No. 19-1371

In the

**SUPREME COURT of the UNITED STATES**

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ROGER DEAN WALDNER,
Petitioner,

v.

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,

Respondents.

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On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

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# PETITION FOR REHEARING

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## GROUNDS FOR REHEARING
(Rule 44.2)

Petitioner Waldner seeks rehearing on the grounds that Justice Barrett became a member of this Court only after his Petition for Certiorari had been denied on October 5, 2020. The Plaintiffs admitted, after the case had been affirmed on appeal that they had manufactured deliberately false jurisdictional facts before the courts below to name Waldner as a defendant. App. L at 49-50.

Justice Barrett may bring fresh eyes to Waldner's Petition, apprehend issues with her own unique views on the applicable law, and thereby cause this Court to grant his Petition.

## I. QUESTIONS PRESENTED FOR REVIEW

Relief from a void judgment under "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error . . ." *United Student Aid Funds v. Espinosa,* 559 U.S. 260, 270 (2010). "Article III of the Constitution limits the 'judicial power' of the United States to the resolution of 'cases' and 'controversies.'" *Valley Forge College v. Americans United,* 454 U.S. 464, 471 (1982). See also *Campbell-Ewald Co. v. Gomez,* 136 S. Ct. 663, 679 (2016) ("If either the plaintiff or the defendant ceases to have a concrete interest in the outcome of the litigation, there is no longer a live case or controversy.").

The Hartke-Respondents brought suit in 2017 against Roger and others to void stale notes and mortgages. After appeal in their favor, the Hartkes made judicial admissions that Roger was not a party to the notes or mortgages and had no interest in the judgment obtained. Their judicial admissions mean that Roger never had a *concrete interest in the outcome of the litigation.* The district court exercised Article III judicial power over a non-case and a non-controversy.

The following questions are presented for review:

1. Is a district court's exercise of Article III judicial power over a non-controversy a rare instance of jurisdictional error that renders its judgment void?

2. If so, is the judgment so affected by a fundamental infirmity that the infirmity can be raised even after the judgment became final?

3. In lieu of plenary review by this Court, is a GVR[1] Order, without determining the merits, appropriate for the following reasons:

   - There is a reasonable probability that a GVR Order in light of the Hartkes' judicial admissions will result in voiding the judgment?

   - The Hartke admissions are "confessions of error" that, because Roger had *no concrete interest* in the dispute, no case or controversy existed?

   - A GVR Order would promote fairness to Roger without using much of this Court's limited docket?

   - There is reason to believe the Eighth Circuit did not fully consider the legal significance of the Hartkes' judicial admissions?

[1] Roger uses shaded highlight herein for ease of reference.

## II. ALL PROCEEDINGS BELOW

1. United States District Court, District of Minnesota, Case 0:17-cv-01851, Bradley R. Hartke, et al., v. WIPT, Inc., et al.

2. United States Court of Appeals for the Eighth Circuit, No. 17-3702, Bradley R. Hartke, et al., v. WIPT, Inc., et al.

3. United States Court of Appeals for the Eighth Circuit, No. 17-3685, Bradley R. Hartke, et al., v. WIPT, Inc., et al.

4. United States District Court, for the District of Minnesota, 18-cv-976 JRT/SER, Bradley R. Hartke, et al., v. WIPT, Inc., et al.

5. United States Court of Appeals for the Eighth Circuit, No. 19-2813, Bradley R. Hartke, et al., v. WIPT, Inc., et al.

## III. TABLE OF CONTENTS

Contents

## IV. TABLE OF AUTHORITIES

### Cases



### Rules



### Treatises



### Constitutional Provisions

## V. PETITION FOR WRIT OF CERTIORARI

Roger Dean Waldner petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit, Case 19-2813.

## VI. OPINIONS BELOW

The Panel denial of Roger's first appeal, Case 17-3685, of the district court's judgment, Case 17-cv-01851, is unpublished and included at Appendix A ("App."). The denial of petition for rehearing *en banc* is included in App. B. The opinion of the district court is unpublished and is included in App. C.

The Panel denial of the corporate defendants' related appeal, Case 17-3702, of the district court's judgment, Case 0:17-cv-01851, is unpublished and included at App. D. The denial of petition for rehearing *en banc* is included in App. E. The opinion of the district court is unpublished and is included in App. C.

The Panel denial of Roger's appeal, Case 19-2813, of the district court's denial of his Rule 60(b)(4) motion, Case 17-cv-01851, is unpublished and included in App. F. The denial of petition for rehearing *en banc* is included in App. G. The district court's Order of denial is unpublished and is included in App. H.

The district court denial of related case 18-cv-976 is unpublished and appears in the denial of his Rule 60(b)(4) Motion. App. I. The denial of his Rule 59(e) motion is unpublished and appears in App. J.

## VII. JURISDICTION

Roger seeks review of the Eighth Circuit's denial of his appeal, Case number 19-2813, issued on December 2, 2019,

App. F. His timely petition for rehearing was denied on January 7, 2020. App. G. This petition is timely filed pursuant to Supreme Court Rule 13.3, as modified by miscellaneous Order of this Court dated 3/19/2020. This Court has jurisdiction under 28 U.S.C. § 1254(1). Order at https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf

## VIII. CONSTITUTIONAL AND STATUTORY PROVISIONS

The Cases and Controversies Clause of the United States Constitution, Art. III, § 2, cl. 1, provides in part:

> The judicial Power shall extend to all Cases . . . to Controversies . . .

Federal Rule of Civil Procedure 60(b) provides in part:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void.

## IX. STATEMENT OF THE CASE

### *a. Background*

The Hartke Plaintiffs sued Roger and the corporate defendants to void enforcement of notes and mortgages that encumbered their property in Minnesota. They described their success in their enforcement proceedings before the Honorable Nancy E. Brasel: "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." App N at 60. "App. N at 60" refers to Appendix N herein, at page 60.

In his judgment for the Hartkes, Judge Magnuson summarized the case: "The only real issue here is whether the relevant statutes of limitations bar Defendants from taking any action to enforce the notes." App. C at 22.

Defendant Community Bank's Motion to be dismissed from the case was granted. App. C at 22.

Petitioner Roger and the Corporate Defendants appealed to the Eighth Circuit. Their appeals and rehearing petitions were denied. App. A, B, D, E.

During these appeals, the Hartke Plaintiffs sought to enforce the judgment in Minnesota state court. Roger and the Corporate Defendants removed the state court case into the federal district court for the district of Minnesota. The case was assigned to Judge Brasel, 18-cv-00976-NEB-BRT. It was denied, App. I, as was Roger's Rule 59(e) Motion, App. J. No appeals of Judge Brasel's decisions were made.

b. *Hartkes' Judicial Admissions*.

On April 1, 2019, after appeals and rehearings had been completed, the Hartkes filed their Memorandum In Opposition To Defendant Waldner's Motion For Stay, in the related case before Judge Brasel. App. K. They stated: "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." App. K at 46. (italics and shaded highlight added).

Roger included the latter statement in his appellate brief to the Eighth Circuit. App. L at 50.

The Hartkes identified the owners of the notes and mortgages as the corporations, not Roger: "The notes and mortgages originated in 2002 and were between the Hartkes and 'The One Stop'. . . .The mortgages were subsequently

assigned to Defendants WIPT, Inc. and RDW-KILT, Inc." App. O at 62. Roger had no "personal stake" in the notes: "Roger Waldner . . . is not a party to any of the notes, nor does he claim an interest in any of the mortgaged properties." App. O at 63.

The Hartkes' statements are judicial admissions of the truth of the facts alleged. *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013) ("See 9 J. Wigmore, Evidence § 2588, p. 821 (J. Chadbourn rev. 1981) (defining a "judicial admission or stipulation" as an "express waiver made . . . by the party or his attorney conceding for the purposes of the trial the truth of some alleged fact" (emphasis deleted)); . . . 9 Wigmore, *supra*, § 2590, at 822 (the "vital feature" of a judicial admission is "universally conceded to be its *conclusiveness* upon the party making it").").

The Hartkes' judicial admissions are similar to the Solicitor General's "confession of error." Justice Scalia described the Court's GVR practice in such instances: "Our recent practice, however, has been to remand in light of the confession of error without determining the merits, leaving it to the lower court to decide if the confession is correct." *Lawrence v. Chater*, 516 U.S. 163, 183 (1996) (Scalia, J., dissenting). The per curiam opinion noted that "the dissent acknowledges as 'well entrenched,' *post*, at 183 (opinion of SCALIA, J.), our practice of GVR'ing in light of plausible confessions of error without determining their merits." *Id.* at 171.

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## X. REASONS FOR GRANTING THE WRIT

### A. A GVR Order, without determining the merits, may be appropriate, leaving it to the lower court to decide if the Hartkes' judicial admissions warrant dismissal of the judgment as void.

1. *Hartkes and their Counsel deceived the lower courts.*

The Hartkes' judicial admission that Roger was not a party to the notes and mortgages was made only *after* the judgment was affirmed on appeal and is an admission that no Article III case or controversy existed between them and Roger over the notes or mortgages. Yet, *before* judgment was affirmed, the Hartkes deceived the lower courts into believing that a case or controversy did in fact exist. They can't have it both ways. Either a controversy existed or it didn't. Which is true?

Prior to judgment, the Hartkes and their Counsel led Judge Magnuson to believe that Roger "controlled" the corporate defendants. See Judgment, App. C at 21 ("Over the next several years, Waldner-controlled entities such as The One Stop and Defendant WIPT . . . The November note was eventually assigned to Defendant RDW-KILT, another Waldner-controlled company . . .").

Yet, after judgment and appeal, they reversed their litigating position: "He also has no interest in the defendant corporations." Hartke Memorandum, App. K at 46.

How can this Court (or any court) affirm a judgment based on contradictory jurisdictional facts?

Judge Magnuson granted judgment on the Hartkes' pleadings without the discovery requested by Roger. App. C at 24 ("Plaintiffs' Motion for Judgment on the Pleadings (Docket Nos. 47, 49) is GRANTED").

The courts below had no opportunity to consider the jurisdictional deceit perpetrated on them by the Hartkes' pleadings *before* the judgment had been affirmed on appeal because discovery was not permitted and no opportunity for

jurisdictional discovery was allowed even *after* the Hartkes made their judicial admissions.

Diametrically opposite jurisdictional facts cannot both be truthful. The courts below were necessarily deceived by one set of facts.

2. *GVR is appropriate, because the Hartkes' judicial admissions were not fully considered below.*

This Court has noted that, "[w]here intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate." *Lawrence*, 516 U.S. at 167.

The Eighth Circuit Panel decision did not include a word about the Hartkes' judicial admissions that Roger had no interest in the notes, the mortgages, the Hartkes' real estate, or in the corporate defendants, and had "*no standing* to object to the enforcement of the judgment." App. K at 46 (italics added).

If this Court issues a GVR Order, in light of the Hartkes' judicial admissions, Roger submits that there is "a reasonable probability that giving the lower court the opportunity to consider that point anew will alter the result." *Lawrence*, 516 U.S. at 171-72.

3. *The Hartkes' jurisdictional fraud undermined the very legitimacy of the judgment.*

This Court has observed that the interest in the finality of judgments is undermined in "cases of fraud upon the court calling into question the very legitimacy of the judgment." See *Calderon v. Thompson*, 523 U.S. 538, 557 (1998) (citing *Hazel-Atlas Co. v. Hartford Co.*, 322 U.S. 238

(1944) (discussing "the historic power of equity to set aside fraudulently begotten judgments" and canvassing cases and treatises and vacating a judgment entered nine years earlier), *overruled on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17, 18 (1976)).

Here, the lower courts relied upon the truthfulness of the initial set of jurisdictional facts presented to them by the Hartkes. However, their *post-judgment* judicial admissions, if true, are *conclusive* evidence that they committed fraud and deceit in their *pre-judgment* jurisdictional facts. *Standard Fire Ins.*, 568 U.S. at 592 ("9 Wigmore, supra, § 2590, at 822 (the "vital feature" of a judicial admission is "universally conceded to be its *conclusiveness* upon the party making it")") (emphasis in original).

The Hartke Complaint identified WIPT as the owner of one of the notes and alleged that WIPT made the December 2016 demand for payment. Judge Magnuson paraphrased these two facts in his judgment of 11/28/2017:

> "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.)." Judge Magnuson's Judgment, App. C at 21-22 (citing ¶ 53 of the Hartkes' Complaint).

Yet, in their Appellees' brief to the Eighth Circuit, the Hartkes changed their litigating position and stated that "the payment demand was made *by Waldner's December letter*." (Emphasis added). App. M at 58.

> 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 was made by Waldner's December letter.

App. M at page 58. The Hartkes continued:

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.

App. M at 59.

In their enforcement proceedings, the Hartkes reversed position 100% in judicial admissions before Judge Brasel but did so only *after* the judgment had been affirmed on appeal. See App. K at 44-48.

Roger brought these facts to the attention of the Eighth Circuit Panel and summarized the issue: "to ensnare Waldner in their web of deceit the Plaintiffs were compelled to manufacture deliberately false jurisdictional facts before this Court, as well." App. L at 49-50.

4. *A GVR Order is appropriate because the very temple of justice has been defiled.*

Fraud on the court has been recognized for centuries as a basis for setting aside a final judgment, sometimes even years after it was entered. *Hazel-Atlas*, 322 U.S. at 245.

It is, of course, true that "in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered." *Id.* at 244. For this reason, a final judgment, once entered, normally is not subject to challenge. However, the policy of repose yields when "the court finds after a proper hearing that fraud has been practiced upon it, or the very temple of justice has been defiled." *Universal Oil Co. v. Root Rfg. Co.*, 328 U.S. 575, 580 (1946). "[A] case of fraud upon the court [calls] into question the very legitimacy of the judgment." *Calderon v. Thompson*, 523 U.S. 538, 557 (1998). One treatise states the issue as follows: "[w]hen a judgment is shown to have been procured" by fraud upon the court, "no worthwhile interest is served in protecting the judgment." Restatement (Second) of

Judgments § 70 cmt. b (1982).

Here, the deceit by the Hartkes and their Counsel is spread out on the pages before two district courts and the Eighth Circuit. Roger challenges only the judgment as to him. The Hartkes knew that they could obtain a judgment against Roger *only* if they manufactured false jurisdictional facts against him. They admit that he had no interest in the notes and mortgages encumbering their property.

The Hartkes and their Counsel essentially revealed, perhaps inadvertently, the deceit they practiced on all three courts by their judicial admissions before Judge Brasel.

Roger's statement to the Eighth Circuit may prove to have been correct: "to ensnare Waldner in their web of deceit the Plaintiffs were compelled to manufacture deliberately false jurisdictional facts before this Court, as well." App. L at 49-50.

### B. The Hartkes' pre-judgment deceit is revealed by their post-appeal judicial admissions.

If the Hartkes' judicial admissions are truthful, then they are *conclusive* against them. There was no controversy between them and Roger on the notes and mortgages, and they had no Article III standing to bring their action against him. The courts were lulled by the Hartkes' deceit into exercising Article III "judicial power" over a non-controversy.

Hartkes' judicial admissions are laid bare in their pleadings clearly and convincingly. Yet, the courts below had no way of telling from the immediate record before them that the Hartkes had manufactured false jurisdictional facts. No discovery was had. The courts were compelled to rule on the pre-judgment false facts pled by the Hartkes.

Only after the judgment was affirmed on appeal did the Hartkes plead Roger's lack of a "personal stake" in the case. Without a defendant's "personal stake" in a dispute, no Article III case or controversy exists for a plaintiff to bring suit. Chief Justice Roberts explained the concept recently.

"A case or controversy exists when both the plaintiff

and the defendant have a 'personal stake' in the lawsuit. *Camreta v. Greene*, 563 U.S. 692, 701 (2011). A plaintiff demonstrates a personal stake by establishing standing to sue, which requires a 'personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.' *Allen*, 468 U.S., at 751. [quoting *Allen v. Wright*, 468 U.S. 737 (1984)]. A defendant demonstrates a personal stake through 'an ongoing interest in the dispute.' *Camreta*, 563 U.S., at 701, 131 S.Ct. 2020." *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 678-79 (2016). (Roberts, C. J., dissenting).

The Hartkes' judicial admissions describe facts that *conclusively* show that Roger lacked a "personal stake" in the case below:

- "Defendant Waldner has no property interest in any of the real estate that is the subject of the motion." App. K at 46.
- He "has no standing to object to the enforcement of the judgment." Id.
- "He also has no interest in the defendant corporations." Id.
- "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." Id.
- Waldner "does not have, and has never had, an interest in the properties nor was he a party to the notes." App. N at 61.
- "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." App. O at 63.

### C. The Hartkes lulled the district court into a clear usurpation of Article III "judicial power" that rendered its judgment void against Roger.

The Hartkes described the purpose of their lawsuit:

"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." App. O at 62.

Their post-judgment judicial admissions *conclusively* show that Roger had no "personal stake" in the lawsuit. They lulled the court unwittingly into exercising Article III "judicial power" over a non-controversy, a violation of the case-or-controversy requirement of Article III.

"'This case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate. . . . The parties must continue to have a 'personal stake in the outcome' of the lawsuit.' *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-478 (1990). See also *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). This means that, throughout the litigation, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (quoting *Lewis, supra*, at 477).

The Hartkes' judicial admissions show that they did not suffer an actual injury traceable to Roger that could be redressed by a favorable decision for them against him. No case or controversy existed between them and Roger as to the notes on their mortgaged properties.

"If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976).

Roger submits that the Hartkes' post-appeal judicial admissions prove *conclusively*: 1) that their pre-judgment

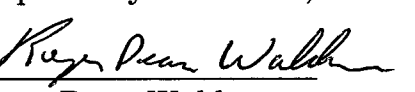
jurisdictional facts deceived the district court into exercising Article III "judicial power" over a non-case and non-controversy; **2)** that the district court's exercise was an unknowing usurpation of judicial power from the onset of the case; **3)** its exercise was a fundamental infirmity that so affected the case that Roger could raise the infirmity to the courts even after the judgment had become final; **4)** no "arguable basis" existed for jurisdiction by the court; and **5)** the jurisdictional error is one of those "rare instances of a clear usurpation of power [that] will render a judgment void." *United Student Aid Funds v. Espinosa*, 559 U.S. 260, 271 (2010) (citation and quote marks omitted) (alteration in brackets added).

## XI. CONCLUSION

**WHEREFORE**, for the reasons cited and for such other reasons as seem appropriate, Petitioner Roger respectfully asks this Court to issue a GVR Order and to remand in light of the judicial admissions by the Hartkes and their Counsel, without determining the merits, leaving it to the Eighth Circuit to decide if the judicial admissions warrant dismissal of the judgment against Roger as void.

Dated: October 29, 2020

Respectfully submitted,



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## XII. APPENDIX – TABLE OF CONTENTS

**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 court[2] 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.

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District Judge for the District of Minnesota.

[3]A 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

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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 court[4] 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.

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

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

**APPENDIX C:** *Memorandum and Order*, CASE 0:17-cv-01851-PAM-BRT Document 114 Filed 11/29/17

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 8-242002 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

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[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)

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**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.

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

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**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.

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/s/ Michael E. Gans

**APPENDIX H:** *Order*, CASE 0:17-cv-01851-PAM-BRT Document 135 Filed 07/22/19

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

**APPENDIX I:** *Order on Motions*, CASE 0:18-cv-00976-NEB-BRT Document 41 Filed 10/01/19

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. 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

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[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 damages[9], 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

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[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

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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

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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.

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 OPPOSTION 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 STATUTORYAUTHORITY 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
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**ATTORNEYS FOR PLAINTIFFS**

**APPENDIX L:** *Appellant's Brief*, Appellate Case: 19-2813 Date Filed: 11/06/2019 Entry ID: 4849546 (partial)

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**

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[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



[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



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

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***.



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

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.

33

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

34

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

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



[begin page 40]

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

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,



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**

**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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[begin page 12]

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



was made by Waldner's December letter.

[begin page 16]

> 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 E[12] ). 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]

No. 19-1371

In the

**SUPREME COURT of the UNITED STATES**

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ROGER DEAN WALDNER,
Petitioner,

v.

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,

Respondents.

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On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit

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**CERTIFICATE OF GOOD FAITH**
(Rule 44)

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Roger Dean Waldner,
Petitioner, *Pro Se*
P.O. Box 485
Redfield, SD 57469
Phone: 605-472-3135

Petitioner Waldner certifies that his Petition for Rehearing is filed in good faith and not for delay. Moreover, its grounds are limited to intervening circumstances of a substantial effect that were not and could not have been previously presented.

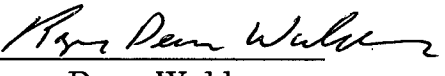
Justice Barrett became a member of this Court only after Waldner's Petition for Certiorari had been denied. Her views and her vote on Petitioner's Petition for Rehearing may provide the necessary impetus for a majority of this Court to grant Petitioner's GVR.

Justice Barrett's views and vote are intervening circumstances of a substantial effect that were not and could not have been previously presented.

This Petition for rehearing is limited to the grounds specified in S.Ct. Rule 44.2, is presented in good faith and not for delay.

Dated: October 29, 2020

Respectfully submitted,



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