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4 Attorney for Plaintiff
ABC COMPANY, INC.

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
8 SAN DIEGO JUDICIAL DISTRICT

9 ABC COMPANY, INC., a California
10 Corporation,
11 Plaintiff,
12 vs.
13 THOMAS M. SMITH, an individual; FANNY M.
SMITH, an individual; and DOES 1 through
14 50, inclusive,
Defendants.

Case No. 830346
COMPLAINT TO SET ASIDE FRAUDULENT
CONVEYANCE AND FOR DAMAGES
CC §§ 3302, 3439.07

15 Plaintiff complains and alleges as follows:

16 **FOR A FIRST CAUSE OF ACTION AGAINST**
17 **ALL DEFENDANTS**
18 **(To Set Aside Fraudulent Conveyance)**

19 1. Defendants at all times mentioned are and were residents of
20 San Diego County, California. The property fraudulently conveyed is in
21 this judicial district.

22 2. The true names and/or capacities, whether individual,
23 corporate, associate or otherwise, of Defendants named in this action as
24 DOES 1 through 50, inclusive, are unknown to Plaintiff at his time;
25 therefore, Plaintiff will amend this Complaint to show heir true names
26 and capacities upon discovery of same.

1 7. Plaintiff is informed and believes and thereon alleges that
2 Defendant TOM SMITH had substantial equity in this real property but
3 received little to no compensation for his conveyed
4 interest in said property to Co-defendant FANNY M. SMITH. Thus,
5 Defendant TOM SMITH did not receive reasonably equivalent value in
6 exchange for this transfer.

7 8. Plaintiff is informed and believes and thereon alleges that
8 the transfer of the above-described property was received by defendant
9 FANNY M. SMITH with the knowledge that Defendant TOM SMITH was insolvent
10 at the time of the aforementioned transfer and/or with the intent to
11 hinder, delay or defraud the collection of plaintiff's claim and the
12 claims of the TOM SMITH's then and future creditors. Plaintiff is
13 informed and believes and thereon alleges that on or about 4/27/97 co-
14 defendant FANNY M. SMITH filed a petition for separation in Vista
15 Superior Court, Case No. DN99117, which case remained dormant until
16 12/98. Plaintiff is informed and believes and thereon alleges that
17 Defendants despite the filing of the referenced legal separation
18 petition on 4/27/97 have lived continuously together at the 13252
19 Norcroft Rd. residence with their children from their and earlier
20 marriages since that time. These defendants were not "separated" as
21 defined by Fam. C. § 771. On 12/16/98 FANNY M. SMITH appeared ex parte
22 before Judge Etta Oeltman Gillivan and unsuccessfully requested that the
23 judge enter a judgment of legal separation nunc pro tunc as of 12/31/97
24 filing a marital settlement notarized on 11/20/98 with the court. Judge
25 Gillivan signed the judgment of legal separation on 12/16/98 effective

1 on that date. On 1/8/99 defendant TOM SMITH filed a Chapter 7
2 bankruptcy petition in the Southern District of California, Case No. 99-
3 00189-A7, attempting to discharge this debt. On or about 2/13/99 this
4 bankruptcy case was dismissed on the motion by the Bankruptcy Trustee
5 Greg Akers. These domestic and bankruptcy filings evidence defendants'
6 unsuccessful attempts to conceal their fraudulent conveyance of 13252
7 Norcroft Rd. to Defendant FANNY M. SMITH and to support their
8 assertion that this conveyance was part
9 of their claimed legal separation in 1997.

10 **FOR A SECOND CAUSE OF**
11 **ACTION AGAINST All DEFENDANTS**
12 **(Conspiracy)**

13 9. Plaintiff realleges and incorporates herein by
14 reference each and every allegation contained in the prior
15 paragraphs of the complaint as though fully set forth.

16 10. As alleged above, on 1/21/98 defendants, and each of
17 them agreed and knowingly and willingly conspired between
18 themselves to hinder, delay and defraud plaintiff in the
19 collection of its claim against defendant TOM SMITH.

20 11. Under this conspiracy, defendants agreed that defendant
21 TOM SMITH would transfer all interest in the 13252 Norcroft
22 residence to Co-defendant FANNY M. SMITH for little to no
23 consideration despite him having substantial equity in said
24 property.

1 DATED: _____

Mark P. Kroner, Attorney for Plaintiff
ABC COMPANY, Inc.

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VERIFICATION

I, NORMAN HUSER, declare,

1. I am the President of Plaintiff ABC COMPANY, INC., a California corporation. I have read the foregoing amended complaint and am informed and believe and thereon allege that the matters stated are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 1999, in San Marcos, California.

Norman Huser
