



CIRCUIT COURT OF SOUTH DAKOTA SIXTH JUDICIAL CIRCUIT

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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

Plaintiff Bryan Reo ("Plaintiff") obtained an Ohio judgment against Defendant Martin Lindstedt ("Defendant") on July 2, 2019, which Defendant has appealed. Since this time, additional claims have been brought by Plaintiff against Defendant in State and Federal Courts in Ohio. On August 10, 2019 Plaintiff made application to register and docket his judgments as a foreign judgment in Stanley County, South Dakota. On August 19, 2019, Stanley County Clerk of Courts registered the July 2019 Ohio judgments against Defendant in Stanley County, where Defendant owned real property. On October 25, 2019, Defendant transferred this real property owned in Stanley County to his sister Susan Bessman ("Bessman").

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

A Temporary Restraining Orders ("TRO") preventing Defendant and Bessman from further encumbering or transferring the property was entered on February 26, 2020 by Judge Northrup. In addition, a hearing was set for March 11, 2020, regarding Plaintiff's Motion for

Preliminary Injunction. The TRO was set to expire on March 11, 2020 as well. The TRO and hearing were extended for good cause to March 27, 2020. On March 24, 2020, Defendant requested a continuance and permission to appear by telephone. This hearing on the continuance was granted at the March 27, 2020 hearing, with Defendant appearing telephonically. The TRO was extended to June 5, 2020, at which time the preliminary injunction hearing was to also take place.

On May 19, 2020 Judge Mayer was appointed to act in the stead of Judge Northrup. On June 3, 2020, Judge Mayer held a hearing with Defendant appearing telephonically. A third continuance was granted to August 4, 2020 and the TRO was extended to August 4 as well, *unless modified by this court*. Defendant was given until June 30, 2019, to respond or file any motions.

A variety of motions have been made prior to this court holding the preliminary injunction hearing. Defendant filed a Motion to Dismiss the lawsuit on grounds that an appeal has been filed on the Ohio judgment. Plaintiff filed a Response to Defendant's Objection to the preliminary injunction being issued. Plaintiff argues Defendant should not be allowed to participate in the preliminary injunction hearing because Lindstedt transferred the property to Bessman and says he doesn't own the property anymore. Plaintiff also requests that the current TRO be extended, that Defendant's exhibits be stricken, and that Plaintiff's legal counsel be released from any obligation to file Defendant's pro se documents with Stanley County. Bessman has made no motions that need resolving at this time.

Defendant's Motion to Dismiss

Defendant's Motion to Dismiss this action in Stanley County generally on the basis that there is an appeal pending on the Ohio judgments is denied. The present lawsuit before this Court does not concern itself with the merits of the Ohio lawsuits. Eventually, this court will need to determine whether there was a fraudulent transfer under SDCL Ch. 54-8A. That would occur IF Defendant loses his Ohio appeal and Plaintiff's judgments are affirmed. Alternatively, if Defendant prevails in his Ohio appeal and prevails in the other Ohio court cases, then Plaintiff will not be able to acquire the Stanley County property at issue to satisfy any of the Ohio Judgments. In the latter event, there would be no need to determine if the property still belongs to Defendant.

In the meantime, and before that hearing on the merits of an alleged fraudulent transfer, this court will address whether a preliminary injunction should be issued to preserve the Stanley County property in dispute. If granted, the preliminary injunction would prevent any transference or encumbrance of the property until the legal matters are concluded in the Ohio cases. The previous TROs were put in place to preserve the property temporarily. Should this court grant the Plaintiff's request for a preliminary injunction, that would merely take the place of the TRO and prohibit Defendant and/or his sister, Bessman, from encumbering or transferring the Stanley

County property until the Ohio lawsuits are finalized and the matter herein is determined. Defendant's Motion to Dismiss is therefore denied.

This court also finds that much of what Defendant has filed and discusses in his submissions to the court have no relevance to the issue of whether a preliminary injunction should issue. The court has reviewed the submissions and has given them the consideration they deserve. Again, the Defendant's motion to Dismiss is denied.

Plaintiff's Motions

Plaintiff Motion to disallow Defendant from participating in the Preliminary Injunction hearing is next reviewed. Plaintiff's reasoning for this request is that Defendant stated he no longer owns the property and has admitted to transferring the property. Plaintiff thus concludes that Defendant has no rights to defend at the preliminary injunction hearing. The Court disagrees as this reasoning runs counter to the entire premise of this lawsuit.

SDCL Ch. 54-8A concerns fraudulent transfers. Plaintiff's case is therefore rooted in the argument that Defendant still owns the property despite the transfer to Bessman, and that Plaintiff therefore has the right to access the property to satisfy the docketed judgments once, and if, the Ohio matters are concluded in its favor. Taken as a whole, Plaintiff is stating that Defendant has rights in the property to satisfy Plaintiff's judgments yet has no stake in the preliminary injunction hearing to preserve the status quo of that same property. This reasoning contradicts itself. Plaintiff cannot have it both ways.

The Court finds that Defendant does have standing or a stake in this matter before the court. "[S]tanding is satisfied if the litigant can show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the" other party. *See Arnoldy v. Mahoney*, 2010 SD 89, ¶ 19, 791 N.W.2d 645, 653. Ultimately, should there be a finding of a fraudulent transfer to Bessman, the property would still be Lindstedt's and it could be utilized by Plaintiff to satisfy any valid judgments. This action, thus affects Lindstedt. The court doesn't believe Plaintiff can assert that Defendant has "no interest" at the preliminary injunction proceedings, and then at some point down the road claim Defendant does in fact have ownership interest in the property that can be used to satisfy a judgment. Plaintiff's Motion is therefore denied, and Defendant may participate in the preliminary injunction hearing.

It is worth noting that once Defendant realizes that the preliminary injunction would merely preserve the property from being further transferred and encumbered (but does not resolve the merits of the underlying complaint), Defendant might very well agree that the preliminary injunction should be granted. The preliminary injunction would serve to preserve the property in question, until the Ohio court matters are resolved, and this matter is concluded.

Plaintiff filed a Motion to Extend the TRO preventing Defendant or Bessman from further transferring or encumbering the property. This court takes judicial notice of its prior judgments on this matter, and that Plaintiff has made the requisite showing and certification under 15-6-65(b)(2). Plaintiff's Motion to Extend the TRO is **granted until October 2, 2020**. Plaintiff is directed to submit that order to the court for signing.

Plaintiff's Motion to Strike the exhibits submitted by Defendant is denied. Plaintiff claims that these submissions are violative of SDCL Ch. 15-15A-9 and 16-21A-5. The Clerk may designate any confidential documents as such. As for the remainder of the filings, the court will consider these filings and give them the weight, credibility and consideration it determines they deserve.

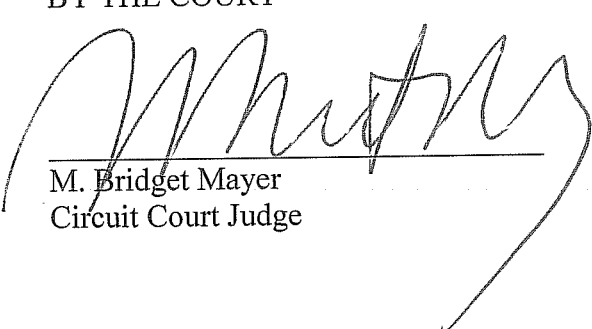
Finally, Plaintiff asks this court to relieve Plaintiff of the obligation to file items on behalf of Defendant. The court previously ordered Plaintiff to do so for the sake of convenience. It is clear that this end is not being met by this arrangement. Therefore, Defendant must henceforth file his own submissions with the Stanley County Clerk of Courts.

With these issues and Motions resolved, the next step in this litigation is to set a hearing on the preliminary injunction. This hearing is to be set prior to the TRO expiring on October 2, 2030.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is DENIED, Plaintiff's Motion Disallowing Defendant from participating in the preliminary injunction hearing is DENIED, Plaintiff's Motion to Strike is DENIED, Plaintiff's Motion to Extend Temporary Restraining Order is GRANTED, and Plaintiff's Motion for Relief of filing for Defendant is GRANTED.

BY THE COURT



M. Bridget Mayer
Circuit Court Judge