STATE OF SOUTH DAKOTA	**)**	**IN CIRCUIT COURT**
	)SS	
COUNTY OF STANLEY	**)**	**SIXTH JUDICIAL CIRCUIT**

BRYAN ANTHONY REO,	**)**	**CIV20-000007**
	)	
Plaintiff,	**)**	
	)	**PLAINTIFF'S COMBINED REPLY BRIEF**
VS.	**)**	**IN SUPPORT OF MOTION FOR SUMMARY**
	)	**JUDGMENT**
MARTIN LINDSTEDT and	**)**	
SUSAN APRIL BESSMAN, as	**)**	
Trustee of the Susan April Bessman	**)**	
Revocable Living Trust,	**)**	
	)	
Defendants.		

COMES NOW, Plaintiff Bryan Reo, by and through his attorney of record, Robert Konrad, and for his Reply to Defendant Lindstedt's Objections to Summary Judgment and Defendant Bessman's Opposition to Summary Judgment does state and allege as follows:

INTRODUCTION

As this court is aware from Plaintiff's prior briefing, there are numerous legal and equitable reliefs available to this court to undo or unwind the fraudulent transfer made by Defendant Lindstedt. It would appear that it is cleanest to simply void the transaction and return the land to Martin Lindstedt for further execution proceedings. Plaintiff is eager to resolve this case, and in light of the arguments made by responding parties, the "defenses" of fraud, champerty, and ethical violations can all be mooted by simply returning the land to Martin Lindstedt for the purpose of future execution.

Defendant Bessman concentrates a large portion of her reply brief arguing for the fair treatment of Anthony Reo and Stefani Reo. It is unfortunate she does not hold Plaintiff's need to

collect in the same regard. It is plainly obvious that all judgment creditors of Martin Lindstedt, no matter how situated, would immediately benefit from the conveyance to Bessman being set unwound. A conveyance to Martin renders Bessman's arguments as moot, resolves this matter quickly, and is supported fully by statute as set forth in SDCL 54-8A-7, specifically granting this court the ability to issue an order granting "avoidance of the transfer . . . to the extent necessary to satisfy the creditor's claim." As set forth in SDCL 54-8A-7(3)(i), this court may also grant an "injunction against further disposition by the debtor … of the asset transferred." To hasten complete resolution on summary judgment, avoidance of the transfer as originally pleaded in the Verified Complaint, is the remedy requested by Plaintiff.

Accordingly, in response to the arguments made by Defendants, Plaintiff requests the court unwind the transfer of property and order that Bessman deed the land to Lindstedt so the Reos in their respective capacities, may execute on the property in future proceedings.

REPLY AS TO DEFENDANT LINDSTEDT'S ARGUMENTS

Defendant Lindstedt's "objections" are another attempt by him to degrade Plaintiff by constantly referring to him as a "homosexual mongrel." The arguments made by Lindstedt are racist, unprofessional, threatening, and in violation of the current court order forbidding him from making such comments. These statements are indicative of the continued harassment, libel, and slander made by Mr. Lindstedt against Plaintiff. Furthermore, Defendant Lindstedt's arguments are facially invalid, unsupported by law, and deficient in nearly every aspect. His responsive brief does not comply with statute and is untimely. Due to the language used in the brief, the late filing, and failure to follow procedural rules, Plaintiff asks that Defendant Lindstedt's brief be stricken, or in the alternative disregarded.

Defendant Lindstedt fails to comply with SDCL 15-6-56(e) with states as follows:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in § 15-6-56, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in § 15-6-56, must set forth specific facts showing that there is a genuine issue for trial. *If he does not so respond, summary judgment, if appropriate, shall be entered against him.*

Defendant Lindstedt has failed to respond by affidavit or otherwise comply with SDCL 15-6-56 and he has not attached sworn or certified copies of his attached documents. His rambling response sets forth no cognizable defense, and fails to comply with all form and sworn affidavit requirements, and likewise is untimely.

The South Dakota Supreme Court has set forth the appropriate standard for considering an objection to summary judgment made by a Defendant:

> We require "those resisting summary judgment [to] show that they will be able to place sufficient evidence in the record at trial to support findings on all the elements on which they have the burden of proof." *Chem–Age Industries, Inc. v. Glover,* 2002 SD 122, ¶ 18, 652 N.W.2d 756, 765 (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 251, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986)). In fact, "SDCL 15–6–56(e) requires the opposing party to be diligent in resisting a motion for summary judgment, and mere general allegations and denials which do not set forth specific facts will not prevent the issuance of a judgment." *Hughes–Johnson Co. v. Dakota Midland Hosp.,* 86 S.D. 361, 364, 195 N.W.2d 519, 521 (1972). *See also Casazza v. State,* 2000 SD 120, ¶ 16, 616 N.W.2d 872, 876. Accordingly, [Defendant] must present more than "[u]nsupported conclusions and speculative statements, [which] do not raise a genuine issue of fact." *Paradigm Hotel Mortg. Fund v. Sioux Falls Hotel Co., Inc.,* 511 N.W.2d

> 567, 569 (S.D.1994) (citing *Home Fed. Sav. & Loan Assoc. v. First Nat'l Bank,* 405 N.W.2d 655, 658 (S.D.1987)).

Bordeaux v. Shannon County Schools, 2005 S.D. 117, 707 N.W.2d 123. In this case Defendant Lindstedt's statement set forth no genuine issue of material facts still in dispute, rather he makes unsupported conclusions and unsworn speculative statements, which the Supreme Court has expressly stated do not "raise a genuine issue of fact." *Id.* Martin Lindstedt has failed to show any material fact genuinely in dispute, and therefor summary judgment against Defendant Lindstedt is appropriate.

Defendant's brief degrades Defendant, his family, and various courts. He restates threats to various courts, reminds the court of his "invitation" to a federal judge, and undermines all rules of etiquette and professional decorum. Defendant Lindstedt seems to relish in his comments to the court. Plaintiff suggests that this Defendant need not be granted any latitude procedurally due to his pro-se appearance, as he has certainly abused any latitude granted so far.

In the event the court allows his late-filed, abusive brief to be considered on the merits, is is important to clarify all Defendant's misstatements of the law. Defendant cites SDCL 15-16A-6, however, he curiously takes a selective quote out of context and uses that to support his position concerning a stay of execution. SDCL 15-16A-6, *in its entirety,* states as follows:

> If the judgment debtor shows the circuit court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, *upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.* [emphasis added]

As the court can see, Defendant leaves out the requirement (not discretionary action), that the court issue the stay only upon proof that the judgment debtor has furnished the proper security, ie. cash or supersedes bond. The Ohio state court judgment rendered in July of 2019 is appropriately subject to Ohio Rule. Civ. P. 62 concerning posting of security for stay of execution. That statute states as follows, in relevant part:

> (B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.
>
> (D) Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

At this time, Defendant Lindstedt has not provided this court with a certified copy or sworn copy of any court order staying execution of the Ohio $105,400 judgment, or any other proof that he has posted the required supersedes bond. Therefore, with regard to the most crucial judgment, Defendant has failed to show any proof of any stay of execution made by any court.

The remainder of the Reo judgments were handed down by an Ohio federal court, and the federal rules also require the posting of a bond under Fed. R. Civ. P. 62(b) which states as follows: *"At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the bond or other security."*

Again, Defendant has failed to produce any document, order, or bond paperwork staying the execution of the judgment. Defendant reminds us over and over again about his theories and indicates to the court that he has a stay, however he fails to produce a single document evidencing the stay. Again, mere assertions of his position or factual arguments do not constitute a proper reply to a motion for summary judgment. For Defendant to be successful on his argument regarding stay, he needs to produce the order granting stay or proof of supersedes bond, and he cannot do so because those documents do not exist in any state.

Next, Defendant indicates that "this Court has an affirmative duty to prevent lawyers from destroying SD property-holders from defamation barratry, in this case from Ohio as opposed to any other third-world country." Unfortunately Defendant cites no law or case purportedly requiring this court to undertake such an affirmative duty. On the other hand, this Court *does* have a duty to enforce the Uniform Fraudulent Transfer Act (UFTA), and undo fraudulent transfers made by judgment debtors who transfer assets to avoid collection and recovery. The purpose of the UFTA is to protect a debtor's estate from being depleted to the prejudice of the debtor's unsecured creditors. UFTA § 3, cmt (2).

In support of Defendant's arguments, he sets forth SDCL 15-16-45&46. The court can tell from the plain reading of the statutes that these statues do not apply to this case in any way, as they concern OUT OF COUNTRY judgments, not out of state. The codified laws for out of country judgment laws are set forth in SDCL 15-16-44 through 15-16-47. Most glaringly, SDCL 15-16-17 specifically states that "*Sections 15-16-44 to 15-16-46, inclusive, apply to judgments rendered in defamation proceedings outside the United States before, on, or after July 1, 2013, but do not apply to any out-of-country foreign judgment already recognized by the courts of this*

state prior to July 1, 2013." This case does not involve foreign judgments, and Defendant Lindstedt is kindly mistaken.

Rather than conclude his brief with relevant argument or a sworn statement of facts in controversy, Defendant restates his usual rhetoric, threats, and name-calling. At no point in his brief does he controvert or respond to the Plaintiffs statement of uncontroverted facts, and therefore Plaintiff's statement of facts is deemed admitted pursuant to SDCL 15-6-56(c)(3).

Defendant's brief was due on at least fourteen days prior to hearing pursuant to SDCL 15-6-56(c). Defendant emailed his argument to the court on August 21, 2021 at 3:52 pm, which is approximately six days prior to hearing. Defendant has waited until the last minute to raise frivolous arguments and agenda without a single citation to the record to factually support his case. In fact, a careful reading of his argument, reveals that Defendant *completely disregards* all matters, facts, and circumstances from the time of the pronouncement of the $105,400.00 verdict against him in Ohio in June of 2019 to the time of the fraudulent transfer on October 25, 2019. This failure is not accidental, rather proof that there is no alternative good-faith reason, defense, or justification for why Defendant Lindstedt conveyed his $1.3 million dollar Stanley County ranch land to Defendant Bessman for NOTHING.

Defendant's actions are reprehensible, prohibited, and not supported by South Dakota law, or Ohio law for that matter. The UFTA has been adopted in nearly every state, and it is designed to protect against both the constructive and intentional defrauding of creditors. As set forth in Plaintiff's brief, Defendant Lindstedt has gone so far as to brag about his fraudulent achievement.

The facts of this case are not disputed by Defendant Lindstedt as they are purposefully ignored. He also fails to join any argument made by Defendant Bessman. Defendant has committed obvious fraud, and due to his admissions and lack of controverted facts, summary judgment is proper at this time.

REPLY AS TO DEFENDANT SUSAN BESSMAN'S ARGUMENTS

Introduction

Defendant Bessman glosses over and ignores all facts ignores all substantive facts pertaining to the fraudulent transfer. Unbelievably, Bessman not only opposes summary judgment, wants the court to now punish Plaintiff by dismissing this action due to his perceived "ethical violations." Bessman has cited no authority for why the archaic champerty or failure to join a necessary party somehow allows this court to turn a blind eye to the obvious fraud committed by Lindstedt. This court has heard at prior hearings the braggadocios comments made by Defendant Lindstedt concerning his desire to keep Reo from collecting on his judgments. Curiously, Bessman largely ignores the facts and circumstances between the entering of the $105,400.00 judgment against Lindstedt and in favor of Plaintiff and the time of the fraudulent transfer on October 25, 2019. This ignorance is not by inadvertence, rather the facts leading up to the transfer are so damaging to Defendant's case that is makes sense from her perspective to spend more time on alternative theories.

Defendant attempts to distract the court, blame the victim, and confuse the court with confounded legal ideals unsupported by the facts all in furtherance of continuing the fraud and profiting from rental income to continue the war against Plaintiff. As set forth on pages 34-36 in the Status Report to this court filed on April 16, 2021, Defendant Bessman is listed as a

"director" and "deaconess" in the Aryan church created by Defendant Lindstedt. Rather than pleading *any* defense in her answer, Defendant Bessman has been a squatter on the land, profited from its use, and at this last minute engages in personal attacks against Plaintiff.

While Defendants want to focus on all aspects of the case after the October 25, 2019 transfer, it is actually the events prior to the transaction that are relevant. The Uniform Fraudulent Transfer Act (UFTA) was set forth in SDCL Chapter 54-8A focuses all aspects prior to the transfer, and makes little mention if any of the circumstances after the transfer. With that caveat, it is important to analyze Bessman's response to the initial judgment that started Mr. Reo's attempt to collect.

Plaintiff Reo was granted a judgment against Martin Lindstedt personally in the amount of $105,000 on July 1, 2019 in Ohio Court of Common Pleas and then it was filed as a foreign judgment in South Dakota on August 19, 2019. Bessman makes no argument of any kind that this judgment is invalid, procured by fraud, stayed, or otherwise defective. In fact, in her argument on page thee of her brief states that Bessman "excepts" from her argument any jurisdictional defects with regard to the $105,000.00 civil judgment. It is this non-champertous, fully valid, appealed and affirm judgment that is paramount in this matter. The existence of this judgment necessarily resulted in Lindstedt blatantly conveying his property to his sister for no value. Bessman cites no authority for why the $105,000.00 judgment is invalid or unenforceable.

After the court granted the $105,000.00 judgement in Ohio, the Plaintiff engaged in post-judgment interrogatories. It was at that time requested that Defendant Lindstedt disclose to the court and the Plaintiff the existence of his assets, including the Stanley County ranch land.

Lindstedt thumbed this nose to Reo, and accordingly Reo moved the Ohio court for an order compelling Lindstedt to disclose his assets. It is in the same timeframe that Lindstedt was served with a summons and complaint on three additional federal lawsuits by Bryan Reo and Anthony Reo. A mere six days after Reo made a motion to compel discovery responses, Lindstedt gave away, ***for free***, his Stanley County Ranch land valued at more than one million dollars. Plaintiff has discussed the admissions of actual intent to fraud and the elements/factors of constructive fraud, appropriately referred to as "badges of fraud." The Supreme Court has discussed the badges of fraud:

> The role of "reasonably equivalent value" in actual fraudulent intent as compared to constructive intent is not the same although the meaning of the phrase is the same. In the context of actual fraud, the absence of reasonably equivalent value is only one of the badges of fraud that courts consider in determining whether a transfer was made with fraudulent intent. Its existence is not an absolute defense when other badges exist. Thus, several badges of fraud could overcome a finding that reasonably equivalent value was given when actual fraud is considered. *See, e.g., In re Spatz,* 222 B.R. 157, 169 (N.D.Ill.1998)(finding that under UFTA, reasonably equivalent value relates to only one of several badges of fraud); *In re Model Imperial, Inc.,* 250 B.R. 776, 794 (Bankr.S.D.Fla.2000)(the absence of reasonably equivalent value is only one of the badges of fraud that courts consider in determining whether a transfer was made with fraudulent intent under federal statute on which UFTA § 4(a) is modeled). However, absence of reasonably equivalent value is the essential component of constructive fraud. Unless it is proven, constructive fraud cannot be found.

Glimcher Supermall Venture, LLC v. Coleman Co., 2007 S.D. 98, ¶ 19, 739 N.W.2d 815, 823.

In this instance, the parties all agree that Mr. Lindstedt gave his land way for *nothing*. Equivalent value is by far the most important of the badges of fraud concerning constructive fraud, and all parties agree that no consideration was given.

Response to UFTA Defenses Raised by Defendant Bessman

Bessman spends less than one half page of her 26 page argument to discuss why she believes she has a defense to the UFTA claim made by Defendant. First she cites that "she did not know" of the judgments. First of all, it is highly unlikely that as Lindstedt sister and listed business director in the Aryan church that she would be unaware of the judgment. In *Glimcher*, the Supreme Court addressed a UFTA case where the underlying trial court believed that the transferee purchased in "extreme good faith" and ultimately denied a UFTA claim on that good faith basis *Id.* at ¶25. However, the Supreme Court squarely reversed that decision by correctly pointing out that the subjective intent of the transferee is not relevant:

> However, "[t]he transferee's good faith is irrelevant to a determination of the adequacy of the consideration under this Act[.]" UFTA, § 4, cmt (2). "The focus in 'constructive fraud' shifts from a subjective intent to an objective result." *Badger State Bank v. Taylor,* 276 Wis.2d 312, 688 N.W.2d 439, 447 (2004). "Proof of 'constructive fraud' simply entails proof of the requirements of the statute." *Id.* "The circuit court erred as a matter of law by focusing on the transferee's point of view.
> The transferee's subjective state of mind does not play a role in resolving the present case under [UFTA § 5(a)]." *Id.* at 449.

Glimicher, at ¶25. Even if Bessman had no knowledge of any judgment by Reo or any other party, that is a far cry from "extreme good faith." Bessman should have known that something was fishy when her estranged, racist, and constantly threatening brother wanted to give her more than one million dollars in property out of the kindness of his heart. Bessman's lack of knowledge is not grounded in clean hands, rather her conscious decision to turn a blind eye toward the circumstances of the transaction. Her subjective viewpoint is irrelevant, and not a legal defense to the fraudulent transfer.

Susan then states that she did not aid or abet or conspire to defraud Reo. Plaintiff disagrees as she has fervently refused to disclose her phone records and emails, even though the admitted she would produce the same in discovery. Nevertheless, for purposes of summary judgment, and not credibility, a conspiracy nor aiding and betting are required under the UFTA to be proven before setting aside a transfer. Bessman's argument as to lack of mental state is immaterial and irrelevant under *Glimicher*.

Bessman then argues that the transfer is not fraudulent because, in her opinion, the *subsequent* judgments obtained by Reo are in violation of Ohio statutory caps. This again is a red herring argument. The $105,000 judgment is again not contested or alleged to violative of the Ohio law. The inclusion and mention of the four pending federal cases in Ohio as part of Plaintiff's complaint was made to inform the Court that prior to the fraudulent conveyance, Lindstedt had been served with three federal lawsuit, essentially putting him on notice that he would incur additional liability. The amount of the liability is immaterial as the transaction was fraudulent as the $105,000.00 judgment anyway. Bessman has offered no argument as to why the conveyance was not fraudulent as to the $105,000.00. This is a very important point, as neither Bessman nor Lindstedt argue that the $105,000 judgment violates any law, statutory cap, or other Ohio law. Having been appealed once and affirmed, the judgment is essentially bulletproof, save for a miracle on a writ of certiorari from the US Supreme Court. While Bessman wants this court to delve into the specifics of Ohio tort reform, nothing has been presented by either Defendant as to why this transaction was not fraudulent as to the $105,000 judgment.

Lastly, Defendant cites champerty in support of not only her objection to summary judgment, but her request to have this case dismissed. Again, for the sake of argument, assuming the Anthony Reo judgment was champertous and somehow declared unenforceable by this court, Defendant would still have on his own more than $1,105,000.00 in judgments duly docketed foreign judgments. Defendant Bessman cites no authority as to why champerty is any way related to a defense against fraudulent transfer. The purpose of this action is not to completely wrap up every aspect of every Reo case. The purpose of this action is to set aside the wrongful conveyance of the Lindstedt Property to Bessman for zero dollars. The transfer to Bessman shocks the conscious and an obvious fraud. Having cited no authority as to how champerty is a defense to a fraudulent transfer, especially in light of the fact that there is by all account at least one lawful judgment, requires that Defendant's argument must fail.

Response to Defendant's Argument for Dismissal for Failure to Join Stefani Reo as a Party

After Plaintiff has worked to resolve this case for nearly 18 months, Defendant Bessman now wants this court to dismiss this matter because allegedly Stefani Reo has been caught up in Defendant's words a "deletion-of-assets-conflict-of interest-scheme." Mr Lindstedt has been found liable by a federal judge for defaming Stefani Reo, but, Defendant Bessman believes Plaintiff is guilty party in this "scheme." As stated before, Defendant attempts to cloud the issues, make assumptions unsupported by the record, and avoid at all costs discussing the fraudulent transfer itself. So, we are now discussing Bessman's new-found belief that Stefani needs protection from Plaintiff.

Stefani's does not hold a judgment at this time. Defendant has done no inquiry of Stefani concerning her position or role in this matter. There is NO record evidence of any issue between

Plaintiff and Stefani, there is no evidence of any bar complaint, disciplinary action, or malpractice suit, and there is no complaint made by Stefani on this record. Stefani has not moved to intervene in this matter. Defendant's attempt to add Stefani at this juncture serves one purpose only: delay the inevitable to collect more cash rent to fund the resistance against the Reo family. Bessman, having personally pocketed all the cash from the rent for herself is now ironically concerned about Stefani's collection rights.

Defendant seems at argue that good conscious requires that Stefani be an indispensable party when under any circumstances Stafani would presumably want exactly the same relief requested by Plaintiff. Simply reversing the conveyance and returning the Lindstedt Property back to Martin Lindstedt for orderly execution is *exactly* the outcome Stefani would want. It is hard to fathom that Stefani, so distraught over her alleged maltreatment from Plaintiff, would want the land to remain in Bessman's name so as to precluded all Reos from collecting.

Even on a generous reading of SDCL 15-6-19(a) and (b), it necessarily fails as justification for why Stefani is required to be a patron in this action to void the transfer. To the contrary, Stefani is reaping the rewards of this action, assuming successful, without even having to be a party. Given Lindstedt's vile and disgusting comments made to her (Lindstedt having stated that Stefani Reo was a transsexual prostitute) one could surmise she would not want to be involved in this matter at all and be subjected to continual harassment.

Defendant has unearthed no precedent or authorities in support of er claim that this matter should be dismissed to protect Stefani as in indispensable party. This action benefits all Reos, even if not parties. Logically, setting aside the conveyance to Bessman benefits all present and

future Lindstedt creditors, while keeping this matter as simple as possible for judicial economy purposes.

Defendant cites SDCL 15-6-19(a) is support of her argument that Stefani is an indispensable party because this case with its present parties, should Plaintiff prevail, would "impair or impede her ability to protect her interest." What is exactly is her interest? At this time she has no legal judgment, and is correctly categorized as future creditor of Martin Lindstedt. Assuming the judgement would be handed down tomorrow, her judgment against Lindstedt would be worthless given his insolvency. However, should Plaintiff prevail on this action the property be returned to Lindstedt, Defendant Bessman would then (after filing her foreign judgment) have a fourth judgment on Lindstedt property and can avail herself of her right to collect on the same by writ of execution. This likely outcome, should she be left out as a party, immediately benefits Stefani. She would not suffer *any* prejudice as set forth in SDCL 15-6-19(b). Presumably, if Stefani was a party, she would join Plaintiff's argument to set aside the transfer so as to allow her to execute against Lindstedt.

It appears from the record that all Reos operate on a united front, and logically that makes sense. Given the harassment against them by Lindstedt and the wrongful squatter by Bessman, they all have a common interest. This court is without jurisdiction to reassign the order of judgments as pronounced in Ohio. Clearly Plaintiff was the proper first party on the basis of his unassailable judgement of $105,000.00 prior to the conveyance.

Stefani Reo is not an indispensable party. She will suffer no harm or prejudice should the court grant summary judgment in favor of Plaintiff, rather she stands to benefit from the outcome of this case. Reversing the transfer allows Stefani the best ability to collect on her judgment.

While Plaintiff appreciates the concern for Stefani, her legal position and ability to collect will be best safeguarded by reversing the obvious fraud committed by Lindstedt.

Response to Defendant's Argument for Dismissal for Failure to Join Stefani Reo as a Party

Defendant Bessman stunningly asks Plaintiff to dismiss this case because of his alleged ethical violations, and in the alternative, asks this Court to dismiss the case because Plaintiff is an unethical attorney.

Put another way, Defendant wants this case dismissed so she can retain $1.3 million dollars in real estate because the has a hunch that Plaintiff has engaged in unethical behavior. No bar complaints have been made, no discovery has been made on this issue, and it appears Bessman wants this court to serve as D-board for Plaintiff's alleged Ohio infractions. Defendant Bessman, again purportedly looking out for Stefani, wants this case dismissed. How is dismissing this case even remotely in Stefani's best interest when she stands to gain from voiding the transfer?

Defendant cites no authority for why Plaintiff's case should be dismissed, even if the ethical rules have been broken. One would think such a claim would be raised by Stefani with the Ohio BAR or in an Ohio malpractice case. Plaintiff has not engaged in attorney practice in South Dakota, he has never represented Stefani in South Dakota, and the undersigned counsel does not represent Stefani. Nevertheless, Defendant cites South Dakota ethical rules? Defendant cites *Homestake Mining Co. v. Bd. Of Environmental Protection,* 289 N.W.2d 561, 563 (S.D. 1980) in support of her proposition that Plaintiff should be disqualified as counsel. It is impossible to disqualify Plaintiff as counsel because he is counsel for nobody in South Dakota. This case is meaningless in the context of this case. Then Defendant wants the undersigned

counsel to resign, and stop prosecuting this case, based upon opposing counsel's apparent determination that there is an ethical issue. Again, for reasons stated above, it is hard to fathom how the undersigned has worked a disadvantage to *any* creditor of Martin Lindstedt by bringing this action to void the transfer. The allegations of impropriety are simply indicative of the level of animosity directed to Plaintiff, even though he has been damaged by Lindstedt. This argument made by Bessman is unsupported, assumes facts out of the record, and is an improper attempt to further delay this matter.

Reply to Defendant Bessman's Collateral Attack on Ohio Federal Judgments

Defendant Bessman cites absolutely no legal authority for her position that the Ohio Federal judgments are invalid or "void" pursuant to Ohio Tort Reform Law. Essentially, Defendant Bessman wants this Court to engage in a complete tear-down and analysis of the Ohio judgments (except the $105,000.00 judgment that all parties agree is valid). Furthermore, Defendant Bessman wants this court, without any legal authority, to disavow all judgments by the Reos obtained after the fraudulent transfer on the basis that Reo, a lawyer with approximately two years experience, bamboozled three federal judges to grant judgments exceeding Ohio tort reform laws. In fact, due to Defendant Lindstedt's deemed admissions to the facts of the case, summary judgment was granted in favor of Plaintiff. In other words Martin Lindstedt agreed to the judgment amounts, and judgment was entered on the same.

Defendant Bessman offers no authority for her argument that Reo had a "duty" to inform the Ohio courts of the tort reform amounts. It interesting that Bessman does not approach this case with the same "clean hands" approach she insists Reo follow at every step of the way. However, Reo's case is distinguishable from the Ohio Tort Reform cases as the tort reform

statutes refer to a jury verdict or a trier of fact. Regarding the two federal judgments pronounced so far, there was no trial, and Defendant admitted to the damage amounts. It appears to be a case of first impression in Ohio where a Defendant admitted to damages in excess of any tort-reform cap. Given that these matters were not tried to a jury or a court, the statutory limits do not specifically apply. Reo has no obligation to argue against his own case when he has a good faith basis for how the tort reform laws carve out an exception for his cases. Although nuanced and novel, as the Court can tell from these proceedings, dealing with Martin Lindstedt is challenging and certainly different than the average case.

Defendant Bessman Contends that because the exemplary damages are allegedly in excess of the statutory caps the judgments are automatically void. Unfortunately, no judge or appeals court has taken the same self-serving position of Defendant. In fact, the tort reform statues in Ohio carve out procedure for potentially amending or correcting the judgments allegedly in excess of the cap. Ohio R.C. 2315.19 states:

> (A) Upon a post-judgment motion, a trial court in a tort action shall review the evidence supporting an award of compensatory damages for noneconomic loss that the defendant has challenged as excessive. That review shall include, but is not limited to, the following factors:
>
> (1) Whether the evidence presented or the arguments of the attorneys resulted in one or more of the following events in the determination of an award of compensatory damages for noneconomic loss:
>
> (a) It inflamed the passion or prejudice of the trier of fact.
>
> (b) It resulted in the improper consideration of the wealth of the defendant.
>
> (c) It resulted in the improper consideration of the misconduct of the defendant so as to punish the defendant improperly or in circumvention of the limitation on punitive or

> exemplary damages as provided in section 2315.21 of the Revised Code.
>
> (2) Whether the verdict is in excess of verdicts involving comparable injuries to similarly situated plaintiffs;
>
> (3) Whether there were any extraordinary circumstances in the record to account for an award of compensatory damages for noneconomic loss in excess of what was granted by courts to similarly situated plaintiffs, with consideration given to the type of injury, the severity of the injury, and the plaintiff's age at the time of the injury.
>
> (B) A trial court upholding an award of compensatory damages for noneconomic loss that a party has challenged as inadequate or excessive shall set forth in writing its reasons for upholding the award.
>
> (C) An appellate court shall use a de novo standard of review when considering an appeal of an award of compensatory damages for noneconomic loss on the grounds that the award is inadequate or excessive.

Although Defendant states the judgments are "void," it appears that Ohio law sets forth the proper procedure for amending a judgment by remittur process. Bessman cites no authority for why she should have the right to collaterally attack the judgment amounts in a case where she is not a party. The record in this case shows that there has been no attempt by Defendant Lindstedt or Bessman for that matter to make an Ohio R.C. 2315.19 motion to reduce the judgment amounts. Simply concluding the judgments are "void" without authority bypasses a necessary motion practice and Ohio law.

The Ohio Supreme Court has recently decided a case where a jury returned non-economic damages in the amount of 3.5 million, in excess of the statutory cap. As set forth in *Simpkins v. Grace Brethren Church of Delaware, Ohio*, 149 Ohio St.3d 307, 2016- Ohio-8118, the underlying trial court conducted a post-judgment hearing to reduce the judgment amounts from the 3.5 million dollar award to amounts under the statutory caps. *Id.* at ¶16. It appears

from the record in this matter that no such motion has been filed, considered, or otherwise made by any party. Bessman concludes it is Plaintiff's obligation to file this motion with the court. Defendant is unable to cite any authority for her position that a Plaintiff in a tort action is required to modify his own judgment downward. Absent any further order from the Ohio courts, the only authority cited by Defendant that the judgments are void are her own unsupported conclusions.

The broader point is that it is not the position nor duty of this court to second-guess or relitigate foreign judgments. In fact, the Full Faith and Credit Clause of the Constitution supports the notion that the Ohio judgments are to be fully recognized by South Dakota. In the recent case of *Matter of Cleopatra Cameron Gift Trust, Dated May 26, 1998,* 2019 S.D. 35, ¶19-20 931 N.W.2d 244, 249-250, the South Dakota Supreme Court engaged in a complete and proper analysis of an out of state foreign judgment:

> The Full Faith and Credit Clause of the United States Constitution provides that, "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. The command to afford the judgments of foreign states full faith and credit is further codified at 28 U.S.C. § 1738 (2013), which provides that authenticated records and judicial proceedings "shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State[.]"
> The United States Supreme Court has recognized that providing full faith and credit to the judgments of foreign states serves the salutary purpose of limiting the opportunity to relitigate issues that have been resolved previously through the judicial process. *Riley v. New York Trust Co.*, 315 U.S. 343, 348-49, 62 S. Ct. 608, 612, 86 L. Ed. 885 (1942). As a result, the Full Faith and Credit Clause "alter[s] the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and ... make[s] them integral parts of a single nation." *V.L. v. E.L.*, —— U.S. ——, 136 S. Ct. 1017, 1020, 194 L. Ed. 2d 92 (2016) (per curiam) (quoting *Milwaukee*

County v. M.E. White Co., 296 U.S. 268, 277, 56 S. Ct. 229, 234, 80 L. Ed. 220 (1935)); *see also Wooster v. Wooster*, 399 N.W.2d 330, 334 (S.D. 1987) (recognizing that valid foreign judgments are given effect in the interests of comity).

Generally, if the judgment was "rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, [it] qualifies for recognition throughout the land." *Id.* Furthermore, "[a] State may not disregard the judgment of a sister State because it disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits." *Id.*; *see also Milliken v. Meyer*, 311 U.S. 457, 462, 61 S. Ct. 339, 342, 85 L. Ed. 278 (1940) ("[T]he full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based.").

There are, however, certain limitations upon the requirements of the Full Faith and Credit Clause. Providing full faith and credit to a foreign state's judgment "does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law." *Baker by Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 235, 118 S. Ct. 657, 665, 139 L. Ed. 2d 580 (1998); *see also* Restatement (Second) of Conflict of Laws § 99 (1971) ("The local law of the forum determines the methods by which a judgment of another state is enforced."). " 'Evenhanded' means only that the state executes a sister state judgment in the same way that it would execute judgments in the forum court." *Adar v. Smith*, 639 F.3d 146, 159 (5th Cir. 2011).

Justice Scalia, in his concurring opinion in *Baker*, noted that the power of the Full Faith and Credit Clause is to make the judgment of "one State[ ] conclusive evidence in the courts of another State[.]" 522 U.S. at 242, 118 S. Ct. at 668 (Scalia, J. concurring) (quoting *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 291-92, 8 S. Ct. 1370, 1375, 32 L. Ed. 239 (1888)). [emphasis added]

It is important to apply the Full Faith and Credit Clause as well as it progeny. Justice Scalia's comment drives home the notion that it is not this court's duty to relitigate these matters

on the merits. In fact, even if this court disagrees with any of the judgments, they are entitled to recognition "thought the land." Bessman, much like Martin Lindstedt, seems insistent on relitigating issues already decided. This invades the province of the court, is a waste of judicial resources, and violative of the Full Faith and Credit Clause.

Here Defendant Bessman wants to relitigate the matter, and engage in an impermissible collateral attack. It is important to note that Bessman is not a party to the Ohio matters, nor any judgment amounts. The record indicates she has not filed a motion to intervene in any matter.

Regarding Ohio R.C. 2315.21(D)(2)(b), there is possibility that the $1,000,000 judgment in favor of Plaintiff is violative of the statutory cap for punitive damages, assuming of course, that the courts disagree with the argument that damages can be admitted in excess of the statutory cap. Defendant Bessman argues that the 10% of net worth should of course be based upon the her view of the facts. While still reserving the right to challenge the appraisal, she cites the appraised value as Linstedt's net worth. However, Lindstedt has mentioned to this court that he has other homes, and that his property was worth between $1,000,000 and $2,000,000.00. This court again is not in the position to analyze and digest the record evidence before the Ohio courts concerning the net worth of Defendant Lindstedt. Bessman has provided no transcript of the hearings, and no citation or any evidence introduced regarding Lindstedt's net worth.

This court has been presented with duly rendered, filed, and docketed judgments from a foreign court. There is no fact set forth on the record in this matter that supports Defendant's position that the judgments are facially invalid. However, in a light most favorable to defendant, there appears to be a statutory authority for modifying or amending a judgment that allegedly exceeds a statutory cap on damages. That statute as well as Ohio case law suggests that the

appropriate remedy is not voiding the judgment rather reducing the judgment amount to a number lower or equal to the statutory cap. Again this argument concerning Ohio tort reform does not apply to the original judgment of $105,000.00.

Lastly, defendant argues pursuant to Ohio R.C. 2315.21(D)(5)(a) that the actions of Lindstedt are "based upon the same course of conduct," and therefore subject to aggregate punitive damage maximum dollar amounts. Again Defendant sites no authority for the contention that different claims made by different parties on different dates can be statutorily interpreted as the same course of conduct. Again the Defendant is asking the court to stand in the shoes of the Ohio court and judge the actions of the federal judge without any knowledge of the record in Ohio. As this court is aware from the affidavit of Plaintiff Bryan Reo, each of the federal matters was served individually, on different dates, and alleging different damages as a result of independent actions. It can logically be deduced by this court that the judges in Ohio concluded the tortious actions and harassment by Lindstedt constituted a different course of conduct. Based on the Full Faith and Credit Clause of the Constitution, those judgments should be upheld and recognized by this court to their fullest extent as facially valid judgments.

Reply to Defendant's Argument as to Champerty

Defendant cites the 1919 case of *Hudson v. Sheafe*, 171 N.W. 320 (S.D. 1919) for the proposition that Plaintiff Reo's actions were champertous. Defendant correctly summarizes the factual background of that case, however, there is an important distinction set forth in special concurrence by Justice Smith. Justice Smith states:

> "The object of the statute is to prevent attorneys from buying claims to obtain costs by the prosecution thereof, and to constitute the offense the purchase must be for the very purpose of bringing suit and no other. The

> intent to bring a suit must not be merely incidental and contingent, and it must be brought for the attorney's benefit. It does not apply *** to the purchase of a demand with the intent of prosecuting it *** in the courts of another state or to the purchase of a judgment for the purpose of collecting it by execution"–citing *De Forest v. Andrews*, 27 Misc. Rep. 145, 58 N. Y. Supp. 358; *Moses v. McDivitt,* 88 N. Y. 62; *Wightman v. Catlin*, 113 App. Div. 24, 98 N. Y. Supp. 1071; *Creteau v. Foote Glass Co.*, 40 App. Div. 215, 57 N. Y. Supp. 1103; *Tilden v. Aitkin,* 37 App. Div. 28, 55 N. Y. Supp. 735; *Van Dewater v. Gear*, 21 App. Div. 201, 47 N. Y. Supp. 503; *West v. Kurtz* (N. Y. Com. Pl.) 3 N. Y. Supp. 14.

Id. at 324.

The analysis by Justice Smith is analogous on with the facts of this case. Defendant contents the Reo's aging father assigning his judgments against Lindstedt to is only son is champertous because it was done with he intent to bring suit. This matter was started long before any judgment was contemplated in favor of Anthony Reo by a federal judge. Rather, it appears, for the same reasoning as stated above regarding Stefani, that the Reos have united front, and all would be benefitted by the setting aside of this fraudulent transfer. Bessman's argument for champerty is based upon mere speculation as to the facts and circumstances surrounding the assignment. Anthony Reo has not challenged the assignment, and the record does not set forth any facts or circumstances surrounding the alleged champerty. Bessman, again striving to make sure the creditor's rights of Stefani an Anthony are protected, cites no record fact that the assignment was not made for the purpose of collecting attorney fees. In *Hudson,* the assignment of an Illinois judgment was made to an attorney for the purpose of prosecuting an execution in South Dakota. However, this case is not an execution case, rather a complaint to void a blatantly fraudulent transfer in violation of UFTA. In this case Plaintiff had already commenced action, not for collecting, but to void a transfer to make collection for all the Reos'

possible. It is quite understandable in this case that an assignment would be made to avoid having to deal with Martin Lindstedt's antics. The record in this matter was not established through discovery, and now Defendant Bessman, having alleged no affirmative defenses, engages in speculation to support a finding of champerty.

Assuming, arguendo, that the judgment is champertous, Defendant cites no authority that champerty is a defense to a fraudulent conveyance. At worst case scenario, the assignment can be voided or assigned back, and Anthony Reo can collect on his judgment, thanks in large part to Plaintiff seeking to have the transfer voided. This argument fails to address the fact that Plaintiff had a duly filed Stanley County foreign judgment at the time the transfer was made.

REPLY AS TO DEFENDANT LINDSTEDT'S 2ND LATE FILED ARGUMENTS

On August 24, 2021 Defendant Lindstedt again filed additional argument in opposition of summary judgment on the grounds that he finally read the motion for summary judgment made by the undersigned. Again and again, he calls for death, nuclear sabotage, Antifa, and other irrelevant incomprehensible argument. In trying to decipher Defendant Lindstedt's arguments, it appears he is arguing to this court that the relief sought in the motion for summary judgment would be violative of the preliminary injunction. Defendant's argument lacks a basic understanding of how preliminary injunctions work.

SDCL 21-8-1 states: "Relief by injunction is either temporary or permanent. *Temporary injunctions may be referred to as interlocutory injunctions, and are either temporary restraining orders or preliminary injunction*s. Permanent injunctions may be referred to as final injunctions." By their very nature preliminary injunctions are not permanent, and therefor expire at the conclusion of the case. "When, *during the pendency of an action*, it appears by affidavit that a

party to the action threatens, or is about to remove or dispose of his property, with intent to defraud his creditors, a temporary restraining order or preliminary injunction may be granted to restrain such removal or disposition." SDCL 21-8-6. Martin Lindstedt is arguing that summary judgment cannot be granted because it will be violative of the preliminary injunction. To make it clear to the court, Plaintiff is requesting that this court issue judgment on that merits of the claim of fraudulent transfer as there are no material facts in dispute. Plaintiff will request dismissal of the preliminary injunction as a matter of law upon of finding of judgment in favor or Plaintiff.

Finally, Plaintiff restates and reincorporates all arguments set forth in the first section above concerning timelines, failure to follow statutory authority for responding to a motion for summary judgment, and offensive argument in violation of this courts order. Defendant Lindstedt's untimely rant is an impermissible sur-reply and should be stricken.

CONCLUSION

Defendants' reply arguments are not based on a clear statement of controverted material facts. Bessman, now surprisingly concerned the with collection efforts of Stefani Reo and Anthony Reo, requests dismissal of this action on the grounds that Stefani and and Anthony have been mis-served by their attorney. Plaintiff and his family, as set forth in Reo's testimony at the preliminary injunction hearing, have had to deal with Lindstedt's harassment for years. Globally, the Reos are seeking to collect on their judgments, much to the disgust of Defendant Bessman that seems insistent on thwarting that effort to the maximum extent of the law. She has hired a total of four lawyers, foundered nearly entirely by rental proceeds from the land. The fraud is continuous and needs to stop.

In Defendant Bessman's 26 page brief, approximately 1/2 page is dedicated to the crucial facts from June 2019 - October 2019. The undisputed and devastating facts between that time have caused Defendant Bessman to purposefully ignore the facts and sidetrack the argument.

Stefani Reo, while perhaps a proper party, is not an indispensable party pursuant to SDCL 15-6-19(a)(2)(i). Avoiding or unwinding the transfer of Lindstedt property is certainly the outcome that Stefani would want, and such an outcome does not prejudice, Stefani, rather it enriches her position. She has no vested interest in the Lindstedt property at this time as a valid judgment creditor. Bessman's attempt to protect the interest of Stefani is disingenuous and an impermissible collateral attack.

Defendant's tort reform arguments are red herring arguments designed to distract this court from the uncontested $105,000.00 judgment in favor of Reo against Lindstedt before he transferred his property. The judgments are facially valid, and Defendant can point to no case for their proposition that the judgments are completely invalid. At an absolute minimum, the economic damages are valid. The Ohio judgments are not the primary cause of the fraudulent transfer. The Defendant Martin Lindstedt was aware of the $105,000.00 judgment at the time he made the transfer, and that judgment forms the primary basis of the fraudulent transfer. Suffice it to say, Lindstedt's rhetoric and threats likely will result in lifelong tort claims by multiple parties. Nothing Defendant argues refutes the idea that Defendant Lindstedt intentionally and constructively committed fraud by transferring his property to his sister. Defendant can point to no case holding that the admitted damage amounts in the Ohio judgments are invalid for exceeding a tort reform cap. Proper remittur process was not followed, and therefore the judgments are facially valid until vacated or modified by the federal court in Ohio.

Defendant requests dismissal on several unsupported grounds including champerty. Champerty does not apply to "to the purchase of a demand with the intent of prosecuting it in the courts of another state or to the purchase of a judgment for the purpose of collecting it by execution. *Hudson,* at 324. This is not typical champerty case where a person has assigned a right to bring a claim. Plaintiff's claim was already in existence when the Anthony Reo matter was resolved. Lastly, Defendant can point to no case stating that champerty is a defense to a UFTA claim.

Overall, Plaintiff has been intentionally and constructively defrauded by Defendant Lindstedt. SDCL 15-8A-7 allows this court to unwind the transaction. Unwinding the transfer moots all arguments of tort reform, champerty, ethical obligations, and gets this case back the basics. While there may be argument as the judgment amounts, but that is best reserved for another day when request for execution is made. This matter requests solely the unwinding of the transfer.

WHEREFORE, Plaintiff requests that this Court grant summary judgment in favor or Plaintiff, reverse the conveyance, disgorge Defendant Bessman of the past and future rental proceeds, and issue a permanent injunction prohibiting Defendant Lindstedt from further conveying the real property until all his debt matters are properly settled.

Dated this 25th day of August, 2021.

Konrad Law Prof. LLC

/s/ Robert Thomas Konrad
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Certificate of Service

The undersigned hereby certifies that on the 25th day of August, 2021 he served a true and correct copy of the Plaintiff's Combined Reply Brief in Support of Motion for Summary Judgment upon the following persons in the following manner:

BY EMAIL TO:

Sarah Baron-Houy
Attorney for Defendant Bessman
sbaronhouy@bangsmccullen.com
By way of Odyssey File and Serve

AND BY USPS MAIL POSTAGE PREPAID TO THE FOLLOWING:

Martin Lindstedt
338 Rabbit Track Road
Granby, MO 64844

Dated this 25th day of August, 2021.

/s/ Robert Thomas Konrad
Robert Konrad