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Hide, seek and find the \$10 million

Brace yourself for the prize and outwit the fraudulent conveyance

BY DAVID J. COOK

Did you know that money grows feet? Did you know that real estate grows feet? Did you know that everything else owned by the defendant facing the \$10 million verdict grows feet? Did you know that safe deposit boxes intone “Open Sesame?” No? Good gracious me! Beating a hasty retreat out the back door? Waiting for the door to slam? Oh my!

Fraudulent conveyances

“. . . Fraudulent conveyances typically involve “a transfer to a close relative, a secret transfer, a transfer of title without transfer of possession, or grossly inadequate consideration.” (*Husky Int’l Elecs., Inc. v. Ritz*, (2016) 136 S. Ct. 1581, 1587.) Watch out for those “close relatives.”

Need another jolt? “Moreover, increasingly sophisticated foreign-haven judgment proofing strategies, coupled with technology that permits the nearly instantaneous transfer of assets abroad, suggests that defendants may succeed in avoiding meritorious claims in ways unimaginable before the merger of law and equity.” (*Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.* (1999) 527 U.S. 308, 338-39, [dissent, Ginsburg, J.]

“Nearly? “Very ’90s. Post iPhone (2007): Excise “nearly” and swap out “unimaginable etc.” for “found online.”

This article is written for the trial attorney who eyeballed the “close relative,” iPhone in hand, hiding in the back of the courtroom, waiting for the verdict and ready to smash the send button. Scariest jargon: “Horse’s out of the barn.”

Start here

1. Crack open the online Grant-or-Grantee index for any recorded deeds of trust, grant deeds, quitclaim deeds, or long-term leases. If the \$10 mil judgment just buried the uninsured defendant who owns a \$10 mil home in Beverly Hills, expect a barrage of these instruments. Grantees range from “close relatives,” to offshore repositories.

Don’t expect that the judgment itself would solely jolt the defendant into deeding away (or lien) the home. Try other events for kicking off squirreling away everything: The filing the lawsuit, service of process, trial-setting date, summary judgment, trial dates, opening and closing statements or jury verdict. Compare the recorder’s index with the court docket for each event. Sometimes, the day of deposition is the day of grant deed. Most county recorders are online, but not Los

Angeles and Santa Clara. Your best friends are the customer service department of the title company to track down the scary deeds. Upon judgment, record the abstract without any delay and even before attorney fees and costs coming down. Handwriting the abstract is necessary. Look for family law recordings, including deeds that transmute community property into separate property or family law judgments. Bogus deeds of trust are common. Buy a \$20.00 magnifying glass.

If the grant deed or quitclaim is free of R&T Transfer taxes, *the transfer is a fraudulent conveyance* absent a good explanation.

Brace yourself

2. Pull the Vesting Title. Prior to *In Re Brace* (2020) 9 Cal.5th 903, joint tenancy implied separate property which rendered the home nearly levy proof. Post-*Brace*: “For joint-tenancy property acquired with community funds on or after January 1, 1975, the property is presumptively community in character. (Fam. Code, § 760; *In re Brace, supra.*) Community property is 100% leviable, and the home is fair game. (Code Civ. Proc., § 695.010, Fam. Code, § 910, but watch out for Family Code § 1000.)

Brace yourself: Pre-*Brace* JT deflates property by 50% of equity, which renders



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the house near execution-proof. Facing the pre-*Brace* JT crumbs, plaintiff accepts the policy limits offer. Post-*Brace* JT renders JT property community 100% leivable and doubles available assets, and the risk of the sheriff selling the house. All policy-limits offers wilt.

3. Run a UCC search for bogus (or genuine) UCC filings that would reflect a lien that collateralize a real or fictitious debt. Don't be surprised if the defendant files 25, 50 or 100 UCCs in favor of every possible or fictitious creditor. Unlike recorded instruments, UCC filings are easier to remove.

4. Run a search through the County Clerk for recently fictitious business names. Very, but very clever, corporate defendants, when facing Armageddon, form a new corporate or LLC entity in the beginning of the litigation, but file an FBN in the name of the original defendant. Unknown to you, the debtor remains in the litigation, but a new entity is operating the business, siphoning off the revenue domiciled in a new offshore home. Guaranteed that you win the judgment against the original entity, but guaranteed that you will never collect, unless you want to spend inordinate capital chasing down money parked in offshore havens.

5. Bulk sale notices are recorded in the County Recorder and likewise searchable under the Grantor-Grantee index. If a bulk sale, the creditor has 12 business days to file a claim, or if a sale of bar or restaurant, the creditor must file before the license transfers (about 30 days). When in a pinch, email or fax the claim. Some bulk sale notices are bona fide but expect that most bulk sale notices are outright frauds including that some assets are transferred outside the bulk sale (and escrow), undervaluing assets, or filing false insider claims in the escrow.

6. The USPTO: Whether trademark or patents, the defendant and "close relatives" will file an application for the transfer. Expect this outcome particularly when the transfer of the trademark

is a related party. The USPTO is online. Check with the United States Copyright office. Learn the FOIA.

7. State Board of Equalization permits, liquor licenses, state professional permits or licenses, county health, use, construction or environments permits, City Tax or Business Permits other filings might reflect a transfer from the defendant to the "close relative" or newly formed LLC, for the same address. Absent the SBE permits, nearly all of the permits and licenses are accessible online.

8. Download every lawsuit filed by another plaintiff and filed by the defendant. If any change of ownership, title or just the name, the defendant and the adverse litigants might have made the disclosure in the amended complaints, pending motions, discovery, and disclosures in open court. Snag the transcript. Consider state court, federal court, bankruptcy court and every other tribunal, even city and county hearings. The most prized are declarations, motions to compel, and transcripts of testimony including depositions. Look for lawsuits filed by vendors, landlords, employees (including the Labor Commissioner) and tort claims. Look for collection lawsuits filed by the defendants to collect their own receivables or evict tenants.

9. Run through every variation of every name with the Secretary of State that includes the corporate and limited liability directories. Don't be surprised that Alpha Beta Corporation Ltd, Inc. (The Defendant) is now Alpha Beta Company, LLC, or ABC Ltd. LP, or AlphaBetaCompany.com Inc, or Alpha Beta Company Holding Co. Inc.

10. Send a letter and see what comes back. Imprint on the face of the envelope: "Address Service Requested." You might get a return with the new address. If mail is returned, chances are the debtor has moved might coincide with the sale of the business or property.

11. Google your defendant including the website. Look for the "Our

History," or other page that reflects ownership. Look for the "we are the owners."

12. Expect that the non debtor spouse and debtor spouse are going to file a divorce or legal separation. Expect that the proceedings will be collusive or downright fraudulent. Read *Mejia v. Reed* (2003) 31 Cal.4th 657 or try *In re Marriage of Dick*, (1993) 15 Cal.App.4th 144, 161-62. Read *Brace*. Read *Brace* again.

13. Run the defendant's name through bankruptcy courts. Don't be surprised if the defendant filed Chapter 11 or Chapter 13 within minutes of the jury award or entry of judgment.

14. Instruments are indexed by the legal names. Nicknames? Not so good. The name of this judgment debtor is Vladimir Ilyich Ulyanovsk, but his best friends call him Lenin. Make sure that the name is in the correct order. Easy mistake to make.

15. Drive by the house and look for sale by a broker or owner. If a business, look for "going out of business," "for lease," or "bargain sale." Not a good sign. Did you record the abstract?

16. Haul the debtor into a Debtor's examination. What do you get? "And the sanctity of the oath, by itself, does not ensure that all judgment debtors will be completely forthcoming during a judgment debtor examination." (*Jogani v. Jogani*, (2006) 141 Cal.App.4th 158, 188.) What to do? Subpoena into the OEX the lenders who received financial disclosures that include a uniform residential loan application. (URLA.) Bring a court reporter.

17. Cycle through this list on a near daily basis. Sometimes defendant put their "asset protection" strategy on ice pending the usual post-trial motions, but not always. Yet, more than once, and many times, the grant deed, quitclaim, deed of trust, lease, or UCC filing is filed or recorded on the day (or day before) entry of judgment. Don't forget that the title reports (or litigation guarantees) bear a "date down" about two weeks prior



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to issuance and that the recorder's online indexes might be a day or two behind.

Punch line: Diligence is your co-pilot.

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