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Attorney for Intervenor
Stanley M. Chesley

RELATORS' MOTION FOR EMERGENCY RELIEF

On September 17, 2015, this Court spoke. It granted emergency relief and ordered that the litigation between Intervenor Stanely M. Chesley (“Chesley”) and Waite Schneider Bayless & Chesley Co. L.P.A. (“WSBC”) (collectively, “Intervenor”) on the one hand, and Chesley’s judgment creditors on the other, be stayed. This Court also stayed enforcement of any of the orders issued by Respondent Robert P. Ruehlman (“Respondent”). These stays were to last until this Court resolved Relators’ request for issuance of Writs of Prohibition and Mandamus. That has not yet occurred.

On April 28, 2016, Intervenor filed yet another lawsuit against a subset of Chesley’s judgment creditors. *See* Hamilton County Court of Common Pleas Case No. A1602508. In this complaint, they challenge whether certain classes of Chesley’s judgment creditors are valid holders of the judgment. In their prayer for relief, Intervenor ask the Ohio court to “[g]rant equitable relief against the Defendants continuing efforts to collect money from Chesley on claims they do not own or which have been extinguished as a matter of law.” (*See* Complaint, attached hereto as Exhibit A). Although this request appears to relate to only a subset of Chesley’s judgment creditors, a closer look belies any such assertion. Intervenor have since moved for a preliminary injunction in which they seek to prohibit any Chesley judgment creditor from collecting the judgment. Indeed, the proposed preliminary injunction order tendered by Intervenor reads: “[t]he holders of the Chesley Judgment are enjoined from taking action to collect the Chesley Judgment in Ohio until that judgment is properly transformed into an Ohio judgment and the Court determines it is entitled to enforcement in Ohio.” (*See* Proposed Order, attached hereto as Exhibit B). This is the same relief requested in the action underlying this case—the same issue this Court stayed. (*See* Ex Parte TRO at ¶ 4, attached hereto as Exhibit C)

(“ . . . Ford, the Unknown Respondents and any other person acting on behalf of the Unknown Respondents are preliminary enjoined from taking any action to collect the Chesley Judgment in the State of Ohio . . .”).

Although this case was initially assigned to the monthly equity judge, for reasons that remain unclear, the case was returned to the assignment commissioner. It was then somehow assigned to Respondent. Interestingly, Intervenor, or Chesley individually, have filed three separate lawsuits during the past year and a half, each requesting emergency injunctive relief, and Respondent issued emergency relief in each one. *See* Case nos. A150067 (the case underlying this Action, in which Respondent enjoined domestication of the judgment), A1506294 (the case in which Respondent enjoined enforcement of a valid arrest warrant for Chesley unless Respondent pre-approved the arrest), and A1602508 (the latest action seeking an injunction against collection).

Despite this Court’s clear orders, Respondent has accepted jurisdiction over Case No. A1602508—which involves the same parties and the same issues. Defendants to that case have petitioned Respondent to transfer the case to another judge, but he has not. Instead, he has set the matter for a preliminary injunction hearing on June 22, 2016. He has given no indication that he intends to either recuse or decline jurisdiction over the case.

Respondent’s actions of accepting the case and setting it for preliminary injunction hearing violate this Court’s orders. Last year, this Court instructed Respondent to “stop” hearing litigation involving Intervenor and the judgment creditors involving the enforceability of the judgment against Chesley. That is exactly what Respondent is now doing.

Relators have been left with no choice but to seek this Court’s intervention yet again. Relators respectfully ask this Court to issue an order staying the case currently before

Respondent, Hamilton County Court of Common Pleas Case No. A1602508, including the preliminary injunction hearing set for June 22, 2016.

Respectfully submitted,

s/ Brian S. Sullivan

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*Attorneys for Relator and
Proposed Co-Relator*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on the following individuals via U.S. regular mail on this 20th day of June, 2016:

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*s/ **Brian S. Sullivan***

EXHIBIT A



**TRACY WINKLER
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
April 28, 2016 12:15 PM
TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 493892**

STANLEY M CHESLEY

A 1602508

vs.

**PROBATE ESTATE OF DANNY
LEE ABNEY**

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH NO JURY
DEMAND**

PAGES FILED: 66

EFR200

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Stanley M. Chesley
9005 Camargo Road
Cincinnati, OH 45243

Waite Schneider Bayless & Chesley Co., LPA
1 West Fourth Street, Suite 1513
Cincinnati, Ohio 45202

Plaintiffs,

v.

Probate Estate of Danny Lee Abney
c/o Carol Barnes co-administrator
P.O. Box 42
Irvine, KY 40336

Ronnie Abney co-administrator
1002 Dark Hallow Road
Irvine, KY 40336

Also serve:
William Trude, Esq.
135 Dry Branch Road
Irvine, KY 40336

Probate Estate of Phyllis Applegate
c/o George Applegate, administrator
610 Martin Drive
Richmond, KY 40475

Probate Estate of Alma Brock
c/o Amy Glodo, administrator
253 W. Laurel Road
London, KY 40741

Probate Estate of Wathalee Brumfield
c/o Nathaniel Brumfield
2342 Union City Road
Richmond, KY 40475

: Case No. _____

:
: Judge Ethna Cooper

:
: **COMPLAINT FOR TEMPORARY**
: **RESTRAINING ORDER,**
: **DECLARATORY RELIEF AND**
: **INJUNCTIVE RELIEF**

:
: **PLAINTIFF WAITE SCHNEIDER**
: **BAYLESS & CHESLEY CO., LPA**
: **ALSO SEEK DAMAGES**

:
: This complaint and the related motion for
: temporary and injunctive relief are
: supported by the attached Affidavit of
: James C. Worthington, Sr., Esq.

Also Serve:
Catherine York, Esq.
1409 Pleasant Ridge
Lexington, KY 40509

Probate Estate of Warren Scott Burgess
c/o Marilyn Burgess, administrator
100 Fuller St.
Georgetown, KY 40324

Probate Estate of Clara Lou Fulks
c/o Lois Rushing, administrator
P.O. Box 7
Dycusburg, KY 42038

Also Serve:
James E. Story, Esq.
P.O. Box 216
Eddyville, KY 42038

Probate Estate of Milton Lewis
c/o Joy Perry, administrator
15 Sallie Lyttle Road
Manchester, KY 40962

Also Serve:
Clay M. Bishop, Jr., Esq.
102 Walters Street, Suite 2
Manchester, KY 40962

Probate Estate of Michael Miller
c/o Wilma Coleman, limited guardian
117 Glass Ave.
Lexington, KY 40505

Also Serve:
Angel Miller, administrator
120 Carlisle Ave
Lexington, KY 40505

Probate Estate of Norma Pickett
c/o Jonaka White Hall, Esq.
CW Firm, PLLC
300 10th Ave. South
Nashville, TN 37203

Probate Estate of Sharon Smith
c/o Stephen L. Hogg, Esq.
117 Riverview Drive
Pikeville, KY 41501

Probate Estate of Paul Stauffer
c/o Scott Stauffer, co-administrator
103 Lakeshore Drive
Richmond, KY 40475, and

Eric Stauffer, co-administrator
607 Galata Drive
Lexington, KY 40503

Also Serve:
Elizabeth R. Seif, Esq.
DeCamp Talbott Seif
301 East Main Street, Suite 600
Lexington, KY 40507

Probate Estate of Connie Stephens
c/o Kenneth Stephens, administrator
120 Pug Lane
Berea, KY 40403

Also Serve:
William D. Reynolds, Esq.
P.O. Box 1250
140 West Main St.
Mt. Vernon, KY 40456

Probate Estate of Sharon Stevenson
c/o Leland Stevenson, administrator
3085 Hwy 235
Nancy, KY 42544

Also Serve:
Jay McShurley
126 N. Maple St.
P.O. Box 1827
Somerset, KY 42502

Probate Estate of Marjorie Sudduth
c/o Craig Sudduth, co-administrator
150 Northwood Drive
Frankfort, KY 40342

Shane Sudduth, co-administrator :
315 Eagle Drive :
Lawrenceburg, KY 40342 :

Probate Estate of Ella Jane Tackett :
c/o Sharon Tackett, administrator :
449 Apple Street :
Hazard, KY 41701 :

Probate Estate of Lane Walker :
c/o Charlotte Baker, co-administrator :
63 Forest Hill Road :
Manchester, KY 40962, and :

David Walker, co-administrator :
7148 East Laurel Road :
London, KY 40741 :

Also Serve: :
Joseph C. White, Esq. :
303 Main Street :
Manchester, KY 40962 :

Probate Estate of Martin T. Ward :
c/o Betty Ward, administrator (deceased) :
1105 Gainesway Dr. :
Lexington, KY 40517, and :

Lorraine Pilar Gallion, administrator :
de bonis non :
1105 Gainesway Drive :
Lexington, KY 40517 :

Also Serve: :
Catherine York, Esq. :
1409 Pleasant Ridge Dr. :
Lexington, KY 40509, and :

Dennis A. Bradley, Esq. :
205 N. Upper St. :
Lexington, KY 40507 :

Probate Estate of Gloria M. Williams
c/o Lalaneah Bailey, administrator
1109 Winburn Dr. # 27
Lexington, KY 40511

Ruby Adams
c/o Gloria Little
2322 Highland Ave.
Cincinnati, OH 45212

Marilyn Kaye Barnes
RR #4, Box 274
Monticello, Kentucky 42633

Ms. Carol Boggs
3415 County Road 181
Ironton, Ohio 45638

Linda Brumley
415 W. Mulberry Street
West Union, OH 45693

Ruby Godbey
1134 Terrington Way
Miamisburg, OH 45342

Leona Gail Handley
202 Woodview Drive
Nicholasville, Kentucky 40356

Louisa Moss Howard
3895 Mack Road
Fairfield, OH 45014

Charlotte Louise Hughes
P.O. Box 328
Garrett, Kentucky 41630

Della Mae Jackson
116 Benjamin Lane
London, Kentucky 40741

Betty Kelly Estate
117 West Parkwood
Fairborn, OH 45324

Rebecca Lovell Estate
4591 Miles Drive
Port Orange, FL 32127

Mary Lou White-Lynch
5610 Tiffany Lane
Springfield, OH 45502

Pamela Sue Marlowe
315 West Wyatt Street
Fredonia, Kentucky 42411

Linda Nevels
125 Deuce Lane
Monticello, Kentucky 42633

Rita Profitt-Norman
190 Pavillion Drive
Georgetown, Kentucky 40324

Judith Peck
2233 Riverside Drive, Unit 1A
Cincinnati, OH 45202

Brian Sterling Powell
650 Old Peacock Road, #5
Paris, Kentucky 40361

Billie Jean Reese
16 Marksman Trail
Louisville, Kentucky 40216

Glenna Brock Powell Renner Estate
3909½ Jewell Street
Middletown, OH 45042

Elaine Smith
80 Alfred Drive
West Liberty, Kentucky 41472

Unknown Jane or John Does 1-20
Putative judgment creditors
who filed bankruptcy

Unknown Jill or Jack Smiths 1-25 :
 Judgment creditors who inherited :
 their claim against Chesley or :
 their interest in the Chesley Judgment :
 :
 Defendants. :

COMES NOW Plaintiffs Stanley M. Chesley (“Chesley”) and Waite Schneider Bayless & Chesley Co., LPA (“WSBC”) who assert the following:

INTRODUCTION

Defendants are all allegedly part of a group of 382 persons or entities all of which claim to own an undivided and non-pro rata share of an August 1, 2014 judgment awarded in Kentucky against Chesley. This litigation arises from the inappropriate and illegal efforts of certain of Chesley’s putative judgment creditors to collect that judgment. A description of how that judgment arose and its current status is attached hereto as Appendix A.

PROCEDURAL STATUS

The parties and other interested entities have filed court papers in this matter in five states (seven total state cases), two appellate courts (five cases) and four federal court cases. Judgment collection related activity in all but one of those 16 cases was initiated by judgment creditors. The most relevant of those filings are summarized below.

A. The “Judge Ruehlman Case.” In January of 2015, Chesley initiated *Chesley v. Ford, et al.*, Hamilton County Common Pleas Case No. A1500067 (the “Judge Ruehlman Case”).¹ Chesley’s asserts therein that applicable Ohio law requires the disclosure of certain information before a foreign judgment is used in Ohio (e.g. to support discovery from non-judgment debtor Ohioans), recognized in Ohio (e.g. the basis of a creditor’s bill action) or

¹ Respondent Angela M. Ford (“Agent Ford” herein) has been dismissed from the Judge Ruehlman Case. Agent Ford was and is an agent of Chesley’s judgment creditors.

enforced in Ohio (e.g. for seizure of Ohio property from the judgment debtor). Chesley further asserted that the “Chesley Judgment,” defined below, does not include the required information.

The Judge Ruehlman Case is the subject of a pending proceeding in prohibition and mandamus initiated by then-Respondent Angela M. Ford against Judge Ruehlman on September 4, 2015. *State ex rel. Angela M. Ford, Esq. v. Honorable Robert P. Ruehlman*, Ohio Supreme Court Case No. 2015-1470. At Ford’s request, proceedings in the Judge Ruehlman Case have been stayed since September 17, 2015 (the “Ruehlman Case Stay”).

Plaintiffs are not waiving any of the assertions they made in the Ruehlman Case. None of the claims asserted in the Ruehlman Case are asserted herein.

B. The “Miscellaneous Case”. Defendants and all of Chesley’s other alleged judgment creditors started a Hamilton County Common Pleas miscellaneous case in October 2015. That case is M151179 and was pending before Judge Martin. Because this case is an “M” case under Ohio Revised Code 2319.09, Judge Martin’s jurisdiction is limited and the claims brought in this matter cannot be heard in that case.²

The Miscellaneous Case is now on appeal to the Ohio First District Court of Appeals as case number C160315. Therefore, Judge Martin no longer has jurisdiction over the Miscellaneous Case.

Nothing in this case is intended to prevent the discovery already approved by Judge Martin in the Miscellaneous Case.

² The motion to open the Miscellaneous Case states, in its title, that its purpose is to serve subpoenas and cites R.C. 2319.09 as providing authority for opening the Miscellaneous Case. Ohio courts say that: “We do not view the court’s power under R.C. 2319.09 as extending any further than enforcing the implementation of the foreign discovery order.” *Fischer Brewing Co. v. Flax*, 138 Ohio App. 3d 92, 96, 740 N.E.2d 351, 354 (2000). See also *Thomas v. Rome*, 2013-Ohio-4046, ¶ 22 and *E.I. DuPont de Nemours & Co. v. Thompson*, 29 Ohio App. 3d 272, 274, 504 N.E.2d 1195, 1197 (1986).

STATEMENT OF THIS CASE

In October 2015, Defendants' counsel disclosed that 43 of putative 382 Chesley judgment creditor "plaintiffs" have died and their probate estates are now supposedly among Chesley's 382 judgment creditors. Eighteen of those probate estates are defendants herein, the "KY Probate Estate Defendants." It is Plaintiffs' assertion that the KY Probate Estate Defendants are not Chesley's judgment creditors and their collection action is wrongful.

The situation is similar with the "Bankrupt Defendants," defined below. Those defendants have each been the subject of a federal bankruptcy case; hence, the United States Bankruptcy Code automatically transferred their claims against Chesley to the respective bankruptcy estate. See, 11 U.S.C. Section 522. It is Plaintiffs' assertion that the Bankrupt Defendants may not be among Chesley's judgment creditors, that they do not have standing to assert any claims under the judgment, and that their collection action is wrongful unless they can prove they own part of the Chesley Judgment.³

The KY Probate Estate Defendants and the Bankrupt Defendants and the remaining Defendants are all engaged in the collection activities described herein either as named parties or through their agents as described herein.

Accordingly, Chesley seeks: (i) a declaratory judgment; (ii) a temporary restraining order and (iii) subsequent injunction to prevent collection efforts by putative judgment creditors who, in fact, are not judgment creditors.

Chesley's judgment creditors, including the Defendants, have attempted to collect the Chesley Judgment by seizing the assets of WSBC. This illegal action damaged WSBC. After

³ The standing requirements for the collection of a transferred claim are discussed in a collection of cases related to the foreclosure of transferred mortgages. See, for example, *Federal Home Loan Mortgage Corp. v. Schwartzwald*, 134 Ohio St.3d 13 (2011).

the failure of those efforts in front of two different Nevada judges, the Defendants' Agents initiated those same efforts in multiple federal court cases.

Without domesticating the Chesley Judgment in Ohio, Chesley's judgment creditors have alleged that they have a lien on WSBC's assets in Ohio. WSBC asserts that Defendants' lien assertion is contrary to Ohio law and warrant the award of damages against Defendants.

Defendants, acting in concert with Chesley's other judgment creditors, have abused the discovery process in two states and inappropriately disclosed protected information concerning non-parties. This current activity should be stopped and any future such abuse should be prohibited.

INTRODUCTION

1. Chesley is a resident of Hamilton County, Ohio. WSBC is an existing corporate entity formed under Ohio law that does business solely in Ohio. WSBC's principal place of business is in Hamilton County, Ohio.

2. Defendants each individually assert that it is: (1) a "plaintiff" in litigation styled *Mildred Abbott et al. v. Stanley M. Chesley, et al.* Boone County, Kentucky Circuit Court Case No. 05-CI-00436 (the "Abbott Case"); and (2) one of the Abbott Case plaintiffs who is among Chesley's judgment creditors.⁴ The Abbott Case is not a class action. Each of Chesley's putative judgment creditors holds an individual claim against Chesley.

3. Defendant Carol Boggs ("Boggs") is a resident of Ohio and a putative Chesley judgment creditor. Boggs has claimed publicly that she is one of Chesley's judgment creditors. Boggs' agents have asserted that same fact. Boggs has publicly admitted that she filed a bankruptcy petition.

⁴ All the Abbott Case plaintiffs are clients of Angela M. Ford, Esq. However, not all plaintiffs in the Abbott Case are Chesley's putative judgment creditors.

4. Defendants are all represented by the same several lawyers in certain other litigation related to the Chesley Judgment. Those counselors include Angela M. Ford, Esq. and Brian S. Sullivan, Esq. (individually “Agent Ford” or “Agent Sullivan” and jointly the “Agents”).

5. The amount Chesley allegedly owes to any particular Defendant is unknown. The amount Chesley allegedly owes to any co-owner of the Chesley Judgment is unknown. Chesley reserves the right to assert this and other deficiencies in the Kentucky judgment, *inter alia*, if relevant to jurisdiction or if Defendants seek to domesticate the Kentucky judgment.

6. Acting through Agent Sullivan, Defendants have each taken legal action in Ohio to obtain information that they hope to use to collect the Chesley Judgment.

7. The “KY Probate Estate Defendants” are (i) the Probate estate of Danny Lee Abney, (ii) the Probate estate of Phyllis Applegate, (iii) the Probate Estate of Alma Brock, (iv) the Probate Estate of Wathalee Brumfield, (v) the Probate Estate of Warren Scott Burgess, (vi) the Probate Estate of Clara Lou Fulks, (vii) the Probate Estate of Milton Lewis, (viii) the Probate Estate of Michael Miller, (ix) the Probate Estate of Norma Pickett, (x) the Probate Estate of Sharon Smith, (xi) the Probate Estate of Paul Stauffer, (xii) the Probate Estate of Connie Stephens, (xiii) the Probate Estate of Sharon Stevenson, (ixv) the Probate Estate of Marjorie Sudduth, (xv) the Probate Estate of Ella Jane Tackett, (xvi) the Probate Estate of Lane Walker, (xvii) the Probate Estate of Martin T. Ward, and (xviii) the Probate Estate of Gloria M. Williams. The “KY Probate Estate Defendants” are each a probate estate created by a legal proceeding in Kentucky. The existence of the KY Probate Estate Defendants and their alleged status as an alleged Chesley judgment creditor was disclosed in information that Agent Ford and Defendants’

Nevada counsel recently provided as part of a Nevada legal proceeding attempting to enforce the Chesley Judgment.

8. Acting through Agent Sullivan, Defendant Mary Lou White-Lynch is the putative Chesley judgment creditor who caused the filings in a federal case asserting that she and Chesley's other judgment creditors have a "lien" on the assets of WSBC located in Ohio. As part of that proceeding, Defendant White-Lynch asserted that the Bankrupt Defendants and the KY Probate Estate Defendants are among Chesley's judgment creditors.

9. Defendant Linda Brumley is the putative Chesley judgment creditor who is the writ of prohibition filed against Judge Ruehlman. As part of that writ proceeding, Defendant Brumley asserted that the Bankrupt Defendants and the KY Probate Estate Defendants are among Chesley's judgment creditors.

10. Putative judgment creditor Connie McGirr is the leader of a group of 20 of the 382 judgment creditors who are seeking to collect funds owed to WSBC in order to collect the Chesley Judgment. Agent Sullivan filed pleadings of behalf of Defendant McGirr and her group in two separate federal court cases. One of McGirr's gang of 20 is a person who would qualify as a Bankrupt Defendant and another of McGirr's gang of 20 is a person who would qualify as a KY Probate Defendant; Plaintiffs reserve the right to add those two putative judgment creditors to this action if those claims are not part of the litigation initiated by McGirr and the gang of 20.

11. The judgment against Chesley is in favor of the Abbott Case "plaintiffs" without naming the owners of that judgment. According to Agent Ford's affidavits, 382 of the Abbott Case plaintiffs are Chesley's judgment creditors. According to Agent Ford, the other Abbott Case plaintiffs (who are also Agent Ford's clients) are not Chesley's judgment creditors, despite the fact that Agent Ford asserted claims in the Abbott Case against Chesley on behalf of those

Abbott Case plaintiffs who are not Chesley's judgment creditors. Hence, Defendants cannot prove they are one of Chesley's judgment creditors merely by demonstrating that they are a plaintiff in the Abbott Case.

12. According to Agent Ford's list of 382 judgment creditors filed in Nevada which is verified by her affidavit, each of the Defendants claims to own an undivided and non-equivalent interest in the Chesley Judgment.

13. Defendants Marilyn Kaye Barnes, Carol Boggs, Leona Gail Handley, Charlotte Louise Hughes, Della Mae Jackson, Pamela Sue Marlowe, Linda Nevels, Brian Sterling Powell, Rita Profitt-Norman, Billie Jean Reese, and Elaine Smith are collectively the "Bankrupt Defendants." Except for Defendant Boggs, Chesley used the partial disclosure made by Agent Ford to determine that each Bankrupt Defendant was the debtor in a bankruptcy case in a federal bankruptcy court. For each Bankrupt Defendant, except Defendant Boggs, there is an indication in the public records of the respective bankruptcy case that the supposed Chesley judgment creditor is or was the bankrupt debtor subject to that bankruptcy case.

14. Chesley believes that there are additional members of the 382 supposed judgment creditors identified by Agent Ford who (a) obtained their claim against Chesley via an inheritance or intestacy transfer and whose claim might not have been properly preserved and therefore be legally extinguished or (b) were the subject of a bankruptcy case. These supposed judgment creditors are identified herein as the "Jane or John Doe" or "Jill or Jack Smith," Defendants respectively. These placeholders are inserted into this case so that specific putative judgment creditors can be added to this case as their existence and addresses are determined.

15. The Court has personal jurisdiction over all the parties herein. The Court has subject matter jurisdiction over the issues and claims described herein. Venue of this matter is appropriate in this Court.

**THE KENTUCKY JUDGMENT AGAINST CHESLEY
AND DEFENDANTS' COLLECTION ACTIVITY**

16. On August 1, 2014 the Boone County, Kentucky Circuit Court ("Boone Circuit Court") entered an Order against Chesley in the Abbott Case. That Order awarded the "Chesley Judgment." The Chesley Judgment incorrectly purports to impose on Chesley joint and several liability with three other individuals who suffered a prior judgment in the Abbott Case.

17. Chesley has exercised his right to appeal the Chesley Judgment to the Kentucky Court of Appeals and expects the Chesley Judgment to be reversed. See Appendix A attached. Nothing in this Complaint or any other document filed herein admits that Chesley agrees with any particular finding of fact and conclusion of law that led to the Chesley Judgment. Chesley is NOT asking this Court to void or reverse the Chesley Judgment.

18. The amount of the Chesley Judgment is stated in one gross amount, \$42,000,000. According to Agent Ford's affidavit in Nevada, the amount owed by Chesley to the judgment creditors is now over \$76,000,000, after accounting for over \$17,000,000 that Agent Ford admits she has collected from the other judgment debtors and the accrual of interest from 2002. Agent Ford has collected over \$40,000,000 for the benefit of the Defendants and Chesley's other judgment creditors.

19. Defendants (acting through Agent Ford and Defendants' Nevada counsel) filed two separate domestications of the Chesley Judgment and served in Nevada two separate garnishment writs in an effort to satisfy the Chesley Judgment. Those two garnishments explicitly stated Defendants' intent to seize funds payable to WSBC.

20. As a result of Defendants' actions in Nevada, Plaintiffs were forced to engage Nevada counsel. Plaintiffs' Ohio and Nevada counsel engaged in significant litigation in Nevada. Chesley moved to dismiss Defendants' first effort to domesticate the Chesley Judgment in Nevada. Judge Wiese in Nevada dismissed the Defendants' first domestication effort; while making that ruling, Judge Wiese stated that Defendants could not seize the assets of WSBC.

21. Defendants (through Agent Ford and Nevada counsel) initiated a second domestication of the Chesley Judgment in Nevada and issued a second garnishment writ in Nevada. This second garnishment was again directed at funds payable to WSBC. A different Nevada Judge (Judge Bell) again ruled that Chesley's judgment creditors cannot seize the assets of WSBC. Copies of Judge Bell's initial Decision & Order, as well as her Decision & Order denying Defendants' motion for reconsideration of the initial decision are attached as Exhibits A and B (together, the "Nevada Decisions"). The Nevada Decisions are final orders. The Nevada Decisions concluded, among other things, that the Chesley Judgment and subsequent Kentucky orders are not enforceable against WSBC.

22. Defendants (through Agent Sullivan) have taken action in Ohio to seek discovery that is supposedly intended to identify assets of Chesley against which Defendants could collect the Chesley Judgment. This discovery is addressed to third parties. See the several subpoenas issued in the Miscellaneous Case.

A. At a March 11, 2016 hearing during the Miscellaneous Case, Judge Martin stated that "The evidence that's collected is supposed to be confidential; it's not to be placed into the public record without order of the Court."

B. Pursuant to a subpoena issued in the Miscellaneous Case, on March 15, 2016, Chesley's judgment creditors, including the Defendants, conducted a deposition of Mr. Thomas Rehme, the trustee who now legally owns WSBC.

C. In violation of Judge Martin's instructions, Agent Sullivan acting for the Defendants has placed portions of Mr. Rehme's testimony into the public record in more than one court. Defendants should be ordered to file a motion in each case where improper information was placed into the public record that removes that information from the public record.

23. Defendants, acting through Agent Ford and local counsel, have taken steps to domesticate the Chesley Judgment in Louisiana and Colorado. The express purpose of those filings is to seize the income of WSBC. Agent Ford has stated Defendants' intent to use the Chesley Judgment to seize certain funds in Colorado that may become payable to WSBC.

24. Defendant Boggs asserts in court filings, in the press and in open court that she is one of Chesley's judgment creditors. That statement may be legally incorrect.

25. Any amount paid to any of the Bankrupt Defendants on account of the Chesley Judgment after each persons' bankruptcy case was filed may not belong to that defendant and might be subject to transfer to the rightful owner.

ALL FOR ONE AND ONE FOR ALL

26. Through Agent Sullivan, Defendant Mary Lou White-Lynch is asking Judge Carr of the United States District Court, Northern District of Ohio to seize certain funds and direct those funds to Agent Ford, presumably for the benefit of all of Chesley's judgment creditors including the Defendants.

27. At all relevant times, the funds at issue in the Judge Carr Case were the property of WSBC.

28. In his filings asking for this relief, Agent Sullivan asserted to federal court Judge Carr that he is acting on behalf of only one of Chesley's judgment creditors, Defendant White-Lynch. Similarly, the writ of prohibition case against Judge Ruehlman (discussed above) is also being pursued by Agent Sullivan on behalf of only one of Chesley's judgment creditors, Defendant Brumley.

29. Despite being only one of 382 alleged Chesley judgment creditors, Defendant White-Lynch has never presented to Judge Carr an amount owed just to White-Lynch or any other amount less than the total amount of the Chesley Judgment.

30. Despite being only one of 382 alleged Chesley judgment creditors, Defendant Brumley in the writ of prohibition case before the Ohio Supreme Court has never presented to the Ohio Supreme Court an amount owed to only Defendant Brumley or any other amount less than the total amount of the Chesley Judgment.

31. Acting through Agent Sullivan, McGirr leads a group of 20 supposed Chesley judgment creditors (including one who is in the same position as the KY Probate Estate Defendants and one who is in the same position as the Bankrupt Defendants), who have initiated a fraudulent conveyance action against Plaintiffs and Rehme. See, *McGirr et al. v. Rehme, et al.*, U.S.D.C. S.D. Ohio Case No. 1:16-cv-464.

32. Despite being only twenty of 382 alleged Chesley judgment creditors, McGirr and her group have not alleged an amount allegedly owed to only the twenty plaintiffs in the *McGirr et al. v. Rehme, et al.*, U.S.D.C. S.D. Ohio Case No. 1:16-cv-464 or any other amount less than the total amount of the Chesley Judgment.

33. The amount supposedly owed to any individual owner of the Chesley Judgment has not been disclosed by the Defendants or their several counsel in Kentucky, Ohio, Nevada, Louisiana or Colorado.

34. One co-owner of the Chesley Judgment Mary White-Lynch, acting through their mutual agent, is asserting that she is entitled to enforce the entire amount of the Chesley Judgment against the property that she seeks to seize through her filings before Judge Carr. Chesley believes, but does not know for certain, that Mary White-Lynch intends to share any funds she obtains through her efforts with Judge Carr amongst all of Chesley's supposed judgment creditors including those Defendants who may not actually be Chesley's judgment creditors. As putative co-owners of the Chesley Judgment, Defendants presumably know how Defendant White-Lynch and their mutual agent, Agent Sullivan, are using the Chesley Judgment in filings before Judge Carr.

35. McGirr and her gang of 20, acting through Agent Sullivan, are asserting that they are entitled to enforce the entire amount of the Chesley Judgment against the property that she seeks to seize through her filings before Judge Cleland. Chesley believes, but does not know for certain, that McGirr intends to share any funds she obtains through her efforts amongst all of Chesley's supposed judgment creditors including those Defendants who may not actually be Chesley's judgment creditors.

36. As putative co-owners of the Chesley Judgment, Defendants presumably know how Defendant Brumley and their mutual agent, Agent Sullivan, are using the Chesley Judgment in filings before the Ohio Supreme Court.

37. As putative co-owners of the Chesley Judgment, Defendants presumably know how McGirr and her Gang of 20 and their mutual agent, Agent Sullivan, are using the Chesley Judgment in federal court.

38. Under Ohio principal / agent law, Defendants collectively are charged with knowledge of, and responsibility for, (i) judgment domestications and garnishment writ filings in Nevada by Agent Ford, (ii) domestication filings in Colorado or Louisiana, and (iii) the above-described actions in Ohio because all those actions were taken by the Agent Sullivan on Defendants' behalf using property in which the Defendants claim an undivided and non-*pro rata* ownership interest, the Chesley Judgment.

EFFORTS TO COLLECT EXTINGUISHED / TRANSFERRED DEBTS

39. In her Nevada affidavit, Agent Ford has listed each of the KY Probate Estate Defendants as one of Chesley's judgment creditors. Although not explained by Agent Ford, Chesley presumes that the KY Probate Estate Defendants are each asserting that it succeeded to a decedent's claim against Chesley and is now one of the Abbott Case "Plaintiffs" who is a Chesley Judgment creditor.

40. Kentucky law has certain rules that must be met when a probate estate wants to be substituted as a plaintiff in pending litigation and assert a tort claim owned by a decedent. If those rules are not followed within one year after the original claimant's death, the claim is extinguished as a matter of Kentucky law. The Kentucky Practice treatise explains the basic rule as follows:

When a party to litigation pending in a Kentucky court dies, the action is abated unless and until the action is revived by substituting the decedent's representative. The provisions of KRS 395.278 direct that the "application to revive an action in the name of the representative or successor of a plaintiff, or against the representative or successor of a defendant, shall be made within one (1) year after the death of a deceased party." KRS 395.278

is "a statute of limitation, rather than a statute relating to pleading, practice or procedure, and the time limit within this section is mandatory and not discretionary" and, therefore, neither a court nor a party may extend the one-year statute of limitations. If an action is not revived against the administrator of the decedent's estate and the administrator substituted as the real party in interest within one year of a defendant's death, the action must be dismissed. Whether an action has been timely revived is a matter of law. In one case, an executor for the estate was duly appointed and the estate was admitted to probate. However, timely application to revive the civil action against the decedent's representative was not filed. As stated in the trial court's order, "[a]bsent the showing of some act or conduct which misleads or deceives the plaintiff the action must be dismissed.

2 Ky. Prac. Prob. Prac. & Proc. § 1891 (citations omitted). The same legal rule applies with equal force to plaintiffs who die while the action is pending. See the attached Affidavit of James C. Worthington, Sr., Esq.

41. The proper procedure for reviving an action is by filing a motion under Kentucky Civil Rule 25.01 in the case where the substitution of parties is desired, here the Abbott Case. After the application is filed, the Boone Circuit Court must enter an order substituting the probate estate as a party and reviving the action within the one year statute of limitations. The purported successor plaintiffs [the KY Probate Estate Defendants] cannot simply provide notice of its ownership of a claim and substitution as a party plaintiff.

42. The Abbott Case's docket in the Boone Circuit Court does not reveal the entry of any order(s) substituting the KY Probate Estate Defendants, or any of them, as plaintiffs in the Abbott Cases and reviving claims of the KY Probate Estate Defendants against Chesley. The KY Probate Estate Defendants each failed to comply with Kentucky Civil Rule 25.01 and Kentucky Revised Statute 395.278 and those failures are fatal to the claims of the KY Probate Estate Defendants' causes of action against Chesley.

43. Despite the fact that they do not own a legally cognizable claim against Chesley or WSBC, acting through the Agents, each of the KY Probate Estate Defendants continues to assert otherwise through filings in multiple states, including Nevada and Ohio.

44. Chesley is entitled to have the total of the Chesley Judgment reduced by the amount supposedly owed to the KY Probate Estate Defendants because their claims have been legally extinguished.

45. The KY Probate Estate Defendants should be directed: (i) to account for all funds they received on account of their alleged interest in the Chesley Judgment; and (ii) to transfer to the rightful owners (maybe the remaining owners of the Chesley Judgment) any funds paid to them on account of the Abbott Case after the claim of that particular KY Probate Estate Defendant was extinguished. Chesley is not asking for this relief because he has no right to those funds.

46. The Bankrupt Defendants⁵ may not be the owner(s) of any claim against Chesley because their claims (or their respective interests in the Chesley Judgment) were transferred to a bankruptcy estate. The Bankrupt Defendants' continuing efforts to collect money from Chesley are wrongful unless they can show they own the claims against Chesley.

47. Any money paid to a particular Bankrupt Defendants after each persons' bankruptcy case was filed should be accounted for and transferred to the proper owner of that claim; if that transfer does not occur, those persons who are jointly liable on judgments entered in the Abbott Case (including Chesley) may be exposed to excess liability since improper payments to the Bankrupt Defendants might not reduce the amount of the Chesley Judgment.

⁵ Chesley has reason to believe up to 34 of Chesley's 382 alleged judgment creditors (as disclosed by Agent Ford) may have filed bankruptcy and may no longer have an interest in the Chesley Judgment because their claims against Chesley were transferred to their respective bankruptcy estates. See 11 U.S.C. Section 522. The current Bankrupt Defendants are some of the up to 34 transferor former judgment creditors.

48. There may be more of the 382 alleged judgment creditors whose personal situation means they should be included as Bankrupt Defendants. Chesley will request that these persons be added to this case as their identity and address is discovered and that those supposed judgment creditors be treated as Bankrupt Defendants.

49. There may be more of the 382 alleged judgment creditors who obtained their claim against Chesley or interest in the Chesley Judgment from a deceased person. After those identities and addresses are discovered, Chesley will try to determine if the supposedly transferred claim was properly preserved and transferred. If not, Chesley will request that these persons be added to this case and that they be treated as a KY Probate Defendant.

ILLEGAL EFFORTS TO SEIZE THE ASSETS OF WSBC

50. WSBC is not a party to the Abbott Case and is not a judgment debtor.

51. Agent Ford filed motions in the Abbott Case asking the Boone Circuit Court to declare that it could collect the Chesley Judgment against the assets of WSBC. Not surprisingly, those two motions were granted because WSBC was not a party to the Abbott Case and so could not oppose those motions.

52. Defendants and all the other judgment creditors are seeking to seize the assets of WSBC. Those efforts have been made in Ohio and Nevada and are threatened in Colorado and Louisiana.

53. Defendants and all the other judgment creditors were unsuccessful in Nevada when they tried to seize the assets of WSBC in Nevada using the two Kentucky orders. Three different statements from two different Nevada judges declare that the assets of WSBC cannot be seized to satisfy the Chesley Judgment using the two Kentucky orders. The Nevada Decisions are *res judicata* on the issues decided therein and as final orders all the judgment creditors (including the

Defendants), WSBC and Chesley were parties to the Nevada action. A copy of the third decision analyzing Nevada and Kentucky law is attached as Exhibit C.

54. The Nevada Decisions hold that under Kentucky and Nevada law, the two Kentucky orders cannot be enforced against WSBC because they violate WSBC's due process rights on account of the fact that WSBC was never made a party in the Abbott Case and never received notice of Defendants' efforts to attack WSBC's assets.

55. Acting through Agent Sullivan, Defendants continue their efforts to seize the assets of WSBC. Said efforts are taking place in the Judge Carr Case and the Fraudulent Conveyance Action.

56. Defendants' actions constitute trespass and attempted conversion of the specific assets of WSBC that they have sought to seize.

57. Defendants' actions tortuously interfered with WSBC's contractual relationship with those entities on which Defendants' served a garnishment order in an effort to seize the assets of WSBC.

58. WSBC was and continues to be damaged by Defendants' actions described in this complaint.

59. WSBC is entitled to a declaration that the two Kentucky orders do not create a lien under Ohio law on the assets of WSBC. This exactly what the Nevada judges decided is the law for liens in Nevada under either Nevada or Kentucky law. WSBC also is entitled to a declaration that the Chesley Judgment and the two Kentucky orders are not enforceable against WSBC or its assets.

ABUSIVE DISCOVERY

60. Defendants' collection tactics include an effort to abuse Chesley's family and friends and to harass innocent third-parties who do business with Chesley or WSBC. This effort includes subpoenaing bank account records of Chesley's spouse and service of multiple subpoenas on the same third parties (banks and accounting firms).

61. Defendants have served multiple sets of discovery on Chesley.

62. For several years, an agreed protective order was in place in Kentucky to protect the financial information provided to Defendants pursuant to the (i) multiple sets of discovery requests served on Chesley and (ii) the at least twelve subpoenas served on third parties (banks, insurers and accountants). This order was very important because Defendants have sought and received information concerning several third-parties.⁶

63. Recently, Defendants acting through Agent Ford sought and obtained an order in the Abbott Case that eviscerated the agreed protective order in that case. WSBC and all third-parties from Ohio whose information has been sought or obtained by the Defendants are entitled to injunctive relief providing protection of their private information. This protection should include an injunction preventing the Defendants from placing into the public record any information obtained through discovery authorized in the Miscellaneous Case.

64. WSBC and all third-parties from Ohio whose information has been sought or obtained by the Defendants are entitled to injunctive relief providing protection from multiple subpoenas issued by the Agents on behalf of Chesley's judgment creditors (including the Defendants) in an effort to discovery information that might be used to collect the Chesley Judgment.

⁶ Defendants discovery of this information has been conducted by Agent Ford in violation Ky Rule of Civil Procedure which requires that the third parties whose information is sought be given notice of the subpoenas served by Agent Ford.

65. The Agents disclosure of Rehme's testimony in violation of Judge Martin's directions occurred before the expiration of Rehme's opportunity to review his testimony and correct same using an *errata* sheet as provided by Ohio law. Defendants should be ordered to supplement their filings to include that *errata* sheet so that Rehme's testimony is complete.

RELIEF REQUESTED HEREIN

66. Chesley is entitled to a declaratory judgment stating that the KY Probate Estate Defendants are not his Judgment Creditors and that their claims against him have been extinguished.

67. Chesley is entitled to a temporary restraining and subsequent injunction requiring the Defendants and their agents to cease all efforts to collect money from Chesley.

68. Chesley is entitled to an order requiring the KY Probate Estate Defendants to disclose: (i) the amount of the \$42,000,000 Chesley Judgment and the supposed current total [over \$76,000,000] owed to each of those Defendants so that those amounts can be removed from the total judgment amount and the supposed current debt can be recalculated (including a recalculation of the interest on the Chesley Judgment). Chesley is entitled to an order directing the KY Probate Estate Defendants to correct the filings in Nevada, Colorado, Louisiana and Ohio to state the correct number of judgment creditors and the proper (reduced) amount allegedly owed by Chesley.

69. Chesley is entitled to a restraining order and injunction preventing the Bankrupt Defendants from continuing their efforts to collect the Chesley Judgment unless they can demonstrate that they are actually co-owners of the Chesley Judgment.

70. WSBC is entitled to a temporary restraining order and subsequent injunctive relief to prevent the continuing improper conduct described herein.

71. WSBC is entitled to money damages to compensate it for the improper conduct described herein.

PRAYER FOR RELIEF

WHEREFORE: Plaintiffs pray the Court for orders and judgments that:

1. Grant equitable relief against the Defendants continuing efforts to collect money from Chesley on claims they do not own or which have been extinguished as a matter of law;
2. In a motions filed simultaneously with the Complaint, Plaintiffs seek a temporary restraining order that (i) grants the equitable relief described above and directs immediate correction of any filing actively now under consideration by any court and (ii) orders the Defendants not to destroy any documents relevant to the facts and claims asserted herein;
3. Any other relief to which Chesley is entitled;
4. WSBC is entitled to equitable relief preventing the Defendants and their agents from asserting a lien on or seeking to seize the assets of WSBC;
5. WSBC is entitled to an award of damages against the Defendants in an amount determined by the Court; and
6. Any other relief to which WSBC is entitled.

Respectfully submitted:

/s/ Vincent E. Mauer
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Counsel for Stanley M. Chesley

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Respectfully submitted:

/s/ Donald J. Rafferty
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*Counsel for Waite Schneider Bayless &
Chesley, Co., LPA*

APPENDIX A TO COMPLAINT

Chesley is not asking this Court to void the Chesley Judgment or to block enforcement of the Chesley Judgment against Chesley's assets. Chesley believes, however, that it is important for the Court to appreciate the reason for his confidence that the Chesley Judgment will be reversed. For that reason, Chesley provides the following background:

A. In the late 1990s, Kentucky attorneys Messrs. Cunningham, Gallion and Mills ("CGM") initiated pharmaceutical product liability related litigation over the weight loss drug Fen-phen. CGM represented several hundred plaintiffs. That litigation was pending in Boone County when CGM approached Chesley for help negotiating a settlement. In return for that assistance, CGM agreed to pay Chesley 20% of their attorney fees. Chesley was then a well known and successful plaintiffs' counsel in mass tort actions. With Chesley's help, the defendants raised their settlement offer from about \$50,000,000 to \$200,000,000.

B. CGM were responsible for securing approval of the settlement and distributing funds to their clients. Unknown to Chesley, CGM stole a portion of the \$200,000,000 from their clients.

C. In 2005, the Abbott Case was initiated by most of CGM's clients. In 2007, Agent Ford won a \$42,000,000 joint and several money judgment against CGM. The judgment against CGM was awarded on a summary judgment motion filed by Agent Ford in the Abbott Case. At the same time, Boone Circuit Court Judge Weir denied the summary judgment sought by Agent Ford against Chesley. Judge Weir stated "[t]he rationale of the previously entered partial summary judgment [against CGM] does not apply to" Chesley.

D. CGM appealed the summary judgment against them and Ford appealed the denial of summary judgment against Chesley. The Kentucky Court of Appeals reversed the entry of summary judgment against CGM and again denied summary judgment against Chesley.

E. The Abbott Case plaintiffs, including the Defendants, appealed to the Kentucky Supreme Court. The Kentucky Supreme Court reinstated summary judgments against CGM and again denied summary judgment against Chesley. The 2013 Kentucky Supreme Court's *Abbott et al. v. Chesley et al.*, 413 S.W.3d 589 (K.Y. Dec. 2013) states:

Appellants also contend that the joint and several liability of CGM [Cunningham, Gallion and Mills] should extend to Chesley because he acted in concert with CGM. We decline the invitation to do so. . . . Chesley's role in the enterprise clearly differed from that of Cunningham, Gallion, or Mills. The agreement itself seems to treat him differently.

F. Unlike Chesley, CGM were accused of federal crimes for their actions that form the basis of the Abbott Case. Cunningham and Gallion were convicted of federal crimes. An evidence admission decision of the United States District Court Judge who presided over the second criminal trial sheds further light on Chesley's innocent actions. During a bench conference, trial counsel for the United States, Ms. Voorhees stated "Your Honor, we have never identified Mr. Chesley as a co-conspirator." After that statement, the federal judge considered all the evidence thus far introduced in the criminal trial and declined to admit certain evidence that would have been admissible if Chesley had conspired with CGM. In other words, the federal trial judge hearing CGM's criminal case knew that Chesley was not in league with those criminal defendants.

G. The Kentucky Bar Association initiated disciplinary proceedings against Chesley. The Kentucky Bar Association determined that Chesley be disbarred and that he be ordered to pay restitution of \$7,555,000.

H. Chesley's disbarment proceeding came before the Kentucky Supreme Court in March 2013 which is before that same court denied the Abbott Case plaintiffs' motion for summary judgment against Chesley (see discussion above). The Kentucky Supreme Court affirmed the decision to disbar Chesley. *Kentucky Bar Association v. Chesley*, 393 S.W.3d 584 (K.Y. Mar. 2013). That decision did not cause the Kentucky Supreme Court to later grant summary judgment against Chesley.

I. In 2014, without any further discovery, the Abbott Case plaintiffs brought another summary judgment against Chesley. This time, the motion was heard by Judge Schrand. The Abbott Case plaintiffs asserted against Chesley joint and several liability with CGM on the 2007 judgment in the amount of \$42,000,000.

J. Judge Schrand entered the Chesley Judgment in August 2014. The Chesley Judgment is based solely on the principal of collateral estoppel and holds that the Kentucky Supreme Court decided all the factual issues necessary to establish Chesley's liability to the Abbott Case plaintiffs when the Kentucky Supreme Court considered disciplinary action against Chesley. Judge Schrand made this decision despite the fact that the Kentucky Supreme Court refused to award summary judgment against Chesley after that court's disbarment decision. For unknown reasons, Judge Schrand did not reduce the \$42,000,000 face amount of the 2007 judgment despite the fact that Agent Ford collected and distributed over \$37,000,000 in the Abbott Case.

K. Judge Schrand of the Boone Circuit Court crocheted together Chesley and CGM despite the fact that Judge Weir and the Kentucky Supreme Court said their situations are different. Judge Schrand's decision against Chesley is an anomaly that is contrary to the conclusions of Judge Weir, the Kentucky Court of Appeals and the Kentucky Supreme Court.

EXHIBIT A

CLERK OF THE COURT

1 DAO

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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MILDREDABBOTT,

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Plaintiff,

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us.

Case No. A-15-726616-F

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STANLEY M. CHESLEY,

Dep't No. VII

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Defendant.

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DECISION AND ORDER

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This case arises from a judgment obtained by Plaintiff Mildred Abbott against Defendant Stanley Chesley in Kentucky case 05-CI-00436. Now before the Court is Third Party Claimant Waite Schneider Bayless & Chesley's ("WSBC") Petition to Determine Title in Property Subject to Wrongful Attachment and Third Party Castano Directed Distribution Trust's ("Castano Trust") Motion to Interplead. The matter came before the Court on February 2, 2016. The Court grants WSBC's Petition to Determine Title and finds that Abbott's judgment against Chesley in case 05-CI-00436 cannot be used to garnish WSBC's interest in the Castano Trust. The Court denies Castano Trust's Motion to Interplead as moot.

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I. Procedural and Factual Background

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Chesley used to be an attorney licensed to practice in Ohio. He was the sole owner of WSBC. In 2013, Chesley was disbarred based on allegations that he improperly retained funds that should have gone to his client. Chesley transferred ownership of WSBC in a Wind-Up Agreement in April of 2013. Abbott and other Plaintiffs (hereinafter referred to as "Abbott") obtained a second amended judgment against Chesley in Kentucky case 05-CI-00436 on October 22, 2014 based on the same circumstances that lead to Chesley's disbarment. Abbott did not name WSBC as party to the action.

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LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 Abbott filed a motion to transfer beneficial interest in the Castenado Trust in case
2 05-CI-00436. Abbott asserted that Chesley maintained a beneficial interest in WSBC. On
3 June 23, 2015, the Kentucky Court ordered Chesley to transfer his beneficial interest in
4 WSBC and any payments derived from that interest to Abbott.

5 Abbott subsequently filed a motion to execute. Abbott argued that Chesley failed to
6 comply with the Kentucky Court's June 23, 2015 order. Chesley argued that he no longer
7 had in interest in WSBC. The Kentucky Court issued an order on September 25, 2015. The
8 Kentucky Court found that "the Wind-Up Agreement in a sham, and that Defendant
9 Chesley continues to control and direct WSBC" and disregarded WSBC's corporate identity.
10 The Kentucky Court essentially ruled that Chesley was an alter ego of WSBC, though it
11 never used that term. The Kentucky Court ordered Chesley to transfer his interest in WSBC
12 and any payments derived from that interest to Abbott. The order specifically addressed
13 the Castano Trust, which makes periodic transfers to WSBC's account for fees earned in
14 past cases involving the tobacco industry. The Kentucky Court ordered Chesley to direct
15 the Castano Trust "that all payments to which [Chesley] and/or WSBC are entitled from the
16 Castano Trust shall be paid directly to Plaintiff counsel." WSBC was never named a party to
17 case 05-CI-00436 and did not have an opportunity to argue to the Kentucky Court that it
18 was not an alter ego of Chesley.

19 On October 22, 2015, Abbott filed an application of foreign judgment in the instant
20 case. The application was made in Nevada because it is where Castano Trust is located.
21 Abbott seeks to garnish funds from the Castano Trust that are due to be paid to WSBC.
22 WSBC was not named as a party in the instant case. On January 8, 2016, Castano Trust
23 filed a motion to interplead WSBC as a defendant.

24 On January 13, 2016, WSBC filed its petition to determine title to WSBC's interest in
25 the Castano Trust. WSBC argues its interest in the Castano Trust is WSBC's sole property
26 and Chesley has no interest in the Castano Trust. Abbott filed a response on January 29,
27 2016, arguing that under the Kentucky Court's order, Chesley and WSBC are alter-egos of
28 each other, and Chesley is a personal beneficiary of the Castano Trust.

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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II. Discussion

“Only property owned by the judgment debtor is subject to garnishment...” Brooksby v. Nev. State Bank, 312 P.3d 501, 502 (Nev. 2013). “If the property levied on is claimed by a third person as the person’s property... the plaintiff or the third-party claimant is entitled to a hearing within 10 days therefrom before the court having jurisdiction of the action, in order to determine title to the property in question, which hearing must be granted by the court upon the filing of an application or petition therefor.” NRS 31.070.

In order for a Court to find that parties are alter egos, “[t]here must be such unity of interest and ownership that one is inseparable from the other.” Truck Ins. Exch. v. Palmer J. Swanson, Inc., 189 P.3d 656, 660 (Nev. 2008). Alter egos are liable for each others’ debts because “adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice.” Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 886 (Nev. 1987).

The procedure for determining whether parties are alter egos, and thus co-judgment debtors, appears to be similar, if not identical, in Nevada and Kentucky. In Nevada, “a defendant who is subject to a judgment creditor’s alter ego claim must receive, in an independent action, formal notice, service of process, an opportunity to conduct discovery, fact-finding, and an opportunity to be heard, before the claim is resolved.” Callie v. Bowling, 160 P.3d 878, 879-81 (Nev. 2007). In Kentucky, it is also proper to secure a judgment against one debtor and then bring “a piercing suit” against potential alter egos. Inter-Tel Techs., Inc. v. Linn Station Properties, LLC, 360 S.W.3d 152, 168 (Ky. 2012). Both states require that notice be given before a court determines that individuals or entities are alter egos.

In the instant case, Abbott failed to give WSBC notice that WSBC was a potential alter ego of Chesley until the Kentucky Court already ruled on the issue. WSBC was not named as a party in Kentucky case 05-CI-00436. Abbott did not bring any separate action against WSBC to assert that Chesley and WSBC are alter egos. The Kentucky Court made

1 an alter ego determination in a case with no way for WSBC to assert a defense against
2 Abbott's claims.

3 The Court cannot extend full faith and credit to an order resulting from a lack of due
4 process. "The full faith and credit clause of the United States Constitution requires that a
5 final judgment entered in a sister state must be respected by the courts of this state absent a
6 showing of fraud, lack of due process or lack of jurisdiction in the rendering state." Mason
7 v. Cuisenaire, 128 P.3d 446, 448 (Nev. 2006) (quoting Rosenstein v. Steele, 747 P.2d 230,
8 231 (Nev. 1987).

9 The Court finds that respecting the Kentucky Order declaring Chesley and WSBC to
10 be alter egos would create a due process violation in this case. Abbott asks this Court to
11 apply an order entered solely against Chesley to deprive a nonparty of its property. The
12 Court grants WSBC's petition and determines that WSBC's interest in the Castano Trust is
13 not subject to garnishment by Abbott. WSBC's interest in the Castano Trust is its sole
14 property. Abbott may attach funds distributed to Chesley individually, not funds
15 distributed to WSBC.

16 **III. Conclusion**

17 The Court grants WSBC's Petition to Determine Title and finds that Abbott's
18 judgment against Chesley in case 05-CI-00436 cannot be used to garnish WSBC's interest
19 in the Castano Trust. Because this Order removes the conflict regarding title to funds held
20 by the Castano Trust, the Court denies Castano Trust's Motion to Interplead as moot.

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DATED this 11 day of February, 2016.



LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
John W. Mujie, Esq. John W. Mujie & Associates Angela Ford, Esq.	Counsel for Mildred Abbott
Brian D. Shapiro, Esq. Brian D. Shapiro, LLC	Counsel for Stanley Chesley
Thomas Fell, Esq. Fennemore Craig, P.C.	Counsel for Castano Directed Distribution Trust
Will Kemp, Esq. Kemp, Jones & Coulthard, LLP Donald J. Rafferty, Esq. Cohen, Todd, Kite & Stanford, LLC	Counsel for Waite Schneider Bayless & Chesley Co.

SHELBY DAHL
LAW CLERK, DEPARTMENT VII

AFFIRMATION

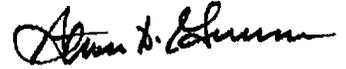
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A626616 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell Date 2/10/16
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

EXHIBIT B



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DAO

EIGHTH JUDICIAL DISTRICT COURT CLERK OF THE COURT
CLARK COUNTY, NEVADA

MILDRED ABBOTT,

Plaintiff,

vs.

STANLEY M. CHESLEY,

Defendant.

Case No. A-15-726616-F

Dep't No. VII

DECISION AND ORDER

This case arises from a judgment obtained by Plaintiff Mildred Abbott against Defendant Stanley Chesley in Kentucky case 05-CI-00436. On February 11, 2016, the Court ruled Abbott's judgment against Chesley in case 05-CI-00436 cannot be used to garnish Waite Schneider Bayless & Chesley's ("WSBC") interest in the Castano Directed Distribution Trust ("Castano Trust"). Now before the Court is Abbott's Motion to Reconsider the Court's Ruling Dated February 11, 2016. This matter was scheduled to come before the Court on March 8, 2016. The Court now rules on the motion without an oral hearing pursuant to EDCR 2.23(c). The Court denies Abbott's Motion to Reconsider. The Court also grants Abbott's Motion to Seal Exhibits 8 and 9 to Abbott's response to WSBC's petition to determine title in property. The Court vacates the hearing currently set for April 12, 2016.

I. Procedural and Factual Background

Chesley was the sole owner of WSBC before April 2013, when he transferred ownership of WSBC in a Wind-Up Agreement. Abbott and other Plaintiffs (hereinafter referred to as "Abbott") obtained a judgment against Chesley in Kentucky case 05-CI-00436 on October 22, 2014. Abbott did not name WSBC as party to the action.

On June 23, 2015, the Kentucky Court ordered Chesley to transfer his beneficial interest in WSBC and any payments derived from that interest to Abbott. Chesley argued

HEARING DATE
ALREADY ENTERED

MAR 31 2016



LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

1 that he no longer had in interest in WSBC. The Kentucky Court issued an order on
2 September 25, 2015, ruling "the Wind-Up Agreement in a sham, and that Defendant
3 Chesley continues to control and direct WSBC" and disregarding WSBC's corporate
4 identity. The Kentucky Court essentially ruled that Chesley was an alter ego of WSBC,
5 though it never used that term. The order specifically addressed the Castano Trust, which
6 makes periodic transfers to WSBC's account. The Kentucky Court ordered Chesley to direct
7 the Castano Trust "that all payments to which [Chesley] and/or WSBC are entitled from the
8 Castano Trust shall be paid directly to Plaintiff counsel." WSBC was never named a party
9 to case 05-CI-00436 and did not have an opportunity to argue to the Kentucky Court that it
10 was not an alter ego of Chesley.

11 On October 22, 2015, Abbott filed an application of foreign judgment in the instant
12 case. The application was made in Nevada, where Castano Trust is located. Abbott seeks to
13 garnish funds from the Castano Trust that are due to be paid to WSBC. WSBC was not
14 named as a party in the instant case. On January 8, 2016, Castano Trust filed a motion to
15 interplead WSBC as a defendant. On January 13, 2016, WSBC filed its petition to
16 determine title to WSBC's interest in the Castano Trust.

17 On February 11, 2016, the Court ruled that enforcing the Kentucky Order declaring
18 Chesley and WSBC to be alter egos would create a due process violation in the instant case.
19 WSBC did not receive notice of the Kentucky case that found Chesley and WSBC to be alter
20 egos. The Kentucky Court made an alter ego determination in a case with no way for WSBC
21 to assert a defense against Abbott's claims. WSBC's interest in the Castano Trust is its sole
22 property. The Court found Abbott may attach funds distributed to Chesley individually, not
23 funds distributed to WSBC.

24 On February 22, 2016, Abbott filed a motion to reconsider the February 11, 2016
25 Decision. Abbott argues the Decision was erroneous because it misapplied the law to
26 Abbott's claims. WSBC filed an opposition on March 7, 2016, asserting Abbott was merely
27 rearguing issues already ruled on by the Court. Abbott argued additional grounds for
28 reconsideration in its reply, filed on March 8, 2016.

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II. Discussion

A. Motion to Seal

Abbott filed a response to WSBC's petition to determine title to WSBC's interest in the Castano Trust on January 29, 2016. The response contains exhibits Abbott now moves to have sealed. Exhibits 8 and 9 are financial documents containing confidential information such as account numbers.

Nevada Supreme Court Rule Part VII governs the sealing of Court records. The Court may seal records when there are compelling circumstances. The sensitive financial information within the exhibits justifies sealing these Court records. In addition, Abbott's motion to seal was unopposed. See EDCR 2.20(e). Therefore, the Court grants Abbott's motion to seal Exhibits 8 and 9.

B. Motion for Reconsideration

Reconsideration is only appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, 941 P.2d 486, 489 (Nev. 1997). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." Moore v. City of Las Vegas, 551 P.2d 244, 246 (Nev. 1976). "Rehearings are not granted as a matter of right, and are not allowed for the purposes of reargument..." Geller v. McCowan, 178 P.2d 380, 381 (Nev. 1947).

In the motion for reconsideration, Abbott first reargues the issues raised in WSBC's petition to determine title to WSBC's interest in the Castano Trust: whether Chesley was the true beneficiary of the trust rather than WSBC and whether Chesley and WSBC were alter egos. Abbott does not provide the Court with new evidence or persuade the Court that it ruled erroneously on these points.

Abbott raises two additional arguments that the Court's February 11, 2016 Decision was erroneous. First, Abbott argues the Court should not have evaluated the merits of

1 Kentucky order in deciding whether to extend full faith and credit. Second, Abbott argues
2 the Kentucky order did not violate due process.

3 **1. The Court Properly Evaluated the Due Process Implications of the**
4 **Kentucky Court's Decision**

5 "Under the Full Faith and Credit Clause of the United States Constitution, a
6 final judgment entered in a sister state must be respected... However, not all judgments are
7 entitled to full faith and credit in Nevada." City of Oakland v Desert Outdoor Adver, Inc.,
8 267 P3d 48, 50-51 (Nev. 2011). "The full faith and credit clause of the United States
9 Constitution requires that a final judgment entered in a sister state must be respected by
10 the courts of this state absent a showing of fraud, lack of due process or lack of jurisdiction
11 in the rendering state." Mason v. Cuisenaire, 128 P.3d 446, 448 (Nev. 2006) (quoting
12 Rosenstein v. Steele, 747 P.2d 230, 231 (Nev. 1987).

13 This Court had the authority and the duty to evaluate the due process implications of
14 the Kentucky Court's orders in case 05-CI-00436. The case Abbott cites to dispute the
15 Court's evaluation goes through a due process analysis. See Milliken v Meyer, 311 US 457,
16 463 (1940). Therefore, this argument by Abbott is not a proper basis for the Court to
17 reconsider its ruling.

18 **2. The Court Properly Determined that the Kentucky Court's Decision**
19 **Violated Due Process**

20 Generally, "[d]ue process is satisfied by giving both parties 'a meaningful
21 opportunity to present their case.'" JD Constr. v IBEX Int'l Group, 240 P3d 1033, 1040
22 (Nev. 2010) (quoting Mathews v. Eldridge, 424 U.S. 319, 349 (1976). In its February 11,
23 2016 Decision, the Court concluded enforcing the Kentucky order would violate due process
24 because WSBC had no notice of the Kentucky case. Abbott argues two bases for the Court
25 to reconsider its findings on this issue. First, Abbott argues the Court improperly used
26 Nevada law in determining the proper procedure for Abbott's alter ego claim. Second,
27 Abbott argues WSBC received notice of the Kentucky case through Chesley.
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a. The Court Did Not Use Nevada Law to Establish the Proper Procedure for Abbott's Alter Ego Claim

In its February 11, 2016 Decision, the Court cites both Nevada and Kentucky law to evaluate the due process required in an alter ego claim. The Court found "[b]oth states require that notice be given before a court determines that individuals or entities are alter egos." See Callie v. Bowling, 160 P.3d 878, 879-81 (Nev. 2007) and Inter-Tel Techs., Inc. v. Linn Station Properties, LLC, 360 S.W.3d 152, 168 (Ky. 2012).

The Court did not find that the Kentucky order violated due process because it failed to follow Nevada law. The Court found the Kentucky order violated due process because it failed to follow its own law. Though Abbott argues the Court misinterpreted Kentucky law, Abbott did not cite a single case where Kentucky courts have allowed a claimant to establish an alter ego relationship without giving notice to both alleged alter ego parties. Furthermore, the Court did not find a due process violation solely because Abbott did not bring a separate claim against WSBC. The Court found a due process violation because WSBC did not receive notice of any action, including case 05-CI-00436, seeking to establish an alter ego relationship between WSBC and Chesley.

The Court correctly found that due process required WSBC to receive notice of the action relating to its purported alter ego relationship with Chesley. Because this finding was not erroneous, this argument by Abbott is not a proper basis for the Court to reconsider its ruling.

b. WSBC Did Not Receive Notice of the Kentucky Proceedings Through Chesley

Abbott argues WSBC received notice of the Kentucky case through Chesley's involvement in the case. Abbott asserts three methods: (1) through Chesley as WSBC's registered agent for service of process, (2) through WSBC paying Chesley's attorneys fees, and (3) through virtual representation by Chesley.

Suing a registered agent in his individual capacity does not give notice to a related entity that its interests may be at risk. Abbott argues, "if it were required that WSBC

1 receive a copy of the motion, for purposes of notice, the motion would have been delivered
2 to Chesley..." (Reply in Supp. of Mot. Recons. at p. 2.) If it had been required that WSBC
3 receive any pleading in the Kentucky case, the Court would have directed service to WSBC,
4 putting Chesley and WSBC on notice that Chesley was acting as a registered agent, not in
5 his individual capacity. The Court finds it concerning that Abbott argues Chesley acted
6 purely in his individual capacity when signing documents regarding the Castano Trust
7 "individually and as President of WSBC" (Id. at p. 6) while simultaneously arguing Chesley
8 acted as a representative of WSBC's interest by being sued in his individual capacity.

9 Paying the attorneys fees for another individual does not entitle the payee to notice
10 regarding the case at issue. Paying attorneys fees does not make the payee a party to the
11 action. Under Nevada Rule of Professional Conduct 1.8(f) and Kentucky Supreme Court
12 Rule 130(1.8)(f), attorneys must keep information relating to the representation of a client
13 confidential from non-clients paying for the client's representation.

14 The Court is not persuaded by Abbott's virtual representation argument for two
15 reasons. First, the Kentucky court made no mention of virtual representation in its
16 decision. It would be illogical to conclude that a due process violation based on a lack of
17 notice could be cured by a silent and invisible finding by a court. Second, virtual
18 representation cannot serve as an end run around the due process issue in this case. The
19 standard for virtual representation is similar to the standard for alter egos. In order for a
20 Court to find parties are alter egos, "[t]here must be such unity of interest and ownership
21 that one is inseparable from the other." Truck Ins. Exch. v. Palmer J. Swanson, Inc., 189
22 P.3d 656, 660 (Nev. 2008). The determining factor of virtual representation "is such
23 identity of interest as to give reasonable assurance that the contingent rights of the absent
24 party will be protected by the person joined in the suit." Harris v Jackson, 192 SW3d 297,
25 303 (Ky. 2006), as mod (May 24, 2006) (quoting Carroll v. First Nat. Bank & Trust Co. of
26 Lexington, 227 S.W.2d 410, 411 (Ky.1950). There is a critical distinction in the degree of the
27 unity of interests. This distinction is reflected in the procedures courts may take to
28 determine alter ego relationships and virtual representation. Courts must provide notice to

LINDA MARIE BELL
DISTRICT JUDGE
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1 potential alter egos regarding cases seeking to establish alter ego relationships. A court
2 may not rely on a virtual representation determination, even if one had existed in this case,
3 to deprive a party of the opportunity to address the higher unity of interest inherent in an
4 alter ego relationship.

5 The Court correctly found that WSBC did not receive proper notice of case 05-CI-
6 00436. Because this finding was not erroneous, this argument by Abbott is not a proper
7 basis for the Court to reconsider its ruling.

8 **III. Conclusion**

9 Abbott failed to provide a basis for the Court to conclude that its February 11, 2016
10 ruling was erroneous. The Court denies Abbott's Motion to Reconsider the Court's Ruling
11 Dated February 11, 2016. The Court grants Abbott's Motion to Seal Exhibits 8 and 9 and
12 vacates the hearing currently set for April 12, 2016.

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15 DATED this 30th day of March, 2016.

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20 LINDA MARIE BELL
21 DISTRICT COURT JUDGE
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LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
John W. Mujie, Esq. John W. Mujie & Associates Angela Ford, Esq.	Counsel for Mildred Abbott
Brian D. Shapiro, Esq. Brian D. Shapiro, LLC	Counsel for Stanley Chesley
Thomas Fell, Esq. Fennemore Craig, P.C.	Counsel for Castano Directed Distribution Trust
Will Kemp, Esq. Kemp, Jones & Coulthard, LLP Donald J. Rafferty, Esq. Cohen, Todd, Kite & Stanford, LLC	Counsel for Waite Schneider Bayless & Chesley Co.

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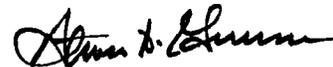
SHELBY DAHL
LAW CLERK, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A626616 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell Date 3/22/16
District Court Judge

EXHIBIT C



CLERK OF THE COURT

1 **ORDER**

2 Brian D. Shapiro, Esq.
3 Nevada Bar No. 5772
4 Law Office of Brian D. Shapiro, LLC
5 228 S. 4th Street
6 Las Vegas, NV 89101
7 (702)386-8600, Fax (702)33-0944
8 brian@brianshapirolaw.com
9 Attorney for Defendant, STANLEY M. CHESLEY

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 MILDRED ABBOTT, ET AL.)	Case No: A-15-718827-F
)	
11 Plaintiffs)	Dept. No. XXX
)	
12)	
13 vs)	
)	Date: 12-10-15
)	Time: 9:30 a.m.
14 STANLEY M. CHESLEY, ET AL.)	
)	
15)	
16 Defendants)	

17 **ORDER**

18 STANLEY M. CHESLEY ("Defendant"), by and through his counsel, Brian D. Shapiro,
19 Esq. of the Law Office of Brian D. Shapiro, LLC, filed the following motions which were heard
20 on the above referenced date and time: Motions to Strike Domestication Documents and
21 declaring the attempted domestication void ab initio as the (1) the underlying judgment is not
22 enforceable; (2) the domestication failed to name the proper parties; (3) the domestication failed
23 to provide the full addresses and amount owed to each party; (4) the domestication failed to
24 provide the amount owed to each party; and (5) the Plaintiffs failed to pay the filing fee
25 (collectively referred to herein as "Defendant's Motions"). Waite Schneider Bayless &
26 Chesley Co., L.P.A. ("WSBC"), by and through Eric M. Pepperman, Esq., of Kemp Jones &
27
28

1 Coulthard, LLP filed a petition pursuant to NRS §31.070 to determine title in property subject
2 to wrongful attachment (referred to herein as "WSBC Petition") which was heard on the above
3 referenced date and time. Castano Directed Distribution Trust (the "Trust"), by and through
4 Thomas H. Fell, Esq., of Fennemore Craig, P.C. filed a motion for entry of judgment pursuant
5 to NRS §31.330 (referred to herein as the "Trust Motion") which was heard on the above
6 referenced date and time. At the time of the hearing, the Plaintiffs appeared by and through
7 John Muije Esq., of the law firm of John W. Muije & Associates, and Angela M. Ford, of the
8 Law Offices of Angela M. Ford, the Defendant appeared by and through Brian D. Shapiro, Esq.,
9 of the Law Office of Brian D. Shapiro, LLC, WSBC appeared by and through Will Kemp, Esq.,
10 and Eric M. Pepperman, Esq., of Kemp Jones & Coulthard, LLP and the Trust appeared by and
11 through Thomas H. Fell of Fennemore Craig, P.C. At the time of hearing, the Court heard
12 arguments by the parties, made its findings of fact and conclusions of law on the record, good
13 cause appearing therefore it is hereby
14

15
16 ORDERED, that the Court's findings of fact and conclusions of law as stated on the
17 record are incorporated within this Order as if fully stated herein. It is further
18

19 ORDERED, that Defendant's Motion to Strike Domestication Documents and declaring
20 the attempted domestication void ab initio as the underlying judgment is not enforceable is
21 granted. It is further
22

23 ORDERED, that this case is dismissed. It is further
24

25 ORDERED, that the remaining Defendant's Motions are hereby denied as moot. It is
26 further
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28 ORDERED, that WSBC's Petition is hereby denied as moot. It is further

ORDERED, that the Trust Motion is hereby denied as moot. It is further

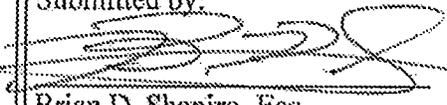
1
2 ORDERED, that the preliminary injunction entered on October 14, 2015 is hereby
3 dissolved. It is further

4 ORDERED, that the bond for the preliminary injunction in the amount of \$100,000.00 is
5 hereby exonerated and the Clerk of the Court is authorized to remit such funds to Angela M.
6 Ford, Chevy Chase Plaza, 836 Euclid Avenue, Suite 311, Lexington, Kentucky 40502.
7

8
9 DATED 16 Dec 2015

10
11 
12 _____
13 DISTRICT COURT JUDGE
14

14 Submitted by:

15 
16 Brian D. Shapiro, Esq.
17 Nevada Bar No. 5772
18 Law Office of Brian D. Shapiro, LLC
19 228 S. 4th Street
20 Las Vegas, NV 89101
21 (702)386-8600, Fax (702)33-0944
22 brian@brianshapirolaw.com
23 Attorney for Defendant, STANLEY M. CHESLEY
24
25
26
27
28

AFFIDAVIT OF JAMES C. WORTHING, SR.

BOONE CIRCUIT COURT
54th JUDICIAL DISTRICT

Case No. 05-CI-436

Mildred Abbott *et al.*

v.

Stanley M. Chesley *et al.*

EXPERT WITNESS AFFIDAVIT OF JAMES C. WORTHINGTON, SR.

COMES James C. Worthington, Sr. and after first being duly sworn states as follows:

1. I am a duly licensed attorney licensed to practice law in the Commonwealth of Kentucky.

I have practiced law since 1992 and have focused my practice on estate and trust issues since 1996, and have practiced in Kentucky since 2000.

2. I am a Fellow of the American College of Trust and Estate Counsel, described as of December 3, 2015, on its website, www.actec.org, as follows:

The American College of Trust and Estate Counsel (formerly known as The American College of Probate Counsel) is a nonprofit association of lawyers and law professors skilled and experienced in the preparation of wills and trusts; estate planning; and probate procedure and administration of trusts and estates of decedents, minors and incompetents. Its more than 2,700 members are called "Fellows" and practice throughout the United States, Canada and other foreign countries.

To qualify for membership, a lawyer must have no less than 10 years' experience in the active practice of probate and trust law or estate planning. Lawyers and law professors are elected to be Fellows based on their outstanding reputation, exceptional skill, and substantial contributions to the field by lecturing, writing, teaching and participating in bar activities. It is their aim to improve and reform probate, trust and tax laws, procedures, and professional responsibility.

3. My Curriculum Vitae with a List of Presentations is attached to this Affidavit. Most relevant here is that for approximately 10 years, I have made an annual presentation providing an

update about Kentucky probate cases to the Midwest/Midsouth Estate Planning Institute sponsored by the University of Kentucky Continuing Legal Education program.

4. I have reviewed the pleadings in the above-captioned case and have researched the law regarding the substitution of parties following a party's death, particularly CR 25.01, KRS 395.278, and have reviewed numerous cases applying that law. I have also reviewed CR 17.01 and numerous cases regarding the requirement that the real party in interest bring claims, the principles regarding assignment of claims, and the principle of champerty to prevent claims the assignment of which would violate public policy.

5. As I will explain below, I have reached the opinion that this court should dismiss the claims in the case at bar of any party who died after the current action was filed and whose claim was not revived in the manner provided for by CR 25.01 and KRS 395.278, *i.e.*, by filing (not merely serving), within one year of the death of the deceased party, a motion with the court to revive the action. I will refer to this as the Substitution of Parties opinion or issue and provide support for it in section 7 and its sub-sections.

6. I have also reached the opinion that if a decedent died before the current action was filed in 2005, CR 17.01 requires that the proper party to bring that decedent's claim would be the personal representative of his or her estate or an assignee, in which case the assignee must bring the action. I will refer to this as the Real Party in Interest opinion or issue and provide support for it in section 8 and its sub-sections.

7. I base my opinion regarding the Substitution of Parties issue on the following analysis.

7.1. The Kentucky Practice treatise explains the basic rule as follows:

When a party to litigation pending in a Kentucky court dies, the action is abated unless and until the action is revived by substituting the decedent's representative. The provisions of KRS 395.278 direct that the "application to revive an action in the name of the representative or successor of a plaintiff,

or against the representative or successor of a defendant, shall be made within one (1) year after the death of a deceased party.” KRS 395.278 is “a statute of limitation, rather than a statute relating to pleading, practice or procedure, and the time limit within this section is mandatory and not discretionary” and, therefore, neither a court nor a party may extend the one-year statute of limitations. **If an action is not revived against the administrator of the decedent's estate and the administrator substituted as the real party in interest within one year of a defendant's death, the action must be dismissed.** Whether an action has been timely revived is a matter of law. In one case, an executor for the estate was duly appointed and the estate was admitted to probate. However, timely application to revive the civil action against the decedent's representative was not filed. As stated in the trial court's order, “[a]bsent the showing of some act or conduct which misleads or deceives the plaintiff the action must be dismissed.

2 Ky. Prac. Prob. Prac. & Proc. § 1891 (emphasis added; citations omitted). As noted in the following section, the law applies with equal force to plaintiffs who die while the action is pending.

7.2. The Kentucky Supreme Court addressed the death of a plaintiff in *Hammons v. Tremco, Inc.*, Ky., 887 S.W.2d 336 (1994). There, the plaintiff died while his appeal was pending. The defendant moved to dismiss the appeal when more than a year had passed without the action being revived by the personal representative of the plaintiff's estate. The Hammons Court explained the relationship of the statute and the CR 25.01 while explaining the mandatory nature of dismissal:

Therefore, when considered together, KRS 395.278 and CR 25.01(1) require that when a plaintiff dies any action pending on the part of the deceased plaintiff **must be revived** by the decedent's successor or personal representative **within one year**, and the successor or personal representative must be substituted as the real party in interest.

887 S.W.2d at 338 (emphasis added) (*Hammons* was a workers compensation case to which the civil rules fully applied.)

7.3. One of the cases cited by *Hammons* and used to support the treatise quoted in section 7 is *Snyder v. Snyder*, Ky.App., 769 S.W.2d 70 (1989). There, a decedent's son was appointed as administrator of her estate after she died following entry of a decree of legal separation. The other spouse successfully moved to vacate the decree based on a jurisdictional defect (the lack of an outside witness regarding residency as required by KRS 403.025 & KRS 403.140). The decedent's son then moved to vacate the order vacating the decree because the spouse failed to revive the action against administrator within a year of the decedent's death. "We hold that KRS 395.278, relating to the reviver of an action, is a statute of limitation, rather than a statute relating to pleading, practice or procedure, and the time limit within this section is mandatory and not discretionary, thereby preventing a party or the court from extending such time via CR 6.02. Thus, an action which is not revived within the one-year statutory period of this provision **must be dismissed. A personal representative does not automatically succeed to his decedent's rights and status as a litigant** and thus is not a party to any suit against the decedent unless the action is revived." 769 S.W.2d at 72 (emphasis added; citations omitted).

7.4. The proper procedure for reviving an action is by filing a motion under CR 25.01 in the case where the substitution of parties is desired. The court must enter an order substituting the party and reviving the action; the purported successor cannot simply provide notice of his or her substitution. Filing is required; mere service is not sufficient. *Osborne v. Kenacre Land Corp.*, Ky.App., 65 S.W.3d 534 (2001).

7.5. I have reviewed approximately 20 cases decided under CR 25.01 and KRS 395.278 and have not found any cases reaching a different result than that expressed in my opinion. There are situations that are distinguishable from the instant case that could be used to mislead the court. Where real property is involved, the heirs rather than the personal representative are the real party

in interest. *See, e.g., Commonwealth v. Maynard*, Ky.App., 294 S.W.3d 43 (1994). This is because “[u]pon death of an owner of real property, the title to said property passes directly to the heirs at law or to the beneficiaries under a will; it does not pass through the estate.” *Slone v. Casey*, Ky.App., 194 S.W.3d 336, 337 (2006). *See also Levin v. Ferrer*, Ky., 535 S.W.2d 79 (1975). This is related to the first-year law student lesson that there is never a gap in the title to real property. Where efforts are made to prevent a plaintiff from learning that a defendant has died, estoppel may bar the assertion of the limitations defense presented by the civil rule and statute. *Harris v. Jackson*, Ky., 192 S.W.3d 297, 304 (2006) (citing *Munday v. Mayfair Diagnostic Laboratory*, Ky., 831 S.W.2d 912, 915 (1992)). *But see Frank v. Estate of Enderle*, Ky.App., 253 S.W.3d 570 (2008) (where defense counsel informed plaintiff’s counsel of defendant’s death and plaintiff’s counsel failed to act within one year, estoppel did not apply).

7.6. I have also reviewed the court’s 88-page docket, particularly the filings and motion hearings, in the case at bar as well as a list of deceased Kentucky plaintiffs, a copy of which is attached. Based on that review, I conclude that no orders were entered substituting personal representatives and reviving actions in the case at bar. Thus, these plaintiffs have not complied with CR 25.01 and KRS 395.278 and those failures are fatal to their causes of action.

8. I base my opinion regarding the Real Party in Interest issue on time-tested principles.

8.1. In 1852, our highest court decided *McChord v. Fisher’s Heirs*, 52 Ky. 193 (1852). Despite its age, our appellate courts have cited it 27 times and as recently as 2003.

Heirs and distributees can not, in their own names, in law or equity, prosecute suits to recover the unadministered estate of the intestate, or to collect debts; but **such suits can only be maintained by the personal representative who has qualified as such**, if there be one, or, if not, by one or more to be appointed to administer; except in cases where the distributees may sue in equity to recover the estate, or portions thereof, because, although there be an administrator or administrators, etc., they refuse to administer upon the estate

sued for, or to prosecute suits for the recovery thereof; and in such cases the personal representatives are necessary parties.

In this case it appears there is an administrator duly appointed by the Mason county court; but he is not made a party to the suit by the guardian, nor is it alleged in the bill that he, being informed of his right to the money in the hands of the defendant, Joshua Fisher, refuses to collect it by suit or otherwise; for this reason, also, this suit can not be maintained by the present complainant.

52 Ky. at 194-95. (emphasis added).

8.2. Where a claim has been assigned, the assignee must bring the action. *See generally Works v. Winkle*, Ky., 234 S.W.2d 312 (1950). I am not aware that any claims have been assigned in the case at bar and do not express an opinion regarding whether any of the claims in the case at bar are brought by assignees.

8.3. I have also reviewed the court's 88-page docket, particularly the filings and motion hearings, in the case at bar as well as a list of deceased Kentucky plaintiffs, a copy of which is attached. Based on that review, I conclude that the claims of persons who died before the 2005 filing are not being pursued by the real party in interest and those claims should be dismissed under CR 17.01.

8.4. Champerty is designed to prevent the purchase of a cause of action and has deep roots in the common law. *Hensley v. Clay*, Ky., 208 S.W.2d 501, 502 (1948). I am not aware that any claims have been purchased or that would otherwise involve a violation of public policy and do not express an opinion whether champerty applies in the case at bar.

FURTHER THE AFFIANT SAYETH NAUGHT.



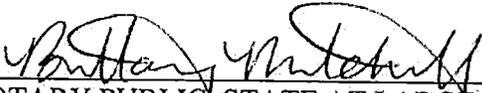
JAMES C. WORTHINGTON, SR., Affiant

Affidavit of James C. Worthington, Sr.
Page 6 of 7

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The foregoing document was acknowledged and sworn to before me this 4th day of December, 2015.

My Commission expires: 11-05-2019.



NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

JAMES C. WORTHINGTON, SR.

Worthington Law Firm
First Trust Centre, Suite 610 North
200 S. Fifth Street
Louisville, Kentucky 40202
(502) 371-1193
jim@worthingtonlawfirm.com

Legal Career

February 2010 to Present
Worthington Law Firm
Louisville, Kentucky

Sole practitioner. Legal practice involving all facets of estate and trust planning, administration, and related controversies; planning for Medicaid and VA benefits; tax planning and controversy; and business organization, re-organization, disposition, and succession.

June 2005 to February 2010
Stock Yards Bank & Trust Co.
Louisville, Kentucky

Vice President and Wealth Advisor/Estate Planning. Responsible for administration of all decedents' estates as well as trusts and estates holding special assets or involving complex relationships; co-chair of Fiduciary Oversight Committee overseeing encroachments and other non-investment discretionary decisions; responsible for administration of life insurance trusts; worked with other clients, their officers, and their professional advisors to achieve the client's estate and financial planning goals.

September 2000 to June 2005
Stites & Harbison, PLLC
Louisville, Kentucky

Counsel in the Trusts & Estates Service Group. Estate planning and administration, business succession planning, estate and trust litigation, and charitable planning for donors and non-profit organizations.

August 1992 to August 2000
Poe, Hoof & Reinhardt
Durham, North Carolina

Associate ('92 to '97) and Partner ('98 to '00). Practice concentration in estate planning and administration, business formation and planning, and real estate transactions. Litigation experience including mediations, arbitrations, and jury and bench trials as first and second chair.

Education

LL.M. in Taxation, 2011
University of Alabama School of Law
Tuscaloosa, Alabama

3.82 GPA
Graduated with high honors

J.D., 1992
Duke University School of Law
Durham, North Carolina

Research Editor, Duke Environmental Law & Policy Forum; American
Jurisprudence Award in Constitutional Law.

B.S., 1987
Washington University
St. Louis, Missouri

Graduated *magna cum laude* in Mechanical Engineering.

Bar Admissions

Kentucky
North Carolina
Fourth Circuit Court of Appeals, M.D.N.C., E.D.N.C.

Professional Activities

American College of Trust and Estate Counsel
Elected Fellow (March 2014)

Kentucky Bar Association

Probate and Trust Law Section, Former Chair and Current Chair-Elect
Probate and Trust Law Section Legislative Committee, Member
Taxation Section, Member

Louisville Bar Association

Probate & Estate Section, Former Chair
Leadership Academy, Member of Initial Steering Committee

American Bar Association

Real Property, Trust & Estate Section (formerly RPPT), Member
Business Planning Group, Member
Taxation Section, Member
Individual and Family Taxation Committee, Member
Estate Planning & Administration for Business Owners, Farmers & Ranchers
Committee, Former Vice-Chair
Probate and Fiduciary Litigation Committee, Former Member

University of Kentucky Midwest/Midsouth Estate Planning Institute

Program Steering Committee Member
Speaker for Annual Kentucky Case Law Update, 2005 - 2015

Louisville LawWire e-newsletter (no longer published), Wills & Estates Editor

Civic Activities

National Association of Workforce Boards

Member, Board of Directors, May 2015 – Present

55,000 Degrees

Member of Founding Board of Directors
Finance Committee, Former Chair

Kentuckiana Works, Inc.

Chair of the Board, 2009 – August 2012
Program Oversight Committee, Chair, 2005-2009
Board of Directors, 2001 – June 2013

Family & Childrens Place

Board of Directors, Former Member
Finance & Personnel Committee, Former Member

Home of the Innocents

2005 & 2006 Childfriend Breakfast Committee, Chair
Resource Development Committee, Former Member

Louisville Zoo Foundation

Bequest & Planned Giving Council (no longer active), Member

Focus Louisville, Spring 2001

Toastmasters International, CTM Certificate in Public Speaking

JAMES C. WORTHINGTON, SR.

Worthington Law Firm
First Trust Centre, Suite 610 North
200 S. Fifth Street
Louisville, Kentucky 40202
(502) 371-1193
jim@worthingtonlawfirm.com

**PRESENTATIONS AND PUBLICATIONS
(2001 – Present)**

2015

Speaker, "Probate Update (including Revised Uniform Fiduciary Access to Digital Assets Act)," Bluegrass Estate Planning Council, Lexington, Ky., Sept. 1, 2015

Author, "Limits on Powers of Attorney," Attorney at Law Magazine, Vol. 3, No. 4, August 2015

Speaker, "Kentucky Estate Planning and Administration Case Law & Legislative Update," 42nd Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 16, 2015

Speaker, "Legal and Financial Planning for VA Benefits," Southern Indiana Estate Planning Council, New Albany, In., Jan. 13, 2015

2014

Speaker, "Planning for a Full or Partial Outright Sale or Gift," National Business Institute Estate Planning for Farmers Seminar, Lexington, Ky., Nov. 10, 2014

Speaker, "Early Experiences with Kentucky's Almost Uniform Trust Code," Louisville Estate Planning Council, Louisville, Kentucky, October 22, 2014

Speaker, "The Kentucky Uniform Trust Code: Selected UTC Provisions and Kentucky Law Changes," Kentucky Law Update, Lexington, Ky., October 2, 2014

Speaker, "Understanding Estate, Gift and Trust Taxation" and "Using Revocable Trusts," Foxmoor Continuing Education's "The Complete Trust Course," Louisville, Ky., Aug. 20, 2014

Speaker, "Kentucky Estate Planning and Administration Case Law & Legislative Update," 41st Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 24, 2014

2013

Speaker, "Planning for a Full or Partial Outright Sale or Gift" & "Planning for a Gradual Transfer within the Family," National Business Institute Estate Planning for Farmers Seminar, Louisville, Ky., Dec. 10, 2013

Speaker, "Kentucky Estate Planning and Administration Case Law & Legislative Update," 40th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 26, 2013

2012

Speaker, "Kentucky Estate Planning and Administration Case Law & Legislative Update," 39th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 26, 2012

2011

Speaker, "Kentucky Probate & Trust Update 2011," Kentucky Law Update, Louisville, Ky., December 1, 2011

Speaker, "Kentucky Estate Planning and Administration Case Law & Legislative Update," 38th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 21, 2011

2010

Author, "The Conflict Between a Lawyer's Duty to the Client and the Statutory and Regulatory Standards for Tax Practitioners," *KBA Bench & Bar*, November 2010

Speaker, "Kentucky Probate & Trust Update 2010, Including House Bill 188," Kentucky Law Update, Louisville, London, and Prestonsburg, Ky., September 3 and October 6 & 20, 2010

Speaker, "Kentucky Probate Law Update," Bluegrass Estate Planning Council, Lexington, Ky., September 7, 2010

Speaker, "Kentucky Estate Planning and Administration Case Law & Legislative Update," 37th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 22, 2010

Moderator, "Molding Estate Plans to Changed Circumstances," Kentucky Bar Association Convention, Lexington, Ky., June 16, 2010

Speaker, "Estate Planning," Retirement Planning Seminar for Kentucky National Guard members, Frankfort, Kentucky, March 23, 2010

Speaker, "Tax Ethics," Louisville Estate Planning Council, Louisville, Ky., March 16, 2010

Speaker, "Current Estate Planning Issues," Bluegrass Estate Planning Council, Lexington, Ky., January 5, 2010

2009

Speaker, "Probate Law Update," Kentucky Law Update, Louisville, Ky., December 4, 2009

Panelist, "Charitable Entrepreneurism," Seminar sponsored by The Cure Starts Now, Cincinnati, Ohio, November 18, 2009

Speaker, "Tax Ethics," Estate and Tax Seminar Sponsored by Stock Yards Bank & Trust Co., Jeffersonville, In., October 29, 2009

Speaker, "Kentucky Estate Planning Case Law & Legislative Update," 36th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 23, 2009

Panelist, "Financial Exploitation of the Elderly," Kentucky Bar Association Convention, Covington, Ky., June 11, 2009

2008

Speaker, "Kentucky Estate Planning & Trust/Fiduciary Law Update," 35th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 25, 2008

2007

Speaker, "Understanding Tax Procedures to Avoid Problems Later," National Business Institute Estate Administration Seminar, Louisville, Ky., November 13, 2007

Panelist, "Fiduciary, Legal & Investment Issues Regard Non-Profits," Estate and Tax Seminar Sponsored by Stock Yards Bank & Trust Co., Jeffersonville, In., October 25, 2007

Speaker, "Kentucky Estate Planning Case Law & Legislative Update," 34th Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 20, 2007

Speaker, "Kentucky Fiduciary Law Case & Legislative Update," 34th Midwest/Midsouth Estate Planning Institute Pre-Institute Program, Lexington, Ky., July 19, 2007

Panelist, "Estate Litigation: What Every Attorney Needs to Know About Probate & Estate Planning," KBA Convention, Louisville, Ky., June 22, 2007

Speaker, "Fiduciary Law Update," Louisville Estate Planning Council, Louisville, Ky., May 15, 2007

Speaker, "The Probate Process from Start to Finish in Kentucky," National Business Institute, Louisville, Ky., April 19, 2007

Speaker, "Indiana Fiduciary Law Update," Southern Indiana Estate Planning Council, Jeffersonville, In., April 10, 2007

Panelist, "An Historical Look at Principal & Income Acts and Their Impact on Trust Investing," Bluegrass Estate Planning Council, Lexington, Ky., April 3, 2007

Speaker, "Current Issues in Fiduciary Duty, Including the Prudent Man Rule and the Prudent Investor Act," Estate Planning Council of Louisville, Louisville, Ky., January 18, 2007

2006

Speaker, "Understanding Tax Procedures to Avoid Problems Later," National Business Institute, Louisville, Ky., November 30, 2006

Panelist, "An Historical Look at Principal & Income Acts and Their Impact on Trust Investing," Estate and Tax Seminar Sponsored by Stock Yards Bank & Trust Co., Jeffersonville, In., October 26, 2006

Speaker, "Kentucky Estate Planning Case Law & Legislative Update," Louisville Estate Planning Council, Louisville, Ky., October 17, 2006

Speaker, "Kentucky Estate Planning Case Law & Legislative Update," 33rd Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 14, 2006

Speaker, "Kentucky Fiduciary Law Case & Legislative Update," 33rd Midwest/Midsouth Estate Planning Institute Pre-Institute Program, Lexington, Ky., July 13, 2006

Panelist, "Issues Impacting the Formation and Administration of Trusts," Louisville Bar Association, Louisville, Ky., May 23, 2006 & March 28, 2006

Speaker, "Current Issues in Fiduciary Duties and Trust Administration," The Louis D. Brandeis School of Law's Ninth Annual Estate Planning Institute, Louisville, Ky., April 28, 2006

Author, "Sophisticated Giving," Sophisticated Living, March/April 2006

Speaker, "Wealth Management Insights," Stock Yards Bank 2006 Economic Seminar, Louisville, Ky., March 8, 2006

Panelist, "Caring for Your Horses When You Can No Longer Care for Them," American Morgan Horse Association Annual Convention, Lexington, Ky., February 17, 2006

Speaker, "The Indiana, Kentucky, and Uniform Principal and Income Acts," Southern Indiana Estate Planning Council, Jeffersonville, In., February 14, 2006

Speaker, "The Probate Process from Start to Finish in Kentucky," National Business Institute, Louisville, Ky., February 10, 2006

2005

Author, "'Tis the Season for Giving," The Louisville Zoo Trunkline, Winter 2005

Panelist, "Planned Giving 101," Council for the Advancement and Support of Education Kentucky Conference, Louisville, Ky., December 8, 2005

Panelist, "Strangi and Its Progeny: Five Cases," Estate Planning Council of Louisville, Louisville, Ky., November 17, 2005

Speaker, "Estate Issues for Funeral Home Directors," Funeral Directors Association of the Falls City, Louisville, Ky., November 8, 2005

Speaker, "Jim's Quick & Easy Plan to Kick Up Your Planned Giving Program," Louisville Olmsted Parks Conservancy, Louisville, Ky., November 3, 2005

Panelist, "Trusts in Business Succession," Harding, Shymanski & Co., P.S.C. Industry Conference, Louisville, Ky., November 2, 2005

Speaker, "Current Fiduciary Issues: Drafting and Administration," Estate and Tax Seminar Sponsored by Stock Yards Bank & Trust Co., Jeffersonville, In., October 27, 2005

Speaker, "Charitable Gifts," Breckenridge Memorial Hospital Foundation, Hardinsburg, Ky., August 17, 2005

Speaker, "Living Wills, Wills and Trusts, and Charitable Giving," Trinity Presbyterian Church, Louisville, Ky., July 25-27, 2005

Speaker, "Kentucky Estate Planning & Administration Case Law Update," 32nd Annual Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 22, 2005

Co-Author, "Income Tax Reimbursement Clauses in Irrevocable Grantor Trusts—When to Use Them and When Not To," Probate & Property, May/June 2005

Speaker, "The Implications of Circular 230 for Lawyers, Trust Officers, and Other Financial Services Professionals," Louisville Bar Association, Louisville, Ky., May 24, 2005

Moderator, "Roundtable on Post-Mortem Administration of Business Interests," 2005 ABA RPPT Symposia, Washington, D.C., April 29, 2005

Panelist, "2004-2005 Developments on Family Limited Partnerships, S Corporations Reform, and Closely Held Businesses," 2005 ABA RPPT Symposia, Washington, D.C., April 28, 2005

2004

Speaker, "Oddities and Challenges in Kentucky Probate Law," National Business Institute, Louisville, Ky., August 25, 2004

Author, "House Bill 517—Kentucky Principal and Income Act, 2004 Session in Summary: Banking Laws from the Regular Session of the Kentucky General Assembly," Kentucky Bankers Association, July 2004

Speaker "A Review of Significant, Though Largely Unpublished, Kentucky Probate & Estate Cases Between January 2003 and February 2004," KBA Convention, Lexington, Ky., June 25, 2004

Panelist, "The Final Regulations under IRC § 643 and the New Kentucky Principal and Income Act," Louisville Bar Association, Louisville, Ky., June 14, 2004

Speaker, "The Use of Trusts in Estate Planning for Kentucky Residents," Lorman Education Services, Louisville, Ky., May 19, 2004; May 16, 2003

Speaker, "Wills, Trusts and Powers of Attorney for You and Your Family," Legal Secretaries of Louisville, Louisville, Ky., March 16, 2004

Speaker, "Use of Charitable Remainder and Charitable Lead Trusts," Center for Higher Education Law, Louisville, Ky., February 20, 2004

Panelist, "Gift Planning with Retirement Assets," Center for Higher Education Law, Louisville, Ky., February 20, 2004

2003

Speaker, "Have You Made A Will: What to Think About Before You Sit Down with a Lawyer," Firm Client, Louisville, Ky., November 17, 2003

Speaker, "Kentucky Estate Planning and Drafting Fundamentals," National Business Institute, Louisville, Ky., October 30, 2003

Speaker, "Probate and Estate Planning Update for the General Practitioner," KBA Kentucky Law Update, Louisville, Ky., September 25, 2003; Lexington, Ky., October 17, 2003

Author, "The Soft Skills of An Estate Planning Practice," LBA Bar Briefs, September 2003

Speaker, "Planned Giving in a Time of Low AFRs," Center for Higher Education Law, Nashville, Tenn., September 19, 2003

Speaker, "Charitable and Planned Giving," Easter Seals of Louisville, Louisville, Ky., June 26, 2003

Panelist, "Working with Professional Advisors: Dos and Don'ts," Fundraising Executives of Metro Louisville, Louisville, Ky., March 11, 2003

Speaker, "Advance Directives," Hardin Memorial Hospital Medical Staff, Elizabethtown, Ky., March 3, 2003

2002

Speaker, "The Death of the 'New' Death Tax," KBA Convention, Covington, Ky., June 12, 2002

Speaker, "Estate Planning Strategies After the Economic Growth and Tax Relief Reconciliation Act of 2001," The Louis D. Brandeis School of Law's Fifth Annual Estate Planning Institute, Louisville, Ky., April 26, 2002

Speaker, "Estate Planning Strategies After The 2001 Tax Act," Louisville Estate Planning Council, Louisville, Ky., April 16, 2002

Speaker, "Financial Planning Strategies in Light of Tax Law Changes," Kentuckiana Chapter of the Financial Planning Association, Louisville, Ky., January 16, 2002

2001

Author, "A Search for Certainty in an Uncertain Era: Estate Planning in the Wake of H.R. 1836," LBA Bar Briefs, September 2001

Co-Author, "Asset Protection in a Divorce Context," 28th Annual Midwest/Midsouth Estate Planning Institute, Lexington, Ky., July 13, 2001

Speaker, "QDROs and Other Issues Related to Employee Benefit and Retirement Plans," Louisville Bar Association, Louisville, Ky., May 23, 2001

EXHIBIT B

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Stanley M. Chesley, <i>et al.</i>	:	Case No. A1602508
	:	
Plaintiffs,	:	Judge Ethna Cooper
	:	
v.	:	EX160048
	:	CJ16006214
Probate estate of Danny Lee Abney, <i>et al.</i>	:	
	:	
Defendants.	:	

**ORDER GRANTING INJUNCTION TO PREVENT ENFORCEMENT OF
IMPROPERLY DOMESTICATED KENTUCKY JUDGMENT**

This matter is before the Court on Plaintiff Stanley M. Chesley's ("Chesley") Motion for Injunction to Prevent Enforcement of Improperly Domesticated Kentucky Judgment (the "Motion"). Upon consideration of the Motion, the response thereto, and the arguments of counsel, and the Court being fully advised, the Court hereby ORDERS and DECREES as follows:

1. The Motion shall be, and hereby is, granted.
2. The Court hereby determines that Ohio's UEFJA (O.R.C. Section 2329.021 *et seq.*) requires, among other things, that the name, address, and properly calculated amount owed to each individual judgment creditor is listed in the affidavit that is filed in connection with any effort to domesticate the Chesley Judgment in Ohio.
3. The Hochscheid Affidavit fails to comply with Ohio law.
4. The holders of the Chesley Judgment are enjoined from taking action to collect the Chesley Judgment in Ohio until that judgment

is properly transformed into an Ohio judgment and the Court determines it is entitled to enforcement in Ohio.

Judge Ethna Cooper
Hamilton County Court of Common Pleas

Copies to:

Vincent E. Mauer, Esq.
Frost Brown Todd, LLC
3300 Great American Tower
301 East Fourth Street
Cincinnati, Ohio 45202

Donald J. Rafferty, Esq.
Cohen Todd Kite & Stanford LLC
250 East Fifth Street, Suite 2350
Cincinnati, Ohio 45202

Tabitha M. Hochscheid, Esq.
Hochscheid & Associates LLC
810 Sycamore Street, Suite 420
Cincinnati, Ohio 45202

0118087.0619701 4830-1089-8737v1

EXHIBIT C

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE W. RICHARD RUEHLMAN
Court of Common Pleas
Hamilton County, Ohio

Stanley M. Chesley,

Petitioner

v.

Angela M. Ford, Esq. *et al.*

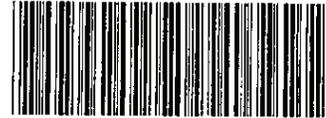
Respondents.

Case No. A1500067

Judge Ruehlman

ENTERED

JAN 07 2015



D109138670

**EX PARTE TEMPORARY RESTRAINING ORDER AGAINST CERTAIN ACTIONS BY
RESPONDENTS AND ORDER SETTING HEARING**

This matter came before the Court on January 7, 2015 at an *ex parte* conference. The Court's record includes the Verified Petition For Declaratory Judgment And Injunctive Relief (the "Petition") and Petitioner's Motion Order Restraining Registration and Enforcement of Kentucky Judgment and Document Destruction (the "Motion"). The Motion was supported by Petitioner's Verified Memorandum in Support of Motion for Injunctive Relief (the "Supporting Memo"). Both the Petition and the Supporting Memorandum are verified and thus are treated as affidavit evidence at this early stage in the proceeding. Also verified as accurate are copies of certain Kentucky filings attached to the Supporting Memo.

Capitalized terms in this *EX PARTE* TEMPORARY RESTRAINING ORDER AGAINST CERTAIN ACTIONS BY RESPONDENTS AND ORDER SETTING HEARING (the "Temporary Restraining Order") that are not defined herein have the meaning set forth in the Petition, Motion and Supporting Memo.

The Court must consider the following when ruling on a motion for a temporary restraining order on an *ex parte* basis: "whether (1) the movant [Chesley] has shown a strong or substantial likelihood or probability of success on the merits, (2) the movant [Chesley] has shown irreparable injury, (3) the preliminary injunction could harm third parties, and (4) the

public interest would be served by issuing the preliminary injunction.” *Johnson v. Morris* (1995), 108 Ohio App.3d 343, 352, 670 N.E.2d 1023. Moreover, relief is appropriate if Chesley shows serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the [nonmoving party] if relief is granted. *Id.*, citing *In re DeLorean Motor Co.* (C.A.6, 1985), 755 F.2d 1223.

An *ex parte* order is appropriate if the danger is imminent and notice to the known Respondent, Ford, is impossible, impracticable or might prompt Ford to quickly take action to cause the very harms that are the subject of the Petition. Chesley makes exactly this last argument – if Ford receives notice of the Petition and Motion without prior entry of *ex parte* temporary protection, Ford might as a clerical matter cause the registration or domestication of the Chesley Judgment and issue discovery to Ohio citizens, residents and domiciles before this Court’s hearing on the Motion. This threat is real and imminent given Ford’s December 14, 2014 e-mail to Chesley’s counsel and given the easy and clerical nature of the efforts Ford might undertake. See Ohio R. Civ. Procedure 65(A).

The Court notes the appearance of counsel for an interested non-party, Waite Schneider Bayless and Chesley (“WSBC”). WSBC is an Ohio entity that is a logical target of Ford’s possible discovery and collection action. Chesley, Chesley’s wife, and WSBC are Ohio entities resident in Hamilton County, Ohio.

After a hearing the arguments of Chesley’s counsel, the Court makes the following preliminary Findings of Fact and Conclusions of Law concerning the relief sought in the Petition and the Motion. All of the following preliminary findings of fact and conclusions of law are subject to further review by the Court during this proceeding, particularly since this Court may

later direct addition of certain parties to this case who may revisit any of the following preliminary findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Chesley has shown a strong or substantial likelihood of success on the merits in this matter. It seems likely that Ford or other counsel for the Unknown Respondents will seek to register or domesticate the Chesley Judgment in Ohio in part because Ford has stated that she intends to demand depositions of Ohio residents who will not voluntarily submit to those depositions. It further seems probable that the registration or domestication filing will occur in Hamilton County, Ohio due to the residence of Chesley and certain of Ford's stated targets; in that event the Chesley Judgment will be treated by this Ohio court as an Ohio judgment. The Court believes that it will ultimately conclude (i) as a matter of Ohio law that as a judgment debtor, Chesley is entitled to know the total amount he owes on the Chesley Judgment and (ii) as a matter of fact that Chesley has been denied access to this information.

B. Chesley has made the necessary preliminary showing of irreparable injury to himself and third parties to be suffered if the Chesley Judgment is used as an Ohio judgment without first being provided the information sought in the Petition. The loss of any reasoned opportunity to stay proceedings (i) in Kentucky by obtaining a stay pending appeal, (ii) by the filing of a voluntary petition under the United States Bankruptcy Code, or (iii) by settlement with some or all of the Unknown Respondents damages Chesley and has the potential to damage any third party from whom Ford seeks information or attempts to seize assets, all of which might be delayed or avoided permanently.

C. The requested relief will benefit third parties including the targets of Ford's discovery and asset seizure efforts other than Chesley. Importantly, the relief sought in the

Petition and Motion has a strong likelihood of benefitting the Court and courts in Kentucky because the actual total amount owed on the Chesley Judgment will be relevant to issues that courts will consider going forward. The requested relief will not significantly harm any third parties and represents only a minor harm to the Respondents because Ford should have ready access to most of the information sought by Chesley thus minimizing any delay in her efforts to use the Chesley Judgment in Ohio; and

D. The public interest would be served by issuing the requested relief. The process of administering justice fairly in Ohio and Kentucky will be enhanced if relief is granted. Civil litigation is conducted with the full disclosure of relevant information and the information sought by Chesley is relevant. This Court could have ordered pre-judgment disclosure of the alleged damages suffered by particular the Abbott Case plaintiffs if that case had been pending in this Court and the need for that disclosure (including the enhanced possibility of settlement) is just as present and important in the current posture of this proceeding – the probable use and enforcement of the Chesley Judgment in Ohio.

UNLESS SUPERSEDED BY A SUBSEQUENT COURT ORDER, THE COURT
ORDERS AS FOLLOWS:

1. For the next 14 days, Respondent Ford, any co-counsel acting with her and any other Ohio lawyer representing any of the Unknown Respondents are enjoined from (i) taking any action in the State of Ohio to enforce the Chesley Judgment or (ii) serve any Chesley asset related discovery on any Ohio resident, citizen or domiciliary, except Chesley;

2. For the next 14 days, Respondent Ford, any co-counsel acting with her and any other Ohio lawyer representing any of the Unknown Respondents are enjoined from making any

filing in any Ohio court that would be or could be part of an effort to domesticate or register the Chesley Judgment in Ohio;

4. For the next 14 days, Ford, the Unknown Respondents and any other person acting on behalf of the Unknown Respondents are preliminarily enjoined from taking any action to collect the Chesley Judgment in the State of Ohio from any Ohio resident, Ohio citizen or Ohio domiciled entity, other than Chesley;

5. For the next 14 days, Ford, the Unknown Respondents and any other person acting on behalf of Ford and the Unknown Respondents are preliminarily enjoined from issuing any subpoena seeking documents or testimony to any Ohio resident, Ohio citizen or Ohio domiciled entity (other than Chesley) if the purpose of the requested documents or testimony would be to obtain information related to any effort to enforce the Chesley Judgment;

6. For the next 14 days, Ford, the Unknown Respondents and any other person acting on behalf of Ford or the Unknown Respondents are preliminarily enjoined and prohibited from destroying, damaging or secreting any documents or electronically stored information relevant to any of the issues described in this Petition, the Motion or the Supporting Memo including but not limited to any document or electronic information that reflects any (i) collection of funds collected and/or credited against the Criminal Defendants Judgment, (ii) restitution obligations of the Criminals, (iii) forfeiture of any assets in the Criminal Case, (iv) funds Ford or any affiliated entity transferred to or from Johnston, (v) funds transferred to or for the benefit of any Criminal Case victims who are not Abbott Case plaintiffs; (vi) amounts distributed to the Abbott Case plaintiffs; (vi) operation of the Tandy LLC receivership; (vii) funds transferred to or subsequently by the United States Marshall's Service related to the

Criminal Case or the Abbott Case, and (viii) the legal fees and expenses of Ford and her co-counsel in the Abbott Case; and

7. If Ford or any other Respondent believes this Temporary Restraining Order improperly or irreparably damages their position and relief cannot wait more than 14 days, Ford is invited to contact the Court and set this matter for a hearing prior to the hearing set below.

THE FIRST SUBSTANTIVE ISSUE TO BE CONSIDERED BY THE COURT AFTER NOTICE TO FORD will be the status of the Unknown Respondents. It is clear from Exhibit A attached to the Supporting Memo that the Abbott Case “Plaintiffs”, or some of them as apparently asserted by Ford, are Chesley’s judgment creditors and real parties in interest in this proceeding. Therefore, this Court will first consider if steps must be taken to make those persons or entities parties to this proceeding with proper notice of the filings by Chesley.

The Court is considering the following plan and the parties should be prepared to address it at the next hearing in this matter:

Should respondent Ford be offered the option to either (a) provide to the Hamilton County, Ohio Clerk of Court the names and addresses of all of the current Unknown Respondents so that a copy of the Petition, Motion and Supporting Memo can be served on the Unknown Respondents by the Hamilton County Clerk of Court,¹ or (b) facilitate the filing of a Notice of Appearance with the Hamilton County, Ohio Clerk of Court for each and every one of the current Unknown Respondents by one or more Ohio counsel. If option “b” is selected, the appearing Ohio counsel will certify to the Court that said Ohio counsel provided a copy of the Petition, Motion and Supporting Memo to each of the Unknown Respondents for whom that Ohio counsel appears in this Court.

¹ If option “a” is chosen, Ford shall notify Chesley’s counsel who will provide to the Hamilton County Clerk of Court adequate copies of the Petition, Motion and Supporting Memo for service by the Clerk on the entities listed by Ford.

If Respondent Ford wants to agree with either the “a” or “b” option described in this paragraph, the Court invites her to so indicate and the Court will conduct a telephone conference at which the Court will extend the prohibitions in this Temporary Restraining Order for a period of time sufficient to cause the Unknown Respondents to receive service of Chesley’s filings and possibly become parties and then set a briefing schedule as discussed below.

AFTER THE COURT RESOLVES THE ISSUE CONCERNING THE UNKNOWN RESPONDENTS AND AFTER THE APPEARANCE OF THE UNKNOWN RESPONDENTS – SHOULD THE COURT ORDER SAME, the Court will direct complete briefing of the issues and then the Court will make final determinations of the issues in this case, including but not limited to:

Whether Chesley is entitled to know and Respondent Ford must disclose to this Court and Chesley (i) the name, address and amount owed to each of the current Unknown Respondents and (ii) the exact current amount owed on the Chesley Judgment including a specific calculation of prejudgment and post-judgment interest that recognizes possible changes in the daily accrual as credits against the Chesley Judgment occurred before Respondents (i) take any action in the State of Ohio to enforce the Chesley Judgment or (ii) serve any Chesley asset related discovery on any Ohio entity, except Chesley;

Whether Chesley is entitled to know and that Respondent Ford must disclose to Chesley (i) how much money and the value of non-monetary assets seized under the authority of the Criminal Defendants Judgment, (ii) if any assets were forfeited in the Criminal Case and if any restitution was paid in the Criminal Case, (iii) when any assets were seized or forfeited and any restitution payments were made so that Chesley can check the accuracy of Ford’s pre-judgment

and post-judgment interest calculations, (iv) the amount collected by Ford using the Criminal Defendants Judgment and not distributed to her clients, and (v) the total amount distributed to each of Chesley's Judgment Creditors in both the Settled Case and the Abbott Case before Respondents (i) take any action in the State of Ohio to enforce the Chesley Judgment or (ii) serve any Chesley asset related discovery on any Ohio entity, except Chesley;

Whether Ford, the Unknown Respondents and any other person acting on behalf of the Unknown Respondents should be permanently enjoined from taking any action to collect the Chesley Judgment in the State of Ohio from any Ohio resident, Ohio citizen or Ohio domiciled entity (other than Chesley), until 90 days after Chesley has received all of the information that this Court declares Chesley is entitled to receive;

Whether Ford, the Unknown Respondents and any other person acting on behalf of the Unknown Respondents should be permanently enjoined from registering or domesticating the Chesley Judgment in Ohio until 90 days after Chesley has received all of the information that this Court declares Chesley is entitled to receive; and

Whether Ford, the Unknown Respondents and any other person acting on behalf of the Unknown Respondents, should be permanently enjoined and prohibited from destroying, damaging or secreting any documents relevant to any of the issues described in this Petition, the Motion or the Supporting Memo including but not limited to any document or electronic information that reflects any (i) collection of funds collected and/or credited against the Criminal Defendants Judgment, (ii) restitution obligations of the Criminals, (iii) forfeiture of any assets in the Criminal Case, (iv) funds Ford or any affiliated entity transferred to or from Johnston, (v) funds transferred to or for the benefit of any Criminal Case victims who are not Abbott Case plaintiffs; (vi) amounts distributed to the Abbott Case plaintiffs; (vi) operation of the Tandy LLC

receivership; and (vii) funds transferred to or subsequently by the United States Marshall's Service related to the Criminal Case or the Abbott Case.

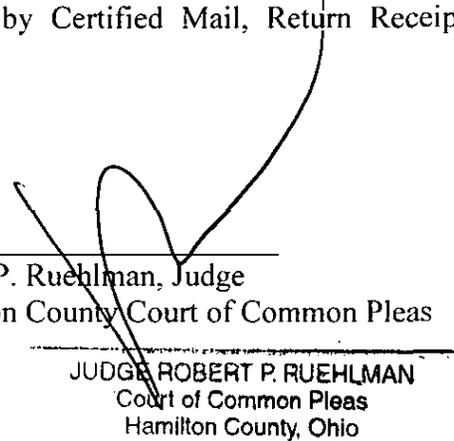
At this time, the Court determines that Chesley is not required to post any security for this Temporary Restraining Order to become effective due to the short term nature of this Temporary Restraining Order and the protections for the Respondents included herein.

The *ex parte* relief lasts for no more than 14 days, unless extended by the Court or by agreement of the parties. This matter will come on for a hearing on the Motion's request for a preliminary injunction and consideration of the status of the Unknown Respondents on January 14, 2015 at 9 AM o'clock. Petitioner did not request and the Court does not currently intend to combine this hearing with the hearing on the merits of the Motion as permitted by Ohio Civ. R. 65(C).

Chesley's counsel will electronically transmit a courtesy copy of the Temporary Restraining Order on Respondent Ford. The Hamilton County, Ohio Clerk of Court shall serve this Temporary Restraining Order on Respondent Ford by Certified Mail, Return Receipt Requested. See Ohio R. Civ. Procedure 65(E).

Entered this 7th day of January 2015

Robert P. Ruehlman, Judge
Hamilton County Court of Common Pleas



JUDGE ROBERT P. RUEHLMAN
Court of Common Pleas
Hamilton County, Ohio

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