled;
- b. Granting a temporary and/or permanent injunction against further disposition by the debtor or a transferee, or both, of the assets transferred or of other property owned by Steven;
- c. Appointing a receiver to take charge of the assets transferred or of other property of Steven or a transferee; and,

d. Awarding plaintiff costs and such other and further relief as the court may deem proper.

DATED this 17 day of August, 2010.

SMITH HOOD BIGMAN

BY: _____

CHARLES D. HOOD, JR.

Florida Bar No. 260649

Post Office Box 15200

Daytona Beach, FL 32115-5200

Telephone No.: 386-254-6875

Facsimile No.: 386-257-1834

ATTORNEYS FOR PLAINTIFF

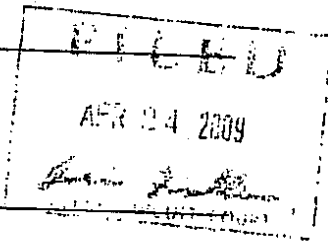
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Instrument# 2009-127482 # 1
Book: 6374
Page: 2911

| | | |
|---|--------|------------------------|
| STATE OF NORTH CAROLINA In The General Court Of Justice | | EXEMPLIFICATION |
| IREDELL | County | |

U.S. Code Title 28-1738

As Clerk of the Superior Court of this County, State of North Carolina, I certify that the attached copies of the documents described below are true and accurate copies of the originals now on file in this office.

Number And Description Of Attached Documents 15- 2009-CA-006578 -XXXX-MA
 07CVS163
 RK CO INC
 VS
 STEVEN B FISH
 JUDGMENT



DIVISION CV-II

SEAL

Date: March 25, 2009
 Signature: *Pamela M Simmons*
 Name (Type Or Print): Pamela M Simmons
 Deputy CSC Assistant CSC Clerk Of Superior Court

As a Judge of the General Court of Justice, State of North Carolina, I certify that the signature appearing above is that of the Clerk, Assistant Clerk, or Deputy Clerk of Superior Court for this County, who is duly sworn. I further certify that the seal affixed to the certificate appearing above is the seal of this Court and that it has been used here in good form by the proper officer.



Date: March 25, 2009
 Signature Of Judge: *Christopher M Collier*
 Name Of Judge (Type Or Print): Christopher M. Collier

As Clerk of the Superior Court of this County, State of North Carolina, I certify that the signature appearing above is that of a duly sworn Judge of the General Court of Justice, State of North Carolina.

SEAL

Date: March 25, 2009
 Signature: *Diane D Fletcher*
 Name Of Clerk (Type Or Print): Diane D Fletcher
 Assistant CSC Clerk Of Superior Court

Instrument# 2009-127482 # 2
Book: 6374
Page: 2912

NORTH CAROLINA

IREDELL COUNTY

R. K. Co., Inc.,

Plaintiff

vs.

Steven B. Fish, Diane C. Fish
and Peter J. Fish,

Defendants

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
07 Cvs 163

JUDGMENT

RECORDED
APR 12 11 51 AM '09
FILED

This matter was heard by the undersigned and a jury at the March 2, 2009, term of the Superior Court for Iredell County, and the following issues were submitted to and answered by the jury:

FRAUD ISSUES

1. Was the Plaintiff, R. K. Company, Inc., damaged by the Defendant, Steven Fish, by fraud?

ANSWER: Yes

2. What amount is the Plaintiff, R. K. Company, Inc., entitled to recover from the Defendant, Steven Fish, on damages for fraud?

ANSWER: \$229,950 + court costs + attorney fees

PUNITIVE DAMAGES ISSUE

1. Was the Defendant, Steven Fish's fraud accompanied by outrageous or aggravated conduct?

ANSWER: Yes

FILED
APR 24 2009
Eric Fuller
CLERK CIRCUIT COURT

Instrument# 2009-127482 # 3
Book: 6374
Page: 2913

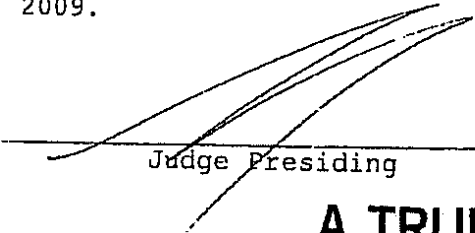
2. What amount of punitive damages, if any, does the jury in its discretion award to the Plaintiff, R. K. Company, Inc.

ANSWER: \$27,500

IT IS THEREFORE ORDERED that Judgment is entered for Plaintiff against Defendant, Steven Fish, in the amount of \$257,450, with interest at eight (8%) percent per annum on the components of said amount as follows:

- a. On the sum of \$229,950, from January 16, 2007, until paid in full.
- b. On the sum of \$27,500, from the date of this Judgment until paid in full.
- c. The costs of this action are taxed to Defendant, Steven Fish.

This 12 day of March, 2009.



Judge Presiding

A TRUE COPY
CLERK OF SUPERIOR COURT
IREDELL COUNTY

By Jane O'Neal
Assistant Deputy Clerk Superior Court

Instrument# 2009-127482 # 4
Book: 6374
Page: 2914
Diane M. Matousek
Volusia County, Clerk of Court

CERTIFICATE OF SERVICE

The foregoing Judgment was served by mailing copies to the Defendants' attorney of record as follows:

Mr. Edwin A. Pressly
Pressly, Thomas & Conley, P.A.
214 Harrill Street
Statesville, NC 28677
Attorneys for Big Red Fish, LLC

This 12 day of March, 2009.

EISELE, ASHBURN, GREENE & CHAPMAN, PA

By: *Douglas G. Eisele*
Douglas G. Eisele
N.C. State Bar #4930
Attorneys for Plaintiff
P. O. Box 1108
Statesville, NC 28687-1108
Telephone: 704/878-6400
FAX No.: 704/924-9727
e-mail: qblee@statesville.net

FILED
MAR 12 9 17 AM '09

STATE OF FLORIDA
COUNTY OF VOLUSIA
I, the undersigned, Clerk of Circuit Court and County Court in and for the County of Volusia, Florida, do hereby certify that the foregoing is a true and correct copy of the original as it appears on record and file in the office of the Clerk of Circuit Court and County Court in and for the County of Volusia, Florida.
WITNESS my hand and the seal of said Court this 12th day of March, A.D. 2009.
JOHN FULLER
Clerk of Circuit Court and County Courts
Volusia County, Florida

Property Appraiser's
Parcel Identification No.: 5321-08-00-0640

This instrument was prepared by:
Name: Philip L. Logas, Esq.
Address: First Global Title, LLC
121 S. Orange Avenue, Suite 1470
Orlando, Florida 32801

FOR USE BY RECORDING OFFICE

TRUSTEE'S DEED

THIS TRUSTEE'S DEED made the 17 day of May, 2010, by **KATHLEEN PAGEL**, married, **SANDRA FIUMARA**, married, **LAWRENCE MADAY**, married as Co-Trustees of **ADELINE E. MADAY REVOCABLE LIVING TRUST**, dated May 24, 1996, and as amended and restated on January 21, 2003 and on May 29, 2008, whose collective address is 1894 Silver Fern Road, Port Orange, Florida 32128, hereinafter called the grantor, to **STEVEN B. FISH** and **DIANE C. FISH**, husband and wife, whose address is 131 Sea Isle Circle, South Daytona, Florida 32119, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, conveys and confirms unto the grantee, all that certain land situate in Volusia County, Florida:

Lot 64, of PALM HARBOR ESTATES THIRD ADDITION, according to the Plat thereof, as recorded in Map Book 27, at Page 158, of the Public Records of Volusia County, Florida.

Subject to:

1. Taxes and assessments for the years 2010 and thereafter.
2. Restrictions, easements, covenants, conditions, limitations and reservations of record, provided that this recital shall not operate to reimpose same.

The Grantor hereby certifies that the property conveyed hereby is not now, nor has it ever been, the Grantor's homestead or principle residence, nor is the property located contiguous to the homestead or principal residence of the Grantor.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.


TO HAVE AND TO HOLD, the same in fee simple forever.

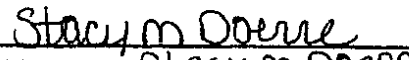
EXHIBIT B

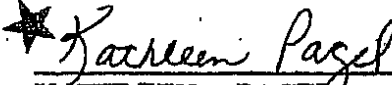
AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor.

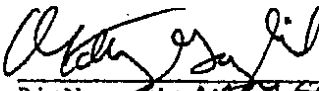
IN WITNESS WHEREOF, the said grantors have caused these presents to be duly executed the day and year first above written.

Signed, Sealed and Delivered
in the presence of:

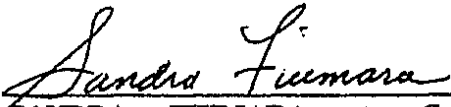

Print Name: William H. Byrky III



Print Name: Stacy M. Doerre


★  (Seal)
KATHLEEN PAGEL, as Co-Trustee of
ADELINE E. MADAY REVOCABLE LIVING
TRUST, dated May 24, 1996, and as amended and
restated on January 21, 2003 and on May 29, 2008

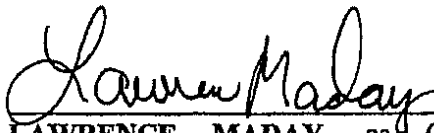

Print Name: PHILIP L. LOGAS


Print Name: PHILIP L. LOGAS

 (Seal)
SANDRA FIUMARA, as Co-Trustee of
ADELINE E. MADAY REVOCABLE LIVING
TRUST, dated May 24, 1996, and as amended and
restated on January 21, 2003 and on May 29, 2008


Print Name: PHILIP L. LOGAS


Print Name: PHILIP L. LOGAS

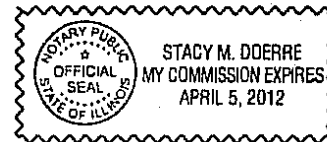
 (Seal)
LAWRENCE MADAY, as Co-Trustee of
ADELINE E. MADAY REVOCABLE LIVING
TRUST, dated May 24, 1996, and as amended and
restated on January 21, 2003 and on May 29, 2008

**STATE OF ILLINOIS
COUNTY OF:**

THIS INSTRUMENT WAS ACKNOWLEDGED before me this 17 day of May, 2010, by **KATHLEEN PAGEL**, as Co-Trustee of **ADELINE E. MADAY REVOCABLE LIVING TRUST**, dated May 24, 1996, and as amended and restated on January 21, 2003 and on May 29, 2008. She produced ILLINOIS DRIVERS LICENSE as identification and did not take an oath.



Stacy M Doerre
Print Name: Stacy M Doerre
Notary Public, State of Illinois
My Commission Expires: 4/5/12

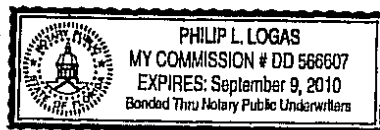


**STATE OF FLORIDA
COUNTY OF VOLUSIA**

THIS INSTRUMENT WAS ACKNOWLEDGED before me this 18 day of May, 2010, by **SANDRA FIUMARA** and **LAWRENCE MADAY**, as Co-Trustees of **ADELINE E. MADAY REVOCABLE LIVING TRUST**, dated May 24, 1996, and as amended and restated on January 21, 2003 and on May 29, 2008. They produced fl. Dr. Lic as identification and did not take an oath.

[Signature]

Print Name: _____
Notary Public, State of Florida
My Commission Expires: _____



This instrument prepared by:
Name: an employee of
Coast Title of Volusia
Address: 3867 Nova Road
Port Orange, FL 32127

Return to: Coast Title of Volusia
FILE NO. DY101125
Address: 3867 Nova Road
Port Orange, FL 32127

Property Appraisers Parcel Identification Number(s):
621201000130

06/15/2010 12:08 PM
Doc stamps 1837.50
(Transfer Amt \$ 262500)
Instrument# 2010-107308 # 1
Book: 6485
Page: 2452

THIS WARRANTY DEED Made the 11th day of June, 2010 by Steven B. Fish and Diane C. Fish Husband and Wife whose post office address is 1696 Town Park Drive, Port Orange, Fl 32129, hereinafter called the grantor, to Steven B. Fish II whose post office address is 1696 Town Park Drive, Port Orange, Fl 32129 hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH, that the grantor, for and in consideration of the sum \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in ***VOLUSIA*** County, State of ***FLORIDA***, viz:

Lot 13, A Plat of Town Park P.U.D. - Phase 1A, according to the plat thereof, recorded in Map Book 47, Page(s) 5 through 7, inclusive, of the Public Records of Volusia County, Florida.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in otherwise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with the grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31ST, 2010. ***FURTHER SUBJECT TO*** restrictions, reservations, covenants and easements of record, if any, however this reference shall not operate to reimpose same.

EXHIBIT C

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Heidi L. Sirois-Cowoski
Witness Signature
HEIDI L. SIROIS-COWOSKI

Witness Printed Signature

Mike Weirich
Witness Signature
MIKE WEIRICH

Witness Printed Signature

Heidi L. Sirois-Cowoski
Witness Signature
HEIDI L. SIROIS-COWOSKI

Witness Printed Signature

Mike Weirich
Witness Signature
MIKE WEIRICH

Witness Printed Signature

Steven B. Fish
Steven B. Fish

Diane C. Fish
Diane C. Fish

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 11th day of June, 2010 by Steven B. Fish and Diane C. Fish Husband and Wife, who is personally known to me or who produced Valid Florida Drivers License as identification and who did/did not take an oath.

Heidi L. Sirois-Cowoski
Notary Public
My Commission Expires: HEIDI L. SIROIS-COWOSKI

[seal]

