

App. 1

IN THE SUPREME COURT
OF THE STATE OF NEVADA

JEFFREY KIRSCH,
Appellant,
vs.
REDWOOD RECOVERY
SERVICES, LLC; AND
ELEVENHOME LIMITED,
Respondents.

No. 73576

ORDER OF AFFIRMANCE

(Filed Nov. 15, 2019)

This is a pro se appeal from a district court final judgment and order granting an injunction following a bench trial.¹ Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

We are not persuaded that the district court committed reversible error in entering the challenged orders. First, we agree with the district court's determination that appellant had sufficient minimum contacts with Nevada such that he was subject to specific personal jurisdiction in this state. *See Catholic Diocese of Green Bay, Inc. v. John Doe* 119, 131 Nev. 246, 249-50, 349 P.3d 518, 520 (2015) (explaining Nevada's test for determining minimum contacts, which includes the extent to which the plaintiff's cause of action arises from the defendant's contacts with Nevada). Most notably, the district court found that appellant created a

¹ Pursuant to NRAP 34(f)(3), we have determined that oral argument is not warranted in this appeal.

App. 2

Nevada-registered LLC (Rock Bay, LLC), physically went to a Las Vegas branch of U.S. Bank to set up a bank account for Rock Bay, and then orchestrated the deposit of millions of dollars into that account in order to hide that money from respondents. Having reviewed the record, we conclude that substantial evidence supports the district court's findings, and because respondents' claims arise directly from the aforementioned conduct,² we agree that appellant's contacts with Nevada were sufficient to subject him to specific personal jurisdiction in Nevada. *Id.* at 249, 349 P.3d at 520 ("When reviewing a district court's exercise of jurisdiction, we review legal issues *de novo* but defer to the district court's findings of fact if they are supported by substantial evidence.").

Nor are we persuaded that the district court abused its discretion in prohibiting appellant from introducing evidence at trial as a discovery sanction. *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (reviewing the imposition of discovery sanctions for an abuse of discretion).³ In particular, the record demonstrates that appellant (1) refused to disclose any witnesses or documents in compliance with NRCP 16.1, (2) repeatedly refused to appear for his deposition, (3) refused to respond to requests for production,

² In this primary respect, *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 131 Nev. 30, 342 P.3d 997 (2015), is distinguishable from this case.

³ While the district court did not impose case-concluding sanctions, we note that the court nevertheless adequately considered the *Young* factors such that case-concluding sanctions would have been justified.

App. 3

and (4) refused to respond to interrogatories. Given that appellant did not produce any evidence during discovery, the district court was well within its discretion to prohibit appellant from relying on that evidence at trial.⁴

Finally, we conclude that the district court did not clearly err in determining appellant waived his statute-of-limitations affirmative defense. *See Wells Fargo Bank, N.A. v. Radecki*, 134 Nev. 619, 621, 426 P.3d 593, 596 (2018) (upholding a district court's factual findings following a bench trial unless they are clearly erroneous). The district court's written judgment found that appellant waived the defense by not asserting it until he joined in the other defendants' post-trial brief, and the necessary implication behind this finding is that respondents were not provided with a reasonable opportunity to address the defense at trial. *Cf. Williams v. Cottonwood Cove Dev. Co.*, 96 Nev. 857, 860, 619 P.2d 1219, 1221 (1980) ("Failure to timely assert an affirmative defense may operate as a waiver if the opposing party is not given reasonable notice and an opportunity to respond."). Appellant did not address this finding in his opening brief, and to the extent that he attempts to address it in his reply brief, we decline to consider those arguments. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7

⁴ Appellant suggests respondents were not prejudiced by appellant's refusal to cooperate with the discovery process or that imposing monetary sanctions would have been an adequate deterrent. These suggestions are perplexing, given the lengths to which appellant has gone to not pay the already-imposed Florida judgment.

App. 4

(2011). For the same reason, we decline to address appellant's argument that the district court improperly held him personally responsible for the conduct of the corporate defendants in this case and the non-party judgment-debtor entities. Accordingly, we

ORDER the judgments of the district court AFFIRMED.⁵

/s/ Gibbons, C.J.
Gibbons

/s/ Silver, J. /s/ Douglas, Sr. J.
Silver Douglas

cc: Hon. Mark R. Denton, District Judge
Thomas J. Tanksley, Settlement Judge
Jeffrey Kirsch
Jolley Urga Woodbury Holthus & Rose
Levine, Kellogg, Lehman, Schneider & Grossman
Eighth District Court Clerk

⁵ The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.

App. 5

FFCL

L. CHRISTOPHER ROSE, ESQ.

Nevada Bar No. 7500

lcr@juww.com

JOLLEY URGA WOODBURY & LITTLE

330 S. Rampart Boulevard, Suite 3830

Las Vegas, Nevada 89145

(702) 699-7500 Telephone

(702) 699-7555 Facsimile

*Attorneys for Plaintiffs Redwood Recovery Services,
LLC and Elevenhome Limited*

DISTRICT COURT
CLARK COUNTY, NEVADA

REDWOOD RECOVERY	)	Case No.
SERVICES, LLC, and	)	A-15-718683-B
ELEVENHOME LIMITED,	)	Dept No. XIII
Plaintiffs,	)	FINDINGS OF
v.	)	FACT AND
JEFFREY KIRSCH; AMERICAN	)	CONCLUSIONS
RESIDENTIAL EQUITIES,	)	OF LAW
LLC; AMERICAN RESIDEN-	)	(Filed Jun. 26, 2017)
TIAL EQUITIES LIII, LLC;	)	Dates of Trial:
WESTBOURNE CAPITAL,	)	January 25, 2017
LLC; ROCK BAY, LLC;	)	January 26, 2017
SLOANE PARK, LLC, VIZCAYA	)	February 2, 2017
INVESTMENTS, LLC;)	
OPPSREO, LLC;)	
STATEBRIDGE COMPANY,)	
LLC; DOES 1-10; and ROE)	
ENTITIES 11-20,)	
Defendants,)	

App. 6

This matter came on regularly for a bench trial beginning January 25, 2017 and continuing until its completion. Plaintiffs Redwood Recovery Services, LLC (“Redwood”) and Elevenhome Limited (“Elevenhome”) (collectively referred to as “Redwood” or “Plaintiffs” unless otherwise noted) were represented by their attorneys, L. Christopher Rose, Esq. of Jolley Urga Woodbury & Little, and Lawrence A. Kellogg, Esq. of Levine Kellogg Lehman Schneider & Grossman, LLP. Defendant Jeffrey Kirsch (“Kirsch”) represented himself in proper person. Defendants American Residential Equities, LLC (“ARE LLC”) and American Residential Equities LIII (“ARE 53”) were unrepresented and did not appear at trial (Kirsch, ARE LLC and ARE 53 are collectively the “Judgment Debtors”). Defendants Westbourne Capital, LLC (“Westbourne”), Rock Bay, LLC (“Rock Bay”), Sloane Park, LLC (“Sloane Park”), Vizcaya Investments, LLC (“Vizcaya”), and OppsREO, LLC (“OppsREO”) (collectively, the “Westbourne Defendants”) were represented by their attorney, Matthew L. Johnson, Esq. of Johnson & Gubler. Judgment Debtors and the Westbourne Defendants are collectively referred to as “Defendants” unless otherwise noted. Defendant Statebridge Company, LLC (“Statebridge”) was represented by its attorney, Gregg Hubley of Brooks Hubley.

The Court, having read and considered the pleadings filed by the parties; entering all lawful orders associated with this case; having considered the evidence and testimony at trial; and having carefully considered the oral and written arguments of counsel; and with

App. 7

the intent of deciding all claims before the Court pursuant to NRCP 52(a) and 58, the Court makes the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

PRELIMINARY MATTERS

1. As stated in the Court's Order filed July 27, 2016 ("Sanction Order #1"), this Court struck the answers of, and entered default against, ARE LLC and ARE 53 due to multiple violations of the Courts' orders, Court rules, refusal to participate in discovery, and other litigation abuse and misconduct as described in Sanction Order #1 (the "Litigation Misconduct"), and failure to oppose Redwood's Motion to Strike Answers to Complaint and for Entry of Default. Thus, the allegations of the Complaint are deemed admitted and true as to ARE LLC and ARE 53. The Court also entered sanctions against Kirsch and the Westbourne Defendants for their Litigation Misconduct, as set forth in Sanction Order #1.

2. Kirsch and the Westbourne Defendants failed to comply with Sanction Order #1, leading this Court to enter a sanction order against the Westbourne Defendants, filed November 14, 2016 ("Sanction Order #2") and against Kirsch, filed November 28, 2016 ("Sanction Order #3"). In addition to barring Defendants from introducing, using and/or relying upon Excluded Evidence (as defined in Sanction Orders #2 and #3), the Court also ordered that it would apply any properly applicable evidentiary presumptions (the

App. 8

“Evidentiary Presumptions”). The Evidentiary Presumptions include that evidence willfully suppressed would be adverse if produced (NRS 47.250(3)) and that higher evidence would be adverse from inferior evidence being produced (NRS 47.250(4)). Even without the Sanction Orders, under NRS 47.240, it is conclusively presumed under Nevada law the truth of a fact recited in a written instrument between the parties thereto, or their successors in interest by a subsequent title. Further, the Court is to presume under NRS 47.250(7) that things which a person possesses are owned by that person, and that a person is the owner of property from exercising acts of ownership over it. NRS 47.250(7)-(8). All of these presumptions are included in the “Evidentiary Presumptions”.

3. On the first day of trial, Statebridge and Redwood reached a settlement of the claims in this matter, which was entered on the minutes of the Court. The settlement terms are as follows: 1) Statebridge stipulated to entry of judgment against Statebridge and in favor of Plaintiffs on the first, third, fifth, and sixth claims for relief, with the limited exception as to the third claim for relief under Nevada’s Uniform Fraudulent Transfers Act to the extent that Statebridge did not stipulate to entry of judgment for any monetary damages or attorneys’ fees; 2) Statebridge is bound by the rulings and relief awarded by the Court (other than monetary damages or attorneys’ fees), including as to injunctive relief; 3) the settlement in this case has no effect whatsoever on any right or remedies that Redwood has before Judge Stefany Miley in District Court

App. 9

Case No. A-11-652803, or any defenses or issues that Statebridge would have in that matter, and both Redwood and Statebridge reserve all rights, remedies and defenses in that case.

THE KIRSCH ENTERPRISE, ARE LLC'S OWNERSHIP OF MORTGAGE LOANS

4. Kirsch, a Florida attorney and a principal and controlling person of ARE LLC, ARE 53, the Westbourne Defendants, and other entities, at all relevant times operated a business engaged in purchasing and managing pools of underperforming and non-performing mortgage loans. Kirsch, through ARE LLC and ARE 53, bought loans with funds borrowed from non-resident aliens, representing that he would acquire mortgages and liquidate the mortgages at a profit.

5. Kirsch operated his business through a number of entities that all fell under his ownership and/or control (the "Enterprise" or "Kirsch Enterprise"). Among the entities in the Enterprise is ARE LLC. He also created and used numerous, separate single-purpose entities, each of which were named "American Residential Equities" followed by a roman numeral. The single purpose numbered entities would sign an unsecured promissory note to the non-alien lenders. The funds borrowed were then used to purchase pools of non-performing or underperforming mortgages.

6. Ownership and management of the purchased mortgage loans, servicing rights for the loans, and the

App. 10

corresponding revenues generated by the Enterprise were placed in ARE LLC.

7. The Kirsch Enterprise retained third-party loan servicer to perform basic functions such as holding the mortgage loans, collecting mortgage payments, paying insurance and property taxes, enforcing loans, initiating foreclosures, and related loan servicing activities. Kirsch also placed mortgage loans with the Mortgage Electronic Registration System (“MERS”), a national electronic registry system for mortgage loans.

8. ARE LLC owned thousands of mortgage loans that were serviced by GMAC Mortgage Corporation (“GMAC”), one such loan servicer. In the servicing agreement between ARE LLC and GMAC – signed by Kirsch himself – ARE LLC represented and warranted its ownership of all of the mortgage loans:

9.06 Ownership

With respect to each Mortgage Loan, Owner [ARE LLC] is the owner of all right, title, and interest in and to the Mortgage Loan (and the servicing rights appurtenant thereto). Each Mortgage Loan is a valid and collectible obligation of the respective Mortgagor; and no Mortgage Loan is subject to the Home Ownership and Equity Protection Act of 1994.

Tr Ex. 1, p. 44. That servicing agreement was originally signed in 2004 but was amended five times – including in February 2009 when Kirsch again signed personally to reaffirm ARE LLC’s ownership of the loans.

**KIRSCH AND HIS ENTERPRISE DEFRAUD
REDWOOD**

9. Redwood and Elevenhome, through predecessor entities, loaned substantial funds to the Kirsch Enterprise for the purpose of making and purchasing mortgage loans.

10. Redwood and Elevenhome ultimately discovered that certain commercial loans represented to be legitimate were in fact fabrications based on forged promissory notes Kirsch created for loans that were never made. To perpetuate and conceal the fraud, Kirsch and his Enterprise companies made purported mortgage interest payments on the non-existent loans. Kirsch knew, but concealed, that the loans had not been made. Kirsch later admitted at trial that he lied about the loans to avoid destroying his business relationship with Redwood and Elevenhome's predecessor entities.

11. Redwood confronted Kirsch after discovering the fraudulent loans, and Kirsch and a number of his related entities in the Kirsch Enterprise promised to refund the fraudulent loan proceeds. Redwood, Elevenhome and Kirsch also negotiated a separation and termination of their business dealings.

12. The settlement agreement between Redwood, Elevenhome, and Kirsch and his Enterprise¹ was

¹ The other entities in the Kirsch Enterprise obligated to Redwood and Elevenhome pursuant to the settlement agreement included Meadow Mint, LLC, Key Biscayne Family Trust, ARE LLC, American Residential Equities, Inc., ARE Asset

App. 12

entered March 17, 2008 and included execution of promissory notes to Redwood to be paid \$10 million and to Elevenhome in the amount of \$6.6 million.

13. Unbeknownst to Redwood, Kirsch and the other parties to the settlement agreement, including those who later became the Judgment Debtors, began implementing a plan to avoid any liability under the settlement agreement or for any lawsuit or judgments that would later arise therefrom. In essence, Kirsch transferred all of the assets to a new enterprise, and left the Plaintiffs' debt behind. His business thereafter proceeded free of his obligations to Plaintiffs, who were left attempting to enforce their rights against empty shells.

14. Kirsch's plan involved creating and using non-Judgment Debtor entities to conduct what previously had been the Judgment Debtors' business, shifting operations and transferring assets and property to those non-Judgment Debtor entities, and using bank accounts of non-Judgment Debtor entities to receive and conceal payments and funds belonging to Judgment Debtors, among other things.

15. The chronology of events shows that the timing of Kirsch's maneuvers and those of the Kirsch Enterprise were strategic, intentional, in bad faith and with the intent of evading liability to Redwood. A

Management, LLC, Seabreeze Financial, LLC, and ARE 53, all of which are included in the definition of the Kirsch Enterprise.

App. 13

summary of the chronology of events based on the evidence includes:

3/17/2008	Judgment Debtors signed a settlement agreement with Redwood
July-Oct. 2008	OppsREO was formed, ARE numbered entities were shut down
10/28/2008	Redwood and Elevenhome filed a Florida lawsuit against Kirsch and other Judgment Debtors and parties to the settlement agreement, <i>Redwood Recovery Services, LLC, et al. v. Jeffrey L. Kirsch, et al.</i> , Case No. 08-65603, Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida
Dec. 2008-	
Nov. 2010	Kirsch formed multiple entities as follows
12/31/2008	Rock Bay was formed in Nevada
4/29/2009	Addle Hill was formed
6/1/2009	Sloane Park was formed in Nevada
8/26/2009	Vizcaya was formed
5/10/2010	Rock Bay and Vizcaya filed fictitious firm name certificates to do business in Clark County, Nevada as "ARE" and "American Residential Equities"

App. 14

10/22/2010	Rock Bay opened a US Bank account in Las Vegas, Nevada
11/23/2010	Westbourne was formed
1/13/11	Kirsch transferred ownership and servicing of the mortgage loans from ARE LLC to Westbourne, which claimed to be owner. Further, instead of GMAC as servicer, servicing of the loans went to Residential Credit Solutions, Inc.
1/17/2011	Redwood's trial in Florida against Kirsch and the Judgment Debtors began
3/7/2011	Final judgments were entered in favor of Redwood and against Judgment Debtors in Florida lawsuit
4/1/2011	Kirsch transferred operations, revenue, employees from ARE LLC to Addle Hill
12/9/2011	Redwood domesticated Florida judgments in Nevada
12/20/2011	Rock Bay filed articles of dissolution in Nevada and organized in Utah
8/2/2013	Moab Ventures, LLC was formed

16. All of the entities mentioned in the preceding paragraph are part of the Kirsch Enterprise.

VARIOUS TRANSFERS AND TRANSACTIONS OF THE KIRSCH ENTERPRISE

17. Kirsch and the other Judgment Debtors formed non-Judgment Debtor entity Rock Bay in the State of Nevada with the intent to transfer assets to and conceal assets in Rock Bay.

18. On May 10, 2010, only months before Redwood's Florida trial against Kirsch and the other Judgment Debtors (including ARE LLC and ARE 53) was to begin, Kirsch signed and filed Certificates of Fictitious Firm Names with the Clerk of Clark County, Nevada indicating that Rock Bay would do business in Clark County, Nevada under the fictitious names of "ARE" and "American Residential Equities." Kirsch also signed and filed similar certificates on that date so that Vizcaya could likewise do business in Clark County, Nevada under "ARE" and "American Residential Equities."

19. On October 22, 2010, Kirsch opened a bank account for Rock Bay at a US Bank branch in Las Vegas, Nevada. Kirsch was the only signatory on the bank account. A few days later, US Bank permitted Kirsch to add to the US Bank account records that Rock Bay did business as "American Residential Equities."

20. By opening an account for Rock Bay under the fictitious firm name of American Residential Equities, Kirsch and his Enterprise were able to deposit checks and wire transfers payable to Judgment Debtor ARE LLC into the bank account of non-Judgment Debtor entity, Rock Bay, thereby concealing Judgment

App. 16

Debtors' funds and avoiding Redwood's discovery and execution efforts.

21. After establishing Rock Bay's US Bank Account, Kirsch, Judgment Debtors, and Rock Bay caused millions of dollars payable to Judgment Debtors to be diverted and deposited into the Rock Bay's account instead of Judgment Debtors' accounts. From November 1, 2010 to March 31, 2014, payments intended for and belonging to Judgment Debtors but deposited into Rock Bay's account exceeded \$2 million. Thereafter, the Rock Bay account was used by Kirsch as the central bank account for his Enterprise and the various new entities that now operated his business.

22. On January 13, 2011, just days prior to the beginning of the Florida trial, Kirsch transferred ownership and servicing of the mortgage loans to new entities. Whereas ARE LLC previously owned the mortgage loans, now Westbourne claimed to be owner. Further, instead of GMAC as servicer, servicing of the loans went to Residential Credit Solutions, Inc. Kirsch again signed the servicing agreement personally, and now Westbourne – not ARE LLC – represented and warranted its ownership of all of the mortgage loans.

23. On January 17, 2011, the Florida trial between Redwood and Judgment Debtors began.

24. On March 7, 2011, the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida found in favor of Redwood and against Kirsch, ARE LLC, and other defendants in the amount of \$10,522,910.00 plus accrued interest ("Redwood

Judgment") and found in favor of Elevenhome against ARE 53 in the amount of \$6,650,435.13 plus accrued interest ("Elevenhome Judgment") (collectively, the "Florida Judgments").

25. On April 1, 2011 – four days after the Florida Judgments became final – ARE LLC transferred all of its business operations, employees, revenue, and management operations to Addle Hill, Inc. ("Addle Hill"), a then recently created California entity within the Kirsch Enterprise. William Hirschkowitz ("Hirschkowitz"), ARE LLC's chief financial officer who then began working for Addle Hill, admitted these facts under oath in testimony taken by Plaintiffs in aid of execution:

- All functions and operations ARE LLC engaged in prior to the transfer on April 1, 2011 began to be performed by Addle Hill after the transfer without any interruption;
- Addle Hill did not pay, nor did ARE LLC receive, any consideration for the transfer of its business operations, employees, revenue, management operations or other assets;
- Just as Kirsch at all times dominated, controlled, and oversaw all operations for ARE LLC and the other Judgment Debtors, Kirsch at all times dominated, controlled, and oversaw all operations for Addle Hill;
- the job titles and compensation of all of the employees did not change, they merely began working for Addle Hill instead of ARE LLC;

App. 18

- ARE LLC closed its bank account and a bank account was opened for Addle Hill;
- Addle Hill started paying all expenses of operations for the Kirsch Enterprise, including paying for Judgment Debtors' attorneys;
- Addle Hill collected the money generated by the mortgage loans and began collecting the management fee that ARE LLC once collected;
- there was no gap between the change – one day all operations and employees were with ARE LLC and the next they belonged to Addle Hill;
- Addle Hill did not assume any of ARE LLC's liabilities; only assets were transferred, none of the debts;
- After the transfer, ARE LLC had no further operations whatsoever;
- All financial records for ARE LLC were destroyed on an annual basis at the direction of Jeffrey Kirsch.

26. The purpose of the transfer from ARE LLC to Addle Hill was to place the operating and revenue producing arm of the Kirsch Enterprise beyond Redwood's reach once Redwood obtained the Florida Judgments.

27. On or about September 28, 2011, as a result of Hirschkowitz's testimony, Redwood filed a Motion to Implead Addle Hill as a defendant in the Florida action.

App. 19

28. Within days after this Impleader was filed, Kirsch began using the Rock Bay Nevada Bank account to pay all of the expenses of his operations, including employees and attorneys representing the Judgment Debtors in contesting collection of the Florida Judgments. Further, substantial, if not all of the revenues of Kirsch's operations were thereafter deposited into the Rock Bay US Bank account.

29. In the midst of the maneuvering discussed above, Kirsch continued to transfer servicing of the mortgage loans.

30. On November 3, 2011, Kirsch moved the loans from Residential Credit Solutions to a new loan servicer, Marix Servicing Company, LLC. Once again, as head of his Enterprise, Kirsch personally signed the servicing agreement between Marix Servicing and Westbourne. Once again, Westbourne now represented and warranted that it was the owner of all mortgage loans that ARE LLC previously represented and warranted that it owned.

31. On April 20, 2012, Kirsch caused all of the mortgage loans to be transferred for servicing yet again, this time to Statebridge. Kirsch, once again, personally signed the servicing agreement between Westbourne and Statebridge.

32. The testimony from Statebridge representative, David McDonnell, established he [sic] following:

- Statebridge began servicing loans for Westbourne in April 2012;

App. 20

- every loan Statebridge serviced came from Marix Servicing;
- Kirsch signed the servicing agreement and the powers of attorney for Westbourne;
- OppsREO was the entity Westbourne used to receive title to foreclosed properties;
- Statebridge received the restraining order and injunction issued by Judge Stefany Miley in District Court Case No. A-11-652803 enjoining the transfer of properties and the release of any funds for mortgage loans²;
- after the injunction, Westbourne instructed Statebridge to release and transfer a number of properties to a different loan servicer, leading to those properties being transferred after entry of the injunction order;
- the only reason Statebridge transferred servicing of loans after entry of the injunction was because Westbourne instructed Statebridge to do so.

33. On June 20, 2012, the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida, gave permission to Redwood to implead Addle Hill in the Florida action. Redwood filed suit against

² In separate judgment domestication and enforcement proceedings before Judge Stefany Miley in Eighth Judicial District Court Case No. A-11-652803, the District Court issued a restraining order and later an injunction against Kirsch, the other Judgment Debtors, and those persons who received notice of the injunction, from transferring or disposing of any interest in mortgage loans and properties.

Addle Hill alleging claims for successor liability and seeking other related relief against Addle Hill to impose liability for the Florida Judgments.

34. After Redwood was allowed to implead Addle Hill, Kirsch then further transferred all assets and operations from Addle Hill to another Kirsch-controlled entity, Westbourne.

35. Kirsch and the Kirsch Enterprise's transactions then began to occur through Westbourne. The evidence showed that:

- operations and revenue that had been moved from ARE LLC to Addle Hill were then moved to Westbourne;
- employees formerly employed with ARE LLC then later with Addle Hill thereafter began to work for Westbourne;
- ARE LLC's assets are the same assets transferred to the Westbourne Defendants, and all assets came from ARE LLC;
- Kirsch oversaw the entire Enterprise organization, including Addle Hill and Westbourne;
- ARE LLC's General Counsel, Jacquelyn Lissette Smyth, then became General Counsel for Addle Hill, and then for Westbourne. She testified about Westbourne and its successor relationship and connection to Judgment Debtors and the Kirsch Enterprise. She refused to answer when questioned about Westbourne's business and Kirsch's involvement with Westbourne; however, she admitted

doing legal work for Westbourne and being paid for that work by either ARE LLC or Addle Hill; when performing work for Addle Hill she was paid by ARE LLC during 2009;

- Pamela Perrot, another employee of the Kirsch Enterprise, further testified in April 2015 that she was initially an employee of ARE LLC, later became employed by Addle Hill, and at the time of her testimony was employed by Westbourne; her job did not change at all, she was just told she worked for a different company; the change to Westbourne happened in the end of 2012;
- during the course of her employment, she dealt with Jeffrey Kirsch, and he was the boss.

36. On October 16, 2015, the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida, granted Redwood's Motion for Partial Summary Judgment against Addle Hill. *Redwood Recover Services LLC, et al. v. Jeffrey L. Kirsch, et al., and Addle Hill, Inc.*, Order Granting Partial Summary Judgment on Count I of Amended Interpleader Complaint, CV-08-65603 CA 40 (Oct. 16, 2015). In the court's order, the court found that all of the assets of ARE LLC were transferred to Addle Hill; however, none of the debts of ARE LLC were transferred to Addle Hill. Additionally, the Florida court found that "ARE LLC was operated and controlled by Defendant Kirsch" and "[a]t the time of the transfer, Kirsch also operated and controlled Addle Hill." No consideration was paid for any of the transfers between ARE LLC and Addle Hill. Additionally, "all of ARE LLC's former employees performed the

same jobs for Addle Hill, in return for the same compensation.” *Id.* These undisputed facts led the Florida court to conclude that Addle Hill was the alter ego of ARE LLC as it was simply a “mere continuation of ARE LLC that was used with the improper purpose of evading collection of the Judgment.” *Id.* at ¶¶ 17-18. Thus, Addle Hill was liable under the alter ego theory of successor liability and subject to Redwood’s Judgments against ARE LLC. The Florida Court found alter-ego relationships, successor liability and fraudulent transfers between ARE LLC and Addle Hill, Inc., making specific findings about the purpose of their dealings:

18. The Court also finds that ARE, LLC’s assets and revenue stream were fraudulently transferred without consideration to Addle Hill. Indeed, both Mr. Hirschkowitz and Ms. Smyth confirmed this with their testimony.

19. Additionally, the transferring of ARE, LLC’s entire business just after judgment leads to the inescapable conclusion that the transfer was done with the improper purpose of evading collection of the Judgment. Addle Hill has failed to present any evidence to the contrary.

Tr. Ex. 68, ¶¶ 18-19.

37. The Florida Court later entered final judgment against Addle Hill.

38. Redwood eventually obtained discovery of Rock Bay’s account records at US Bank, which establish that Defendants commingled funds in the Rock

App. 24

Bay account, the same account into which over \$2 million in Judgment Debtor funds were deposited. Kirsch used those funds not only to finance his Enterprise but also for cash and personal expenses.

39. More specifically, Rock Bay's account records for November 2010 through March 2014 show:

- Checks made payable to Judgment Debtors totaling \$2,179,986.29 were deposited in Rock Bay's account;
- An additional \$809,456.02 were checks payable to entities other than Rock Bay, and each entity was controlled by Kirsch;
- Deposits from Westbourne totaled \$1,522,785, while withdrawals to Westbourne were \$322,775;
- Deposits from OppsREO totaled \$476,639, while withdrawals to OppsREO totaled \$415,162;
- Only \$931,339 in funds were checks payable to Rock Bay (as opposed to almost \$3 million payable to Judgment Debtors or other entities);
- Kirsch used a debit card drawn against the account for personal expenses and cash withdrawals;
- Rock Bay paid Judgment Debtors' attorneys' fees and costs in fighting Redwood's collection efforts in the amount of \$646,818.95.

The Rock Bay account was a business account with U.S. Bank, whose representative testified in deposition that it had no responsibility to monitor masked deposits or third party deposits to their customer business accounts.

40. The money deposited into the Rock Bay account was generated by the same pool of mortgage assets that had once been managed by ARE LLC.

41. Kirsch has continuously showed through his actions that he is attempting to avoid the liability of the Judgments lawfully imposed on him and the other Judgment Debtors, which he controls.

42. Kirsch's desire to hide assets from Redwood is evidenced by the fact that he directed his chief financial officer each year to destroy the financial records and computer hard drives for any of the entities in the Kirsch Enterprise so as to render it impossible to review specific transactions.

43. At all relevant times, Kirsch showed pervasive control over the affairs of Judgment Debtors, the Westbourne Defendants and the Kirsch Enterprise as a whole. Kirsch orchestrated and caused the transfer of assets, operations, revenue, employees within the Kirsch Enterprise and in particular from ARE LLC to non-Judgment Debtor entities within the Enterprise.

PERSONAL JURISDICTION AND DEFENDANTS' CONTACTS WITH NEVADA

44. The evidence of Kirsch's Nevada contacts was substantial, including the following:

- Kirsch caused the formation of Rock Bay, a Nevada limited liability company, on December 31, 2008. He also signed annual lists filed with the Nevada Secretary of State in 2009 and 2010. Tr. Ex. 2, pp. 1-3;
- Kirsch caused Sloane Park, another Nevada limited liability company, to be formed in June 2009. Notably, Sloane Park's member is Addle Hill, Inc., the corporation that the Florida court already found to be controlled by Jeffrey Kirsch. Tr. Ex. 68, p. 4, ¶ E ("At the time ARE, LLC transferred its business to Addle Hill, Defendant Kirsch controlled Addle Hill and also controlled ARE, LLC . . . Defendant Kirsch oversaw the daily operations of Addle Hill.");
- Kirsch signed and filed fictitious firm name certificates with the Clerk of Clark County, Nevada on May 10, 2010 so that Rock Bay could do business in Nevada as "ARE" and "American Residential Equities";
- Kirsch also signed and filed fictitious firm name certificates with the Clerk of Clark County on May 10, 2010 so that Vizcaya could do business in Nevada as "ARE" and "American Residential Equities";

- Kirsch opened a bank account for Rock Bay at the McCarran branch of US Bank in Las Vegas, Nevada on October 22, 2010, as evidenced by the US Bank account opening document dated October 22, 2010 accompanied by a copy of Kirsch's Florida driver's license. US Bank's regional operation manager, Karen Edmonson, testified at trial about the opening of the account, and that a driver's license is required to verify the identification of the individual opening the account;
- US Bank documents show Kirsch as the "owner" of the account for Nevada entity Rock Bay;
- After Redwood applied to domesticate its judgments in Nevada on December 6, 2011, Kirsch immediately just two weeks later – personally signed and filed Articles of Dissolution for Rock Bay with the Nevada Secretary of State. Notably, Kirsch signed as the manager or member for Rock Bay. Kirsch then signed the documents necessary that very same day to form and domesticate Rock Bay in the state of Utah, which he did on an expedited basis;
- Kirsch caused millions of dollars of checks payable to Judgment Debtors "ARE" and "American Residential Equities" to be deposited into the Rock Bay account established in Nevada. Redwood's summary chart of US Bank deposits shows \$2,179,986.29 in Judgment Debtor funds making their way to the Rock Bay account;

App. 28

- After Redwood's judgments were domesticated in Nevada but before the filing of this action, Kirsch and the other Judgment Debtors voluntarily appeared in Nevada to seek protective orders and otherwise attempt to obstruct and defeat Redwood's post-judgment discovery and execution efforts. *See* Court Docket and pleadings on file in District Court Clark County, Nevada, Case Number A-11-652803-F. NRS 47.130;
- Kirsch caused Rock Bay to petition for a writ of mandamus to the Nevada Supreme Court, resulting in a published decision, *Rock Bay, LLC v. District Court*, 129 Nev. Adv. Op. 21, 298 p.3d 441, 447 (2013) (allowing discovery of Rock Bay's US Bank records where evidence of the relationship between Judgment Debtors and Rock Bay raised "reasonable suspicion as to the good faith of the asset transfers between them"). NRS 47.130;
- Judge Stefany Miley entered a restraining order against Kirsch and Judgment Debtors enjoining the transfer of assets. Kirsch and Judgment Debtors later stipulated to extend the injunction and to engage in discovery. Judge Miley later extended the preliminary injunction against Kirsch and other Judgment Debtors given their claim they owned no assets but refused to engage in discovery on the issue. Kirsch was also ordered to appear personally before Judge Miley to answer questions about assets, which he has yet to do;

App. 29

- After Judge Miley entered the restraining order on February 1, Kirsch signed and recorded deeds and assignments of mortgages in violation of the injunction order. The evidence of this activity with these properties was part of the reason Judge Miley extended the injunction order and ordered Kirsch to appear to testify about assets. Kirsch also caused assets to be transferred from Statebridge after entry of the injunction;
- Kirsch later filed a notice of appeal of the injunction and order for his appearance. The Nevada Supreme Court affirmed Judge Miley's orders in their entirety. Order of Affirmance, Supreme Court Case Number 66728. NRS 47.130.

45. Kirsch presented no credible evidence to contradict the proof described above of his contacts toward and relationship with Nevada. Kirsch is subject to personal jurisdiction in Nevada, both general or at a minimum specific jurisdiction.

46. The evidence of Westbourne's role in the Kirsch Enterprise and contacts with Nevada was substantial. The evidence showed that Kirsch and Westbourne are inseparable from each other. The evidence of their contacts with each other and with Nevada included the following:

- Westbourne was formed on November 23, 2010 – less than two months from the beginning of the Florida trial against Kirsch and his Judgment Debtors;

App. 30

- Kirsch personally signed on behalf of Westbourne to be the managing member of OppsREO;
- Westbourne is a related entity to Rock Bay, a Nevada limited liability company, as Westbourne admitted in a certificate of interested parties filed in its federal court lawsuit against Residential Credit Solutions, Inc.;
- Whereas Judgment Debtor ARE LLC had previously claimed to be owner of Kirsch's portfolio of thousands of mortgage loans, Westbourne later assumed ownership of and servicing rights for all the mortgage loan properties with various third-party loan servicing companies, including Residential Credit Solutions, Marix Servicing, and Statebridge. Kirsch signed all of the servicing agreements;
- The revenue and profits generated by the loans serviced for Westbourne is the same revenue and profits generated by the same loans formerly belonging to and serviced for Judgment Debtor ARE LLC;
- The proceeds of the former assets of Judgment Debtor ARE LLC – later serviced for Westbourne – were then deposited into the Nevada bank account of a Nevada limited liability company – *i.e.*, Rock Bay's US Bank account – according to the undisputed testimony of Kirsch's CFO, William Hirschkowitz;
- The proceeds of those Judgment Debtor assets later owned by and serviced for Westbourne

App. 31

and deposited into the Rock Bay account exceeded \$2.1 million just for payments payable to ARE LLC and American Residential Equities;

- The same Nevada bank account of the Nevada entity (Rock Bay) where Judgment Debtor assets and proceeds were deposited is the same Nevada account that Westbourne deposited and withdrew over \$1.8 million;
- In addition to comingling funds with Judgment Debtors and Rock Bay in the Nevada account of a Nevada limited liability company, Kirsch personally withdrew over \$500,000 in cash and cashier's checks from the Rock Bay account. Kirsch was the only signatory on the account;
- Kirsch signed an affidavit stating that he is a member of Westbourne;
- Statebridge considered Kirsch to be the client while Statebridge serviced loans for Westbourne. Tr. Ex. 48 ("Dear Mr. Kirsch: First, I would like to thank you for being a client of Statebridge.");
- Kirsch signed a limited power of attorney on behalf of Westbourne to grant authority to Statebridge to service loans;
- Westbourne paid for Kirsch and other Judgment Debtors' personal attorney fees to Judgment Debtors' Nevada law firm, Reisman and Sorokac;

App. 32

- Kirsch signed documents assigning mortgages from Westbourne to his most recent vehicle to avoid judgment, Moab Ventures, LLC.

47. Defendants presented no credible evidence to contradict the proof described above of Westbourne's relationship with Kirsch and its contacts with Nevada. Westbourne is subject to personal jurisdiction in Nevada, both general or at a minimum specific jurisdiction.

48. The evidence of Sloane Park's role in the Kirsch Enterprise and contacts with Nevada was substantial, including the following:

- Sloane Park is a Nevada limited liability company;
- As William Hirschowitz testified, assets that had been owned and managed through ARE LLC were then transferred to "roll-up" companies, which included Sloane Park. Those are the same assets that were managed for ARE LLC until they were transferred;
- Because Sloane Park received title to Judgment Debtor assets as a roll-up company, the proceeds of those assets were deposited into the Nevada bank account of a Nevada entity – *i.e.*, Rock Bay's account with US Bank.

49. Defendants presented no credible evidence to contradict the proof described above. Sloane Park is subject to personal jurisdiction in Nevada, both general and specific jurisdiction.

App. 33

50. The evidence of Vizcaya's role in the Kirsch Enterprise and contacts with Nevada was substantial, including the following:

- Kirsch signed and filed fictitious firm name certificates with the Clark County, Nevada clerk on May 10, 2010 so that Vizcaya could do business in Nevada as "ARE" and "American Residential Equities";
- Assets that had been owned and managed through ARE LLC were then transferred to "roll-up" companies, which included Vizcaya. According to William Hirschowitz, those are the same assets that were managed for ARE LLC until they were transferred;
- Because Vizcaya received title to Judgment Debtor assets as a roll-up company, the proceeds of those assets were deposited into the Nevada bank account of a Nevada entity – *i.e.*, Rock Bay's account with US Bank.

51. Defendants presented no credible evidence to contradict the proof of Vizcaya's activities – both directly and as part of the Kirsch Enterprise – as subjecting it to specific jurisdiction in Nevada.

52. The evidence of Rock Bay's role in the Kirsch Enterprise and contacts with Nevada was substantial, including the following:

- Rock Bay was a Nevada limited liability company organized on December 31, 2008 – *after* Judgment Debtors became liable to Redwood;

App. 34

- Kirsch signed and filed fictitious firm name certificates with the clerk of Clark County, Nevada on May 10, 2010 so that Rock Bay could do business in Nevada as “ARE” and “American Residential Equities”;
- Kirsch opened a bank account for Rock Bay at US Bank’s Las Vegas, Nevada branch, the McCarran branch, on October 22, 2010;
- Rock Bay dissolved on December 20, 2011, just days after Redwood domesticated its Florida judgments in Nevada. Kirsch then caused Rock Bay to scurry to Utah to domesticate there;
- Rock Bay received deposits of over \$2.1 million in payments payable to Judgment Debtors from what were once Judgment Debtor assets;
- Nevada was the hub of Kirsch’s Enterprise operations through Rock Bay. Rock Bay not only received millions of dollars in Judgment Debtor assets, but also received payments from and made payments to the other Westbourne Defendants in this case, including Westbourne and OppsREO;
- Rock Bay funded Kirsch and other Judgment Debtors’ personal obligations, including paying their attorneys who defended judgment collection proceedings;
- Rock Bay likewise voluntarily appeared in Nevada to fight Redwood’s discovery and execution efforts. Rock Bay moved to quash

subpoenas and took a writ to the Nevada Supreme Court;

- As William Hirschowitz testified, money generated by ARE LLC's assets was deposited into Rock Bay's account.

53. Defendants presented no credible evidence to contradict the proof of Rock Bay's activities – both directly and as part of the Kirsch Enterprise – as subjecting it to general and specific jurisdiction in Nevada.

54. The evidence of OppsREO's role in the Kirsch Enterprise and contacts with Nevada was substantial, including the following:

- Kirsch signed an affidavit stating that he is a member of OppsREO;
- OppsREO likewise funded personal obligations and expenses for Kirsch and other Judgment Debtors, including payment of their attorney fees in defending judgment collection efforts;
- David McDonnell, Statebridge's managing director, testified, and Statebridge records show, that Kirsch used OppsREO to receive title to any foreclosed properties;
- Since OppsREO received title to foreclosed properties of Westbourne, and Westbourne received the assets and properties once owned by ARE LLC, OppsREO received transfers of assets that were once Judgment Debtors' and then funneled through the Kirsch Enterprise;
- OppsREO also received funds from and deposited funds totaling over \$900,000 into the Nevada

App. 36

bank account of a Nevada limited liability company (Rock Bay's account at US Bank);

- Kirsch also authorized OppsREO's appointment of Westbourne as managing member.

55. Defendants presented no credible evidence to contradict the proof of OppsREO's activities – both directly and as part of the Kirsch Enterprise – as subjecting it to specific jurisdiction in Nevada.

56. Additionally, Defendant ARE LLC is subject to personal jurisdiction in Nevada as a result of it: doing business in Nevada; funneling funds to the Nevada bank account of a Nevada entity; using Nevada entities and bank accounts to conceal assets from Redwood; and engaging in the other acts described herein.

57. Defendant ARE 53 is also subject to personal jurisdiction in Nevada as a result of it: doing business in Nevada; funneling funds to the Nevada bank account of a Nevada entity; using Nevada entities and bank accounts to conceal assets from Redwood; and engaging in the other acts described herein.

JURISDICTION [sic] BASED ON AGENCY

58. The evidence shows that Kirsch is the agent for each and every other Defendant, and the other Defendants are Kirsch's agents. Kirsch created and controls each of the Judgment Debtors and Westbourne Defendants and owns them directly or beneficially. In addition to the evidence cited previously and presented at trial, which is incorporated herein:

- Kirsch signs all the checks for all Defendants;
- Kirsch withdrew over \$500,000 in cash, cashier's checks and ATM withdrawals from Rock Bay's account, which contained commingled funds from the other Defendants;
- Kirsch signed all of the servicing agreements for servicing of the mortgage loans, and powers of attorney;
- As Mr. Hirshkowitz [sic] testified, Kirsch was "the boss". It was all Kirsch's business, he signed all the checks and no one else had check signing authority;
- Kirsch oversaw the entire organization (e.g., the Kirsch Enterprise), including ARE LLC, Addle Hill, Sloane Park, Vizcaya, Rock Bay, OppsREO and Westbourne.

59. Kirsch has at all times made all the decisions, controlled each dollar earned or spent, controlled each mortgage loan purchased or sold, and controlled and choreographed each step of each Defendant. As agents of each other, all of Kirsch's contacts with the State of Nevada are attributable to each and every other Defendant.

JURISDICTION BASED ON ALTER EGO

60. Personal jurisdiction is also proper based on veil-piercing and reverse veil-piercing as Defendants are the alter-egos of each other.

61. The evidence that all Defendants are influenced and governed by Kirsch and each other is substantial, and, in addition to all other evidence cited herein and presented at trial, includes the following evidence:

- Defendants shared debts and liabilities with each other. Payment for Kirsch's and Westbourne's attorneys' fees came from Rock Bay's bank account. Later, Westbourne paid Kirsch and ARE LLC's attorneys' fees;
- All employees of ARE LLC later worked for Addle Hill and then for Westbourne, all of which are Kirsch controlled;
- All Kirsch entities operated out of the same address and office at 100 Wilshire Boulevard, Suite 250, Santa Monica, California 90401;
- Kirsch signed all the checks for ARE LLC and also for all Westbourne Defendants;
- All Westbourne Defendants comingled funds in a single bank account of Rock Bay;
- Employees who worked for ARE LLC and Addle Hill had a "Westbourne" email address;
- Kirsch withdrew over \$500,000 in cash, cashier's checks and ATM withdrawals from Rock Bay's account;
- As Hirschowitz testified, Kirsch was "the boss", signed all the checks, and oversaw the entire Kirsch Enterprise;

- Defendants comingled and diverted funds, but Kirsch also has treated the assets of the Enterprise as his own. Indeed, by all of the Westbourne Defendants comingling funds in the single bank account of Rock Bay, they have each treated each other's assets as their own.

62. Further, there is both ownership and a unity of interest between Kirsch and the Westbourne Defendants. First, Kirsch signed sworn declarations stating that he is a member of Westbourne and OppsREO, thereby attesting to his ownership interest in those entities. As to Rock Bay, Sloane Park and Vizcaya, the evidence and circumstances show an indisputable unity of interest between Kirsch and all of the Westbourne Defendants. Kirsch is “the boss” according to William Hirschowitz. Kirsch is the undisputed, ultimate authority for all of the Westbourne Defendants’ dealings. He negotiated and signed all the loan servicing agreements. The Kirsch Enterprise deposited funds into and paid bills from a common bank account (Rock Bay) and shared debts and liabilities. This and the other evidence herein shows a clear unity of interest between Kirsch and the Westbourne Defendants making them inseparable from another.

63. Adherence to the corporate fiction would sanction a fraud or injustice. The evidence shows that Kirsch’s manipulation of Judgment Debtors, the Westbourne Defendants, their assets, and operations has kept assets beyond Redwood’s reach. Further, the Florida court already found that Kirsch and ARE LLC are alter egos of Addle Hill, another entity in the Kirsch

Enterprise. In imposing alter-ego and successor liability in that case, the Florida court recognized Kirsch's fraudulent scheme by stating that assets were fraudulently transferred without consideration, which "leads to the inescapable conclusion that the transfer was done with the improper purpose of evading collection of the [Redwood] Judgment." Defendants conceded in this case that Addle Hill was the "lynchpin" [sic] to their liability.

64. Kirsch and the Westbourne Defendants have argued extensively that they have no control or agency relationship with each other. Yet, on February 27, 2017, they filed a single, joint closing argument brief consisting of 45 pages (the "Joint Brief").

65. In their Joint Brief, Defendants did not dispute or address that Kirsch and ARE LLC were already adjudicated in Florida to have engaged in fraudulent transfers and to be the alter-ego of another Kirsch entity, Addle Hill. They also did not dispute that ARE LLC and ARE 53's ownership and fraudulent transfer of mortgage loans and other assets are deemed true based on default entered against them through the first Sanction Order filed July 27, 2016.

66. In their Joint Brief, Kirsch and the other Defendants also admitted that "Judgment Debtors have no collectible assets" (Joint Brief at 19:19-20). Kirsch also argued in his opening statement that Redwood merely signed its March 2008 settlement agreement with the "wrong parties". But each of the Westbourne Defendants (and every other Kirsch entity) were

formed, received assets from, and comingled assets with Judgment Debtors after Kirsch and his Judgment Debtor entities became liable to Redwood in March 2008. Notably, that liability arose after Plaintiffs discovered they had invested with Kirsch and his Enterprise in fraudulent loans that had never been made and that were based on forged promissory notes. Kirsch knew the loans were fraudulent and based on forgeries, and he concealed the fraud and lied about the loans to Plaintiffs' predecessor entities. At the Florida trial, Kirsch admitted he lied about the loans to avoid destroying his business relationship with Redwood and Elevenhome's predecessor entities.

67. Redwood has engaged in substantial efforts to satisfy the Florida Judgments; however, to date, Redwood has recovered only minimal amounts.

68. Defendants continuously transferred and concealed assets from Redwood, which has thwarted Redwood's collection efforts.

69. Defendants' actions were unexplained and unjustifiable and, as the Florida Court found, lead to the inescapable conclusion that the actions were deliberately intended to avoid liability to Redwood for the Florida Judgments.

70. Defendants' conduct, including their use of the Kirsch Enterprise, has repeatedly blocked, frustrated, or delayed Redwood's collection efforts, thus allowing Judgment Debtors to evade responsibility for the Florida Judgments.

71. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

II. CONCLUSIONS OF LAW

72. The testimony in prior proceedings that Redwood presented through hearing transcripts or depositions was properly presented and admitted, including the deposition testimony of Jeffrey Kirsch.

73. The Court is constitutionally bound to uphold the Redwood Judgment and Elevenhome Judgment entered by the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida. *See Art. IV, § 1 of the United States Constitution; NRS 17.330-400.* Defendants have not provided evidence of fraud, lack of due process, or lack of jurisdiction in the rendering state to invalidate any of the Judgments from the Florida case. *See Rosenstein v. Steele*, 103 Nev. 571, 573, 747 P.2d 230, 232 (1987). This Court finds that the Redwood Judgment and Elevenhome Judgment are not subject to any appeal and have been domesticated in Nevada under the Foreign Judgments Act and are thus enforceable in Nevada. *See Donlan v. State*, 127 Nev. 143, 145, 249 P.3d 1231, 1233 (2011) (stating that “[t]he Constitution requires that ‘Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be

proved, and the Effect thereof.'") *quoting* U.S. Const. art. IV, § 1.

ARE LLC'S OWNERSHIP OF LOANS

74. Under Nevada law, ARE LLC's ownership of the mortgage loans is conclusively established based on the representations of ownership made in the GMAC servicing agreement. NRS 47.240(2), which sets forth this state's conclusive presumptions, including, "The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration."

75. Other Evidentiary Presumptions apply as well, including (i) that things which a person possesses are owned by that person, (ii) that a person exercising acts of ownership of property is the owner of property, and (iii) common reputation of ownership indicates ownership. NRS 47.250(7)-(8).

76. ARE LLC both possessed and exercised complete control over the mortgage loans in the Kirsch Enterprise. Defendants presented no credible evidence to dispute this fact. Based on the Evidentiary Presumptions and the other evidence presented at trial, ARE LLC was the owner of all mortgage loans that were later transferred to Defendants and other entities in the Kirsch Enterprise.

PERSONAL JURISDICTION

77. The Court finds it has personal jurisdiction over all Defendants.

78. Jurisdiction over a nonresident defendant is proper when the plaintiff shows that the existence of jurisdiction satisfies Nevada's long-arm statute and does not offend the principles of due process. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 328 P.3d 1152, 1157-58 (2014). Nevada's long-arm statute requires only that the defendant have such minimum contacts with Nevada that the defendant could reasonably anticipate being hauled into Nevada court. *Id.* Further, “[a] defendant's contacts with a state are sufficient to meet the due process requirement if either general personal jurisdiction or specific personal jurisdiction exists.” *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 122 Nev. 509, 512, 134 P.3d 710, 712 (2006).

79. The Court has general personal jurisdiction over any corporation or business entity when the business entity is deemed “at home” in Nevada or has affiliations with Nevada that are “so continuous and systematic as to render them essentially at home” in Nevada. *Viega GmbH*, 130 Nev. Adv. Op. 40, 328 P.3d at 1157-58. A corporation is deemed to be at home where it is “incorporated or has its principal place of business.” *Id.* (citing *Daimler AG v. Bauman*, 572 U.S. __ n. 19, 134 S.Ct. 746, 760-61 n.19 (2014)).

80. The Court has specific personal jurisdiction over any defendant when that defendant “purposefully

enters the forum's market or establishes contacts in the forum and affirmatively directs conduct there, and the claims arise from that purposeful contact or conduct." *Viega GmbH*, 130 Nev. Adv. Op. 40, 328 P.3d at 1156-57.

81. Further, in Nevada, a defendant who assists with fraudulent transfers or other efforts to impede satisfaction of a judgment is subject to personal jurisdiction in Nevada. *See Casentini v. Ninth Judicial Dist. Court of State In & For County of Douglas*, 110 Nev. 721, 877 P.2d 535.

82. Nevada also allows the contacts of the agent or alter ego of an entity to be attributed to the entity itself. Under Nevada law, "[t]he contacts of an agent are attributable to the principal in determining whether personal jurisdiction exists." *Trump v. Eighth Judicial Dist. Court*, 109 Nev. [687] at 694, 857 P.2d [740] at 745 (citing *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir.1990)) (finding jurisdiction over Donald Trump under the agency theory). "Generally, an agency relationship is formed when one person has the right to control the performance of another." *Viega GmbH*, 328 P.3d at 1158 (citing Restatement (Second) of Agency § 14 (1958) (providing that an agency relationship exists when the principal possesses the right to control the agent's conduct)). "The alter ego theory allows plaintiffs to pierce the corporate veil to impute a subsidiary's contacts to the parent company by showing that the subsidiary and the parent are one and the same." *Viega GmbH*, 328 P.3d at 1157. "The rationale behind this theory is that the alter ego subsidiary is the same

entity as its parent, and thus, the jurisdictional contacts of the subsidiary are also jurisdictional contacts of the parent." *Id.*

83. The evidence shows that Defendants have sufficient minimum contacts with the State of Nevada to subject them to personal jurisdiction in this matter.

84. Further, Kirsch is the agent of each of the other Defendants, and they are his agents. Personal jurisdiction is also appropriate based on an agency theory as Defendants' contacts with Nevada are attributed to each other.

85. In addition, personal jurisdiction is appropriate based on veil-piercing and reverse veil-piercing because Kirsch is the alter-ego of each of the other Defendants, they are his alter-egos.

86. The evidence also shows that the Kirsch Enterprise was created for Kirsch and Judgment Debtors to avoid liability for Redwood's judgments, and all Defendants participated in and are part of the Enterprise, which operated in great part through Nevada entities and use of Nevada bank accounts as well as other activities aimed at Nevada. Defendants individually and as part of the Enterprise have sufficient minimum contacts with the State of Nevada.

87. Further, Kirsch, Judgment Debtors, Rock Bay, and Sloane Park have also consented to Nevada's jurisdiction due to their engaging in substantial litigation over the course of several years in Nevada courts on issues related to this case. *See Dogra v. Liles*, 129

Nev. Adv. Op. 100, 314 P.3d 952 (2013) (stating that a nonresident defendant can acquiesce to jurisdiction in Nevada). The substantial litigation these Defendants previously engaged in is substantially related to the Judgments and the case at hand.

88. Based on the evidence and the foregoing conclusions, general jurisdiction is proper over Rock Bay and Sloane Park as they are Nevada entities, and they are also subject to specific jurisdiction based on the evidence. Further, general jurisdiction or at a minimum specific jurisdiction is proper over Kirsch, Westbourne, Vizcaya and OppsREO.

89. Defendants could reasonably anticipate being brought into a Nevada court given their purposeful availment of Nevada to conduct and/or participate in the Kirsch Enterprise and the efforts to avoid collection of the Judgments. Further, considering all applicable factors set forth in *Trump*, the Court concludes that it is reasonable to exercise personal jurisdiction and to require Defendants to defend this matter in Nevada. The exercise of jurisdiction in Nevada also comports with fair play and substantial justice. Defendants have not provided the Court with any credible evidence or reason that litigating this case in Nevada would be unreasonable given their contacts with Nevada. *Trump*, 109 Nev. at 700, 857 P.2d at 748.

CREDITOR'S BILL

90. The evidence at trial showed that Redwood is entitled to the remedy of a creditor's bill.

App. 48

91. Redwood has attempted execution to satisfy the Florida Judgments, but Judgment Debtors' obligations to Redwood have remained unsatisfied for over six years.

92. The purpose of a creditors' bill is to reach the assets of a judgment debtor that have been transferred to a third party and have hindered satisfaction of a judgment. *See Hulley v. Chedic*, 22 Nev. 127, 145, 36 P. 783, 786 (1894) (allowing plaintiff to obtain a judgment against a third party that received a transfer of assets from a judgment debtor); *Murtha v. Curley*, 90 N.Y. 372 (1882) (cited by the Nevada Supreme Court in *Hulley v. Chedic* and allowing creditor to reach assets transferred by a judgment debtor to third parties). Relief in the form of a creditors' bill "merely subrogates the creditor to the place of the debtor, and garnishes the debt due to the indebted corporation. It does not change the character of the debt attached or garnished." *Thompson v. Reno Sav. Bank*, 19 Nev. 103, 115, 7 P. 68, 72 (1885) (allowing judgment against debtor and third-party that owned [sic] money to debtor).

93. Based on all of the evidence presented at trial and the findings of fact and conclusions of law cited herein, combined with the Evidentiary Presumptions to be applied under the Sanction Orders, Redwood is entitled to the remedy of a creditor's bill.

ALTER-EGO, VEIL PIERCING AND REVERSE VEIL PIERCING

94. As the Nevada Supreme Court made clear, “the ‘essence’ of the alter ego doctrine is to ‘do justice’ whenever it appears the protections provided by the corporate form are being abused. *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 896, 903, 8 P.3d 841, 845-46 (2000) (*citing Polaris Industrial Corp.*, 103 Nev. at 603, 747 P.2d at 888). Further, the elements for alter ego require only proof by a preponderance of the evidence. *See id.* at 904, 8 P.3d at 846. The Nevada Supreme Court has repeatedly stated, “Where is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case.” *Loomis*, 116 Nev. at 904, 8 P.3d at 847 (*citing Polaris v. Industrial Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987)) (finding alter ego liability despite the fact that a company was not solely owned by the individual who plaintiffs asserted was the company’s alter ego).

95. There are three elements for an ego claim: (1) the business entity is influenced and governed by the person/entity asserted to be the alter ego; (2) there is such a unity of interest and ownership that the two are inseparable from one another; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would sanction a fraud or promote injustice. *Id.* at 904, 8 P.3d at 846-47. Nevada also recognizes reverse veil piercing, which allows Redwood to reach the assets of any Defendant to satisfy the debt of a corporate insider (such as Kirsch) based on a showing

that the entity is really the alter ego of Kirsch. *Id.* at 903, 8 P.3d at 846.

96. Courts use the following factors in analyzing each of the three elements. The factors substantiating a claim for an alter ego relationship may include: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individuals own; or (5) failure to observe corporate formalities. *Id.* at 904, 8 P.3d at 846. Other factors evidencing an alter ego theory of liability include when an individual “use[s] the corporate shell as a conduit for his individual enterprise,” *Mosa v. Wilson-Bates Furniture Co.*, 94 Nev. 521, 523, 583 P.2d 453, 454 (1978), and when “the formation and use of a corporation to transfer to it the existing liability of another person or entity” occurs. *North Arlington Medical Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 522 n. 3, 471 P.2d 240, 244 n. 3 (1970).

97. The Nevada Supreme Court does not require direct proof of ownership for application of the alter-ego doctrine. In *Loomis*, the defendant argued that alter-ego liability could not be imposed because the defendant, William Lange, did not “own a single share of LFC Marketing”, the company alleged to be William’s alter-ego. *Loomis*. at 905, 8 P.3d at 847. The Nevada Supreme Court rejected that argument, stating:

[a]lthough ownership of corporate shares is a strong factor favoring unity of ownership and interest, the absence of corporate ownership is not automatically a controlling event. Instead, the ‘circumstances of each case’ and the

interests of justice should control. *Id.* This is especially true when considering the ease with which corporations may be formed and shares issued in names other than the controlling individual.

...

In this case, there was evidence that William acted as the ultimate authority for all of LFC Marketing's dealings, had negotiated the marketing agreement with NLRC personally, and did not distinguish his interest from the various Lange entities. Further, there was evidence that William considered himself to be the "president and CEO" and the "primary owner" of LFC Marketing. Additionally, there was evidence that LFC Communications paid LFC Marketing's bills and that a common account was used among the LFC entities. Finally, there was testimony that William alone negotiated a settlement agreement with NLRC over a billing dispute and determined which of the LFC entities received the proceeds. We conclude that this evidence is adequate to support the district court's conclusion that there was a unity of interest and ownership.

Id. The Court finds that reverse piercing will not harm the rights of any innocent parties and thus reverse piercing is proper. *Id.* at 904, 8 P.3d at 846 (citing *Floyd v. I.R.S.*, 151 F.3d 1295, 1300 (10th Cir. 1998)).

98. Based on all of the evidence presented at trial and the findings of fact and conclusions of law

cited herein, combined with the Evidentiary Presumptions to be applied under the Sanction Orders, alter-ego, veil-piercing and reverse veil-piercing liability is appropriate as to all Defendants. Accordingly, all Defendants are alter egos of Judgment Debtors and of each other.

99. All Defendants herein are therefore liable for all amounts owed under the Redwood and Elevenhome Florida Judgments.

SUCCESSOR LIABILITY

100. The Court finds that successor liability should be imposed on Defendants and that they must be held liable for all amounts owed under the Florida Judgments.

101. Nevada recognizes four instances where successor liability can be imposed (1) where a transferee expressly or impliedly agrees to assume such debts; (2) where a sale is really a *de facto* merger; (3) when the transferee corporation is merely a continuation of the transferring corporation; and (4) where the transaction was fraudulently made in order to escape liability of debts. *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261 (2005).

102. The Court finds that the Defendants are liable for the Redwood and Elevenhome Judgments under the doctrine of successor liability because Defendants engaged in a number of transfers and transactions designed to avoid liability for the Florida

Judgments. *Village Builders 96 L.P. v. U.S. Laboratories, Inc.*, 121 Nev. 261 (2005); *Lamb v. Leroy Corp.*, 84[5] Nev. 276, [454 P.2d 24] (1969).

103. The Court also finds that Defendants are liable for the Redwood and Elevenhome Judgments under the doctrine of successor liability because ARE LLC's transfer of all assets to Addle Hill, as well as to Defendants constituted *de facto* mergers. *Village Builders 96 L.P.*, 121 Nev. at 268. Whether a *de facto* merger exists requires the Court to apply a four-factor test, considering: (1) whether there is a continuation of the enterprise, (2) whether there is a continuity of shareholders, (3) whether the seller corporation ceased its ordinary business operations, and (4) whether the purchasing corporation assumed the sellers obligations. *Id.* However, every factor in the analysis is not required to favor Redwood to result in a showing of *de facto* merger for successor liability. *Village Builders 96 L.P.*, 121 Nev. at 269-70 (stating that "no single factor is either necessary or sufficient to establish a *de facto* merger"). The Court has considered these factors and based on the evidence presented, successor liability under the *de facto* merger doctrine is warranted.

104. Further, the Florida judgment against Addle Hill is entitled to full faith and credit and is enforceable and binding in this action. Kirsch and the Westbourne Defendants admitted at the beginning of this case that "Addle Hill is a lynchpin [sic] between the Judgment Debtors and Defendants." Defendants' Motion to Dismiss or Stay, filed August 21, 2015, at 9:8-9. Since Addle Hill, the "lynchpin" [sic] of the Kirsch

Enterprise, was adjudged to be a successor entity of ARE LLC, the Westbourne Defendants likewise have successor liability.

105. Thus, the Defendants are jointly and severally liable for the Florida Judgments under the doctrine of successor liability.

FRAUDULENT TRANSFER

106. While all Defendants are alter egos of and successors in interest to the Judgment Debtors, Redwood also has proven it is entitled to relief under Nevada's Uniform Fraudulent Transfers Act, NRS 112.140-250 ("UFTA").

107. For the reasons set forth in Redwood's Closing Argument Reply Brief filed March 31, 2017, Defendants are not entitled to assert a statute of limitation defense. Assuming they were entitled to assert such a defense, however, Defendants did not satisfy their burden of proof for such a defense.

108. All of the property described in these findings of fact and conclusions of law qualifies as property under the UFTA as property is "anything that may be subject to ownership." NRS 112.150(10); *Sportsco Enterprises v. Morris*, 112 Nev. 625, 917 P.2d 934 (1996).

109. Moreover, where a "creditor establishes the existence of certain indicia or badges of fraud, the burden [is on] the defendant to come forward with rebuttal evidence that a transfer was not made to defraud the creditor." *Sportsco*, 112 Nev. at 632, 917 P.2d at 938.

Redwood has established certain indicia or badges of fraud based on the evidence presented. Defendants have provided no evidence regarding any lawful reason as to why the transfers described herein were made.

110. The Court finds that Defendants and other entities in the Kirsch Enterprise, including Addle Hill, transferred property and/or assets within the Kirsch Enterprise with actual intent to hinder, delay, and/or defraud Redwood and Elevenhome, to hide or conceal assets, and to prevent execution on assets or property in satisfaction of the Redwood and Elevenhome Florida Judgments in violation of the UFTA. NRS 112.180(1)(a). *See Sportsco Enterprises*, 112 Nev. at 632, 917 P.2d at 938 (stating that other factors showing that actual fraudulent transfer occurred included the closeness in relationship between the transferor and the transferee).

111. Among other things, Defendants' intent to hinder, delay, and/or defraud is demonstrated by transfers being made to insiders, related/successor and alter-ego entities; Kirsch and the other Judgment Debtors retaining possession or control of the property and assets after the transfers; Kirsch and the other Judgment Debtors continuing to derive significant economic benefit from the transferred property; transfers being hidden and concealed; Judgment Debtors making transfers after liabilities arose, after being sued, in anticipation of the Florida trial and the Judgments being entered, and after the Judgments were entered; transfers containing all or substantially all of Judgment Debtors' assets; Judgment Debtors receiving no

consideration or consideration that was not reasonably equivalent to the value of assets transferred; and Judgment Debtors being insolvent or becoming insolvent after the transfer of assets. NRS 112.180(2); *Herup v. First Boston Financial, LLC*, 123 Nev. 228, 233, 162 P.3d 870, 873-74 (2007).

112. The Court finds that the good faith defense under NRS 112.180 is not applicable here. None of the transferees in this case have objectively shown that they did not know or had no reason to know of any of the Judgment Debtors' fraudulent purpose to delay, hinder, or defraud the transferor's creditors. *Herup*, 123 Nev. at 237, 162 P.3d at 876. On the contrary, all Defendants were and are part of the Kirsch Enterprise, which acted collectively and with knowledge of the matters set forth herein.

113. Additionally, the Court finds that Defendants engaged in constructive fraudulent transfer when they transferred property and assets without receiving a reasonably equivalent value in exchange for the transfer or obligation, and while Judgment Debtors were engaged or were about to engage in a business or a transaction for which the remaining assets of Judgment Debtors were unreasonably small in relation to the business or transaction, or while Judgment Debtors intended to incur, or believed or reasonably should have believed that they would incur, debts beyond their ability to pay as they became due. NRS 112.180(1)(b).

114. Judgment Debtors transferred property and assets to Defendants and other Kirsch Enterprise entities, and Redwood's claims arose before the transfers were made. Judgment Debtors made the transfers or incurred the obligations without receiving a reasonably equivalent value in exchange for the transfer or obligations and Judgment Debtors were insolvent at that time or became insolvent as a result of the transfers or obligations. NRS 112.190; *Herup*, 123 Nev. at 233, 162 P.3d at 873.

115. Loans that were owned by and serviced for ARE LLC were later transferred to Addle Hill, Westbourne and other entities in the Kirsch Enterprise, including Kirsch's new company, Moab Ventures, LLC. *See, e.g.*, Tr. Exs. 69, 71-72.

116. The evidence presented, the chronology of events and transfer of assets, and the other surrounding circumstances demonstrate a clear intent to transfer assets to Defendants and other entities in the Kirsch Enterprise for the improper and fraudulent purposes of avoiding liability to Redwood and Eleven-home. Similar to the Florida Court's finding as to Addle Hill, the evidence here leads to the inescapable conclusion that the transfers to Defendants and other entities in the Kirsch Enterprise were intentionally, willfully and fraudulently designed to evade collection of the Florida Judgments.

117. Based on all of the evidence presented at trial and the findings of fact and conclusions of law cited herein, combined with the Evidentiary

Presumptions to be applied under the Sanction Orders, Defendants are liable for fraudulent transfers under the UFTA.

DECLARATORY RELIEF

118. The Court has authority to grant declaratory relief under NRS 30.010 to 30.160, Nevada's Uniform Declaratory Judgments Act. Declaratory relief is proper upon a showing of: (1) the existence of a justiciable controversy, or in other words, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination. *Kress v. Corey*, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948).

119. Defendants did not address nor dispute Redwood's claim for declaratory relief. In fact, Defendants' Joint Brief establishes an actual controversy between the parties regarding the rights and ownership of mortgage loans, servicing rights, funds generated from those loans, and the other matters set forth herein.

120. The Court finds this case appropriate for the issuance of declaratory relief, and based on the Florida judgment, the testimony and evidence presented, the Evidentiary Presumptions, and the defaults entered against ARE LLC and ARE 53, the

App. 59

Court grants declaratory relief, and issues a judgment declaring the following:

- The Florida Judgments entered against Judgment Debtors on or about March 7, 2011 and against Addle Hill, Inc. (“Addle Hill”) on or about May 11, 2016 in Case No. 08-65603, Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, are entitled to full faith and credit and are binding in this action;
- ARE LLC owned all mortgage loans, servicing rights, and revenue and proceeds generated thereby and related thereto for the Kirsch Enterprise (the “Assets”). The Assets include, but are not limited to:
 - a) property held, possessed, collected and/or administered by any and all mortgage servicing companies and/or by MERS (collectively “Mortgage Servicers”), including, but not limited to, Statebridge;
 - b) loans to third party obligors evidenced by mortgages, deeds of trust, assignments, allonges, and modifications thereto, (the “Mortgage Loans”) together with related loan documentation, including business records made and kept by the Mortgage Servicers during the administration of the Mortgage Loans reflecting payments received, interest accrued, protective advances made and balances of the Mortgage Loans;
 - c) Real estate titled in the name of any of the Judgment Debtors, Westbourne

App. 60

Defendants, Addle Hill, Mortgage Servicers, MERS, or in any entity related to or on behalf of the Kirsch Enterprise (“REO”) as a result of the enforcement of the remedies of the lender or its assignee under the promissory notes, mortgages, deeds of trust, assignments, modifications and allonges evidencing the Mortgage Loans (collectively, “Loan Documents”);

d) Servicing Agreements between any of the entities in the Kirsch Enterprise and any Mortgage Servicer (“Servicing Agreements”); and

e) Money or other property that is the proceeds of the Mortgage Loans, REO, Servicing Agreements or Assets;

- Kirsch at all times controlled the Assets as well as Judgment Debtors, Addle Hill, the Westbourne Defendants, Moab Ventures, LLC and other entities within the Kirsch Enterprise;
- Kirsch divided and segmented the Assets causing them to be transferred to Addle Hill and other entities in the Kirsch Enterprise, including the Westbourne Defendants named here, and Moab Ventures, LLC;
- Kirsch, the Judgment Debtors and the Westbourne Defendants are alter egos of each other and of Addle Hill;
- Kirsch, the Judgment Debtors and the Westbourne Defendants are agents of each other and of Addle Hill;

App. 61

- Kirsch, the Judgment Debtors, Addle Hill, and the Westbourne Defendants engaged in the fraudulent transfer of the Assets;
- The Westbourne Defendants should be held liable for all amounts owed under the Florida Judgments;
- Plaintiffs are entitled to receive title to and possession of all Assets toward satisfaction of the amounts owed pursuant to the Florida Judgments and this Judgment, including, but not limited to:
 - a) all Assets owned by or held beneficially for any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - b) all Assets owned by or held beneficially for any entity related to and/or controlled by Kirsch or any entity in the Kirsch Enterprise that received the transfer of Assets from any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - c) all Assets serviced or held beneficially by Statebridge or any other Mortgage Servicer or MERS for or on behalf of any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
- Defendants have no legal or equitable right, title and interest in the Assets transferred pursuant to this Judgment and Permanent Injunction and may not seek the return of any such assets.

MORTGAGES WERE NOT HELD IN TRUST OR AS “TRUSTEE”

121. Throughout their Joint Brief, Defendants contended that ARE LLC did not own assets directly but only in the capacity as a trustee. The Court rejects this argument for a number of reasons, including:

- Defendants did not introduce or attempt to introduce any “trust” documents or agreements into evidence. They also did not identify any such “trusts” in pretrial disclosures;
- Defendants introduced no evidence of who the alleged settlor or beneficiaries of the supposed trusts were;
- ARE LLC, as “trustee”, did not enter any servicing agreements for the servicing of any mortgage loans. On the contrary, in a servicing agreement effective through 2011, ARE LLC represented and warranted that it owned the mortgage loans directly, not in a “trustee” capacity. Westbourne then represented and warranted that it owned the mortgage loans, again, not in a “trustee” capacity;
- Defendants presented no evidence of a bank account in the name of a trust or for ARE LLC as trustee;
- The argument that payments to “ARE” and “American Residential Equities” were really “trust” funds is contradicted by the fact that Kirsch and ARE LLC deposited those funds into the bank account of Rock Bay, comingled such funds with all of the other Westbourne

App. 63

Defendants in Rock Bay's account, and Kirsch withdrew hundreds of thousands in cash and ATM withdrawals from Rock Bay's account;

- In the Florida action against Addle Hill where the court found that ARE LLC was the alter ego of, and engaged in fraudulent transfers with, Addle Hill, William Hirschowitz did not testify that ARE LLC only acted as "trustee", and Kirsch and ARE LLC did not argue in that case that ARE LLC only acted as "trustee";
- If ARE LLC only owned and managed assets as "trustee", Kirsch, ARE LLC, or any of the Westbourne Defendants could have filed a motion in this case at the beginning or sometime sooner in this litigation instead of waiting to raise this argument after the close of evidence at trial;
- If Defendants' "trustee" argument were valid, they should have sat for depositions, produced documents and participated in discovery instead of engaging in the Litigation Misconduct that led to the three Sanction Orders;
- To the extent any trusts exist, the evidence and Evidentiary Presumptions support the conclusion that such trusts are merely extensions of and part of the Kirsch Enterprise for transferring and concealing assets and for the improper and fraudulent purpose of avoiding liability to Redwood and evading collection of the Florida Judgments.

122. The Court likewise finds that the Michigan Order the Defendants attached to their closing argument brief is not a defense to liability in this case because:

- If the Michigan order had any preclusive effect or absolved Defendants of any liability here, they would have filed dispositive motions in this case at the beginning. Yet, they filed no motions and raised no arguments based on this order until their closing argument brief filed nearly one month after the close of evidence.
- The Michigan order is dated in 2012. The Florida court entered judgment in 2015 that Addle Hill fraudulently transferred assets, was an alter ego, and a successor entity of ARE LLC. But Kirsch and ARE LLC did not raise the Michigan order in the Florida action though they had ample opportunity to do so;
- Defendants' argument is inconsistent with and contradicts what the Florida court has done, which involved no rulings that ARE LLC acted or owned any assets as "trustee" and which did not include a finding based on the Michigan order (which was never raised in that case).

INJUNCTIVE RELIEF

123. The Court is vested with the power to issue injunctive relief pursuant to NRCP 65 and NRS 33.010. Indeed, NRS 33.010(3) provides for injunctive

App. 65

relief when a party acts in “violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment ineffectual.” NRS 33.010(3). The Nevada Supreme Court has long held that “if the injury is likely to be irreparable, or if the defendant be insolvent, equity will always interpose its powers to protect a person from a threatened injury.” *Champion v. Sessions*, 1 Nev. 478, 483 (1865) (emphasis added).

124. Injunctive relief may be of either a mandatory or prohibitive nature, and is properly issued where “it is essential to preserve a business or property interest” *Guion v. Terra Marketing of Nevada, Inc.*, 90 Nev. [237] at 240, 523 P.2d. 420 [847]; *City of Reno v. Matley*, 79 Nev. 49, 60, 378 P.2d 256 (1963).

125. Further, under Nevada’s UFTA, NRS 112.210(1)(c), this Court has authority to issue an injunction “against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property”.

126. The Court finds that a permanent injunction, both mandatory and prohibitive, should be entered against Defendants and Statebridge, and each of them, as well as their officers, agents, servants, employees, and attorneys, and those persons or entities in concert or participation with them who receive actual notice of this Judgment and Permanent Injunction by personal service, email, facsimile transmission, US Mail, or otherwise, whether acting directly or indirectly, including through any third-party,

App. 66

- Enjoining and restraining Defendants and/or Statebridge from concealing, transferring, disposing of, or encumbering any Assets;
- Enjoining and restraining Defendants from concealing, transferring, disposing of, or encumbering any property of Defendants within their possession or control;
- Enjoining and restraining Defendants from directing, aiding and abetting or participating in the concealment, transfer, disposition or encumbering of any Assets or property of Defendants;
- Ordering, directing and requiring the transfer to Plaintiffs of title to and possession of all Assets, including, but not limited to:
 - a) all Assets owned by or held beneficially for any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - b) all Assets owned by or held beneficially for any entity related to and/or controlled by Kirsch or any entity in the Kirsch Enterprise that received the transfer of Assets from any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - c) all Assets serviced or held beneficially by Statebridge or any other Mortgage Servicers or by MERS for or on behalf of any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;

- d) All loan files, notes, mortgages allonges and other loan documents, in whatever form they exist, associated with mortgage loans owned by, serviced by, or in the possession of Defendants, Statebridge, any other Mortgage Servicer or MERS;
- Ordering, directing and requiring Defendants and/or Statebridge to fully cooperate regarding any matters associated with the transfer of Assets pursuant to this Judgment and Permanent Injunction;
- Enjoining and restraining Defendants and/or Statebridge from destroying, erasing, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents or records that relate to the Assets.

127. Defendants' conduct as set forth herein was fraudulent, intentional, willful, flagrant, abusive, in bad faith, and undertaken deliberately with intent to impede collection of the Florida Judgments and to conceal assets. Defendants at all times had full knowledge of the purpose and consequences of their actions and of the actions of the Enterprise.

128. Based on information from Plaintiffs, judgment should be entered in favor of Redwood to have and recover judgment from the Westbourne Defendants, jointly and severally, in the amount of \$13,731,343.11 (thirteen million seven-hundred thirty-one thousand three-hundred forty-three dollars and eleven cents), which constitutes the principal and

App. 68

interest owed through May 31, 2017 under the Florida Judgment minus credit for amounts collected.

129. Based on information from Plaintiffs, judgment should be entered in favor of Elevenhome to have and recover judgment from the Westbourne Defendants, jointly and severally, in the amount of \$8,586,945.82 (eight million five-hundred eighty-six thousand nine hundred forty-five dollars and eighty-two cents), which constitutes the principal and interest owed through May 31, 2017 under the Florida Judgment minus credit for amounts collected.

130. All judgment amounts shall continue to accrue interest at the applicable legal rate provided under Nevada law until paid in full.

131. If any conclusions of law are properly findings of fact, they shall be treated as if appropriately identified and designated.

Dated this 23rd day of June, 2017.

/s/ Mark Denton
DISTRICT COURT JUDGE

Submitted by:

JOLLEY URGA WOODBURY & LITTLE

/s/ L. Christopher Rose

L. Christopher Rose, Esq., #7500
330 S. Rampart Boulevard, Suite 380
Las Vegas, Nevada 89145

App. 69

LAWRENCE A. KELLOGG, ESQ.
Admitted Pro Hac Vice
LEVINE KELLOGG LEHMAN SCHNEIDER
& GROSSMAN, LLP
201 S. Biscayne Boulevard, 22nd Floor
Miami, Florida 33131
*Attorneys for Plaintiffs Redwood Recovery Services,
LLC and Elevenhome Limited*

JUDG

L. CHRISTOPHER ROSE, ESQ.
Nevada Bar No. 7500
lcr@juww.com
JOLLEY URGA WOODBURY & LITTLE
330 S. Rampart Boulevard, Suite 380
Las Vegas, Nevada 89145
(702) 699-7500 Telephone
(702) 699-7555 Facsimile

LAWRENCE A. KELLOGG, ESQ.

[*Admitted Pro Hac Vice*]
lak@lklsg.com

LEVINE KELLOGG LEHMAN SCHNEIDER
& GROSSMAN, LLP
201 S. Biscayne Boulevard, 22nd Floor
Miami, Florida 33131

*Attorneys for Plaintiffs Redwood Recovery Services, LLC
and Elevenhome Limited*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

REDWOOD RECOVERY
SERVICES, LLC, and
ELEVENHOME LIMITED,

Plaintiffs,

v.

JEFFREY KIRSCH; AMERICAN
RESIDENTIAL EQUITIES, LLC;
AMERICAN RESIDENTIAL
EQUITIES LIII, LLC;
WESTBOURNE CAPITAL, LLC;
ROCK BAY, LLC; SLOANE

Case No.
A-15-718683-B
Dept No. XIII

**JUDGMENT and
PERMANENT
INJUNCTION**

(Filed Jun. 26, 2017)

PARK, LLC, VIZCAYA INVESTMENTS, LLC; OPPSREO, LLC; STATEBRIDGE COMPANY, LLC; DOES 1-10; and ROE ENTITIES 11-20,

Defendants,

This matter came on regularly for a bench trial beginning January 25, 2017 and continuing until its completion. Plaintiffs Redwood Recovery Services, LLC (“Redwood”) and Elevenhome Limited (“Elevenhome”) (collectively referred to as “Plaintiffs”) were represented by their attorneys, L. Christopher Rose, Esq. of Jolley Urga Woodbury & Little, and Lawrence A. Kellogg, Esq. of Levine Kellogg Lehman Schneider & Grossman, LLP. Defendant Jeffrey Kirsch (“Kirsch”) represented himself in proper person. Defendants American Residential Equities, LLC (“ARE LLC”) and American Residential Equities LIII (“ARE 53”) were unrepresented and did not appear at trial, the Court having previously stricken their answers and entered default them (Kirsch, ARE LLC and ARE 53 are collective [sic] the “Judgment Debtors”). Defendants Westbourne Capital, LLC (“Westbourne”), Rock Bay, LLC (“Rock Bay”), Sloane Park, LLC (“Sloane Park”), Vizcaya Investments, LLC (“Vizcaya”), and OppsREO, LLC (“OppsREO”) (collectively, the “Westbourne Defendants”) were represented by their attorney, Matthew L. Johnson, Esq. of Johnson & Gubler. Judgment Debtors and the Westbourne Defendants are collectively referred to as “Defendants”, the “Enterprise” or the “Kirsch Enterprise” unless otherwise noted.

Defendant Statebridge Company, LLC (“Statebridge”) was represented by its attorney, Gregg Hubley of Brooks Hubley.

The Court having entered its Findings of Fact and Conclusions of Law, and there being no just reason for delay, and good cause appearing, intending to enter judgment, the Court orders, adjudges and decrees as follows:

MONETARY JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Redwood have and recover judgment from the Westbourne Defendants, jointly and severally, in the amount of \$13,731,343.11 (thirteen million seven-hundred thirty-one thousand three-hundred forty-three dollars and eleven cents), which constitutes the principal and interest owed through May 31, 2017, under the Florida Judgment minus credit for amounts collected, for which sum let execution issue;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Elevenhome have and recover judgment from the Westbourne Defendants, jointly and severally, in the amount of \$8,586,945.82 (eight million five-hundred eighty-six thousand nine hundred forty-five dollars and eighty-two cents), which constitutes the principal and interest owed through May 31, 2017 under the Florida Judgment minus credit for amounts collected, for which sum let execution issue;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs are awarded costs against Defendants, jointly and severally, in the amount of \$23,641.92;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all judgment amounts shall continue to accrue interest at the applicable legal rate provided under Nevada law from the date of the filing of this Judgment until all amounts are paid in full;

DECLARATORY JUDGMENT

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court grants declaratory relief, and issues a judgment declaring the following:

- The Florida Judgments entered against Judgment Debtors on or about March 7, 2011 and against Addle Hill, Inc. (“Addle Hill”) on or about May 11, 2016 in Case No. 08-65603, Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, are entitled to full faith and credit and are binding in this action;
- ARE LLC owned all mortgage loans, servicing rights, and revenue and proceeds generated thereby and related thereto for the Kirsch Enterprise (the “Assets”). The Assets include, but are not limited to:
 - a) property held, possessed, collected and/or administered by any and all mortgage servicing companies and/or by the Mortgage Electronic Registration System (“MERS”) (collectively “Mortgage

Servicers"), including, but not limited to, Statebridge;

- b) loans to third party obligors evidenced by mortgages, deeds of trust, assignments, allonges, and modifications thereto, (the "Mortgage Loans") together with related loan documentation, including business records made and kept by the Mortgage Servicers during the administration of the Mortgage Loans reflecting payments received, interest accrued, protective advances made and balances of the Mortgage Loans;
- c) Real estate titled in the name of any of the Judgment Debtors, Westbourne Defendants, Addle Hill, Mortgage Servicers, MERS, or in any entity related to or on behalf of the Kirsch Enterprise ("REO") as a result of the enforcement of the remedies of the lender or its assignee under the promissory notes, mortgages, deeds of trust, assignments, modifications and allonges evidencing the Mortgage Loans (collectively, "Loan Documents");
- d) Servicing Agreements between any of the entities in the Kirsch Enterprise and any Mortgage Servicer ("Servicing Agreements"); and
- e) Money or other property that is the proceeds of the Mortgage Loans, REO, Servicing Agreements or Assets;

- Kirsch at all times controlled the Assets as well as Judgment Debtors, Addle Hill, the Westbourne Defendants, Moab Ventures, LLC and other entities within the Kirsch Enterprise;

App. 75

- Kirsch divided and segmented the Assets causing them to be transferred to Addle Hill and other entities in the Kirsch Enterprise, including the Westbourne Defendants named here, and Moab Ventures, LLC;
- Kirsch, the Judgment Debtors and the Westbourne Defendants are alter egos of each other and of Addle Hill;
- Kirsch, the Judgment Debtors and the Westbourne Defendants are agents of each other and of Addle Hill;
- Kirsch, the Judgment Debtors, Addle Hill, and the Westbourne Defendants engaged in the fraudulent transfer of the Assets;
- The Westbourne Defendants should be held liable for all amounts owed under the Florida Judgments;
- Plaintiffs are entitled to receive title to and possession of all Assets toward satisfaction of the amounts owed pursuant to the Florida Judgments and this Judgment, including, but not limited to:
 - a) all Assets owned by or held beneficially for any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - b) all Assets owned by or held beneficially for any entity related to and/or controlled by Kirsch or any entity in the Kirsch Enterprise that received the transfer of Assets from any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;

- c) all Assets serviced or held beneficially by Statebridge or any other Mortgage Servicer or MERS for or on behalf of any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
- Defendants have no legal or equitable right, title and interest in the Assets transferred pursuant to this Judgment and Permanent Injunction and may not seek the return of any such assets;

PERMANENT INJUNCTION

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a permanent injunction, both mandatory and prohibitive, be, and hereby is, entered against Defendants and Statebridge, and each of them, as well as their officers, agents, servants, employees, and attorneys, and those persons or entities in concert or participation with them who receive actual notice of this Judgment and Permanent Injunction by personal service, email, facsimile transmission, US Mail, or otherwise, whether acting directly or indirectly, including through any third-party,

- Enjoining and restraining Defendants and/or Statebridge from concealing, transferring, disposing of, or encumbering any Assets;
- Enjoining and restraining Defendants from concealing, transferring, disposing of, or encumbering any property of Defendants within their possession or control;

- Enjoining and restraining Defendants from directing, aiding and abetting or participating in the concealment, transfer, disposition or encumbering of any Assets or property of Defendants;
- Ordering, directing and requiring the transfer to Plaintiffs of title to and possession of all Assets, including, but not limited to:
 - a) all Assets owned by or held beneficially for any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - b) all Assets owned by or held beneficially for any entity related to and/or controlled by Kirsch or any entity in the Kirsch Enterprise that received the transfer of Assets from any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - c) all Assets serviced or held beneficially by Statebridge or any other Mortgage Servicers or by MERS for or on behalf of any of the Judgment Debtors, any of the Westbourne Defendants, or Addle Hill, directly or indirectly;
 - d) All loan files, notes, mortgages allonges and other loan documents, in whatever form they exist, associated with mortgage loans owned by, serviced by, or in the possession of Defendants, Statebridge, any other Mortgage Servicer or MERS.
- Ordering, directing and requiring Defendants and/or Statebridge to fully cooperate regarding any matters associated with the transfer of Assets

App. 78

pursuant to this Judgment and Permanent Injunction;

- Enjoining and restraining Defendants and/or Statebridge from destroying, erasing, concealing, altering, transferring or otherwise disposing of, in any manner, directly or indirectly, any documents or records that relate to the Assets.

DATED this 23rd day of June, 2017.

/s/ Mark Denton
DISTRICT COURT JUDGE

Submitted by:

JOLLEY URGA WOODBURY & LITTLE

/s/ L. Christopher Rose

L. Christopher Rose, Esq., #7500
330 S. Rampart Boulevard, Suite 380
Las Vegas, Nevada 89145

LAWRENCE A. KELLOGG, ESQ.
Admitted Pro Hac Vice
LEVINE KELLOGG LEHMAN SCHNEIDER
& GROSSMAN, LLP
201 S. Biscayne Boulevard, 22nd Floor
Miami, Florida 33131
*Attorneys for Plaintiffs Redwood Recovery Services, LLC
and Elevenhome Limited*
