

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

**TED OLSON JR., ROBIN OLSON,
and DAN A. OLSON,**
Plaintiffs,

vs.

THEODORE V. OLSON, SR.,
Defendant.

Case No. CI99-78

SUMMARY JUDGMENT

DATE OF HEARING: (1) December 23, 1999.
(2) January 6, 2000.

DATE OF DECISION: February 1, 2000.

APPEARANCES:

For plaintiffs: (1) Terry R. Wittler.
(2) none.
For defendant: (1) David E. Copple.
(2) Kathleen K. Rockey.

SUBJECT OF ORDER: Plaintiffs' motion for summary judgment.

FINDINGS: The court finds and concludes that:

1. The decision in *Derr v. Columbus Convention Center, Inc.*, 258 Neb. 537, ___ N.W.2d ___ (2000), restates the oft-repeated principles that control this decision:

a. Summary judgment is proper only when the pleadings, depositions, admissions, stipulations, and affidavits in the record disclose that there is no genuine issue as to any material fact or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.

b. The court views the evidence in a light most favorable to the nonmoving party and gives such party the benefit of all reasonable inferences deducible from the evidence.

c. The party moving for summary judgment has the burden to show that no genuine issue of material fact exists and must produce sufficient evidence to demonstrate that the moving party is entitled to judgment as a matter of law.

d. A movant for summary judgment makes a prima facie case by producing enough evidence to demonstrate that the movant is entitled to a judgment if the evidence were uncontroverted at trial. At that point, the burden of producing evidence shifts to the party opposing the motion.

2. The evidence is absolutely undisputed that the defendant placed the subject airplane in the names of his sons, the plaintiffs, as part of a fraudulent scheme to avoid his creditors. Indeed, the defendant's own affidavit effectively admits that arrangement. A court of equity will not participate in enforcing any such device. The plaintiffs' motion for summary judgment must be granted as to the defendant's counterclaim. That counterclaim must be dismissed with prejudice at the defendant's cost.

3. The evidence shows, without dispute, that the plaintiffs' claim is now moot, as the plaintiffs took possession of the aircraft without judicial authority. The plaintiffs' petition should be dismissed as moot. Thus, it is not necessary to consider whether the rule that necessitates dismissal of the defendant's counterclaim would similarly necessitate dismissal of the plaintiffs' petition.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED
that:

1. As to the defendant's counterclaim, the plaintiffs' motion for summary judgment is granted.

2. Summary judgment is hereby entered dismissing the defendant's counterclaim with prejudice at defendant's cost.

3. The plaintiffs' petition is dismissed at plaintiffs' cost as moot.

4. As to the plaintiffs' petition, the plaintiffs' motion for summary judgment is denied as moot.

Signed in chambers at O'Neill, Nebraska, on February 1, 2000.

DEEMED ENTERED as of the date of filing by the court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20____ by _____.
- Enter judgment on the judgment record.
Done on _____, 20____ by _____.
- Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 20____ by _____.
- Note the decision on the trial docket as: [date of filing] Signed "Summary Judgment" entered granting motion in part dismissing defendant's counterclaim with prejudice at defendant's cost, and denying motion in part as moot and dismissing plaintiffs' petition as moot.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge