



CIRCUIT COURT OF SOUTH DAKOTA SIXTH JUDICIAL CIRCUIT

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September 30, 2021

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**RE: Bryan Reo v. Martin Lindstedt AND Susan April Bessman, as Trustee of
the Susan April Bessman Revocable Living Trust, 58 Civ. 20-07**

MEMORANDUM DECISION

Summary Ruling

The Court grants the summary judgment motion in the matter filed by Plaintiff Reo. This Court concludes there was no genuine issue of material fact regarding a fraudulent transfer of Defendant Lindstedt's land to his sister, Defendant Bessman, which was done to prevent Reo from collecting upon his \$105,400 Ohio judgment.^{1 2} Lindstedt's and Bessman's defenses are rejected as collateral attacks on the foreign judgments. The court further orders the avoidance of the fraudulent land transfer from Lindstedt to Bessman. Effective

¹ A total of five Ohio judgments have been presented to the court by Plaintiff Reo. The holders of judgments in those matters are Plaintiff Reo, Stefani Reo, and Anthony Reo. The Court finds that as of August 27, 2021 Plaintiff Reo's judgment in the amount of \$105,400 against Defendant Lindstedt was the only judgment reduced to a final judgment. This Court therefore decides to grant summary judgment solely on that judgment in the amount of \$105,400.

² Plaintiff Reo received an award of \$105,000 against Defendant Lindstedt individually, and an award in the amount of \$400 against The Church of Jesus Christ Christian / Aryan Nations of Missouri. Defendant Lindstedt is the Pastor of The Church of Jesus Christ Christian.

immediately, all future rental incomes will be paid to and kept by the Stanley Co. Clerk of Courts for future disbursement by order of the Court.

Background

Plaintiff Bryan Reo (“Plaintiff” or “Reo”) obtained an Ohio judgment against Defendant Martin Lindstedt (“Lindstedt”) on July 19, 2019, in the amount of \$105,400. Since this time, additional claims were brought by Reo against Lindstedt in Ohio state and federal Court. On August 19, 2019, Reo docketed the July 2019, judgment against Lindstedt in Stanley County, South Dakota. On October 25, 2019, Lindstedt transferred his real property owned in Stanley County to his sister Susan Bessman (“Bessman”).

Reo filed a fraudulent transfer suit against Lindstedt and Bessman on February 14, 2020. Reo alleges that the transfer of the Stanley County real estate from Lindstedt to Bessman, after the Ohio judgement had been docketed, amounts to a fraudulent transfer under SDCL Ch. 54-8A.

A series of Temporary Restraining Orders (“TRO’s”) and Preliminary Injunctions preventing Lindstedt and Bessman from further encumbering or transferring the property were entered by the South Dakota Sixth Judicial Circuit Court. Reo now asks the court to grant summary judgment in his favor on all claims.

On July 26, 2021, Reo filed an Amended Motion for Summary Judgment. In support of his motion, Reo filed “Affidavit of Plaintiff Bryan Reo in Support of Motion for Summary Judgment” and “Statement of Uncontroverted Facts,” “Affidavit of Counsel in Support of Summary Judgment,” and “Plaintiff’s Brief in Support of Motion for Summary Judgment.”

On August 20, 2021, Bessman filed “Defendant Bessman’s Response to Plaintiff’s Motion for Summary Judgment,” supported by “Defendant Bessman’s Response to Plaintiff’s Statement of Uncontroverted Material Facts,” and “Affidavit of Sarah Baron Houy.” Bessman objected to several facts, denied several facts, and raised several defenses.

Lindstedt untimely filed his Response to Summary Judgment on August 27, 2021. Lindstedt requested at the argument to the Court on August 27, 2021, to join the legal arguments presented by Bessman in opposition to summary judgment. The Court granted Lindstedt’s request.

At the hearing Lindstedt appeared telephonically; Reo appeared telephonically; Sarah Baron Houy appeared telephonically and through authorization of her client Bessman; and Robert Konrad, attorney for Reo appeared in person.

For the following reasons, Plaintiff’s Motion for Summary Judgment is GRANTED.

Ohio Cases

Reo brought multiple cases against Lindstedt in Ohio. Claims were also brought by Stefani Rossi Reo (“Stefani”) (wife of Reo) and Anthony Reo (“Anthony”) (father of Reo). The following chart relies on the information provided by Bessman in her Response to Reo’s Motion for Summary Judgment. It outlines the status of each Ohio case as of August 20, 2021.

No.	Case Caption	Nature of Case	Award	Judgment status
1	<i>Bryan Reo v. Martin Lindstedt, et. al.</i> Lake County Court (Ohio) 15 CV 1590 / 16 CV 825 Hon. Patrick Condon *filed in 2015 & 2016	Defamation per se, invasion of privacy	\$105,000 total \$55K comp \$50 K punitive	7/1/19: Reduced to judgment 8/19/19: Transcribed in SD (58 CIV19-35)
2	<i>Bryan Reo v. Martin Lindstedt</i> 1:19 CV 2103 (N.D. Ohio) Hon. Solom Oliver, Jr. *filed Aug. 12, 2019	Libel per se, invasion of privacy, IIED	\$1,000,000 total \$250 K comp	4/23/21: Reduced to judgment 5/3/21: Transcribed in

			\$750K punitive	SD (58CIV21-16)
3	<i>Stefani Rossi Reo v. Martin Lindstedt</i> 1:19 CV 2786 (N.D. Ohio) Hon. Christopher Boyko *filed Sept. 9, 2019	Libel per se	\$500,000 total \$250K comp \$250K punitive	Not reduced to judgment
4	<i>Anthony Dominic Reo v. Martin Lindstedt</i> 1:19 CV 2615 (N.D. Ohio) Hon. John R. Adams *filed Sept. 18, 2019	Libel per se	\$500,000 total \$250K comp \$250K punitive	6/23/21: Reduced to Judgment 7/2/21: Transcribed in SD (58CIV21-24)
5	<i>Bryan Reo v. Martin Lindstedt, N.D. Ohio</i> 1:19 CV 2589 Hon. Christopher Boyko *filed Sept. 18, 2019	Libel per se	\$750,000 total \$250K comp \$500K punitive	Not reduced to Judgment

Claims for Summary Judgment

Reo claims there are no material facts in dispute. Reo also claims Defendants (non-moving parties) have not presented any facts to show that there are genuine, material issues for trial. *See generally Sacred Heart Health Services, Inc. v. Yankton County*, 2020 S.D. 64, ¶ 11, 951 N.W.2d 544, 548. Defendants disagree as set forth.

Defendants' Responses to Summary Judgment

Defendant Lindstedt's Response to Motion for Summary Judgment

Lindstedt's Response to Summary Judgment was filed on August 27, 2021. Pursuant to SDCL 15-6-56(c), Defendant Lindstedt's Response was untimely and therefore should not be considered in granting summary judgment. *See also Bordeaux v. Shannon County Sch. Dist.*, 2005 S.D. 117, 707 N.W.2d 123.

Moreover, Lindstedt's judgments were not stayed under Ohio law. Ohio R. Civ. P. 62. Fed. R. Civ. P. 62(b), nor this court.

Nonetheless, the Court allowed Lindstedt to present oral argument on August 27, 2021, and such argument is considered in this ruling on the motion for summary judgment. Lindstedt has also requested and was granted a standing objection to all proceedings before the court. Lindstedt's oral arguments in opposition to summary judgment have been substantially rejected. He was allowed to join in Bessman's arguments.

Defendant Bessman's Response to Motion for Summary Judgment

Bessman does not present any disputed material facts to the court. In reality, she asserts defenses such as (1) defense counsel and his client Reo are unethical in proceeding in this matter, (2) champerty and a failure to join an indispensable party (Stefani) prevents this Court from granting summary judgment and, (3) under Ohio tort reform, this Court cannot enforce the foreign judgments.

Substantive Law

A grant of summary judgment is proper when it is determined that the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment as a matter of law. *Hanson v. Big Stone Therapies, Inc.*, 2018 S.D. 60, ¶ 23, 916 N.W.2d 151, 157. (Further citations omitted). "Summary judgment is proper where the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting *Pete Lien & Sons, Inc. v. Zellmer*, 2015 S.D. 30, ¶ 10, 865 N.W.2d 451, 454. However, "[t]he party opposing summary judgment must be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent issuance of a judgment." *Ward v. Lange*, 553 N.W.2d 246, 249 (S.D. 1996).

Pursuant to SDCL ch. 54-8A, the Uniform Fraudulent Transfer Act (UFTA), this Court must first determine if a fraudulent transfer has occurred. If so, the Court may grant any of several remedies, including avoiding the transfer, appointment of a receiver to take charge of assets related to the property, levy against the asset, and any other equitable relief as is proper.

Additionally, pursuant to UFTA at SDCL § 54-8A-4, whether a transfer is fraudulent under South Dakota law is a question of fact. *U.S. v. Schiefen*, 926 F.Supp. 877, 886 (D.S.D 1995). *See also Nielsen v. Logs Unlimited, Inc.*, 2013 S.D. 75, ¶ 18, 839 N.W.2d 378, 383.

The following are undisputed facts. Reo received an Ohio judgment in the amount of \$105,400 that was domesticated in Stanley County on August 19, 2019. Lindstedt then transferred his Stanley County property to his sister Bessman on October 25, 2019. No valuable consideration was exchanged between Lindstedt and Bessman for the transfer. The Court will address these and other additional undisputed facts, and any claimed disputed material facts, in the analysis below.

Finding that there is no genuine issue of material fact and further applying these undisputed material facts to the law, the Court holds that Plaintiff has proven that he is entitled to judgment as a matter of law pursuant to SDCL § 15-6-56(c).

ANALYSIS

1. There is no disputed material fact that the October 25, 2019, transfer from Lindstedt to Bessman is a fraudulent transfer, under the UFTA.

Actual Fraud

In SDCL Chapter § 54-8A, the Uniform Fraudulent Transfer Act (UFTA), defines a fraudulent transfer as well as provides the remedies available to creditors when a fraudulent transfer by a debtor has occurred. Pursuant to SDCL § 54-8A-4,

(a) Any transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

The South Dakota Supreme Court has held that a transfer in violation of the UFTA may occur by actual fraud or constructive fraud. *Glimcher Supermall Venture, LLC v. Coleman Co.*, 2007 S.D. 98, ¶¶ 10-27, 739 N.W.2d 815, 820-826. In determining if actual fraud exists in a transfer, the debtor's state of mind "becomes the point of inquiry." *Prairie Lakes Health Care Sys., Inc. v. Wookey*, 583 N.W.2d 405, 411 (S.D. 1998).

This Court in granting summary judgment finds both actual fraud and constructive fraud occurred on October 25, 2019, when Lindstedt transferred the Stanley County property at issue to Bessman.

The South Dakota Supreme Court has previously used the eleven (11) factors, or "badges of fraud" under SDCL § 54-8A-4 to determine if actual fraud has occurred as the result of a transfer. *Glimcher*, 2007 S.D. 98, ¶¶ 10-27, 739 N.W.2d at 820-826. This Court finds that the following factors under SDCL § 54-8A-4(b) are present so as to support the conclusion that the October 25, 2019, land transfer is both actually and constructively fraudulent.

(a) The transfer was made to an insider.

Lindstedt transferred the property to his sister, Bessman by warranty deed. The relationship between the parties and the transfer of the property are undisputed by the parties. Under SDCL § 54-8A-1, an "insider" is defined as any relative of the debtor if the debtor is an individual, such as Lindstedt. The South Dakota Supreme Court (in applying the Wisconsin version of UFTA) has stated that transfer of property to a closely related person warrants close scrutiny. *Glimcher*, 2007 S.D. 98, ¶ 13, 739 N.W.2d at 822. Again, these facts are not disputed.

(b) The debtor retained possession or control of the property transferred after the transfer.

Lindstedt collected cash rents from a longstanding lease for the year 2019, after he conveyed the land to his sister. Lindstedt also received a promise from Bessman that the property would not pass by intestacy or testacy to who Lindstedt, called the "bad nephew". These two instances are indicative of Lindstedt retaining some control over the property. These facts are not disputed.

- (c) The transfer or obligation was disclosed or concealed.

Lindstedt privately transferred the land to Bessman, without first putting the land up for public sale. The land was conveyed on October 25, 2019. Bessman did not notify the lessees of the property of her ownership until March of 2020. These facts are not disputed

- (d) Before the transfer was made or the obligation was incurred, the debtor had been sued or threatened with suit and the transfer occurred shortly before or shortly after a substantial debt was incurred.

In 2015 and 2016, Reo commenced civil actions against Lindstedt in the Court of Common Pleas, in Lake County, Ohio. On June 26, 2019, a jury verdict was returned in these consolidated cases for Reo in the amount of \$105,000 against Martin Lindstedt and the amount of \$400 against the Church of Jesus Christ, Christian/Aryan nations of Missouri. On August 10, 2019, Reo applied in the Stanley County Circuit Court to register and docket \$105,400 worth of foreign judgments against Lindstedt. On August 19, 2019, these judgments were registered in the Stanley County Clerk of Courts. On August 20, 2019, a “Notice of Filing of Foreign Judgment” was sent to Lindstedt at his known address via US Mail. These facts are not disputed.

Reo filed an additional suit against Lindstedt in the Court of Common Pleas, in Lake County, Ohio on August 12, 2019. Lindstedt was served with summons and complaint of this suit on August 21, 2019. Lindstedt transferred his Stanley County Property to Bessman on October 25, 2019, for no consideration, even though the deed states “for \$1.00 and other good and valuable consideration.” This is undisputed.

As is undisputed, at the time Lindstedt transferred his property to Bessman, he had a judgment in the amount of \$105,400 awarded against him and his organization, and was aware of additional suits in which he was named a defendant.

- (e) The transfer was of substantially all the debtor’s assets and the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

Lindstedt deed all meaningful property he owned (i.e. the Stanley County property) to his sister, which made him insolvent. Lindstedt has now filed multiple documents in the instant case claiming and agreeing he is now indigent. Lindstedt further stated that he gave his inheritance away. None of these facts are disputed.

(f) The Debtor absconded.

It is unclear if Lindstedt absconded as he indicated to this Court that he had moved and did not want Reo to know of his whereabouts. However, absence of this factor is not fatal to finding the transfer matter fraudulent.

(g) The Debtor removed or concealed assets.

Lindstedt removed his assets (i.e. the land) by deeding it to his sister. Also, in Lindstedt's responses to Reo's post-judgment interrogatories for Reo's Ohio judgment, Lindstedt refused to answer certain questions about his assets, requiring that Ohio court to compel his answers. This occurred at approximately the same time as the transfer of the Stanley County property from Lindstedt to Bessman. These facts are not disputed.

(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.³

Lindstedt transferred his Stanley County, South Dakota property to Bessman on October 25, 2019, "for and in consideration of One Dollar (\$1.00) and other valuable consideration". Bessman testified she did not pay any amount for the transfer of the property.

This Court concludes, in weighing the above "badges" of fraud, that the transfer of the Stanley County property from Lindstedt to Bessman constitutes actual fraud by clear and satisfactory proof. *Glimcher*, 2007 S.D. 98, ¶ 22, 739 N.W.2d at 824. The transfer occurred from a debtor (Lindstedt) to an "insider" (Bessman, debtor's sister) for inadequate consideration; Bessman paid nothing for property valued at over \$1,200,000; and Lindstedt received rental profits from the land for a period of time after the transfer, and dictated estate planning

³ The South Dakota Supreme Court has held that the presence of reasonably adequate consideration is only one of the badges when considering if there was fraudulent intent in the transfer, and that the presence of adequate consideration can be overcome to show fraudulent intent if other badges of fraud are present. *Glimcher*, 2007 S.D. 98, ¶ 18, 739 N.W.2d at 823. Clearly, Bessman provided no consideration for the exchange. Moreover, if she had, there are other "badges of fraud" present.

regarding the land. Lindstedt transferred the land without any notice to his lessees or the public. Lindstedt has repeatedly said he has no assets, and has further failed to properly disclose any of his assets without a court directive to do so.

The transfer of the Stanley County property was fraudulent under UFTA, as Lindstedt had knowledge that there was a domesticated foreign judgment to which he was a defendant, and that there were additional judgments that were likely to be domesticated in the future. Lindstedt transferred the property to Bessman to prevent Reo and any future creditors from seeking enforcement of their judgments. *Id.*

Bessman and Lindstedt have failed to dispute any of these facts or present any material facts in dispute. Summary judgment is granted, and the transfer from Lindstedt to Bessman is avoided as fraudulent.

Constructive Fraud

Alternatively, the Court finds constructive fraud exists under SDCL § 54-8A-4(2)(ii).

Bessman claims that her lack of knowledge of the judgments against Lindstedt at the time of transfer is a material fact that prevents summary judgment and the transfer from being avoided under this action. “A disputed fact is not material unless it would affect the outcome of the suit under the governing substantive law in that a reasonable jury could return a verdict for the nonmoving party.” *Aqreva, LLC, v. Eide Bailly, LLP*, 2020 S.D. 59, ¶ 15, 950 N.W.2d 774, 782 (further citations omitted).

The presence of reasonably equivalent value is a partial defense to a finding of actual fraudulent intent, and its absence is one of several factors to be considered for a finding of actual intent. For constructive fraud however, the absence of reasonably equivalent value is an essential component and weighs heavily toward finding constructive fraud. *Glimcher*, 2007 S.D. 98, ¶ 19, 739 N.W.2d at 823. “The focus in ‘constructive fraud’ shifts from a subjective intent to an objective result.” *Id.* (quoting *Badger State Bank v. Taylor*, 276 Wis.2d 312, 328, 688 N.W.2d 439, 447 (2004)). “Proof of ‘constructive fraud’ simply entails proof of the requirements of the statute.” *Glimcher*, 2007 S.D. 98, ¶ 25, 739 N.W.2d at 825, (quoting *Badger State Bank*, 275 Wis.2d 312, 328, 688 N.W.2d 439, 447 (2004)).

The South Dakota Supreme Court has held that “[t]he transferee’s subjective state of mind does not play a role in resolving” cases under UFTA. *Glimcher*, 2007 S.D. 98, ¶ 18, 739 N.W. 2d at 823 (quoting *Badger State Bank v. Taylor*, 275 Wis.2d 312, 331, 688 N.W.2d at 449). A transferors or

transferee's subjective intent is not a consideration or defense to a finding that a transfer was constructively fraudulent under the UFTA, and therefore does not prevent summary judgment.

Conclusion of Summary Judgment on Facts

For the aforementioned reasons, summary judgment is granted, and the October 25, 2019, transfer from Defendant Martin Lindstedt to Defendant Susan Bessman is avoided, pursuant to SDCL 54-8A-7. See the Court's final conclusions on pages 14-15.

2. Defendants' Affirmative Defenses are rejected.

In Defendants' filings, Defendants' assert that summary judgment in the instant case cannot be granted or is improper for the following reasons:

1. Reo's attorney and Reo are unethical by seeking enforcement of the Ohio judgments due to the relationship of the numerous plaintiffs in those judgments.⁴
2. Plaintiff's underlying judgments are invalid under Ohio's punitive damages award cap and were obtained by Plaintiff's failure to disclose such law at the time of judgment.
3. Plaintiff's has failed to join an indispensable party, Stefani Reo, a creditor of Lindstedt, to the instant action.
4. Plaintiff's motion should be denied because the judgment assigned from Anthony Reo to Plaintiff is a violation of the South Dakota law of champerty.

At the time Lindstedt transferred his property to Bessman, Reo had an outstanding valid judgment in the amount of \$105,400 against Lindstedt and his organization. None of the parties argue that this judgment was obtained in violation of Ohio law. Further, none of the parties assert that Stefani Reo or Anthony Reo are parties to that action.

It is only in future proceedings that these defenses may be raised as to the enforcement of other judgments. However, while not necessary, the Court will address these claims here, as the parties have addressed them to the Court, and they will arise in the request to enforce Reo's other Ohio judgments.

⁴ The merits of Stefani and Anthony's enforcement of final judgments is not before the Court in this decision. Further, Defendants fail to cite any law mandating that an attorney cannot seek enforcement of a judgment against a common debtor of that of a client. Defendants cite to *In re Vanderbilt Associates, LTD.*, 111 B.R. 347, 355 (Bankr.D.Utah 1990). The holding in this case was reliant on specific rules regulating representation in bankruptcy cases. The finding of a conflict of interest of representation in this case, was later abrogated in *In re Vanderbilt Associates, Ltd.*, 117 B.R. 678 (D.Utah 1990). This Court finds that Defendants' allegations of misconduct are without merit. Reo's judgment of \$105,400 does not in any way deplete the assets available (i.e. the land) for Stefani and Anthony to seek enforcement of any judgments.

- a. *Defendants' may not challenge the validity of future judgments for violation of Ohio substantive law regarding damages or champerty, pursuant to UFTA, as they are collateral attacks on the judgment.*

Defendants' allege that this court may not undo the transfer of the Stanley County property because two of the three underlying judgments of Reo violate Ohio substantive law concerning punitive damages caps. Defendants seek relief from these judgments and asks the court to prevent enforcement of them under SDCL 15-6-60(b).

SDCL 15-6-60(b) allows relief from a final judgment for the following reasons

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under § 15-6-59(b);
- (3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) Any other reason justifying relief from the operation of the judgment.

The South Dakota Supreme Court in *Wooster v. Wooster*, considered the ability of circuit courts to vacate foreign judgments. *Wooster v. Wooster*, 399 N.W.2d 330, 332 (S.D. 1987). The Supreme Court stated that

When a foreign judgment has been appropriately filed the grounds for vacating it are limited to lack of personal or subject matter jurisdiction of the rendering court, fraud in procurement of the judgment, satisfaction, lack of due process, or other grounds that make the judgment invalid of unenforceable; however, the nature, amount, or other merits of the judgment cannot be relitigated in the state in which enforcement is sought.

Id. at 333 (quoting *Baldwin v. Heinold Commodities, Inc.*, 363 N.W.2d 191, 194 (S.D. 1985)).

The Court held that although the parties in *Wooster*, were correct in seeking a motion to vacate a California judgment under Rule 60(b), the grounds allowing relief under Rule 60(b) do not allow relief from foreign judgments. *Id.* (citing *Matson v. Matson*, 333 N.W.2d 863, 867, 31 A.L.R. 4th 696, 704 (Minn. 1983)). In enforcing foreign judgments, “[n]o defense may be set up which goes to the merits of the original controversy, or which might have

been interposed in the original action.” *Bahr v. Bahr*, 85 S.D. 240, 245, 180 N.W.2d 465, 467 (1970).

Pursuant to our precedent, Defendants’ claims that two of the three underlying judgments violate Ohio damages cap law (and champerty, as discussed below) do not prevent granting of summary judgment, unwinding of the transfer of the Stanley County property, and subsequent enforcement of the judgment in the amount of \$105,400.

The Court notes that the South Dakota Supreme Court has not considered the ability of courts to modify foreign judgments. *Wooster*, 399 N.W.2d at 334 (citing *Barber v. Barber*, 323 U.S. 88, 65 S.Ct 137, 89 L.Ed 82 (1944)). It may be an issue at a future enforcement of other judgment; however, it does not prevent summary judgment in the instant case.

Likewise, the attack of enforcement of a foreign judgment on the grounds of champerty is denied as it is a collateral attack on the foreign judgment. *Signal Data Proc. Inc., v. Rex Humbard Found.*, 651 N.E.2d 498, 501 (Ohio App. 9 Dist. 1994).

Even if the Court were to address the claim, champerty does not apply as there are no facts supporting that Reo had an agreement with Anthony or anyone else to gamble in the outcome of Anthony’s Ohio litigation against Lindstedt. Moreover, champerty cannot be raised as it would be a collateral attack on a foreign judgment.

b. *Defendants’ request for dismissal due to non-joinder is improper.*

Defendants request this Court to deny summary judgment and further dismiss this case for non-joinder. Pursuant to SDCL 15-6-19(a), they claim that Stefani Reo’s absence as a party in this case compels the court to dismiss it.

SDCL 15-6-19(a) provides that a person who is subject to service of process shall be joined as a party if

- (1) In his absence complete relief cannot be accorded among those parties; or
- (2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impeded his ability to protect his interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refused to

do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

SDCL 15-6-19(a). Simply because a person might have an interest in the outcome of a litigation does not make that person an indispensable party who must be joined pursuant to SDCL 15-6-19(a). *Casper Lodgin, LLC v. Akers*, 2015 S.D. 80, ¶ 82, 871 N.W.2d 477, 502 (quoting *Titus v. Chapman*, 2004 S.D. 106, ¶ 36, 687 N.W.2d 918, 927).

There is no evidence that Stefani's absence, or presence, in the instant case results in a failure of relief to be accorded among Reo, Lindstedt, and Bessman. Stefani's absence in the instant case does not impede the ability of her to later seek enforcement of her judgment against Lindstedt. Lindstedt would not incur any additional obligations by the absence of Stefani from the present action.

Summary judgment is granted, as Reo has proven that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law that the transfer of the Stanley County property from Lindstedt to Bessman was in violation of UFTA, SDCL § 54-8A, and that he is entitled to enforcement of his foreign judgment. Lindstedt and Bessman have failed to present any genuine dispute of a material fact which would prevent summary judgment.

3. Damages in the amount of \$56,070 are awarded to Reo against Bessman.

Pursuant to SDCL § 54-8A-7, the court may grant any other relief that may be required under the UFTA. On February 26, 2020, a temporary restraining order was entered prohibiting any leasing of the property during the proceedings of this case. This temporary restraining order was extended on March 11, 2020, June 4, 2020, August 3, 2020, and October 1, 2020. A preliminary injunction prohibiting the lease of the property was entered on November 2, 2020, to be terminated upon final trial or by written order of this Court.

In violation of the prior temporary restraining order and current preliminary injunction, Bessman has continued to lease the land to the Roseth Brothers General Partnership and the Tim and Diane Olson Partnership. Bessman has received \$56,070 in rental profits from the property from the initial filing of this action to present, in violation of the temporary restraining order and the preliminary injunction.

Pursuant to SDCL §54-8A-7(3)(iii), the Court orders Defendant Bessman to pay the amount of \$56,070 in damages, to the Stanley County Clerk of Courts.

4. Damages in the amount of \$18,690 are awarded to Plaintiff against Defendant Lindstedt.

In violation of the prior temporary restraining order and current preliminary injunction, Lindstedt has received \$18,690 in rental profits from the property.

Pursuant to SDCL § 54-8A-7(3)(iii), the Court orders Lindstedt to pay the amount of \$18,690 in damages to the Stanley County Clerk of Courts.

CONCLUSION

Plaintiff's Motion for Summary Judgment is GRANTED. Having found no material issue in dispute that the October 25, 2019, transfer of Stanley County, South Dakota property from Lindstedt to Bessman was in violation of the Uniform Fraudulent Transfer Act, under SDCL § 54-8A, and for the aforementioned reasons, the following it is

ORDERED, that the Court takes judicial notice of all evidence presented and previously accepted by the Court prior to the August 27, 2021, hearing, including the extensive preliminary injunction; and

ORDERED, that the Court grants summary judgment in favor of Plaintiff, in the amount of \$105,400 as awarded by the Ohio judgments in 15 CV 1590 and 16 CV 825; and

ORDERED, that the October 25, 2019, transfer of Defendant Lindstedt's Stanley County Property to Defendant Bessman is found as fraudulent and therefore avoided; and

ORDERED, that the November 2, 2020, preliminary injunction is continued until all current Ohio state and federal suits are brought to final judgment; and

ORDERED, termination of the preliminary injunction may only occur upon written order of this court; and

ORDERED, that any lease of the property shall continue as desired by innocent Third Party Lessees, and that any termination or modification of any lease on the property shall be promptly reported to the court by Lindstedt, Bessman, and/or current Third Party Lessees; and

ORDERED, that Lessees of the property shall deposit all future rental earnings with the Court by either check or wire transfer to the Stanley County Clerk of Courts until written order of this Court; and

ORDERED, any monies paid to Bessman and Lindstedt from any lease shall also be immediately deposited with the Stanley County Clerk of Courts by either check or wire transfer; and

ORDERED, that Plaintiff shall provide notice of these proceedings and orders to any current or subsequent lessees; and

ORDERED, that rental earnings received from the property by Defendants Lindstedt and Bessman from August 20, 2021, to the date of this order shall be repaid to this Court by either check or wire transfer to the Stanley County Clerk of Courts, until the judgment ordered herein is satisfied; and

ORDERED, payment by Defendants Lindstedt and Bessman to the Stanley County Clerk of Courts shall be completed within 90 days of the entry of this order; and

ORDERED, that Plaintiff shall prepare all necessary findings of facts and conclusions of law and orders and that this memorandum opinion be incorporated herein by this order; and

ORDERED, that this summary judgment is enforceable as a final judgment.

BY THE COURT

M. Bridget Mayer

M. Bridget Mayer
Circuit Court Judge