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**APPENDIX A: *Judgment Affirmed* (Roger), Appellate Case:
17-3685 Date Filed: 01/17/2019 Entry ID: 4746804**

United States Court of Appeals
For the Eighth Circuit
No. 17-3685

Bradley R. Hartke; Douglas P. Hartke; Joan L. Hartke,
individually and as Trustees of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as Trustees of the Robert
Eugene Hartke Family Trust dated 7/12/1996; The Joan L.
Hartke QTIP Marital Trust dated 7/12/1996; The Robert
Eugene Hartke Family Trust dated 7/12/1996

Plaintiffs - Appellees

v.

WIPT, Inc.

Defendant

Roger Dean Waldner

Defendant - Appellant

The One Stop, Inc.; RDW-KILT, Inc.; Community Bank

Defendants

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: October 17, 2018

Filed: January 17, 2019

[Unpublished]

Before SHEPHERD, KELLY, and STRAS, Circuit Judges.
PER CURIAM.

Bradley R. Hartke, Douglas P. Hartke, and Joan L. Hartke, individually and as trustees of Hartke-related trusts (collectively, Hartkes) filed an action in the United States District Court seeking a declaration that promissory notes they executed to entities owned by Roger Dean Waldner were unenforceable. Waldner counterclaimed, seeking recovery on the notes. All parties moved for judgment on the pleadings. The district court² denied Waldner's motion for judgment on

² The Honorable Paul A. Magnuson, United States

the pleadings and granted the Hartkes' motion for judgment on the pleadings. Waldner appeals.³ We have jurisdiction, 28 U.S.C. § 1291, and review de novo the district court's entry of judgment on the pleadings, Schnuck Markets, Inc. v. First Data Merchant Services Corp., 852 F.3d 732, 737 (8th Cir. 2017), and its interpretation and application of state law, Nolles v. State Committee for Reorganization of School Districts, 524 F.3d 892, 901 (8th Cir. 2008). Having carefully reviewed the parties' briefs, the record, and the applicable legal principles, we find no reversible error in the district court's disposition of this matter. Accordingly, we affirm the judgment of the district court. See 8th Cir. R. 47B.

District Judge for the District of Minnesota.

³A separate appeal was filed by Waldner-owned entities in No. 17-3702.

APPENDIX B: *Judgment Affirmed* (WIPT et al.), Appellate
Case: 17-3702 Date Filed: 01/17/2019 Entry ID: 4746851

United States Court of Appeals
For the Eighth Circuit

No. 17-3702

Bradley R. Hartke; Douglas P. Hartke; Joan L. Hartke,
individually and as Trustees of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as Trustees of the Robert
Eugene Hartke Family Trust dated 7/12/1996; The Joan L.
Hartke QTIP Marital Trust dated 7/12/1996; The Robert
Eugene Hartke Family Trust dated 7/12/1996

Plaintiffs - Appellees

v.

WIPT, Inc.

Defendant - Appellant

Roger Dean Waldner

Defendant

The One Stop, Inc.; RDW-KILT, Inc.

Defendants - Appellants

Community Bank

Defendant

Appeal from United States District Court
for the District of Minnesota - Minneapolis

Submitted: October 17, 2018

Filed: January 17, 2018

[Unpublished]

Before SHEPHERD, KELLY, and STRAS, Circuit Judges.
PER CURIAM.

Bradley R. Hartke, Douglas P. Hartke, and Joan L.
Hartke, individually and as trustees of Hartke-related trusts

(collectively, Hartkes) filed an action in the United States District Court seeking a declaration that promissory notes they executed to entities owned by Roger Dean Waldner were unenforceable. The Women's Investment Property Trust, Inc. (WIPT), The One Stop, Inc., and RDW-KILT, Inc. (collectively, Appellants)—counterclaimed, seeking recovery on the notes. All parties moved for judgment on the pleadings. The district court⁴ denied Appellants' motion for judgment on the pleadings and granted the Hartkes' motion for judgment on the pleadings. This appeal followed.⁵ We have jurisdiction, 28 U.S.C. § 1291, and review de novo the district court's entry of judgment on the pleadings, Schnuck Markets, Inc. v. First Data Merchant Services Corp., 852 F.3d 732, 737 (8th Cir. 2017), and its interpretation and application of state law, Nolles v. State Committee for Reorganization of School Districts, 524 F.3d 892, 901 (8th Cir. 2008). Having carefully reviewed the parties' briefs, the record, and the applicable legal principles, we find no reversible error in the district court's disposition of this matter. Accordingly, we affirm the judgment of the district court. See 8th Cir. R. 47B.

⁴The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

⁵Waldner filed a separate, pro se appeal in No. 17-3685.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Bradley R. Hartke, Douglas P. Hartke, Joan Hartke,
individually and as Trustees of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as Trustees of the
Robert Eugene Hartke Family Trust dated 7/12/1996; the
Joan L. Hartke QTIP Marital Trust dated 7/12/1996; and
the Robert Eugene Hartke Family Trust dated 7/12/1996,
Plaintiffs,

v.

WIPT, Inc., Roger Dean Waldner, The One Stop, Inc.,
RDW-KILT, Inc., and Community Bank, Defendants.

Civ. No. 17-1851 (PAM/BRT)

MEMORANDUM AND ORDER

This matter is before the Court on the parties' Motions for Judgment on the Pleadings. For the following reasons, Plaintiffs' Motion for Judgment on the Pleadings is granted, Defendant Community Bank's Motion for Judgment on the Pleadings is granted, and the remaining Defendants' various Motions are denied.⁶

BACKGROUND

The personal and corporate relationships underlying this case are complex and opaque. For purposes of the dispositive Motions, however, a complete understanding of

⁶ Plaintiffs moved for judgment on the pleadings or, in the alternative, for summary judgment. Defendants Waldner, WIPT, The One Stop, and RDW-KILT responded by moving for a continuance under Fed. R. Civ. P. 56(d). Because the Court concludes that judgment on the pleadings is appropriate, the Motions for Continuance are denied.

the parties' interactions is not necessary. The Court will thus briefly describe the events giving rise to the litigation.

In July 2002, Plaintiffs Bradley Hartke, Douglas Hartke, Joan Hartke, and the two Hartke family trusts entered into a \$900,000 note for the purchase of a trucking business, Solace Transfer, from Defendant The One Stop, Inc. (Larson Aff. (Docket No. 68) Ex. 2.

Defendant Community Bank, then known as State Bank of Winslow-Warren, is an Illinois bank that provided the financing to the Hartkes for the purchase of Solace. (Compl. 17, 19-20.) Plaintiffs allege that Defendant Roger Waldner, appearing in this matter pro se, was the owner of The One Stop, which in turn owned Solace. (*Id.* 12.) The note was secured in part with a mortgage on farmland and other property the Hartkes owned in southwest Minnesota. (Larson Aff. Ex. 3.)

Waldner had filed for bankruptcy protection for Solace's predecessor company, H&W Motor Express Company, one month before the Hartkes' purchase. (Compl. 16.) Waldner had purchased H&W and transferred all of its assets to Solace, but Solace was in debt for more than \$2 million, all secured with Community Bank-issued mortgages either personally guaranteed by Waldner or secured with various property Waldner and his associates owned. (*Id.* 17, 20.) The Hartkes contend that the \$900,000 purchase price for Solace represented the difference between Solace's indebtedness and the money Waldner had siphoned out of H&W.

The terms of the note required "11 monthly payments of \$7,800 beginning 8-24-2002 and 1 balloon payment of \$887,894.68 on 7-24-2003." (*See* Larson Aff Ex. 2 at 1.) 2

The notes and mortgages attached to the Larson Affidavit are matters necessarily embraced by the pleadings and thus may be considered on a motion for judgment on the pleadings. Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999).

The Hartkes made two monthly payments on the note, but they allege that Solace was in serious financial trouble

even before they agreed to purchase it and that it was never a viable business. They thus made their last payment in October 2002. (Compl. 21.) Over the next several years, Waldner-controlled entities such as The One Stop and Defendant WIPT (which stands for Women's Investment Property Trust) also made payments on the note, but after October 2002, the note was not ever current.

In November 2002, the Hartkes signed another note, in the amount of \$500,000, in favor of The One Stop. (Larson Aff. Ex. 4.) The note was secured with a mortgage on Plaintiff Joan L. Hartke Marital Trust's property. (Id. Exs. 4, 5.) According to this note, the proceeds were to be used for "business investment," and were to be distributed in multiple advances; the note leaves blank the amount of any immediate advance. (Id. Ex. 4 at 1.) The Hartkes assert that they did not receive any money from this note. (Compl. 48.)

They also contend that Waldner used the Hartkes' personal residences as collateral for this note without their consent. (Id. 47.) Waldner insists that the Hartkes knew about the mortgaging of their residences. The November note was eventually assigned to Defendant RDW-KILT, another Waldner-controlled company. (Id. 49.)

The IRS began investigating Waldner in 2005, and in 2006 he was charged in federal court in Iowa with multiple counts of making false statements in H&W's bankruptcy proceedings. He pled guilty to two counts in May 2007, and received a 120-month sentence. United States v. Waldner, 564 F. Supp. 2d 911 (N.D. Iowa 2008). Waldner was released from prison in late March 2017.

In 2007, after Waldner pled guilty but before he was sentenced, RDW-KILT attempted to accelerate the November note and mortgage. (Compl. 51.) The Hartkes allege that they discovered at that time that their homesteads were collateral for the mortgage, and they disputed the acceleration because neither of their spouses had signed the mortgage. (Id. 52.) A Minnesota state court ordered that the mortgages on the homesteads were invalid, and there was apparently no further action on the November

note and mortgage. (Id.)

In late December 2016, WIPT notified the Hartkes that it had acquired the July note and mortgage from Community Bank, and demanded payment from the Hartkes for \$1.5 million that WIPT had ostensibly paid on the note. (Id. 53.) The Hartkes then brought this lawsuit, seeking declarations that the July and November notes and mortgages are unenforceable and that WIPT and the other Defendants are barred by the statute of limitations from attempting to collect on them.

DISCUSSION

The only real issue here is whether the relevant statutes of limitations bar Defendants from taking any action to enforce the notes. The notes went into default, at the latest, in late 2002. There was no attempt to enforce the July note until the end of 2016. The Complaint contains no allegation regarding demands for payment on the November note.

The July 2002 note provides that Illinois law governs the note and mortgage.

There is no dispute that Community Bank no longer has any interest in the note and mortgage it issued to Plaintiffs. Plaintiffs ask for certain factual findings before any dismissal of Community Bank from this action, but those findings are not appropriate. There is no case or controversy as to Community Bank, and its Motion will be granted. (Larson Aff. Ex. 2 at 2; Ex. 3 24.)

The Illinois statute of limitations on promissory notes is ten years “after the cause of action accrued.” 735 Ill. Comp. Stat. 5/13-206. The November 2002 mortgage provides that it is “governed by the laws of the jurisdiction in which Lender is located.” (Larson Aff. Ex. 5 24.) The One Stop was the lender on the November note; it is an Iowa corporation with an address in Dubuque. The Iowa statute of limitations is also ten years. Iowa Code § 614.1(5).

Because Defendants did not make any demand for payment on the July 2002 note until December 29, 2016, the statute of limitations bars them from seeking to enforce the

loan. Any demand on the November 2002 note would also be time-barred.⁷

Defendants argue that an Illinois statute that preserves counterclaims against statutes of limitations applies here to render the notes enforceable. See 735 Ill. Comp. Stat. 5/13-207. This statute saves counterclaims when the plaintiff's initial cause of action accrued before the counterclaim's limitations period expired. See, e.g., Barragan v. Casco Design Corp., 837 N.E.2d 16, 23-24 (Ill. 2005) (noting that § 13-207 applies when a plaintiff "owns" the claim being countered before the counterclaim is time-barred). Thus, for example, if the statute of limitations for breach of contract is 10 years but for a counterclaim asserting unjust enrichment is only five years, a party cannot prevent its opponent from bringing an unjust-enrichment counterclaim by waiting until the sixth year after the alleged breach to assert a claim for breach of contract.

Here, by contrast, Plaintiffs could not have brought a declaratory judgment claim before December 29, 2016, the date Defendants made a demand under the July 2002 note. By that date, however, any counterclaim Defendants might have was untimely. Thus, Plaintiffs did not "own" their declaratory-judgment claims before the limitations period on Defendants' counterclaims expired, and the Illinois

⁷ Although a lack of payment demand might mean that a request for a declaratory judgment with regard to a future demand is not ripe, in the circumstances present here, and especially given the representations in Defendants' pleadings, it is likely that a demand for payment on the November loan is sufficiently imminent to create a case or controversy with respect to that loan. See Missourians for Fiscal Accountability v. Klahr, 830 F.3d 789, 795 (8th Cir. 2016) (noting that a declaratory judgment plaintiff need only show "adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment") (quoting Golden v. Zwickler, 394 U.S. 103, 108 (1969)).

counterclaim-saving statute does not save Defendants' counterclaims.

Finally, Defendants' claim that judgment is premature because they need time to conduct discovery is without merit. The issues here are purely legal: whether the statute of limitations bars Defendants from seeking payment on these notes. The discovery Defendants claim to require is discovery into whether Plaintiffs in fact received money under either of the notes, and more information about the "conspiracy" that Waldner alleges regarding the Hartkes and Galley Smith. But none of those facts has any bearing on the legal issue here, and the resolution of that issue is clear. Defendants are time-barred from seeking payment on these loans, and Plaintiffs are entitled to a declaratory judgment to that effect.

CONCLUSION

Accordingly, **IT IS HEREBY ORDERED that:**

1. Defendant Waldner's Motion for Judgment on the Pleadings (Docket No. 33) is **DENIED**;

2. Defendants The One Stop, RDW-KILT, and WIPT's Motion for Judgment on the Pleadings (Docket No. 36) is **DENIED**;

3. Plaintiffs' Motion for Judgment on the Pleadings (Docket Nos. 47, 49) is **GRANTED**;

4. Defendant Community Bank's Motion for Judgment on the Pleadings (Docket No. 72) is **GRANTED**;

5. Defendant Waldner's Motion for Continuance (Docket No. 81) is **DENIED**;

6. Defendants The One Stop, RDW-KILT, and WIPT's Motion for Continuance (Docket No. 90) is **DENIED**;

7. Plaintiffs' Motions to Strike (Docket Nos. 98, 107) are **DENIED**; and

8. The relevant statutes of limitations preclude enforcement of the notes and mortgages at issue in this litigation.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 28, 2017 _____

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge

APPENDIX D: *Order* (rehearing denied – Roger),
Appellate Case: 17-3685 Date Filed: 03/05/2019 Entry ID:
4762904

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-3685

Bradley R. Hartke, et al.
Appellees

v.

WIPT, Inc.
Roger Dean Waldner
Appellant

The One Stop, Inc., et al.

Appeal from U.S. District Court for the District of
Minnesota - Minneapolis
(0:17-cv-01851-PAM)

ORDER

The petition for rehearing en banc is denied. The
petition for rehearing by the panel is also denied.
March 05, 2019

Order Entered at the Direction of the Court: Clerk, U.S.
Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appellate Case: 17-3685 Page: 1 Date Filed: 03/05/2019
Entry ID: 4762904

APPENDIX E: *Order* (rehearing denied – WIPT et al.),
Appellate Case: 17-3702 Date Filed: 02/25/2019 Entry ID:
4759427

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 17-3702

Bradley R. Hartke, et al.

Appellees

v.

WIPT, Inc.

Appellant

Roger Dean Waldner

The One Stop, Inc. and RDW-KILT, Inc.

Appellants

Community Bank

Appeal from U.S. District Court for the District of

Minnesota - Minneapolis

(0:17-cv-01851 -PAM)

ORDER

The petition for rehearing en banc is denied. The
petition for rehearing by the panel is also denied.

February 25, 2019

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appellate Case: 17-3702 Page: 1 Date Filed: 02/25/2019

Entry ID: 4759427

APPENDIX F: *Judgment*, Appellate Case: 19-2813 Date Filed: 12/02/2019 Entry ID: 4857284

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-2813

Bradley R. Hartke; Douglas P. Hartke; Joan L. Hartke, individually and as Trustees of the Joan L. Hartke QTIP Marital Trust dated 7/12/1996 and as Trustees of the Robert Eugene Hartke Family Trust dated 7/12/1996; The Joan L. Hartke QTIP Marital Trust dated 7/12/1996; The Robert Eugene Hartke Family Trust dated 7/12/1996,

Plaintiffs - Appellees

v.

WIPT, Inc.

Defendant

Roger Dean Waldner

Defendant - Appellant

The One Stop, Inc.; RDW-KILT, Inc.; Community Bank

Defendants

Appeal from U.S. District Court for the District of
Minnesota

(0:17-cv-01851-PAM)

JUDGMENT

Before ERICKSON, GRASZ, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

December 02, 2019

Order Entered at the Direction of the Court: Clerk, U.S.

Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX G: *Order* (rehearing denied), Appellate Case:
19-2813 Date Filed: 01/07/2020 Entry ID: 4868386

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No: 19-2813

Bradley R. Hartke, et al.
Appellees
v.
WIPT, Inc.
Roger Dean Waldner
Appellant
The One Stop, Inc., et al.

Appeal from U.S. District Court for the District of
Minnesota
(0:17-cv-01851-PAM)

ORDER

The petition for rehearing en banc is denied. The
petition for rehearing by the panel is also denied.
January 07, 2020

Order Entered at the Direction of the Court: Clerk, U.S.
Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Bradley R. Hartke, Douglas P. Hartke, Joan Hartke,
individually and as Trustees of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as Trustees of the Robert
Eugene Hartke Family Trust dated 7/12/1996; the Joan L.
Hartke QTIP Marital Trust dated 7/12/1996; and the Robert
Eugene Hartke Family Trust dated 7/12/1996,

Plaintiffs,

v.

WIPT, Inc., Roger Dean Waldner, The One Stop, Inc., RDW-
KILT, Inc., and Community Bank, Defendants.

Civ. No. 17-1851 (PAM/BRT)

ORDER

This matter is before the Court on Defendant Roger Dean Waldner's Motion to Reopen and to Vacate Judgment. Waldner contends that the Court lacked subject-matter jurisdiction to entertain the parties' dispute in the first instance, and seeks to re-open the case and to vacate the Court's Judgment.

The Court granted Plaintiffs' motion for judgment on the pleadings in November 2017 and dismissed the case. (Docket No. 114.) Defendants appealed, and the Eighth Circuit Court of Appeals affirmed per curiam. (Docket Nos. 125, 126.) In the interim, Plaintiffs filed another lawsuit in this District, seeking orders enforcing this Court's judgment. Hartke v. WIPT, Inc., No. 18-976 (NEB/BRT). In response, Waldner filed a motion to vacate this Court's Order and a motion to alter or amend this Court's judgment.

The Judge presiding over the second matter correctly suggested to Waldner that any motion to amend or vacate must be brought in the case in which the challenged order

was issued. The instant Motion to Reopen and to Vacate followed.

Waldner now challenges the Court's jurisdiction, claiming that he never owned co-Defendant WIPT and that the only challenged conduct in Plaintiffs' pleadings was WIPT's conduct. He asks the Court to reopen the matter and either dismiss it for lack of jurisdiction or permit jurisdictional discovery.

But all of these requests come far too late. This case has been closed for nearly two years. The Eighth Circuit affirmed this Court's decision in full. At the very least, res judicata bars the relief Waldner seeks here. Waldner has attempted to forestall judgment on the promissory notes at issue for years. He has moved for continuances, he has pursued meritless appeals, he has filed borderline frivolous motions. His current claim regarding jurisdiction is yet another attempt to distract the Court from his unscrupulous conduct and put off the inevitable judgment against him. The Motion is denied.

Accordingly, **IT IS HEREBY ORDERED** that Defendant Waldner's Motion to Reopen and Motion to Vacate (Docket No. 132) is **DENIED**.

Dated: July 22, 2019

s/ Paul A. Magnuson

Paul A. Magnuson

United States District Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BRADLEY R. HARTKE, individually
and as Trustee of the Joan L. Hartke
QTIP Marital Trust dated 7/12/1996
and as Trustee of the Robert Eugene
Hartke Family Trust, and DOUGLAS
P. HARTKE, individually and as
Trustee of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as
Trustee of the Robert Eugene Hartke
Family Trust dated 7/12/1996, and
THE JOAN L. HARKTE QTIP
MARITAL TRUST DATED 7/12/1996,
THE ROBERT EUGENE HARTKE
FAMILY TRUST DATED 7/12/1996,
JOAN L. HARTKE, individually and
as Trustee of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as
Trustee of the Robert Eugene
Hartke Family Trust dated 7/12/1996,
Plaintiffs,

v.

WIPT, INC., a South Dakota Corporation,
ROGER WALDNER, THE ONE STOP,
INC., a South Dakota Corporation,
and RDW-KILT, INC., a South Dakota
Corporation,
Defendants.

Case No. 18-CV-
976 (NEB/BRT)

**ORDER ON
MOTIONS**

This matter is before the Court on Plaintiffs' motion
to enforce judgment and for further relief [ECF No. 10] and

Defendants' motions for relief from void judgment [ECF Nos. 25, 27].⁸ For the reasons set forth below, Plaintiffs' motion is granted and Defendants' motions are denied.

BACKGROUND

This case began as a Minnesota state court enforcement action of a 2017 federal court judgment. *See Hartke v. WIPT, Inc.*, Civ. No. 17-1851 (PAM/BRT), 2017 WL 5897389 (D. Minn. Nov. 29, 2017), *aff'd*, 748 F. App'x 83 (8th Cir. 2018), and *aff'd*, 748 F. App'x 97 (8th Cir. 2019) (the "2017 Action"). Plaintiffs are the owners of multiple parcels of real property in Martin, Watonwan, and Cottonwood Counties. [See ECF No. 1-1.] The properties are subject to mortgages filed by Defendants WIPT, Inc., The One Stop, Inc., and RDW-KILT, Inc., and notices of lis pendens filed by Defendant Roger Waldner. [See ECF Nos. 1-1, 1-2, 1-3.] For the purposes of the motions before the Court, a complete understanding of the complex personal and corporate relationships between the parties is unnecessary. It is the procedural history of both this case and the 2017 Action that informs the resolution of the parties' motions.

Procedural History

In the 2017 Action assigned to United States District Court Judge Paul A. Magnuson, Plaintiffs obtained a declaratory judgment that the mortgage notes and mortgages on their properties are void and unenforceable due to the running of statutes of limitation. *Hartke*, 2017 WL 5897389, at *3. "Defendants are time-barred from seeking payments on these loans, and Plaintiffs are entitled to a declaratory judgment to that effect." *Id.* Thus, Judge Magnuson ordered, "The relevant statutes of limitations preclude enforcement of the notes and mortgages at issue in this litigation." *Id.* Defendants in the 2017 Action, which are nearly identical to those here, appealed the judgment to the

⁸ Defendant Roger Waldner is representing himself separately from the remaining Defendants. Defendant Waldner's motion [ECF No. 25] is almost identical to that of the remaining Defendants [ECF No. 27].

Eighth Circuit, and the Eighth Circuit affirmed the district court. *Hartke*, 748 F. App'x 83; *Hartke*, 748 F. App'x 97. Defendants then petitioned the Eighth Circuit for rehearing and were denied. *Hartke*, No. 17-3702 (8th Cir. Feb. 25, 2019); *Hartke*, No. 17-3685 (8th Cir. Mar. 5, 2019).

Armed with the federal judgment, Plaintiffs initiated this enforcement action in Minnesota state court by filing a Petition for Further and Supplemental Relief. [ECF No. 1-1 ("Petition").] The Petition seeks to (1) remove and discharge the mortgages on the properties, (2) preclude any state court action on any of the mortgages, and (3) the notices of lis pendens. (*Id.*) Before answering the state-court action, Defendants filed a notice of removal to this Court, asserting diversity jurisdiction under 28 U.S.C. § 1332(a)(1). [ECF No. 1.] Defendants then filed an answer and counterclaim. [ECF No. 4.] Now, Plaintiffs have moved this Court for enforcement of the judgment and for further relief under Minnesota Statutes § 555.08 and 28 U.S.C. § 2202. Defendants have moved the Court to void the judgment in the 2017 Action.

DISCUSSION

I. Subject-Matter Jurisdiction

As a preliminary matter, this Court must make certain it has subject-matter jurisdiction. *See* 28 U.S.C. § 1447(c). Though the parties did not question subject-matter jurisdiction for this action in their initial briefing, the Court requested the parties to address the issue so that the Court had all information necessary to determine jurisdiction. [See ECF No. 24.]

Plaintiffs assert that Minnesota Statutes § 555.08 (as well as 28 U.S.C. § 2202) authorizes this Court to grant relief to enforce the declaratory judgment. [ECF No. 33.] Plaintiffs also argue that there is complete diversity between the parties and that the amount in controversy exceeds \$75,000. A word about the amount in controversy is warranted: Where, as here, the underlying complaint does not specify an

exact amount of damages⁹, the removing party bears the burden of proving by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional minimum. *See James Neff Kramper Family Farm P'ship v. IBP, Inc.*, 393 F.3d 828, 831 (8th Cir. 2005). Other than in the notice of removal, Defendants do not reference the amount in controversy. But given the mortgage notes attached to Plaintiffs' Petition, [see ECF Nos. 1-2, 1-3], and Plaintiffs' contention that "[t]he value of the removing these mortgages is worth significantly more than \$75,000," [ECF No. 33 at 7], the Court concludes that diversity jurisdiction exists.

For their part, Defendants do not challenge diversity jurisdiction in this case—an unsurprising fact, since Defendants were the removing party. As is the case with the merits arguments, Defendants' briefs on subject-matter jurisdiction are aimed at the merits of the 2017 Action, rather this action. [ECF Nos. 34, 35.] The Court addresses Defendants' attacks on jurisdiction over the 2017 Action below. As to subject-matter jurisdiction in this action, the Court concludes that it is proper.

II. Defendants' Motions to Void the 2017 Judgment

Defendants make their motions under Federal Rules of Civil Procedure 60(b)(4) (void judgment) and 60(b)(6) (any other reason that justifies relief).¹⁰ Defendants argue that

⁹ The operative pleading is Plaintiffs' Petition, not the complaint filed in the 2017 Action.

¹⁰ Defendants appear to be under the mistaken impression that this case and the 2017 Action are the same. For example, Defendants assert that "[t]he case was initially designated as Civil No. 17cv01851 PAM/BRT and subsequently reassigned to this Court as Civil No. 18-cv-976 NEB/BRT." [ECF No. 25 at 1, n.1; ECF No. 30 at 1, n.1; ECF No. 31 at 1, n.1.] This assertion is erroneous. This new action is just that—a new action, brought to enforce the 2017 judgment. Though this case is related to the 2017 Action,

the court in the 2017 Action lacked subject-matter jurisdiction, and that the judgment is therefore void or subject to equitable relief from this Court under Rules 60(b)(4) and 60(b)(6). Defendants make clear that they “do not seek a re-hearing of their issues nor do they advance new arguments. They are willing to stand on their previous pleadings. They seek their first occasion for a full and fair opportunity to litigate their counterclaims before this Court.” [ECF No. 29 at 4 (emphasis in original); see ECF No. 25 at 6.]

As Defendants recognize, their arguments under Rules 60(b)(4) and 60(b)(6) are subject to rigorous standards. “A Rule 60(b)(4) motion to void the judgment for lack of subject matter jurisdiction will succeed only ‘if the absence of jurisdiction was so glaring as to constitute a ‘total want of jurisdiction’ or a ‘plain usurpation of power’ so as to render the judgment void from its inception.” *Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004) (quoting *Kocher v. Dow Chem. Co.*, 132 F.3d 1225, 1230 (8th Cir. 1997)). Under Rule 60(b)(6), relief is available only where “exceptional circumstances prevented the moving party from seeking redress through the usual channels.” *In re Zimmerman*, 869 F.2d 1126, 1128 (8th Cir. 1989) (citations omitted). These standards are in place to prevent collateral attacks, either of district court judgments or judgments of the court of appeals: “Just as a Rule 60(b) motion cannot be used to relitigate the merits of a district court’s prior judgment in lieu of a timely appeal, nor can it be used to collaterally attack a final court of appeals’ ruling in lieu of a proper petition for review in the United States Supreme Court.” *In re SDDS, Inc.*, 225 F.3d 970, 972 (8th Cir. 2000), *quoted in Streambend Properties II, LLC v. Ivy Tower Minneapolis, LLC*, No. 10- 4257 (JNE), 2017 WL 66381, at *2 (D. Minn. Jan. 6, 2017).

Defendants meet neither of these standards. Their arguments under Rule 60(b) are a relitigation of the arguments they made to Judge Magnuson and to the Eighth

they are not one and the same.

Circuit, where they were rejected. There is no plausible argument that either court lacked subjectmatter jurisdiction, and thus an order under Rule 60(b) would be entirely inappropriate.

As Plaintiffs point out and Defendants must recognize, Rule 60(b) would be Defendants' only avenue for relief, because Defendants' request for relief from judgment is otherwise barred by res judicata. Res judicata precludes the same parties from relitigating issues that could have been raised in a prior action. *Lundquist v. Rice Mem'l Hosp.*, 238 F.3d 975, 977 (8th Cir. 2001) (citing *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394 (1981)). In this case, res judicata bars the reassertion of claims if three requirements are met: "(1) the prior judgment was rendered by a court of competent jurisdiction; (2) the decision was a final judgment on the merits; and (3) the same cause of action and the same parties or their privies were involved in both cases." *United States v. Brekke*, 97 F.3d 1043, 1047 (8th Cir. 1996). Causes of action are the same if they involve claims that arise out of the same nucleus of operative facts. *See Lane v. Peterson*, 899 F.2d 737, 742 (8th Cir. 1990) (adopting the definition in Restatement (Second) of Judgments § 24 (1980)). Here, all three elements are met. Thus, because the Rule 60 motions fail and the requisite elements of res judicata are satisfied, Defendants are barred from litigating issues that could have been raised in the 2017 Action. Defendants' motions are denied.

III. Plaintiffs' Motion to Enforce the Judgment

Plaintiffs' motion to enforce the judgment is brought under the Minnesota Declaratory Judgment Act, Minn. Stat. § 555.08. This statute provides that upon a grant of a declaratory judgment, "[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper." Minn. Stat. § 555.08. The statute does not limit the relief that a court may grant. Similarly, the Eighth Circuit has recognized that district courts have broad power under 28 U.S.C. § 2202 to craft awards in declaratory judgment actions to enforce a judgment. *See BancInsure, Inc.*

v. BNC Nat. Bank, N.A., 263 F.3d 766, 772 (8th Cir. 2001). The issues in this case have been litigated and the district court judgment has been affirmed by the Eighth Circuit. The mandates on the Defendants' appeals have been issued. Fed. R. App. P. 41(a) and (b); *see Hartke*, No. 173702 (8th Cir. Mar. 6, 2019); *Hartke*, No. 17-3685 (8th Cir. Mar. 13, 2019). Other than the arguments about the legitimacy of the 2017 judgment, Defendants put forth no argument opposing Plaintiffs' motion. The additional relief Plaintiffs seek is appropriate, flowing logically from the judgment granted in the 2017 Action. Plaintiffs' motion is therefore granted.

ORDER

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendant Roger Waldner's Motion for Relief from Void Judgment and for Any Other Reason that Justifies Relief [ECF No. 25] is DENIED;
2. Corporate Defendants' Motion for Relief from Void Judgment and for Any Other Reason that Justifies Relief [ECF No. 27] is DENIED; and
3. Plaintiffs' Motion for Further Relief Under 28 U.S.C. § 2202 and Minnesota Statutes § 555.08 [ECF No. 10] is GRANTED, as follows:
 - i. Certified copies of this Order shall be recorded in Martin County, Cottonwood County, and Watonwan County pursuant to Minn. Stat. §§ 507.40-507.403. All mortgages and assignments between Plaintiffs and Defendants that are the subject of the judgment in *Hartke v. WIPT, Inc.*, Civ. No. 17-1851 (PAM/BRT) (D. Minn.), do not act as a lien against any of the properties identified in this litigation. [See ECF Nos. 1-1, 1-2, 1-3 (Petition and exhibits).] Any further assignments of these mortgages or notes are without effect.

- ii. The lis pendens filed with the Martin, Cottonwood, and Watonwan county recorders on Plaintiffs' properties identified in this litigation shall be discharged.
- iii. The notes that underlie the mortgages identified in this litigation are declared null, void, and unenforceable. All assignments and security interests based on these notes or mortgages are void.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 1, 2019 . BY THE COURT:

s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge

APPENDIX J: *Order on Motions to Alter or Amend
Judgment*, CASE 0:18-cv-00976-NEB-BRT Document 59
Filed 12/12/19

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

BRADLEY R. HARTKE,
individually and as Trustee of the
Joan L. Hartke QTIP Marital Trust
dated 7/12/1996 and as Trustee of
the Robert Eugene Hartke Family
Trust, and DOUGLAS P. HARTKE,
individually and as Trustee of the
Joan L. Hartke QTIP Marital Trust
dated 7/12/1996 and as Trustee of
the Robert Eugene Hartke Family
Trust dated 7/12/1996, and THE
JOAN L. HARTKE QTIP
MARITAL TRUST DATED
7/12/1996, THE ROBERT
EUGENE HARTKE FAMILY
TRUST DATED 7/12/1996, JOAN
L. HARTKE, individually and as
Trustee of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and
as Trustee of the Robert Eugene
Hartke Family Trust dated
7/12/1996,

Plaintiffs,

v.

Case No. 18-CV-976
(NEB/BRT)

**ORDER ON
MOTIONS TO
ALTER OR
AMEND
JUDGMENT**

WIPT, INC., a South Dakota Corporation, ROGER WALDNER, THE ONE STOP, INC., a South Dakota Corporation, and RDW-KILT, INC., a South Dakota Corporation,

Defendants.

This matter is before the Court on motions to amend or alter judgment filed by corporate defendants WIPT, Inc., The One Stop, Inc., and RDW-KILT, Inc. (together, “Corporate Defendants”), and individual defendant Roger Waldner.¹¹ [ECF Nos. 45, 48.] For the reasons set forth below, Defendants’ motions are denied.

BACKGROUND

This case began as a Minnesota state court enforcement action of a 2017 federal court judgment. *See Hartke v. WIPT, Inc.*, Civ. No. 17-1851 (PAM/BRT), 2017 WL 5897389 (D. Minn. Nov. 29, 2017), *aff’d*, 748 F. App’x 83 (8th Cir. 2018), and *aff’d*, 748 F. App’x 97 (8th Cir. 2019) (the “2017 Action”). Plaintiffs are the owners of multiple parcels of real property in Martin, Watonwan, and Cottonwood Counties. [See ECF No. 1-1.] The properties are subject to mortgages filed by the Corporate Defendants, and notices of *lis pendens* filed by Waldner. [See ECF Nos. 1-1, 1-2, 1-3.]

In the 2017 Action assigned to United States District Court Judge Paul A. Magnuson, Plaintiffs obtained a declaratory judgment that the mortgage notes and mortgages on their properties are void and unenforceable due to the running of statutes of limitation. *Hartke*, 2017 WL 5897389, at *3. “Defendants are time-barred from seeking payment on these loans, and Plaintiffs are entitled to a declaratory judgment to that effect.” *Id.* Thus, Judge Magnuson ordered, “The relevant statutes of limitations preclude enforcement of the notes and mortgages at issue in this litigation.” *Id.* Defendants in the 2017 Action, which are nearly identical to those here, appealed the judgment to the

¹¹ Defendant Roger Waldner is representing himself separately from the remaining defendants.

Eighth Circuit, and the Eighth Circuit affirmed the district court. *Hartke*, 748 F. App'x 83; *Hartke*, 748 F. App'x 97. Defendants then petitioned the Eighth Circuit for rehearing and were denied. *Hartke*, No. 17-3702 (8th Cir. Feb. 25, 2019); *Hartke*, No. 17-3685 (8th Cir. Mar. 5, 2019). Waldner filed a motion to reopen and vacate the judgment in the 2017 Action, which Judge Magnuson denied on July 22, 2019. Waldner then filed another appeal, appealing Judge Magnuson's denial and moving to stay the July 22 order. The Eighth Circuit denied the motion for stay on September 6, 2019, and issued a summary affirmance on December 2, 2019. *Hartke*, No. 19-2813 (8th Cir. Dec. 2, 2019).

In this related case, Plaintiffs first filed an action in Minnesota state court. [ECF No. 1-1 ("Petition").] The Petition sought to (1) remove and discharge the mortgages on the properties, (2) preclude any state court action on any of the mortgages, and (3) discharge the notices of lis pendens. (*Id.*) Defendants filed a notice of removal to this Court, asserting diversity jurisdiction under 28 U.S.C. § 1332(a)(1), as well as an answer and counterclaim. [ECF Nos. 1, 4.] Plaintiffs moved this Court for enforcement of the judgment and for further relief under Minnesota Statute § 555.08 and 28 U.S.C. § 2202. The Court granted Plaintiffs' motion on October 1, 2019. [ECF No. 41.]

Defendants have now filed motions to alter or amend the judgment, asserting the Court made manifest errors of law.

DISCUSSION

Defendants request that the Court alter or amend the judgment in their favor pursuant to Federal Rule of Civil Procedure 59(e). "Rule 59(e) motions serve the limited function of correcting 'manifest errors of law or fact or to present newly discovered evidence.'" *United States v. Metro St. Louis Sewer Dist.*, 440 F.3d 930, 933 (8th Cir. 2006) (quoting *Innovative Home Health Care v. P.T.-O.T. Assoc. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir. 1998)). "Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have

been offered or raised prior to entry of judgment.” *Id.* (quoting *Innovative Home Health Care*, 141 F.3d at 1286). Nor can Rule 59(e) be used to relitigate old matters. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008). Courts have “broad discretion in determining whether to grant or deny a motion to alter or amend judgment pursuant to Rule 59(e).” *Metro St. Louis Sewer Dist.*, 440 F.3d at 933. Parties are granted relief under Rule 59(e) only in “extraordinary” circumstances. *Dale & Selby Superette & Deli v. U.S. Dep’t of Agric.*, 838 F. Supp. 1346, 1348 (D. Minn. 1993).

The Corporate Defendants argue that the Court made manifest errors of law by failing to address their factual attack on Plaintiffs’ standing and the Court’s jurisdiction to entertain the parties’ dispute. They claim that jurisdictional discovery would have supported their factual attack. They also assert that *res judicata* does not apply because Plaintiffs obtained the judgment in the 2017 Action by pleading false jurisdictional allegations. [See ECF No. 47 at 7.] Similarly, Waldner challenges Plaintiffs’ standing and the Court’s jurisdiction based on a factual attack, repeatedly citing to his memorandum and exhibits in support of his motion to reopen the 2017 Action. [See ECF No. 50 at 3-4, *see also id.* at 6 (asserting that the court in the 2017 Action “abused its discretion in denying Waldner the opportunity for limited jurisdictional discovery”).] He also argues that *res judicata* does not apply because Plaintiffs obtained the judgment in the 2017 Action by pleading fraudulent allegations tracing WIPT to Waldner. (*See id.* at 7-8, 21-24.)

Judge Magnuson rejected similar arguments in the 2017 Action, explaining:

Waldner now challenges the Court’s jurisdiction, claiming that he never owned co-Defendant WIPT and that the only challenged conduct in Plaintiffs’ pleadings was WIPT’s conduct. He asks the Court to reopen the matter and either dismiss it for lack of jurisdiction or permit jurisdictional discovery.

But all of these requests come far too late. This case

has been closed for nearly two years. The Eighth Circuit affirmed this Court's decision in full. At the very least, *res judicata* bars the relief Waldner seeks here. Waldner has attempted to forestall judgment on the promissory notes at issue for years. He has moved for continuances, he has pursued meritless appeals, he has filed borderline frivolous motions. His current claim regarding jurisdiction is yet another attempt to distract the Court from his unscrupulous conduct and put off the inevitable judgment against him.

(2017 Action, July 22, 2019 Order [ECF No. 135] at 2.)

The current motion before this Court follows exactly the pattern Judge Magnuson described. Court does not find that any manifest errors of law justify an amended judgment, and Defendants do not present any new evidence. Accordingly, the Motions are denied.

ORDER

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Corporate Defendants' Motion to Amend or Alter Judgment [ECF No. 45] is **DENIED**; and
2. Defendant Roger Waldner's Motion to Amend or Alter Judgment [ECF No. 48] is **DENIED**.

Dated: December 12, 2019 BY THE COURT:

s/Nancy E. Brasel

Nancy E. Brasel

United States District Judge

APPENDIX K: *Memorandum in Opposition to Defendant Waldner's Motion for Stay*, CASE 0:18-cv-00976-NEB-BRT Document 18 Filed 04/01/19.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Bradley R. Hartke,
individually and as Trustee
of the Joan L. Hartke QTIP
Marital Trust dated
7/12/1996 and as Trustee of
the Robert Eugene Hartke
Family Trust, and Douglas
P. Hartke, individually and
as Trustee of the Joan L.
Hartke QTIP Marital Trust
dated 7/12/1996 and as
Trustee of the Robert
Eugene Hartke Family
Trust dated 7/12/1996, and
The Joan L. Hartke QTIP
Marital Trust dated
7/12/1996, the Robert
Eugene Hartke Family
Trust dated 7/12/1996, Joan
L. Hartke, individually and
as Trustee of the Joan L.
Hartke QTIP Marital Trust
dated 7/12/1996 and as
Trustee of the Robert
Eugene Hartke Family
Trust dated 7/12/1996,
Plaintiffs

vs.

WIPT, Inc., a South Dakota
Corporation, Roger Waldner,
The One Stop, Inc., a South

File Number 0:17-cv-
01851-PAM-BRT

MEMORANDUM IN
OPPOSITION
TO DEFENDANT
WALDNER'S
MOTION FOR STAY

Dakota Corporation, and
RDW-KILT, Inc., a South
Dakota Corporation,

Defendants

Plaintiffs (the “Hartke Parties”), as and for their
Memorandum in Opposition to Defendant Waldner’s Motion
for Stay, state and allege the following:

ARGUMENT

Defendant Waldner has moved this Court for a stay
in the enforcement of the judgment entered by the U.S.
District Court for the District of Minnesota and affirmed by
the 8th Circuit. Hartkes oppose that motion.

THIS COURT DOES NOT HAVE THE STATUTORY AUTHORITY TO ISSUE A STAY

The judgment previously entered by the Court and
then affirmed by mandate of the appellate court is now the
law of the case. A stay in the enforcement of that judgment,
by Federal Statute, may only be granted by the 8th Circuit or
the U.S. Supreme Court. 28 U.S.C.A. § 2101(f).

The Federal District Courts lack the jurisdiction to
stay enforcement the mandate of the 8th Circuit pending an
application or decision of the Supreme Court for a writ of
certiorari. *Deretich v. City of St. Francis*, 650 F.Supp. 645
(D.MN. 1986); *In re Stumes*, 681 F.2d 524, 525 (8th
Cir.1982); *Gander v. FMC Corp.* 733 F.Supp. 1346, 1347 (E.D.
Mo 1990) (“The power of a district court to grant a stay of
judgment pending appeal terminates when the Court of
Appeals issues its mandate.”); *Metavante Corp. v. Emigrant
Savings Bank*; 2010 WL 3835121 E.D. WI. 2010 (“It is wholly
inappropriate for this court to stay the mandate of a higher
court pending review by the Supreme Court . . .”)

Even if the Appellate Court or the Supreme Court

were to consider a stay of enforcement of judgment pending appeal, Waldner must make the following showing: a reasonable probability that four Justices would vote to grant certiorari; a significant possibility that Supreme Court would reverse judgment below; and a likelihood of irreparable harm, assuming correctness of applicant's position, if judgment is not stayed. *Packwood v. Senate Select Committee on Ethics*, 114 S.Ct. 1036, 510 U.S. 1319, 127 L.Ed.2d 530 (1994); *Barnes v. E-Systems, Inc. Group Hosp. Medical & Surgical Ins. Plan*, 112 S.Ct. 1, 501 U.S. 1301, 115 L.Ed.2d 1087 (1991). Defendant Waldner has made none of these showings.

Hartkes' motion to enforce the judgment is a motion to clear the Hartkes' land title of void mortgages and related real estate filings. Defendant Waldner has no property interest in any of the real estate that is the subject of the motion and has no standing to object to the enforcement of the judgment. He also has no interest in the defendant corporations. In his statement to Judge Magnuson on November 17, 2017, Roger Waldner stated as follows:

"First of all, I do not own, nor have I held the stock certificates of WIPT, Inc., a South Dakota corporation. I've never held or owned the stock certificates for RDW-KILT, Inc., which is a South Dakota corporation. I did own the stock of the One Stop, Inc. back in the early 2000s, and I'm just not sure when that stock was transferred because the attorney that handled the transfer was Thomas A. Pokela. But I do not today own any of those corporations' stock, nor am I an officer of those corporations." Pro Se Statement of Roger Waldner. (Transcript of Motion Hearing Nov. 17, 2017.p.19) (See CASE 0:17-cv-01851-PAM-BRT Document 113, 119, 120, 122, 123).

Defendant Waldner's lower court claims, his appeal, and any possible issue to be raised on certiorari has no relevance to the enforcement of judgment intended to relieve the Hartkes' property of the burden of the void mortgages. Defendant Waldner's only interest in a potential Writ of

Certiorari is in his counterclaim in the related case 17-cv-1851. His statement of the sole “Issues on Appeal” to the 8th Circuit was “Whether the District Court erred in finding that the Illinois counterclaim -saving statute, 735 ILCS 5/13-207, did not save Waldner’s counterclaims. . .” The counterclaims, and any potential petition for writ of Certiorari by Waldner, have nothing to do with the enforcement of the entered judgment. Waldner’s Counterclaims were summarized in the Hartkes’ 8th Circuit brief:

“Waldner filed a pro se First Amended Answer and Second Amended Counterclaim. The counterclaims alleged (1) a conspiracy between the Hartke brothers, their mother, their wives and a person named “Galley Smith” to take money from Waldner businesses (2) unjust enrichment where money was wrongfully taken from Waldner assets by “Galley Smith” to benefit the Hartkes (3) another conspiracy involving a man named “Rush” where the Hartkes borrowed funds from someone and did not repay that source (4) punitive damages deriving from the other claims and (5) breach of an independent contractor agreement dating from 2002. None of the Counterclaims were related to the Hartke Declaratory Judgment Complaint.¹ Waldner has previously brought conspiracy and similar claims against the Hartkes (and many others). See, for example, *Waldner v. North American Truck and Trailer, Inc, et al.*, 277 F.R.D 401 (D. S.D. 2011); *Waldner v. Boade, Hartke, et.al.*, 2013 WL 3480964 (D. S.D. 2013). All his prior suits have been dismissed.

Hartkes Plaintiffs-Appellees v Roger Dean Waldner Defendant-Appellant BRIEF OF APPELLEES p.4 (8th Cir. Appellate Case: 17-3685 -Date Filed: 02/22/2018 Entry ID: 4632638)

CONCLUSION

The Hartkes respectfully request this Court to recognize that it has no jurisdiction to issue a stay, that a stay is not otherwise warranted, and to deny Defendant Waldner’s application.

Dated: April 1st, 2019
By: /s/David W. Larson
David W. Larson, # 60495
John Paul Martin, # 68068
332 Minnesota Street, Suite W2750
St. Paul, MN 55101

MARTIN & SQUIRES, P.A.
Telephone: (651) 767-3740
ATTORNEYS FOR PLAINTIFFS

No. 19-2813

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Bradley R. Hartke, et al.
Appellees

v.

WIPT, Inc.
Roger Dean Waldner
Appellant
The One Stop, Inc., et al.

On Appeal from the United States District Court
for the District of Minnesota,

before

Honorable Paul A. Magnuson, District Judge,
Civil Case # 0:17-cv-01851-PAM-BRT

BRIEF OF APPELLANT ROGER DEAN WALDNER

Roger Dean Waldner, *Pro Se*
P.O. Box 485
Redfield, SD 57469
605-472-3135
RogerDWaldner63@gmail.com

[begin page 18]

The alleged “scheme to swindle” is a swindle of the Plaintiffs’ own creation and has needlessly dragged this case farther along than would have been the case if the Plaintiffs would have filed a run-of-the-mill statute-of-limitations claim without Waldner thrown in for good measure. In addition, to ensnare Waldner in their web of deceit the

Plaintiffs were compelled to manufacture deliberately false jurisdictional facts before this Court, as well.

In their brief to the Eighth Circuit, ECF 4632638, Plaintiffs falsely stated: “Because of standing, ripeness and justiciability issues, the declaratory judgment claim did not exist and was not ‘owned’ by the Hartkes until after the payment demand was made by Waldner’s December letter.” (emphases added). The letter can be seen as Plaintiffs’ Exhibit 7, included in ECF 64 at 50-52. Waldner’s name is nowhere to be found on this letter.

Again, “Hartkes did not have a declaratory claim of sufficient immediacy and reality to warrant the issuance of a declaratory judgment until they received Waldner’s demand for payment.” Id. at 16 (emphases added). These statements are clear falsifications of documentary evidence placed in the record by the Plaintiffs themselves.

Res Judicata does not apply where, as here, the Plaintiffs obtained the judgment by pleading false jurisdictional allegations. The record and discovery will show that the Plaintiffs failed to establish Article III standing needed to plead

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[begin page 31]

Waldner.”) (underline and bold in original).

Yet, the district court summarily dismissed Waldner’s facial challenge to its jurisdiction: “Waldner now challenges the Court’s jurisdiction, claiming that he never owned co-Defendant WIPT and that the only challenged conduct in Plaintiffs’ pleadings was WIPT’s conduct.” ECF 135 at 2. The district court cannot be surprised by Waldner’s claim that he never owned WIPT. In the related case, the Plaintiffs stated the following:

Defendant Waldner has no property interest in any of the real estate that is the subject of the motion and has no standing to object to the enforcement of the judgment. He also has no interest in the defendant corporations. In his statement to Judge Magnuson on November 17, 2017, Roger Waldner stated as follows:

"First of all, I do not own, nor have I held the stock certificates of WIPT, Inc., a South Dakota corporation. I've never held or owned the stock certificates for RDW-KILT, Inc., which is a South Dakota corporation. I did own the stock of the One Stop, Inc. back in the early 2000s, and I'm just not sure when that stock was transferred because the attorney that handled the transfer was Thomas A. Pokela. But I do not today own any of those corporations' stock, nor am I an officer of those corporations." Pro Se Statement of Roger Waldner. (Transcript of Motion Hearing Nov. 17, 2017.p.19) (See CASE 0:17-cv-01851- PAM-BRT Document 113, 119, 120, 122, 123).

Plaintiffs' ECF(RC) 18 at 3 (docket for related Case No. 18-cv-976 (NEB/BRT)).

The Plaintiffs themselves put Waldner outside the four corners of this case. In that same related case, 18-cv-976, the Plaintiffs stated that Waldner "does not have, and has never had, an interest in the properties nor was he a party to the notes." ECF(RC) 12 at 2 (emphases added). Again: "The notes and mortgages originated

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in 2002 and were between the Hartkes and 'The One Stop'. They were governed by the 10-year statutes of limitation of Illinois and Iowa. The mortgages were subsequently assigned to Defendants WIPT, Inc. and RDW-KILT, Inc." Id. at 5. "Roger Waldner is not an attorney, he is not a party to any of the notes, nor does he claim an interest in any of the mortgaged properties." Id. at 5. "The Corporate Defendants' litigation and appeal is relevant to the further relief that the Hartkes are requesting; Roger Waldner's litigation and appeal is not." Id. at 9.

The object of the Plaintiffs' litigation was to secure a judgment to invalidate the notes and mortgages, etc., that encumber their property. They succeeded. Now, they seek to enforce the judgment, but quite freely and openly acknowledged to the court below that "Waldner's litigation

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and appeal is not” relevant to their enforcement efforts. The Plaintiffs’ own words support the point that Waldner is a “non-person” in this litigation.

The court had before it, on November 17, 2017, Waldner’s statement that he didn’t own WIPT. Yet, that wasn’t enough for the court. Waldner knew, from the treatment he received from and the tenor and demeanor of the court toward him, that a facial attack alone might not satisfy the lower court. Events have proven him to be correct. That is why he has sought jurisdictional discovery despite the fact that a facial attack alone should have sufficed to demonstrate that the Plaintiffs lacked Article III standing on all nine counts as to him.

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The court abused its discretion in denying Waldner the opportunity for limited jurisdictional discovery to obtain evidence to support his claim that the Plaintiffs used false jurisdictional facts to plead Article III standing as to him and jurisdiction of the court as to him.

Where, as here, Waldner lodged a factual attack to show that the judgment was affected by the fundamental infirmity of no case or controversy, it was error for the court to dismiss his Rule 60(b)(4) Motion summarily in light of *Espinosa*, 559 U.S. at 270 (A void judgment is “one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.”).

a. The “challenged conduct “is not traceable to Waldner.

In a judicial admission, the Plaintiffs identified the *Lujan/Spokeo* “challenged conduct” in the case. “Under the U.S. Constitution, the Declaratory Judgment Act, and Illinois Declaratory Judgment Act (Illinois Statutes 5/13-207), an actual case or controversy of sufficient immediacy to be justiciable did not exist until the December 29th demand was made. Plaintiffs did not ‘own’ the Declaratory Judgment action until that demand was made in 2016.” ECF

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63 at 9 (emphases added). The *demand* is identified in the Complaint as a *demand for payment* sent to them by letter dated December 29, 2016 from “an attorney for WIPT, Inc.” ECF 1 at 53. The letter can be seen as Plaintiffs’ Exhibit 7, included in ECF 64 at 50-52.

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The Plaintiffs spent plenty of ink on Waldner. “Roger Waldner’s activities are identified in the following paragraphs of the factual portion of the complaint: 2, 3, 11, 12, 14, 17, 20, 21, 24, 25, 26, 27, 28, 32, 36, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48, and 50.” ECF 4826567 at 7. Yet, not one of those paragraphs puts Waldner’s signature on WIPT’s demand-letter. Nowhere in those 26 paragraphs did the Plaintiffs trace the demand-letter to Waldner. In over two years of litigation, they have failed to offer evidence that Waldner sent the WIPT demand letter.

However, on direct appeal to this Court, the Plaintiffs falsified the record below to make it appear (falsely) that Waldner had sent WIPT’s demand-letter. “Because of standing, ripeness and justiciability issues, the declaratory judgment claim did not exist and was not ‘owned’ by the Hartkes until after the payment demand was made by Waldner’s December letter.” ECF 4632638 at 17-18 (red numbers) (emphases added). “Hartkes did not have a declaratory claim of sufficient immediacy and reality to warrant the issuance of a declaratory judgment until they received Waldner’s demand for payment.” ECF 4632638 at 21 (red letters) (emphases added). It could not be clearer that WIPT’s demand-letter is the “challenged conduct” and that the Plaintiffs tried relentlessly and falsely to place Waldner’s signature on it.

[The “challenged conduct” (the December 2016 demand) is not fairly

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traceable to Waldner]. The demand-letter was sent by WIPT’s attorney. Complaint, ECF 1 at 53. But for that demand-letter, the Plaintiffs themselves concede that “an actual case or controversy of sufficient immediacy to be justiciable did

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not exist.” Yet, “[t]he exercise of judicial power under Art. III of the Constitution depends on the existence of a case or controversy.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (emphases added). No such case or controversy existed.

Unless the Plaintiffs can place the demand-letter in Waldner’s hand (and they can’t), “an actual case or controversy of sufficient immediacy to be justiciable did not exist” against Waldner. He was sued in his individual capacity. Complaint, ECF 1 at 3. The Plaintiffs’ Counsel were forced to resort to falsification of the record below to place WIPT’s demand-letter in Waldner’s hands: “the declaratory judgment claim did not exist and was not ‘owned’ by the Hartkes until after the payment demand was made by Waldner’s December letter.” ECF 4632638 at 17-18 (red numbers) (emphases added).

- b. *Absent standing, no case or controversy existed between Plaintiffs and Waldner.*

The Complaint set forth the “facts” in 46 paragraphs. ECF 1 at 11-56. The Plaintiffs devoted 26 of those paragraphs to Waldner’s activities. ECF 4826567 at 7. It is no secret that they had a “keen interest” in Waldner. However, to invoke the judicial power of a federal court to resolve “Cases” or “Controversies” under Article III of the Constitution, the Plaintiffs must demonstrate more than a “keen

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as to Waldner. Its judgment was void as to him. *Kan. City S. Ry. Co.*, 624 F.2d at 825.

- c. *It was error for the court to deny Waldner’s Rule 60(b)(4) Motion.*

A Rule 60(b)(4) motion to void the judgment for lack of jurisdiction will succeed only “if the absence of jurisdiction

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was so glaring as to constitute a 'total want of jurisdiction' or a 'plain usurpation of power' so as to render the judgment void from its inception." *Kan. City S. Ry. Co.*, 624 F.2d at 825.

Here, the district court, for reasons known only to it, presided over proceedings that did not constitute "Cases" or "Controversies" under Article III of the Constitution. The truthful jurisdictional facts laid before this Court will demonstrate clearly the absence of jurisdiction and will be so glaring as to constitute a 'total want of jurisdiction' or a 'plain usurpation of power' so as to render the judgment void from its inception. *Kan. City S. Ry. Co.*, 624 F.2d at 825.

"Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Espinosa*, 559 U.S. at 271.

Here, there is no "arguable basis" by which to place Waldner's signature on WIPT's demand-letter. The Plaintiffs make the judicial admission that no "actual case or controversy" existed without WIPT's demand-letter. ECF 63 at 9. See,

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also, ECF 4632638 at 17-18 (red numbers) ("Because of standing, ripeness and justiciability issues, the declaratory judgment claim did not exist and was not 'owned' by the Hartkes until after the payment demand was made by Waldner's December letter." (emphases added); again, ECF 4632638 at 21 (red letters) ("Hartkes did not have a declaratory claim of sufficient immediacy and reality to warrant the issuance of a declaratory judgment until they received Waldner's demand for payment." (emphases added). The latter two statements are nothing short of fraud on essential jurisdictional facts made to this Court by Plaintiffs' Counsel. This constitutes a Rule 11 violation subject to sanctions.

The Plaintiffs are bound by their judicial admission that no case or controversy existed without WIPT's

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demand-letter. The Plaintiffs cannot trace **WIPT's demand-letter** to Waldner. The Plaintiffs had **no actual case** or **controversy** against Waldner. The district court exceeded the limits of its federal-court jurisdiction to resolving "**Cases**" or "**Controversies**" under Article III of the U.S. Constitution. **No case** or **controversy** as to Waldner existed. ***The judgment against Waldner was void from its inception.*** *Kan. City S. Ry. Co.*, 624 F.2d at 825.

The district court erred by denying Waldner's Rule 60(b)(4) Motion to Reopen the Case and Vacate the Void Judgment. "[R]elief from a void judgment pursuant to Rule 60(b)(4) is not discretionary" *Hunter v. Underwood*, 362 F.3d

APPENDIX M: *Brief of Appellees*, Appellate Case: 17-3685
Date Filed: 02/22/2018 Entry ID: 4632638 (partial)

No. 17-3685

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Bradley R. Hartke; Douglas P. Hartke; Joan L. Hartke,
individually and as Trustees of the Joan L. Hartke QTIP
Marital Trust dated 7/12/1996 and as Trustees of the
Robert Eugene Hartke Family Trust dated 7/12/1996; The
Joan L. Hartke QTIP Marital Trust dated 7/12/1996; The
Robert Eugene Hartke Family Trust dated 7/12/1996,
Plaintiffs - Appellees

v.

Roger Dean Waldner,
Defendant-Appellant

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MINNESOTA
Civil No. 17-CV-01851-PAM-BRT
The Honorable Paul Magnuson

BRIEF OF APPELLEES

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The Declaratory Judgment Act authorizes a federal

court, “[i]n a case of actual controversy within its jurisdiction,” to “declare the rights and other legal relations of any interested party seeking such declaration.” 28 U.S.C. § 2201. Where a basis for jurisdiction exists, such as diversity, “[t]he sole requirement for jurisdiction under the Act is that the conflict be real and immediate, i.e., that there be a true, actual ‘controversy’ required by the Act.” *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83, 96, 113 S.Ct. 1967, 124 L.Ed.2d 1 (1993) This “actual controversy” requirement is equivalent to Article III’s case-or-controversy requirement, see *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 S.Ct. 764, 771, 166 L.Ed.2d 604 (2007), and thus incorporates Article III doctrines of ripeness and standing. *Teva Pharms. USA, Inc. v. Novartis Pharms. Corp.*, 482 F.3d 1330, 1336-38 (Fed.Cir.2007).

The declaratory complaint filed by the Hartkes seeks a determination that the enforcement of Waldner’s and Corporate Appellants’ claims for breach of two notes is barred by the affirmative defenses listed in the complaint. Hartkes’ complaint for declaratory judgment recites in sufficient factual detail an actual and legal controversy between parties, and when the controversy became justiciable, in late December 2016. The threat of injury to Hartkes became imminent, and the controversy became justiciable after the demand for payment on the note was made.

Because of standing, ripeness and justiciability issues, the declaratory judgment claim did not exist and was not “owned” by the Hartkes until after the payment demand

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was made by Waldner’s December letter.

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The Court disagreed, ruling as follows:

Venturi’s declaratory claim did not arise until after limitations had run on defendants’ counterclaim for breach of contract.

Venturi filed its Complaint in state court pursuant to Illinois' declaratory judgment statute, S.H.A. ch. 110, 1 2-701. In order for a plaintiff to have standing under the statute, there must be an actual controversy, (i.e., the facts and issues are not premature or moot) and the party seeking declaratory relief must possess a personal claim, status or right which is capable of being affected. [citation omitted] Put in a more comprehensible form, the test is whether, considering all the circumstances, there is substantial controversy between the parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment]

In the case at bar, Venturi first received notification of General and Austin's claim against it on September 16, 1987. The Court, in light of the authority cited above, holds that Venturi had no standing to bring (and thus did not "own") a complaint for declaratory judgment until it received this notification. Because the statute of limitations on the defendants' contract counterclaim ran December 6, 1984, it ran before Venturi "owned" its declaratory claim, and therefore the limitations defense is not precluded by S.H.A. ch. 110, 1 13-207."

As in *Venturi*, Hartkes did not have a declaratory claim of sufficient immediacy and reality to warrant the issuance of a declaratory judgment until they received Waldner's demand for payment.

The Hartkes' claim for declaratory judgment became justiciable and was first "owned" on December 29th, 2016. As the lower Court ruled, Waldner's counterclaims

APPENDIX N: *Memorandum in Support of Hartkes' Motion for further Relief under 28 U.S.C. §2202 and Minnesota Statutes §555.08*, CASE 0:18-cv-00976-NEB-BRT Document 12 Filed 03/28/19 (pp. 1-2)

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Bradley R. Hartke, et al, vs. WIPT, Inc., et al.

Memorandum in Support of Hartkes' Motion for further Relief under 28 U.S.C. §2202 and Minnesota Statutes §555.08

Plaintiffs (the "Hartkes"), as and for their Memorandum in support of their Motion for Further Relief, state and allege the following:

[begin page 2]

INTRODUCTION

The Hartkes have been dealing with Roger Waldner and his sham corporations for 16 years, since he swindled them into signing fraudulent notes and mortgages in 2002. Since then Waldner has sued them and others again and again, pro se, always losing. He has been sued by others, again and again, with him always losing. The Hartkes request an Order from this Court implementing the Federal judgment affirmed by the 8th Circuit finding the notes and mortgages void and ending all Waldner litigation involving the Hartkes.

HISTORY AND STATUS OF THIS MATTER

In 2017, the Hartkes obtained a declaratory judgment from Senior Judge Magnuson of the Minnesota Federal Court holding that certain notes and certain mortgages on properties located in Martin County, Watonwan County, and Cottonwood County are void and unenforceable due to the

running of the statutes of limitation. (Petition Exhibit E¹²). Defendants WIPT, Inc., The One Stop, Inc., and RDW-KILT, Inc. are parties who have claimed a mortgage interest in the properties. They are also parties to the notes or subsequent assignments. (Mortgages, Petition Exhibit A and B; Assignments, Petition Exhibit C1-C3 and D1-D2). Roger Waldner personally filed a notice of Lis Pendens against the properties, although he does not have, and has never had, an interest in the properties nor was he a party to the notes. (Exhibits I-1, I-2, and I-3)

[end page 2]

¹² All of the exhibits included in the Removed Petition, and numerous other exhibits supporting the entry of Judgment, are found within the filings of related case number 17-cv-1851.

APPENDIX O: *Memorandum in Support of Hartkes' Motion for further Relief under 28 U.S.C. §2202 and Minnesota Statutes §555.08*, CASE 0:18-cv-00976-NEB-BRT Document 12 Filed 03/28/19 (pp. 1, 5)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Bradley R. Hartke, et al, vs. WIPT, Inc., et al.

Memorandum in Support of Hartkes' Motion for further Relief under 28 U.S.C. §2202 and Minnesota Statutes §555.08

Plaintiffs (the "Hartkes"), as and for their Memorandum in support of their Motion for Further Relief, state and allege the following:

[begin page 5]

County Minnesota to remove and discharge the mortgages, assignments, and lis pendens filed in those counties.

FACTUAL BASIS FOR THE MOTION FOR FURTHER RELIEF

On June 1st of 2017, the Hartkes initiated a declaratory judgment action in the U.S. District Court of Minnesota. The matter was assigned to the Honorable Paul Magnuson, Senior Judge. Hartkes were seeking a declaration that certain mortgages on property primarily located in Martin County, but also parcels located in Cottonwood and Watonwan counties, all in Minnesota, were unenforceable based on statutes of limitation. Hartkes also sought judgment voiding the notes and assignments accompanying those mortgages.

[The notes and mortgages originated in 2002 and were between the Hartkes and "The One Stop". They were governed by the 10-year statutes of limitation of Illinois and

Iowa. The mortgages were subsequently assigned to Defendants WIPT, Inc. and RDW-KILT, Inc.

On July 10th, 2017, Defendant Roger Waldner, personally, filed notices of Lis Pendens with the Martin (#2017R-433565), Cottonwood (#280686), and Watonwan County (#229297) Recorders against the properties that were subject to the Federal Court action. Roger Waldner is not an attorney, he is not a party to any of the notes, nor does he claim an interest in any of the mortgaged properties.

Judgment was entered by the United States District Court, District of Minnesota, on November 29, 2017, File Number 17-cv-1851. The operative language on the face of the judgment related to the statute of limitations is:

“8. The relevant statutes of limitations preclude enforcement of the notes and mortgages at issue in this litigation.”

The judgment additionally stated that:

[end page 5]