

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CIVIL ACTION  
 :  
 v. :  
 :  
 HOWARD I. GREEN, MARY GREEN, :  
 ROYLAN FINANCE, and :  
 ERNESTINE WOODMANSEE : NO. 96-7275

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The United States ("the government") brought this suit to set aside as fraudulent an April 1981 conveyance from Howard Green ("Howard") to Howard and Mary Green ("Mary") (collectively, "the Greens") of a property at 990 Old Huntingdon Pike, Huntingdon Valley, Pennsylvania 19006 (the "Property"), and ultimately to foreclose federal tax liens on the Property in partial satisfaction of outstanding tax liabilities.

The government contends that Howard conveyed the Property with actual intent to hinder, delay, or defraud his present and future creditors in violation of Pennsylvania law. It asserts that Howard transferred the Property to himself and his wife for nominal consideration, and that no evidence exists to substantiate the fairness of this transaction. The Greens, though, insist that the conveyance was made for fair and sufficient consideration, and they argue that the transfer was made pursuant to a valid antenuptial agreement entered into the day before their wedding in April 1980.

In addition, both Roylan Finance and Ernestine Woodmansee, Mary's mother, contend that they hold valid liens on the Property

that have priority over any of the government's claims. Roylan Finance argues that it has a \$300,000 mortgage on the Property that Howard granted to it in 1988, and Ernestine Woodmansee asserts that she holds a valid assignment of a \$50,000 first mortgage on the Property as well.

In an effort to sort out these competing claims, a bench trial was held on November 12 and 13, 1997, and the parties have submitted post-trial memoranda. The following constitute my findings of fact and conclusions of law in accordance with F.R.Civ.P. 52(a).

1. Howard and Mary Green met in November 1979, and were married on April 13, 1980. (November 12, 1997, Trial Transcript ("Tr1"), p. 36, lns. 8 - 11.) Prior to their marriage Howard Green had his attorneys prepare a twelve-page antenuptial agreement ("First Agreement"). (Tr1, p. 36, lns. 12 - 17 and Gov't Ex. 25.)

2. The First Agreement expressed Howard's desire to maintain his assets for his children. The First Agreement provided that if Howard and Mary Green were still married at the time of his demise, Mary would receive \$100,000 and would be permitted to live in his home for a period of one year after his death. (Tr1, p. 40, ln. 14 - p. 41, ln. 1 and Ex. 25.)

3. Prior to signing the First Agreement, both Howard and Mary obtained advice from their attorneys with respect to entering into the antenuptial agreement. This agreement was

initialed by Howard and Mary Green on each and every page, their signatures were witnessed and they each signed in the presence of a notary. (Tr1, p. 37 - 40.) Mary signed the First Agreement on April 8, 1980. Howard signed it on April 10, 1980. An original of this document was maintained by the Greens and produced to the government in connection with this litigation. (Tr1, p. 37 - 40; Tr2, p. 141, ln. 20 - p. 142, ln. 17.)

4. The Greens testified that on April 12, 1980, the day before their wedding, they entered into a second antenuptial agreement dated that day (the "Second Agreement") because Mary was unhappy with the First Agreement. (Tr2, p. 87.) In the Second Agreement, Howard agreed to leave \$1 million to Mary upon Howard's demise and to transfer his interest in the Property to both Mary and himself in 1981, if they were then living together as man and wife, in exchange for certain property and cash which Mary was transferring to Howard. (Tr1, p. 41 - 42.) Howard transferred his interest in the Property to himself and to Mary Green by indenture dated April 13, 1981, and recorded on May 19, 1981. The indenture stated that the transfer was made for nominal consideration in the amount of "\$1 and other good and valuable consideration." (Gov't Ex. 38.)

5. The Second Agreement sets forth property purportedly being transferred to Howard by Mary as part of their revised understanding. The evidence failed to support the transfer of this property, in that only the vague testimony of the Greens was offered, with no documentary proof. Further, the documentary

evidence that related to the assets referred to failed to support the purported transfers in 1980. The Greens' testimony regarding the Second Agreement and transfer of Mary's assets referred to therein was not credible, for several reasons. The following facts detract from the genuineness and authenticity of the Second Agreement:<sup>1</sup>

(1) The circumstances surrounding the First Agreement versus the Second Agreement raise a question as to the genuineness of the Second Agreement:

(a) Unlike their signatures on the First Agreement, the Greens' signatures on the Second Agreement were not notarized or witnessed; (Tr1, p. 42; Tr2, p. 143, ln. 23 - p. 144, ln.2.)

(b) Unlike the First Agreement, the Greens do not have an original of the Second Agreement, but only a copy. (Tr1, p. 42.) Accordingly, the government could not perform forensic testing on the alleged Second Agreement for purposes of determining the date upon which it was created;

(c) Unlike the First Agreement, the Second Agreement was not prepared by Howard Green's attorneys, it was not reviewed by Mary Green's attorneys, and it was not initialed on each page;

(d) The Second Agreement which sets forth the

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<sup>1</sup> I have no doubt that the Greens prepared this document, but I conclude that it was not prepared before the April 1981 conveyance of the Property.

agreement regarding the transfer of the Property was neither recorded nor referred to in the April 13, 1981, deed which actually transferred the Property; (Gov't Ex. 38.)

(e) The Second Agreement substantially changed, but nowhere referred to, or expressly superseded or invalidated, (Tr2, p. 144, lns. 12-14), the First Agreement; (Tr1, p. 42.)

(2) The existence of the Second Agreement contradicts a sworn statement that Mary Green gave to the IRS. In 1991, Mary Green submitted an affidavit to the IRS in an attempt to obtain "innocent spouse relief" under 26 U.S.C. §6013(e). (Tr2, p. 11, ln. 13 - p. 12, ln.6.) In that affidavit, Mary Green stated that she did not benefit from Howard Green's understatement of taxes, because the couple had entered into an antenuptial agreement by which Howard Green maintained the benefit of his assets for his children and Mary Green was to receive only \$100,000 upon his death. The affidavit never referred to the Second Agreement or its terms. (Tr1, pages 45-46.)

(3) The Second Agreement conveniently recites assets that Mary would transfer, yet there was no evidence as to why the Greens -- specifically, Mary -- wanted to give these assets to Howard, a multi-millionaire -- or otherwise wanted these conveyances to occur.

(4) The purported value of items conveyed adds up to one-half of the 1980-81 value of the Property, yet the value of the assets was unsupported and, in fact, controverted by the Greens' own proof.

(5) Howard Green had no need or desire for the assets Mary Green was conveying, and according to his testimony, sold them or turned them into cash.

(6) The testimony of Charles Fox, the only witness who corroborated the Second Agreement and the circumstances of its execution, was not credible, in that he had told the government that he knew nothing about an antenuptial agreement. (Tr2, p. 163, lns. 9-13; Tr2, p. 164, ln. 22 - p. 165, ln. 3.) No explanation of this inconsistency was offered. His trial testimony was not credible, in part because of this and based also on his demeanor and his bias in favor of the Greens.

(7) The evidence as to the transfer of assets was vague and unconvincing and their valuation was inconsistent and inflated in that:

(a) Mary allegedly gave Howard approximately \$8,000 in cash, approximately \$12,000 in liquidation of her retirement account, \$2,000 equity in her Ford Mustang, a piano allegedly worth \$15,000, two antique paintings allegedly worth \$8,500, and a \$25,000 promissory note, in exchange for the Property.

(b) Howard Green's interrogatory responses specifically set forth the amount of cash he received from Mary Green as \$7,867, but the responses did not provide any supporting documentation. The Greens also failed to produce any documentation to support this amount at trial. Mary Green does not recall when the transfer of the cash actually occurred, nor

does she remember the method (by check or money order) or amount of the transfer. (Tr2, p. 147, ln. 2 - p. 148, ln. 2 and Tr1, p.65, lns. 9-13.)

(c) Howard Green testified in his interrogatory responses that the liquidation of Mary's retirement fund resulted in a transfer of a very specific sum, \$11,917, to him. (Tr2, p. 145, lns. 12-18.) The evidence showed that the value of the retirement account liquidated was actually \$9,767.14. Additionally, the retirement account was liquidated on June 16, 1982, two years after the Second Agreement was allegedly entered into. (Tr1, p. 81, lns. 6-24.)

(d) As to the transfer of Mary's car, Mary has no copy of the title or transfer of title, and any value of the car to Howard was slight, as Howard already owned other luxury automobiles at the time of the alleged transfer, including a Mercedes, two Cadillac Eldorado convertibles, a Mercury station wagon, and a vintage Ford Mustang. (Tr1, p. 75, lns. 13-25; Tr2, p.90, lns. 1-20.)

(e) The transfer of the piano and its value are also unsupported. Mary and Howard Green testified that Mary Green transferred a Steinway Grand Piano to Howard Green in 1980 as consideration for the transfer of the Property. They claim that the piano was worth approximately \$15,000, (Tr1, p. 65, lns. 18-20), but no expert testimony was ever submitted regarding its value. Mary Green also continued to depreciate the piano, as an expense of her music business, on both her 1980 and 1981 income

tax returns. (Tr1, p. 80, ln. 21 - p. 81, ln. 1 & Gov't Exs. 15 & 20 (Schedule C - Mary Green - Musical Director).) Moreover, the amount she paid for the piano, as testified to and as reflected on the returns, was approximately \$4,900, (Tr1, p. 70, lns. 22-24). No gain was reflected on either return relating to its alleged transfer. (Gov't Exs. 15 & 20.)

(f) There is no evidence to support the value of the two antique paintings. Mary Green testified that she did not remember how much she paid for them. The paintings were not separately insured. (Tr1, p. 83-84.) Howard Green testified that he learned the value of the paintings by describing them to an art dealer prior to entering into the antenuptial agreement. (Tr2, p. 91, ln. 18 - p. 92, ln. 8; Tr2, p. 148, ln. 3 - p. 149, ln. 2.) However, no expert testimony was given regarding their value. No documentation regarding Howard's alleged sale of the paintings was submitted, and the identity of the alleged purchaser was not disclosed.

(g) Mary Green also claims to have given Howard Green a \$25,000 note in consideration for the transfer of the Property. (Green Exs. 8 & 9.) Yet the note does not require Mary Green to make any payments until after Howard's death. Moreover, it gives her credit for any payment she makes toward household expenses in excess of 50% of the household expense. The Greens claim that Mary has paid off the note, but they did not submit any credible evidence reflecting the dates, amounts

and source of such payments.<sup>2</sup> In addition, no evidence was submitted as to the fair market value (amount of consideration) of such a note as of the date of the transfer.

(8) Additionally, IRS Appeals Officer Reginald White testified that the sworn statement given to the IRS by Mary did not refer to Howard's transfer of an interest in the Property in 1981, a fact that he would have wanted to know in making his recommendation on innocent spouse treatment. (Tr2, p. 14, ln. 24 - p. 16, ln. 2.) In direct contradiction of the facts posited by the Greens at trial, the affidavit affirmatively stated that "[t]here were no transfers in excess of \$500 by Howard to or for me for the years of and immediately after the returns except for those funds that were deposited in our joint bank account which were used in running the household." (Gov't Ex. 26 at 4.).

(9) Prior to the time of the transfer of the Property, Green had filed his 1979 tax return, which was substantially false and was filed with the intent to defraud the government. (Tr1, p. 95 & Gov't Exs. 1-8 & 29 (specifically Ex. 4, p. 19, & Ex. 6.))

(10) The April 1981 transfer to Mary of an interest in the Property occurred at a time when Howard Green was involved in a scheme to defraud millions of dollars from investors. He later pled guilty to fraudulent practices which occurred between 1977

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<sup>2</sup> Howard Green testified that Mary Green paid certain household expenses, (Tr2, p. 95-96), but no evidence other than Green's self-serving testimony was submitted as to the source of the funds used to pay those expenses.

and 1981.

(11) In early 1981, Green's scheme was collapsing and Green was forced to file corporate bankruptcy on behalf of Fidelity America Finance Company ("FAFCO") and Fidelity America Mortgage Company ("FAMCO"). The bankruptcy petition was filed on February 4, 1981, approximately two months before the transfer of the Property. (Tr1, p. 49, lns. 15-17; Tr1, p. 95; Tr2, p. 106, lns. 18-20.)

(12) In 1981, Green also began liquidating his other assets. Greentrust, which Green estimated to be worth approximately \$1.4 million, was liquidated by 1982. (Tr2, p. 159.)

6. The Second Agreement was not executed when and as the Greens testified, and the Property was not transferred in 1981 in accordance with its terms. There was no obligation or debt pursuant to which Howard transferred the Property in 1981. The consideration set forth in the Second Agreement was never given and therefore not given as consideration for, or prior to, the transfer of a one-half interest in the Property.

7. Mary Green failed to establish by clear and convincing evidence that she gave fair consideration to Howard Green for the conveyance of the Property.

8. On February 3, 1983, Norman Kranzdorf ("Kranzdorf"), the trustee appointed to the bankruptcy cases of FAFCO and FAMCO, filed suit against Green in the United States District Court for the Eastern District of Pennsylvania ("Kranzdorf complaint").

(Gov't Ex. 18; Tr2, p. 125, lns. 12-17.)

9. The Kranzdorf complaint charged Green with civil fraud, mismanagement and misappropriation of corporate assets. The conduct on which the Kranzdorf complaint was based occurred from 1977 through 1981. (Gov't Ex. 18; Tr2, p. 125, ln. 12 - p. 127, ln. 10.) Ultimately, a \$17 million judgment was entered in favor of Kranzdorf and against Green. (Gov't Ex. 17.)

10. On April 11, 1983, Green was indicted on charges of conspiracy, securities fraud, mail fraud, and the filing of a false income tax return for the 1979 tax year (26 U.S.C. Section 7602(1)). The conduct alleged in the indictment, to which Green ultimately pled guilty, occurred from 1978 until 1981. (Tr1, p. 95, lns. 7-21; Tr2, p. 134, ln. 4 - p.141, ln. 15; Gov't Exs. 1-8, 29.)

11. On June 1, 1983, Howard Green transferred his remaining interest in the Property to his two children, Stacy and Clayton Green. This conveyance was subsequently set aside. (Tr1, p. 50, lns. 11-13.)

12. In September, 1983, Howard and Mary Green opened bank accounts in Maryland under false names, and then transferred money to, and liquidated, those accounts. Mary Green disguised her appearance by wearing a black wig and glasses in the bank. (Tr1, p. 55, ln. 24 - p. 58, ln. 7; Tr2, p. 134, lns. 1-22.)

13. Shortly thereafter, Howard Green fled prosecution and Mary Green went with him. (Tr1, p. 57, ln. 23 - p. 58, ln. 3; Tr2, p. 134, lns. 10-12; Tr2, p. 166, ln. 22 - p. 168, ln. 20.)

14. In April 1984, Howard Green was apprehended in Baltimore, Maryland, redeeming coupons from his bearer bonds. Mary Green was with him at the time of his arrest. (Tr2, p. 135, lns. 7-20; Tr1, p. 58, ln. 4-7 & p. 96, lns. 2-9.) Howard Green was carrying two sets of false identification at the time of his arrest. (Tr2, p. 135, ln. 21 - p. 136, ln. 1.)

15. In July, 1984, Howard Green entered into a plea agreement with the government. He pled guilty to numerous counts of the indictments, including the intentional filing of a false income tax return for the 1979 tax year. As part of his plea agreement, Howard Green was required to pay \$1.1 million in restitution, pay a fine and serve 30 months in jail. (Tr1, p. 97, lns. 2-19; Gov't Exs. 4, 6, 29; Tr2, p. 141, lns. 3-8; Tr2, p. 136, ln. 8 - p. 138, ln. 9.)

16. Howard Green filed Federal income tax returns (Form 1040) for the years 1979 through 1981 substantially under-reporting his Federal income tax liabilities. (November 13, 1997, Trial Transcript ("Tr2"), p. 7, ln. 17 - p. 8, ln. 23.)

17. The Internal Revenue Service ("IRS") later made assessments against Green for Federal income tax liabilities as reflected below: (Government ("Gov't") Ex. 10.)

PERIOD	DATE OF ASSESSMENT	AMOUNT OF TAX ASSESSED
1979	10/09/91	\$ 51,845.00
1980	10/09/91	\$ 42,044.00
1981	10/09/91	\$ 46,408.00

18. In 1991, prior to the making of the assessments against Howard Green, Howard and Mary Green agreed to the amount of the assessments against Howard Green and waived their right to challenge them. (Gov't Ex. 9.)

19. In accordance with the law, on or about the dates of assessment, notice and demand for payment of the unpaid taxes and statutory additions was given. (Gov't Ex. 10.)

20. Although notice and demand for payment of each of the assessments described above was given, Howard Green neglected or refused to pay over in full the amounts assessed. The sum of \$652,139.83 remains due and owing to the United States, plus statutory additions and interest accruing thereon from October 9, 1991. (Gov't Ex. 10; Tr2, p. 7, ln. 21 - p. 8, ln. 8.)<sup>3</sup>

21. On February 10, 1992, the IRS recorded a Notice of Federal Tax Lien against Howard Green with the Prothonotary of Montgomery County, Pennsylvania. The notice concerned the tax years 1979 through 1981. (Gov't Ex. 57.)

22. In addition to the government's tax lien claim, both Roylan Finance Company and Ernestine Woodmansee, Mary Green's mother, contend that they still hold valid liens on the Property that have priority over the government's claims.

23. First, Roylan Finance Company ("Roylan") claims to have a \$300,000 mortgage on the Property. On February 1, 1988,

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<sup>3</sup> This amount represents the combined totals of taxes assessed for 1979, 1980, and 1981, plus interest and penalties to the date of assessment, October 9, 1991.

approximately one year after he was released from prison, Howard Green received an examination report letter from the IRS proposing adjustments for the 1979, 1980 and 1981 tax years. His 1979 return was filed jointly with his former wife Ina Green. His 1980 and 1981 returns were filed jointly with Mary Green. The examination report letter pertained to Howard Green individually and Howard and Mary Green jointly. (Gov't Exs. 11, 15, 19, 20; Tr2, p. 24, ln. 22 - p. 25, ln. 11.)

24. On February 29, 1988, Howard Green wrote a letter to the IRS protesting each of the proposed adjustments to his and Mary's tax liabilities. (Gov't Ex. 11.)

25. On March 1, 1988, one day after Howard Green wrote this letter to the IRS, he granted a mortgage on his residence to Roylan, a company created by Howard Green. (Tr2, p. 150, lns. 22-24.) The sole owner of the company is Mary Green's mother, Ernestine Woodmansee ("Ms. Woodmansee"), and the company was created by Howard Green for the lone purpose of holding a \$300,000 mortgage on his personal residence.<sup>4</sup> Ms. Woodmansee never gave Howard and Mary \$300,000. Rather, the mortgage was given to her to repay her for supporting Mary over the course of her life. Ms. Woodmansee neither required nor expected to be repaid for her parental support. (Tr1, p. 61, ln. 16 - p. 62, ln. 12; Tr2, p. 152, lns. 9-17.)

26. The mortgage was put in the name of Roylan Finance, not

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<sup>4</sup> No testimony of Ms. Woodmansee was elicited at trial regarding Roylan Finance or the Roylan mortgage.

Ernestine Woodmansee, because Howard and Mary wanted their creditors to believe that the mortgage was valid and that it was held by a legitimate finance company, rather than Mary's mother.<sup>5</sup> In fact, Howard Green admitted lying to an IRS investigator about why Roylan had not taken legal action against the Greens. Green falsely told the investigator that Roylan had not initiated legal proceedings because Green was a "tough son of a bitch." He made this statement in order to "get rid of" the IRS investigator, and did not mention that the owner of Roylan was Mary Green's mother, Ernestine Woodmansee. (Tr2, p. 151, lns 17-23.) Mary Green was not legally obligated to repay her mother for any expenditures, nor did her mother expect to be repaid. (Tr2, p. 152, ln. 18 - p. 153, ln. 1.)

27. On February 23, 1989, Howard and Mary Green also executed and filed a UCC-1 Financing Statement, which gave Roylan Finance a security interest in all of their personal property. (Tr1, p.62, ln. 19-23; Tr2, p. 151, lns. 8-14.) This financing statement was filed just two months before, and in anticipation of, a judgment being entered against Howard Green in the Kranzdorf lawsuit. (Tr2, p. 153, ln. 20 - p. 154, ln. 3.)

28. Ernestine Woodmansee produced evidence of another first-lien mortgage on the Property in the amount of \$500,000. On September 27, 1979, Howard had entered into a Property

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<sup>5</sup> Howard Green testified that he put the mortgage in the name of Roylan Finance Company to make it easier to reconvey it to Mary without involving Mary's siblings. (Tr2, p. 154, lns. 11-18.)

Settlement and Separation Agreement ("Agreement") with his first wife Ina Green. (Gov't Ex. 22.) That Agreement provided in paragraph 6(c) on pages 6-7 that:

In consideration of Wife's transfer of her interest in the Premises to Husband, Husband agrees to deliver to Wife the sum of Seventy Five Thousand One Dollars (\$75,001.00) as follows:

- 1) Twenty Five Thousand Dollars (\$25,000.00) as an immediate cash advance against the purchase price . . .
- 2) A note as an immediate additional advance against the purchase price in the sum of Fifty Thousand Dollars (\$50,000.00) at ten percent (10%) annual interest.
- 3) . . . (e) To secure the Note described in subparagraph (c)(2) of this Article, Husband agrees to execute a first mortgage in the amount of Fifty Thousand Dollars (\$50,000.00) to Wife on the real estate located at 990 Old Huntingdon Pike, Huntingdon Valley, Pennsylvania.

29. Pursuant to this Agreement, Howard executed a \$50,000 Mortgage Note and a Mortgage in favor of Ina Green on September 30, 1979. (Green Exs. 4, 5.) The Mortgage was recorded October 29, 1979, in the Office for the Recording of Deeds in and for Montgomery County in Mortgage Book 4814, page 475. (Green Ex. 5; Tr2, pages 84-86.)

30. Over the course of the years that followed, Howard Green defaulted on the mortgage to Ina Green, eventually resulting in litigation. (See generally Tr2, p. 51, ln. 9 - p. 60, ln. 17.)

31. On or about June 12, 1990, intending to purchase the Mortgage, as well as to assist Howard and Mary Green in settling

the litigation with Ina Green, Ernestine Woodmansee withdrew \$50,000 from a safe deposit box and gave the money to Howard Green. (Tr2, pages 157-58, 177.) Howard Green then paid that money to Ina Green through Ina Green's attorney. (Roylan Ex. 6; Tr2, pages 52, 53, 58, 157-158.) The bank money order used to make the payment to Ina Green contained the initials "EEW" on the line marked "sender information." (Roylan Ex. 6.)

32. On June 29, 1990, Ina Green executed an Assignment of her Mortgage ("Assignment") and delivered the Assignment and Mortgage to Howard Green. (Roylan Ex. 7; Tr2, pages 51, 52.) Howard Green shortly thereafter turned the Assignment and Mortgage over to Ernestine Woodmansee. (Tr2, pages 158, 178.) Ina Green clearly intended to assign the Mortgage, and her attorney was never asked for a mortgage satisfaction piece. (Roylan Ex. 7; Tr2, pages 56, 57.)

33. At the time Ina Green executed the Assignment, the balance due under the Mortgage was \$50,000 principal plus interest at ten (10) percent per annum from September 30, 1979. (Roylan Ex. 8.)

34. No payments having been made, the balance due under the Mortgage is now in excess of \$140,000, which represents \$50,000 unpaid principal balance plus ten (10) percent per annum interest from September 30, 1979. (Roylan Ex. 8; Green Exs. 4, 5; Tr2, p. 60.)

35. The Mortgage, which has never been satisfied, is held by Ernestine Woodmansee, who expects to eventually receive full

payment of the balance due her under the terms of the Mortgage.  
(Tr2, pages 55, 177-178.)

36. Pursuant to 26 U.S.C. § 6321, a federal tax lien arises in favor of the United States upon the assessment of Howard Green's taxes.

37. Section 6321 provides in part:

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

38. A federal tax lien arises against all of a taxpayer's property on the date of the assessment if the assessment is not paid. United States v. Vermont, 377 U.S. 351, 353 n.3 (1964); United States v. City of New Britain, 347 U.S. 81, 85 (1954).

39. Tax assessments by the government are presumptively correct. Sullivan v. United States, 618 F.2d 1001, 1008 (3d Cir. 1980); United States v. Vespe, 868 F.2d 1328, 1331 (3d Cir. 1989).

40. In this case, the government established its prima facie case by offering into evidence the Form 4340 Certificate of Assessments and Payments for the tax years 1979 and 1980 assessed on October 9, 1991. Psaty v. United States, 442 F.2d 1154, 1159 (3d Cir. 1971). Moreover, Green has consented to the assessments and does not challenge their accuracy here.

41. For the tax year 1979, Green owed \$51,845.00 in federal

income taxes, excluding interest and penalties. He is indebted to the United States in the amount of \$244,897.43, plus statutory additions accruing from October 9, 1991, for his 1979 tax liability.

42. For the tax year 1980, Green owed \$42,044.00 in federal income taxes, excluding interest and penalties. He is indebted to the United States in the amount of \$187,600.20, plus statutory additions accruing from October 9, 1991, for his 1980 tax liability.

43. Therefore, tax liens arose and attached to all of Howard Green's property and rights to property on the date of the assessment, October 9, 1991.

44. If the conveyance from Howard Green to Mary Green was fraudulent under Pennsylvania law, it is invalid against the United States and the United States shall be allowed to foreclose its tax liens against the Property.

45. The law governing fraudulent transfers in this case is the Pennsylvania Uniform Fraudulent Conveyance Act.<sup>6</sup> Under § 357 of that statute, every conveyance made and every obligation incurred with actual intent to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors. 39 Pa. C.S.A. § 357 (repealed 1994). The "requisite intent under § 357 must be shown by clear and

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<sup>6</sup> The Conveyance Act has since been repealed, but it still controls this case since the alleged fraudulent activity occurred prior to Feb. 3, 1994, the effective date of the law's repeal.

convincing evidence," United States v. Gleneagles Inv. Co., 565 F. Supp. 556, 580 (E.D. Pa. 1983), and intent to defraud will "be inferred from all the circumstances surrounding the transaction, including conduct subsequent to the conveyance." United States v. Purcell, 798 F. Supp. 1102, 1113 (E.D. Pa. 1991).

46. "Under Pennsylvania law, a conveyance from husband to wife for nominal consideration is presumed fraudulent on its face as to creditors, and no further evidence of actual fraud is required." United States v. Klayman, 736 F. Supp. 647, 649 (E.D. Pa. 1990).<sup>7</sup> "When a transfer from husband to wife for apparently nominal consideration has been alleged, the burden is on the wife to show by clear and satisfactory proof that the conveyance was fair." Gleneagles, 565 F. Supp. at 580.

47. Here, the April 13, 1981, deed by which Howard transferred the Property to his wife Mary stated that the conveyance was for nominal consideration in the amount of "\$1 and other good and valuable consideration." (Gov't Ex. 38.)

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<sup>7</sup> The Greens' arguments as to why this presumption does not apply are unavailing. First, the Greens contend that the presumption should not be used because they were not married at the time of the April 12, 1980, agreement which first stated Howard's intent to deed the Property to Mary. However, the Greens were married at the time of the actual transfer in April 1981, and I have concluded that the Second Agreement did not predate this transfer. The Greens also argue that Howard was solvent and that the value of the Property was insignificant in relation to his total assets. However, Howard's financial status and the total value of his estate are irrelevant. Where, as here, there is a conveyance from husband to wife for nominal consideration, actual fraud is presumed, regardless of whether the transferor was in debt. Klayman, 736 F. Supp. at 649; Sheffit v. Koff, 100 A.2d 393, 396 (Pa. Super. Ct. 1954).

Therefore, the Greens have the burden to show by clear and convincing evidence that the transfer was for fair consideration.

48. The Pennsylvania statute defines fair consideration as follows:

Fair consideration is given for property or obligation: (a) When, in exchange for such property or obligation, as a fair equivalent therefore and in good faith, property is conveyed or an antecedent debt is satisfied; or (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the Property or obligation obtained.

39 Pa. Stat. Ann. § 353 (repealed 1994).

49. As detailed above, the Greens did not prove that property was exchanged, or that an antecedent debt was satisfied or secured, and, therefore, they failed to meet their burden at trial to show by "clear and satisfactory proof" that Mary gave consideration, let alone that it was sufficient. Gleneagles, 565 F. Supp. at 580.

50. I find that the Greens did not meet their burden to show that the conveyance was fair, and I hold that the conveyance was fraudulent to Howard Green's creditors and is set aside. Accordingly, the government shall be permitted to foreclose its tax liens against Howard's property.<sup>8</sup>

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<sup>8</sup> The government also asserts that Howard's transfer should be set aside because it was constructively fraudulent, but I need not reach this issue because its fraudulent nature has been shown.

51. I find that Roylan's \$300,000 mortgage has also been tainted by actual fraud. A mortgage that is granted with actual intent to defraud will be set aside as against present and future creditors. 39 Pa. C.S.A. § 357 (repealed 1994). The government (as creditor) has the burden to show actual intent by clear and convincing evidence, In re Lease-a-Fleet, Inc., 155 B.R. 666, 673 (E.D. Pa. 1993), and, as above, intent to defraud will "be inferred from all the circumstances surrounding the transaction, including conduct subsequent to the conveyance." Purcell, 798 F. Supp. at 1113.

52. On February 1, 1988, Howard received a letter from the IRS explaining that he was being investigated for tax fraud for 1979, 1980, and 1981. (Gov't Exs. 11, 15, 19, 20; Tr2, p. 24, ln. 22 - p. 25, ln. 11.) By that time, he had already pled guilty to conspiracy and securities fraud, (Gov't Exs. 4, 6, 29), served time in prison, (Tr1, p. 97, lns. 2-19), and fled from prosecution. (Tr1, p. 57, ln. 23 - p. 58, ln.3; Tr2, p. 134, lns. 10-12; Tr2, p. 166, ln. 22 - p. 168, ln.20.) He was also facing a lawsuit from Norman Kranzdorf, the trustee of his bankrupt estate. (See supra ¶¶ 12, 13.) On February 29, 1988, he wrote a letter to the IRS protesting his 1979-1981 tax liabilities. (Gov't Ex. 11.) And then, the very next day, he granted the mortgage to Roylan Finance, a corporation whose sole owner was his mother-in-law, and which was created for the lone benefit of holding the mortgage. (Tr2, p. 150, lns. 22-24.) No payments have ever been made on this obligation, and Howard has

lied to IRS investigators regarding Roylan Financing's operations. (Tr2, p. 151, lns. 17-23.)

53. Roylan's only defense is that the mortgage was given to repay Ernestine Woodmansee for her life-long support to Mary, rather than to defraud creditors. However, in light of "all the circumstances surrounding the transaction, including conduct subsequent to the conveyance," Purcell, 798 F. Supp. at 1113, I find this argument unpersuasive, and I find the transfer to have been fraudulent.

54. The evidence presented at trial demonstrates that Howard gave the mortgage to Roylan to shield the Property from the government's tax investigation and from the Kranzdorf lawsuit, both of which were rapidly expanding when the mortgage was granted in 1988. The facts and circumstances surrounding this transaction show convincingly that Howard Green granted the mortgage to Roylan Finance in 1988 with actual intent to defraud his creditors. Therefore, the Roylan mortgage shall be set aside as fraudulent.

55. As to Ernestine Woodmansee's claimed first-lien \$50,000 mortgage on the Property, the government makes two arguments as to why I should set it aside. I do not find either contention persuasive. First, the government argues that Howard Green, and not Ernestine Woodmansee, really holds the assignment. It contends that Ernestine never really paid \$50,000 to Ina Green in exchange for the assignment, but that Howard Green instead obtained the assignment himself and then gave it to Ernestine in

yet another attempt to defraud his creditors. Thus, the government argues that we should set aside the \$50,000 mortgage, because either (1) the assignment is really Howard's property and, as such, is subordinate to the government's tax liens, or because (2) Howard's decision to give the assignment to Ernestine was a fraudulent "conveyance."

56. I disagree. The government did not substantiate either of these claims with sufficient evidence at trial. Both Ernestine Woodmansee and Howard Green testified as to the \$50,000 mortgage. Ernestine stated that she "gave Howard \$50,000 for the mortgage" and that she expected the mortgage to be paid off. (Tr2, p. 177.) Likewise, Howard testified that Ernestine Woodmansee gave him \$50,000 as part of a "package" deal by which Howard settled his lawsuit with Ina and the mortgage was assigned to Ernestine. (Tr2, p. 158.) The government's only response to this testimony was to challenge its credibility and to argue that the mortgage was a sham because Ernestine never expected it to be repaid. Yet it is the government's burden to show by clear and convincing evidence that the mortgage is fraudulent, In re Lease-a-Fleet, Inc., 155 B.R. at 673, and the attack on the credibility of the witnesses was insufficient to meet this burden. Ernestine Woodmansee was a credible witness. Further, this transaction and the events leading up to it predated 1981 and have reasonable explanations in terms of the need to resolve marital agreements and litigation. On the record before me, there is no clear and convincing evidence that Howard, rather than Ernestine, paid for

the assignment of the mortgage, nor any indication that Howard currently holds the assignment. Instead, the evidence demonstrates that Ernestine Woodmansee paid \$50,000 for an assignment of the mortgage from Ina Green, and that Ernestine still holds the mortgage to this day.

57. I am also unpersuaded by the government's second argument, namely, that its lien has priority over Ernestine Woodmansee's claim because Ernestine never recorded the assignment of her mortgage. The Pennsylvania recording statute requires that all deeds and conveyances concerning lands "shall be recorded" in order to be valid against subsequent purchasers and creditors. 21 Pa. C.S.A. §§ 351, 444. Mortgages are considered conveyances within these sections and they must be recorded, Southwestern Nat'l Bank v. Riegner, 140 A. 615, 617 (Pa. 1928), but the statute does not specifically require that assignments of mortgages be recorded as well. Therefore, the issue is whether the case law supports the government's argument.

58. The case law in Pennsylvania does not require mortgage assignments to be recorded. At least two courts have stated that "an assignment of a mortgage [is] a conveyance within the recording acts." Fries v. Null, 26 A. 554, 557 (Pa. 1893) (citing Phillips v. Bank of Lewistown, 18 Pa. 394, 402 (Pa. 1852)). But these courts do not hold, as the government suggests, that assignments of mortgages must be recorded to have priority over subsequent creditors. Fries cited Phillips only to support its view that a mortgage is a "conveyance" of property

within the meaning of the recording statute. Similarly, Phillips was ruling on a motion to exclude evidence, and it held merely that a certified copy of an assignment may be admitted into evidence if the assignment is recorded. Neither Fries nor Phillips, nor any other court in Pennsylvania, has ever held that an assignment must be recorded in order to be valid, or in order for the underlying mortgage to take precedence over future creditors. Thus, Ernestine Woodmansee's failure to record the assignment of the Ina Green mortgage does not affect the standing of the mortgage she holds vis-a-vis the government's interest in Howard's property. Ernestine Woodmansee holds a valid \$50,000 mortgage that takes priority over the government's tax liens.

59. Accordingly, I conclude that the transfer of Howard Green's property to himself and Mary Green in 1981, and Roylan's \$300,000 mortgage on Howard Green's property, shall both be set aside as fraudulent. However, Ernestine Woodmansee continues to hold a valid mortgage in the face amount of \$50,000 that has priority over the government's tax lien. An appropriate Order follows.



United States.

BY THE COURT:

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Marjorie O. Rendell, J.