

partnership agreements, the Defendant, Tom S. Bruce, and his co-general partners, in December 1975 and January 1976, withdrew from the partnerships and paid to themselves \$266,063.42 of which the Defendant, Tom S. Bruce, received \$158,358.51. By reason of these unauthorized withdrawals and the real estate market then prevailing, the Defendant, Tom S. Bruce, knew in 1976 that neither the Land or Building Partnerships, nor the Defendant, Tom S. Bruce or his co-general partners, had sufficient assets to make the payments due and to become due on the Bankers Trust and New York Life mortgages necessary to prevent the loss through foreclosures of the entire assets of these partnerships. This situation was made even more critical by the fact, known to the Defendant, Tom S. Bruce in 1976, that Diran Corporation (owned by his son and co-general partner, Dan E. Bruce) was a Lessee of approximately one-third of the Office Building and was not paying nor was it able to pay the rent therefor. Despite this knowledge and despite the fact that the Plaintiff was then making claim against the Defendant, Tom S. Bruce, concerning these mortgages, withdrawals, and Diran rental deficiencies, this Defendant conveyed by way of gift to his wife, the Defendant, Mary E. Bruce, his residence and surrounding acreage without reserving sufficient assets to pay Plaintiff's claims against him. The intended purpose of this conveyance was to defeat Plaintiff's creditor rights against the Defendant, Tom S. Bruce.

7. Prior to and at time of this conveyance the Defendant, Tom S. Bruce, was in substantial default under the terms of the Partnership Agreements by reason of his previously mentioned withdrawals and had failed to make contributions to the partnership as he had agreed; also, the \$1,120,000.00 New York Life mortgage on the building owned by the Building Partnership was then in default, which resulted in foreclosure, with the mortgagee being the highest bidder. Furthermore, 11 days after this conveyance the \$750,000.00 Bankers Trust mortgage on the land owned by the Land Partnership became in default on February 11, 1977, which resulted in foreclosure, with the mortgagee being the highest bidder; in this action, Bankers Trust sought and obtained a deficiency judgment against the Defendants, Tom S. Bruce and Mary E. Bruce (who had also signed the note) in excess of \$400,000.00; this matter is the subject of continuing litigation between those parties in State Court.