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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-002074 12/27/2019

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT
P. Culp
Deputy

LUCINDA MAHONEY

JASON DANIEL CURRY

v.

MATTHEW YOUNG, et al.

MATTHEW YOUNG
4911 E HILLERY DR
SCOTTSDALE AZ 85254

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U S BANK GARNISHMENT DEPT PD-OR-C2GN
PO BOX 30869
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DESERT MEDICAL CAMPUS INC
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SCOTTSDALE AZ 85260
HAPPIEDAZE L L C
C/O MATTHEW YOUNG
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JAMES PORTMAN WEBSTER
JUDGE VIOLA

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-002074 12/27/2019

UNDER ADVISEMENT RULING

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has considered Ms. Mahoney's Application for Writ of Garnishment to Desert Medical Campus, Inc., Mr. Paige's Motion to Intervene, Objection to Garnishment and Request for Hearing filed May 1, 2019 and Ms. Young's Objection to Writ of Garnishment and Summons to Desert Medical Campus, Inc. (Non-Earnings) and Request for hearing filed May 9, 2019. The Court has further considered the evidence presented on Friday, October 18, 2019, the proposed findings of fact and conclusions of law submitted by the parties on November 22, 2019, the pre-trial statement, and the pre-hearing memoranda of law.

Summary Of Dispute

This dispute arises from Lucinda Mahoney's post-judgment garnishment of the only collectible asset owned by Defendant/Judgment Debtor, Tiffany Young ("Ms. Young")[1] —20% of the shares (the "Subject Shares") issued by an Arizona medical marijuana license holder, Desert Medical Campus, Inc. ("DMC"). Ms. Young asserts that she sold the Subject Shares to her fiancé, Lee Paige ("Mr. Paige") through an oral agreement, days before Ms. Mahoney served her garnishment (the "Alleged Sale"). Ms. Mahoney asserts that Ms. Young and Mr. Paige asserted the Alleged Sale solely to avoid the garnishment. Ms. Mahoney also asserts that the Alleged Sale never legally or factually occurred, and, if it did, such sale was actually and constructively fraudulent under Arizona law.

Procedural Summary

On August 3, 2018, the Superior Court for the State of Alaska entered judgment in favor of Ms. Mahoney and against Ms. Young, her ex-husband, Matt Young ("Mr. Young"), and a related entity, Happiedaze, LLC, in the amount of $1,643,415, plus post-judgment interest, costs, and fees (the "Mahoney Judgment"). [SF ¶ 32][2] On March 4, 2019, Ms. Mahoney commenced this case by filing a Notice of Filing Foreign Judgment under A.R.S. § 12-1701, et. seq. [SF ¶ 39] On the same day, Ms. Mahoney mailed a copy of the notice to Ms. Young's last known post office mailing address. [Ex. 115; SF ¶ 39]

After waiting the required 20 days under A.R.S. § 12-1704(c), on April 1, 2019, Ms. Mahoney filed her Application for Writ of Garnishment to Desert Medical Campus, Inc. On the

[1] AKA Tiffany Irvin.
[2] "SF" refers to the parties' stipulated facts in the Joint Pre-Trial Statement.

same day, the Court issued a Writ of Garnishment and Summons to Desert Medical Campus, Inc. (the "Mahoney-DMC Garnishment"). [Ex. 70; SF ¶ 65] On April 4, 2019, Ms. Mahoney served DMC with the Mahoney-DMC Garnishment. [Ex. 102; SF ¶ 73]

On April 26, 2019, DMC filed its Answer to the Mahoney-DMC Garnishment, stating that, as of April 4, 2019: (i) it was holding personal property or money belonging to Ms. Young and Mr. Young, (ii) it was in possession of "40 shares of DMC stock evidenced by certificate", and (iii) "Garnishee is a corporation in which the judgment debtor(s) owns these shares or interests: 40 Share of DMC, Inc." [Ex. 71; SF ¶ 99]

Thereafter, on May 1, 2019, Intervenor/Garnishee, Mr. Paige, filed his Motion to Intervene, Objection to Garnishment and Request for Hearing. Through his motion and objection, Mr. Paige asserted that he is the true owner of the Subject Shares, and he sought to intervene and objected to the Mahoney-DMC Garnishment and DMC Answer. [SF ¶ 103] On May 9, 2019, Ms. Young filed her Objection to Writ of Garnishment and Summons to Desert Medical Campus, Inc. (Non-Earnings) and Request for Hearing. In her objection, Ms. Young alleged that she sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 103] Both Ms. Young and Mr. Paige sought to quash the Mahoney-DMC Garnishment.

After an initial hearing held on May 13, 2019 before Commissioner Lindsay Abramson, the parties engaged in extensive discovery. Thereafter, on July 30, 2019, Commissioner Abramson held a status hearing, where she informed the parties that she was transferring the matter to this Court.

In addition, upon Ms. Mahoney's application, on July 23, 2019, the Court issued a Writ of Garnishment against Mr. Paige (the "Mahoney-Paige Garnishment") to ensure a direct action against Mr. Paige related to the alleged fraudulent transfer of the Subject Shares. [SF ¶ 106] Mr. Paige accepted service of the Mahoney-Paige Garnishment on July 24, 2019. [SF ¶ 106] On August 6, 2019, Mr. Paige filed Garnishee's Answer, asserting that he "was not holding personal property or money belonging to judgment debtor." [SF ¶ 106] On August 8, 2019, Ms. Mahoney filed an objection to the Paige answer, alleging, among other things, that to the extent Ms. Young effectively transferred the Subject Shares to Mr. Paige (which Ms. Mahoney disputed), such transfer was fraudulent and the Subject Shares belonged to Ms. Young. [SF ¶ 107]

On October 18, 2019, the Court held a consolidated evidentiary hearing (the "Hearing") on the Mahoney-DMC Garnishment and the Mahoney-Paige Garnishment. At the Hearing, the following people testified:

1. Steven Mahoney ("Mr. Mahoney"), husband and representative of Ms. Mahoney;

2. Andrew Provencio ("Mr. Provencio"), as principal of DMC, as a creditor of Ms. Young, and as majority shareholder of DMC;

3. Lee Paige;

4. Tiffany Young;

5. Donald Wenk, Ms. Mahoney's valuation expert; and

6. Keith Biermann, Mr. Paige's valuation expert.

At the Hearing, the Court admitted Exhibits 1-121, and took judicial notice of the recording date of Exhibit 122.

Findings Of Fact[3]

Desert Medical Campus, Inc.

1. On or about May 25, 2011, DMC was incorporated as an Arizona for-profit corporation. [SF ¶ 1]

2. DMC was formed to hold an Arizona medical marijuana license and to operate a licensed medical marijuana dispensary pursuant the Arizona Medical Marijuana Act, Arizona Revised Statutes, §§ 36-2801 through 36-2819. [Ex. 3; SF ¶ 4]

3. At formation, Ms. Young was a shareholder, a director, vice president, and corporate secretary of DMC. [SF ¶ 2]

4. At formation, Mr. Provencio was a shareholder, director, president, and treasurer of DMC. [SF ¶ 2]

5. At formation, Ms. Young and Mr. Provencio were the sole members of DMC's Board of Directors. [SF ¶ 3]

6. On May 25, 2011, DMC adopted Bylaws (the "2011 Bylaws"). [Ex. 3; SF ¶ 3]

7. Ms. Young voted to adopt the 2011 Bylaws. [Ex. 3; SF ¶ 3 n. 1]

[3] The Court has adapted the Findings of Fact and Conclusions of Law submitted by Ms. Mahoney and as modified by the Court.

8. Ms. Young signed the 2011 Bylaws, certifying that they were the true and correct bylaws of DMC. [Ex. 3, p. 16; SF ¶ 3 n. 1; Ex. 121, Young Depo. at 23:9-25:21]
9. The 2011 Bylaws provided that DMC would at all times be operated as a non-profit corporation. [Ex. 3; SF ¶ 5]

10. With respect to the transfer of shares, Article III, Section 2 of the 2011 Bylaws (the "2011 Transfer Restriction") state as follows:

> Section 2. Approval Rights of Shareholders. The following actions shall not be taken by the Corporation without the written approval of a majority of the shareholders:
> . . .
> (14) The issuance, redemption, purchase, sale, or transfer of any shares of stock of the Corporation by the Corporation, any shareholder, the Board, or any other person or entity.

[Ex. 3, pp. 5-6; Hearing Tr. 52:21-53:9].

11. Mr. Provencio testified that the Board of Directors intended that the 2011 Transfer Restriction required any person (including a shareholder) to obtain majority shareholder approval before transferring DMC shares. [Hearing Tr. 53:12-54:17]

12. Mr. Provencio also testified that DMC adopted the 2011 Transfer Restriction to protect DMC by, among other reasons, preventing a felon from obtaining shares in DMC, which could result in DMA's license being revoked. [Hearing Tr. 54:18-55:5]

13. Ms. Young presented no evidence or testimony controverting Mr. Provencio's statements regarding the 2011 Transfer Restriction.

14. In or around May 2012, DMC submitted an application for a medical marijuana license to the Arizona Department of Health Services, which was signed by Mr. Provencio and Ms. Young. [Ex. 4; SF ¶ 8]

15. The application disclosed to the State that DMC was a for-profit entity, operating as a non-profit. [Ex. 4].

16. The application also attached a version of the 2011 Bylaws that contains the identical 2011 Transfer Restriction. [Ex. 4]

17. On or about June 19, 2013, the Arizona Department of Health Services issued DMC a Medical Marijuana Dispensary Registration Certificate (Registration Certificate Identification Number 00000024DCTZ00479209). [SF ¶ 9]

18. The State has renewed DMC's license each year since 2013. [SF ¶ 10]

19. DMC is currently authorized to operate its dispensary. [Hearing Tr. 51:5-7]

20. DMC asserts that it adopted new bylaws on February 1, 2019 (the "2019 Bylaws"), which contain a right of first refusal with respect to any sale of shares. [Ex. 2; Hearing Tr. 116:22-117:2]

21. Mr. Provencio testified that DMC adopted the 2019 Bylaws to make it easier for Ms. Young to transfer the Subject Shares, while still protecting DMC. [Hearing Tr. 117:3-11]

22. Ms. Young asserts that the 2019 Bylaws are invalid. [SF ¶ 93]

Provencio-Young Litigation

23. The partnership of Mr. Provencio and Ms. Young fell apart quickly after the dispensary opened in 2013. [Ex. 8-11]

24. In December 2014, Ms. Young and Mr. Young held a DMC board meeting without Mr. Provencio, where they purported to remove Mr. Provencio as an officer and director of DMC. [Ex. 8, p. 2]

25. As a result, on or about January 22, 2015, Mr. Provencio filed suit against Ms. Young and Mr. Young in Maricopa County Superior Court to determine ownership and control of DMC, thereby commencing Case No. CV2015-002274 ("Provencio-Young Lawsuit"). [SF ¶ 11]

26. In the Provencio-Young Lawsuit, Mr. Provencio asserted that he held an 80% interest in DMC. [SF ¶ 11]

27. Ms. Young asserted that she owned a 50% interest, and Mr. Young asserted that he owned another 20% interest. [SF ¶ 11]

28. In support of her position, Ms. Young submitted a consent agreement, whereby DMC allegedly issued her a 50% interest in DMC. Ms. Young alleged that Mr. Provencio signed the consent agreement. After hearing testimony from a hand-writing expert, Judge Warner found that Ms. Young's testimony was not believable and that Mr. Provencio did not sign the consent agreement. [Ex. 8, p. 5]

29. Judge Warner also found that Ms. Young "willfully and knowingly violated" a court order, and held Ms. Young in contempt. [Ex. 9, ¶¶ 43-46, 52]

30. On or about October 18, 2016, Judge Warner found that DMC (including its affiliated companies) was owned 80% by Mr. Provencio and 20% by Ms. Young. [Ex. 10; SF ¶ 13]

31. In the ruling, Judge Warner also found that DMC owed Mr. Provencio $446,317 in unpaid loans, which accrued 10% interest beginning October 18, 2016. [Ex. 10, ¶¶ 31-33; SF ¶ 13]

32. Effective December 1, 2016, Judge Warner returned control of DMC to Mr. Provencio. [SF ¶ 14]

33. On or about February 22, 2018, Judge Warner awarded Mr. Provencio a judgment against Ms. Young, Mr. Young, and others, in the amount of $244,277 for his attorney fees, $19,049.10 in costs, plus post-judgment interest at the statutory rate of 4.25% per annum (the "Provencio Judgment"). [Ex. 29; SF ¶ 15]

34. On May 1, 2018, as part of an effort to collect on the judgment, Mr. Provencio offered to purchase the Subject Shares for $100,000 cash, plus a full release of the Provencio Judgment, under which Ms. Young owed Mr. Provencio $265,165.00 at that time—a total offer valued at $365,165.00. [Ex. 80; SF ¶ 16]

35. Ms. Young declined Mr. Provencio's offer. [SF ¶ 16]

36. Ms. Young asserted to Mr. Provencio that her shares were worth $5 million. [Hearing Tr. 58:7-10]

37. On or around May 1, 2018, DMC issued Stock Certificate No. 2 in the name of Ms. Young, representing 40 shares of DMC—the Subject Shares ("Certificate No. 2"). [Ex. 5; SF ¶ 17; Hearing Tr. 55:6-57:13][4]

38. Certificate No. 2 contains its own conspicuous transfer restriction, stating that Certificate No. 2 is "transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed." [Ex. 5; SF ¶ 17; Hearing Tr. 57:3-13]

The Provencio-DMC Garnishment

39. To enforce the Provencio Judgment, on June 21, 2018, Mr. Provencio filed his Application for Writ of Garnishment for Monies or Property against DMC. [Ex. 12; SF ¶ 18]

40. On June 21, 2018, the court issued a Writ of Garnishment of Monies or Property and Summons directed at DMC (the "Provencio-DMC Writ of Garnishment"), which was served on DMC on June 25, 2018. [Ex. 13-14; SF ¶ 18]

41. On July 20, 2018, DMC filed its Answer of Garnishee (the "Provencio-DMC Garnishment Answer"). [Ex. 15; SF ¶ 19]

42. In the Provencio-DMC Garnishment Answer, DMC disclosed that it had in its possession "Tiffany Young's Desert Medical Campus, Inc. Certificate #2 for 40 Shares", and that Ms. Young owned 40 shares of common stock as of the date the writ was served. [Ex. 15; SF ¶ 19]

43. On July 5, 2018, DMC served the Provencio-DMC garnishment papers, via mail, on Ms. Young. [Ex. 15; SF ¶ 19]

44. On July 26, 2018, Mr. Provencio filed his Application for Judgment Against Garnishee on Writ of Garnishment (the "Provencio-DMC Garnishment Judgment Application"). [Ex. 16]

[4] Mr. Provencio testified that DMC has issued 200 shares of stock, of which he owns 160 and Ms. Young owns 40. [Hearing Tr. 56:7-57:2] DMC's corporate filings note that DMC has issued 100 shares. [Ex. 74-75] Mr. Provencio testified that those corporate filings were not accurate. [Hearing Tr. 57:13-22] The number of shares DMC issued is not material to the issues before the Court. Based on Judge Warner's ruling, the Subject Shares consist of 20% of DMC's outstanding shares, regardless of the number of shares issued.

45. In the Provencio-DMC Garnishment Judgment Application, Mr. Provencio referenced Certificate No. 2 multiple times. [Ex. 16]

46. Mr. Provencio served Ms. Young with the Provencio-DMC Garnishment Judgment Application via mail at two addresses: her Hillery Drive residence and the residence of Mr. Paige, where she testified she sometimes lived. [Ex. 16; SF ¶ 27]

47. On August 30, 2019, the Court entered its Judgment Against Garnishee on Writ of Garnishment (the "Provencio-DMC Garnishment Judgment"). [Ex. 17; SF ¶ 20]

48. In the Provencio-DMC Garnishment Judgment, the Court specifically prohibited DMC and Ms. Young from "transferring, conveying, selling, exchanging, or otherwise disposing of [the Subject Shares] evidenced by stock certificate #2 . . . ." [Ex. 17, p. 2]

49. On September 6, 2018, the Court issued a Writ of Special Execution that specifically references Certificate No. 2, which was served on Ms. Young at her Hillery address, and the Sherriff levied Certificate No. 2 from DMC on September 19, 2018. [Ex. 18-19; SF ¶ 21]

50. On or around October 17, 2018, the day of the initial Sheriff's sale of the Subject Shares, Ms. Young filed for bankruptcy protection. [Ex. 86]

51. Thereafter, the Sheriff returned Certificate No. 2 to DMC. [Ex. 20; SF ¶ 21]

Young's Divorce

52. In April 2018, Ms. Young petitioned for a divorce from Mr. Young in the Maricopa County Superior Court, thereby commencing Case No. FC2018-052941 (the "Divorce Proceedings"). [SF ¶ 23]

53. On April 23, 2018, the court in the Divorce Proceedings issued a Preliminary Injunction (the "Preliminary Injunction") under A.R.S. § 25-315, which in pertinent part stated:

> Restrictions on marital property: You may not sell, hide, give away or otherwise dispose of, any joint, common, or community property, including earnings, or take a loan out on such property other than earnings, without the written permission of the other party or the permission of this Court, unless related to usual course of business,

> necessities of life, court fees or reasonable attorney fees related to this action.
>
> . . .
>
> Warning
>
> This is an official court order. If you disobey this order the court may find you in contempt of court. You may also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.
>
> . . .
>
> This court order is effective until a final decree of dissolution, legal separation or annulment is filed or the action is dismissed.

[Ex. 24; SF ¶ 23]

54. At the time the Preliminary Injunction was issued, the Subject Shares were part of Ms. Young's martial community property. [Ex. 25-26]

55. The Preliminary Injunction was still in effect at the time Ms. Young allegedly sold the Subject Shares to Mr. Paige. [Ex. 26, ¶ 6(d)]

56. On August 6, 2019—after the Alleged Sale—the divorce court issued a minute entry reflecting a consent decree agreed to by Mr. Young and Ms. Young. [Ex. 26]

57. In the August 6, 2019 minute entry, Mr. Young reserved his right to pursue civil remedies against Ms. Young for her violation of the Preliminary Injunction with respect to the Alleged Sale. [Ex. 26, ¶ 6(d)]

Ms. Young's Relationship with Mr. Paige

58. Mr. Paige and Ms. Young have been romantically involved for about 3 years. [Hearing Tr. 122:4-5]

59. In 2017 or early 2018, Mr. Paige and Ms. Young became engaged. [SF ¶ 22]

60. As of the Hearing, Mr. Paige and Ms. Young were engaged. [SF ¶ 22]

61. They have discussed getting married in the fall of 2019. [Hearing Tr. 122:6-8]

62. Ms. Young maintains her residence at 4911 E. Hillery Drive, and she sometimes stays at Mr. Paige's home. [SF ¶ 27]

63. Ms. Young and Mr. Paige both use an email address: "LeeNTiffPaige@----.com." [Ex. 38; Hearing Tr. 153:23-25]

64. In late 2018, Mr. Paige loaned Ms. Young $175,000, allegedly secured by her personal residence, as evidenced by a Promissory Note dated October 10, 2018 and a Deed of Trust recorded on January 3, 2019. [Ex. 82-85; SF ¶ 24]

65. Mr. Paige testified that he placed liens on all Ms. Young's assets to protect them from creditors. [Ex. 121, Paige Depo. at 95:9-96:3]

66. The proceeds of the $175,000 loan were intended for Ms. Young to pay "mortgage loan payments due on a monthly basis on the Property [at 4911 E. Hillery Drive, Scottsdale, Arizona], renovation of the Property, related costs and expenses, ordinary course of living expenses, medical expenses, utilities expenses, automobile loan payments for a Jeep Grand Cherokee, and legal expenses related to [Ms. Young's] pending divorce proceedings." [Ex. 83; SF ¶ 24]

67. On January 15, 2019, Mr. Paige loaned Ms. Young $31,280.67 to purchase an Audi Q3 vehicle. [Ex. 89-90; SF ¶ 25]

68. That loan is secured by the vehicle and evidenced by a Promissory Note dated January 15, 2019. [Ex. 89-90; SF ¶ 25]

69. Mr. Paige funds most of Ms. Young's personal finances, including her attorneys' fees, through loans or gifts. [SF ¶ 26; Hearing Tr. 123:8-10]

70. The parties stipulated that Ms. Young was insolvent before and after April 1, 2019. [SF ¶ 109]

Mahoney-Young Relationship

71. Ms. Mahoney is a former business partner of both Mr. Provencio and Ms. Young. [SF ¶ 31]

72. The three were involved in Carson City Agency Solutions, LLC ("CCAS"), a Nevada marijuana business, which was formed in 2014. [SF ¶ 31]

73. In 2016, Ms. Young's business relationship with Ms. Mahoney ended. [Ex. 116, ¶ 16].

74. In September 2016, Ms. Mahoney sued Ms. Young in Alaska for defamation. [Ex. 116]

75. Ms. Young participated in the Alaska litigation up until trial, when she failed to appear. [Hearing Tr. 16:22-17:2; SF ¶ 32]

76. The Alaska court held a full trial, where the Judge examined witnesses and made findings of fact. [Hearing Tr. 17:3-12]

77. On August 3, 2018, the Superior Court for the State of Alaska entered the Mahoney Judgment. [SF ¶ 32]

78. Before Ms. Mahoney could domesticate the Mahoney Judgment in Arizona, Ms. Young filed bankruptcy. [Ex. 86]

Mahoney-Provencio Relationship

79. In 2016, Mr. Provencio and Ms. Mahoney had a business disagreement and parted ways. [Hearing Tr. 18:12-22]

80. Other than a casual greeting at a conference, Ms. Mahoney and Mr. Provencio have not communicated in over 3 years. [Hearing Tr. 18:14-22, 69:5-11]

81. Ms. Mahoney's husband, Mr. Mahoney, maintains a casual relationship with Mr. Provencio, where they communicate via telephone or text messages a few times a year. [Hearing Tr. 18:23-19:4]

82. The Mahoneys and Mr. Provencio do not have any current business dealings with each other. [Hearing Tr. 19:3-4, 69:12-15]

83. While Mr. Mahoney and Mr. Provencio appear to have discussed Ms. Young on several occasions, based on their testimony, those communications primarily occurred after April 1, 2019 and dealt largely with obtaining information on Ms.

Young's assets and whereabouts and trying to negotiate a settlement between Ms. Young, Ms. Mahoney, and Mr. Provencio. [Ex. 109; Hearing Tr. 19:10-35:23]

84. Both Mr. Mahoney and Mr. Provencio consistently testified that they:

- Never discussed their collections strategy regarding Ms. Young or the Subject Shares;
- Never discussed changing DMC's bylaws;
- Never discussed whether or when Mr. Provencio should provide Ms. Young a payoff statement;
- Never discussed how Mr. Provencio should respond to Ms. Young's discovery requests;
- Never discussed how DMC should answer garnishments;
- Never discussed what Mr. Provencio would bid at Sheriff's sale of the Subject Shares;
- Never discussed when Ms. Mahoney would record her judgment;
- Never discussed Ms. Mahoney's garnishment before it was served on DMC; and
- Never had a plan to prevent Ms. Young from transferring the Subject Shares.

[Hearing Tr. 19:10-36:7, 46:5-25, 69:19-70:14][5]

Ms. Young's Bankruptcy

85. On or about October 17, 2018, Ms. Young filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Arizona, as Case No. 2:18-BK-12715.

[5] The Court found Mr. Mahoney's testimony more credible than Mr. Provencio and Ms. Young. Mr. Provencio's testimony was somewhat less credible given inconsistencies in his statements and written documents and financial records. The Court found Mr. Provencio's testimony more credible than Ms.Young's testimony.

86. In her bankruptcy petition, Ms. Young stated under oath that she lived at 4911 E. Hillery Drive. [Ex. 27]

87. On January 25, 2019, the U.S. Trustee for the District of Arizona moved to dismiss the case for cause under 11 U.S.C. § 707(a) because "allowing this case to continue could require the Chapter 7 trustee to administer assets that are illegal under the Federal Controlled Substances Act." [SF ¶ 34]

88. Ultimately, the Bankruptcy Court dismissed Ms. Young's case on Friday, March 1, 2019. [SF ¶ 35

February 26-28, 2019
Ms. Young Plans to Obtain a Loan from Mr. Paige

89. On February 26, 2019, Ms. Young's counsel—Jim Webster—sent an e-mail to Mr. Young's divorce counsel—Jim Leather—informing him that the bankruptcy court was about to dismiss Ms. Young's bankruptcy case:

> [A] sheriff's sale may begin again and an asset of the estate may be lost as a great loss to the community. This is why we need to work together to prevent this from happening. The letter provides a viable solution but requires your client to act in his best interest.

[Ex. 32; SF ¶ 37]

90. A copy of the referenced letter was not produced. [SF ¶ 37]

91. Ms. Young's counsel followed-up again on February 28, 2019. [Ex. 32; SF ¶ 37]

92. On the same day, Mr. Young's counsel responded via email, stating:

> Mr. Young has no problem with allowing the "lender" to providing [sic] the monies necessary to pay off the creditor conducting the sheriff's sale and that creditor taking a lien in the twenty percent (20%) interest of the parties in the license. . . . He also needs complete disclosure as to the lender.

[Ex. 32; SF ¶ 37] (emphasis added)

March 1-11, 2019

93. On March 1, 2019, the Bankruptcy Court entered an order dismissing Ms. Young's bankruptcy case. [Ex. 94]

94. On March 4, 2019, Ms. Mahoney commenced the above-captioned case to domesticate her judgment in Arizona. [SF ¶ 39]

95. On March 7, 2019, the court in the Provencio-Young Litigation issued a new Writ of Special Execution, which specifically referenced Certificate No. 2. [Ex. 21]

96. Thereafter, the Sheriff again levied Certificate No. 2 from DMC. [SF ¶ 41]

97. On March 11, 2019, the Sheriff filed his "Sheriff's Notice of Sale of Personal Property on Special Execution and Order of Sale" (the "Sale Notice") in the Provencio-Young Litigation. [Ex. 95; SF ¶ 40]

98. In the Sale Notice, the Sheriff disclosed precisely how much was due under the Provencio Judgment as of March 6, 2019—$274,762.74. [Ex. 95]

99. The Sale Notice also included an interest rate which would allow parties to calculate how much was due as of a given date. [Ex. 95]

100. The Sale Notice disclosed that the Sheriff was going to sell "Stock Certificate No. 2 Representing 40 Shares of Common Stock in Desert Medical Campus, Inc." on April 4, 2019 (the "Sheriff's Sale Date"). [Ex. 95]

101. The Sale Notice was provided to Ms. Young. [Ex. 95]

March 13, 2019
Payoff Statement Requests

102. Notwithstanding the Sale Notice, Ms. Young demanded Mr. Provencio provide her with a different form of payoff statement. [SF ¶ 45]

103. On March 13, 2019, Mr. Provencio's counsel—Larry Folks—emailed Ms. Young's counsel stating: "The attached Sheriff's Sale Notice includes the balance due under my client's judgment and the date of the Sheriff's sale." [Ex. 34]

104. On March 13, 2019, Ms. Young's counsel responded to Mr. Folks, stating again that Ms. Young intended to pay the Provencio Judgment in full: "you need to let me know where to pay the judgment in full. I would prefer to get an amount owed as of tomorrow, but my client will overpay to ensure your client is paid." [Ex. 36; SF ¶ 48]

105. On March 13, 2019, Ms. Young's counsel forwarded Mr. Folks's email to Mr. Young's counsel stating:

> As you can see attached is the sale of the marijuana assets. Below is my communication with the attorney in charge of the sale.
>
> . . .
>
> I know your client wants to limit how this is going to get resolved, but my client has been able to procure a private loan. We are about to get down to it and I need to know if your client is going to agree to my client getting a loan to preserve community assets which will lead to a lien against the asset. At some point, it may need to be sold and pay off the lien but we will cross this road when we get there.

[Ex. 34; SF ¶ 42] (emphasis added)

March 14, 2019
Mr. Paige Agrees to Loan Ms. Young Funds to Payoff the Provencio Judgment

106. On March 14, 2019, Mr. Young's counsel responded to Ms. Young's counsel via email, stating, "Although I am sure Mr. Young's position is the same. I have asked him to call me. I will then give a better response. He needs complete disclosure of the lender and the terms of any resolution of the claim." [SF ¶ 43]

107. In response, on March 14, 2019, Ms. Young's counsel sent a lengthy email to Mr. Young's counsel stating, in relevant part:

> As for financing, from what I understand, Lee Paige would be lending her the money. I cannot speak for Lee or the terms as I have not seen any documentation, but given he wants security, I believe he will do what it takes to secure [a]

> lien against the assets. He does not want to put money down and hope this works out. I have not seen anything as to interest, but I imagine it will look like a typical hard money loan.
>
> The problem is, as we both know, there are not a lot of options and since our last discussion, I spoke with Mahoney's attorney. He provided a written statement saying the judgment alone was for $1.6 million. My guess is that it will be close to $1.8 million. From what I understand, the process has been started to domesticate the judgment to then take a similar step as Provencio.

[Ex. 35; SF ¶ 44] (Emphasis added.)

108. In the March 14, 2019 email, Ms. Young's counsel confirmed that Ms. Young would get a credit in the Divorce Proceedings for paying off the community debt with Mr. Paige's loan funds. [Ex. 35][6]

109. On March 14, 2019, Ms. Young's counsel emailed Ms. Young advising her to "[b]e prepared to pay $294,762.74 in certified funds or potentially a bond" to stop Mr. Provencio's Sheriff's sale. [Ex. 37; SF ¶ 50]

110. Ms. Young forwarded the March 14, 2019 email to Mr. Paige. [Ex. 37; SF ¶ 50]

March 15, 2019
Mr. Provencio's Plan to Bid at the Sheriff's Sale

111. On March 15, 2019, Mr. Provencio's counsel emailed Ms. Young's counsel stating:

My understanding is that [Mr. Provencio] will credit bid the full balance of his judgment and intends to bid higher to obtain the stock.

[6] Ms. Young appears to have accepted this loan payment proposal. On August 7, 2019, the court in Ms. Young's Divorce Proceedings, entered a Minute Entry finding, among other things, that with respect to DMC: "Mr. Paige's payment of the community debt [the Provencio Judgment] shall be treated as payment by [Ms. Young] and [Mr. Young] shall be attributed ½ of that amount in an increased allocation of the parties' remaining community debt as equalization for the payoff of that debt in full." [Ex. 26, ¶6(e); SF ¶ 27]

> If there is competitive bidding, this will benefit your client, because I believe she would be entitled to the excess proceeds paid over and above the judgment balance. In addition her legal remedy is to bid at the auction sale if she doesn't want to be paid the excess proceeds and not seek to enjoin the sale.

[Ex. 36; SF ¶ 49; Hearing Tr. 63:2-64:13] (emphasis added)

112. In fact, Mr. Provencio testified that he was prepared to bid up to $1,000,000 at the April 4, 2019 Sheriff's sale. [Hearing Tr. 62:13-63:1]

113. He also testified that he never intended to bid less than his judgment amount, and he never told Ms. Young that he would. [Hearing Tr. 62:21-24, 64:14-19]

114. Ms. Young testified that Mr. Provencio told her in an email that he was the only person allowed to bid at the Sheriff's sale and that Mr. Provencio intended to bid $.01. [Hearing Tr. 194:2-16; Ex. 121, Young Depo. at 107:9-108:16, 138:20-139:11]

115. No such email exists in the record before the Court.

March 26, 2019
Mr. Paige Agrees to Fund $300,000 to Ms. Young

116. Mr. Paige testified that he agreed to allegedly purchase the Subject Shares sometime prior to March 29, 2019, but neither he nor Ms. Young could remember the exact date. [Ex. 121, Paige Depo. at 99:11-16, 134:22-135:8, Young Depo. at 129:5-131:12, 162:9-11; Hearing Tr. 127:17-19]. There is no reference in writing to the alleged purchase until April 22, 2019.

117. Based on the record, Mr. Paige appears to have agreed to transfer $300,000 to Ms. Young sometime before March 26, 2019 because on March 26, 2019, Ms. Young texted Mr. Paige: "No deposit yet- Just FYI". Mr. Paige texted back: "Ok". [Ex. 31, p. TY.1174; SF ¶ 54]

118. Ms. Young testified that Mr. Paige's alleged offer to purchase the Subject Shares was the only offer she received. [Ex. 121, Young Depo. at 134:16-135:5][7]

119. Mr. Paige testified that he allegedly purchased the Subject Shares to keep them out of the hands of Ms. Young's creditors. [Hearing Tr. 126:21-127:2, 145:4-7]

120. Ms. Young testified that she alleged sold the Subject Shares to Mr. Paige to prevent Mr. Provencio from obtaining the Subject Shares. [Ex. 121, Young Depo. at 138:5-19]

121. Mr. Paige's and Ms. Young's alleged agreement to sell the Subject Shares was an oral agreement. [Hearing Tr. 182:22-183:2; Ex. 121, Paige Depo. at 101:13-24, Young Depo. at 145:8-15]

122. The amount Mr. Paige agreed to transfer to Ms. Young ($300,000) was based on the amount needed to pay off the Provencio Judgment. [SF ¶ 58; Hearing Tr. 125:23-126:1]

123. Ms. Young did not ask for more money, and Mr. Paige did not ask to fund less. Ms. Young and Mr. Paige did not negotiate the amount at all. [Hearing Tr. 126:2-10; Ex. 121, Paige Depo. at 99:21-100:14]

124. Notwithstanding Ms. Young's alleged oral agreement to sell the Subject Shares to Mr. Paige, she failed to inform DMC, Mr. Provencio, or Ms. Mahoney of any such sale until April 23, 2019. [SF ¶ 92]

March 27-28, 2019
Settlement Negotiations

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[7] Ms. Young appears to have also misled the divorce court and Mr. Young regarding the Alleged Sale. On July 31, 2019, Ms. Young filed her Separate Pretrial Statement and List of Witnesses and Exhibits As to Property in her Divorce Proceedings and alleged:

> In an attempt to curb damages, [Ms. Young] took offers from multiple bidders. In the end, she took the best and highest offer under the circumstances in the amount of approximately $300,000.00. The sale of the shares is now the subject of a contested supplemental proceeding in Maricopa County Superior Court.

[Ex. 25; SF ¶ 27](Emphasis added.)

125. In the meantime, Ms. Young continued to discuss potential settlement scenarios between her, Mr. Provencio, and Ms. Mahoney, but not Mr. Paige.

126. On March 27, 2019, Ms. Mahoney put potential settlement terms in writing. [Ex. 46]

127. Ms. Mahoney proposed that Ms. Young pay Ms. Mahoney $300,000, plus whatever excess proceeds Ms. Young is entitled to from the Sheriff's sale of the Subject Shares. In exchange, Ms. Mahoney would release the Mahoney Judgment, under which Ms. Young owed in excess of $1.8 million at that time. [Ex. 46]

128. On March 28, 2019, Ms. Young's counsel emailed Mr. Young's counsel stating that Ms. Young received a $2 million offer for the Subject Shares and that he was going to make a counter-offer of $2.75 million because Ms. Young's "goal is to get a $1 [million] payout and release of the" Provencio Judgment and Mahoney Judgment. [Ex. 39]

129. On the same day, Ms. Young's counsel emailed Ms. Mahoney's counsel, stating "My client declines the offer." [Ex. 46]

130. Ms. Young apparently misunderstood the nature of Ms. Mahoney's proposal. Based on Ms. Young's March 28, 2019 email, Ms. Young viewed Ms. Mahoney's offer as a sale of the Subject Shares for $300,000 (which was not Ms. Mahoney's proposal). Such a sale raised several concerns in Ms. Young's mind: (1) payment of $300,000 for the Subject Shares "would all but cement this as a fraudulent transfer as my client would be paying money to give away assets worth well in excess of the judgments of both Mr. Provencio and Ms. Mahoney" [valued at approx. $2 million], (2) the alleged sale of Subject Shares for $300,000 (which Ms. Mahoney was not proposing) "is less than fair market value" because the Subject Shares "are high value assets", and (3) Ms. Young wanted "a lump sum payment of $1,000,000," plus a release of $2 million in judgments. [Ex. 46]

131. Ms. Mahoney's counsel responded via email, clearly confused by Ms. Young's lack of understanding with regard to Ms. Mahoney's offer. Ms. Mahoney's counsel confirmed that Ms. Mahoney actually proposed that Ms. Young pay $300,000 (plus all excess proceeds) for a release of $2 million in judgments. Ms. Mahoney's counsel expressed shock that Ms. Young was demanding "nearly $3 million for part of the [DMC] stock, all of which is contingent upon Mr. Provencio releasing all of his claims", which Ms. Mahoney had no way of controlling. Ms. Mahoney's

counsel wanted confirmation that Ms. Young was really proposing such a deal. [Ex. 46]

132. Ms. Young's counsel responded to Ms. Mahoney's counsel, copying Mr. Young's counsel: "You have a fairly good understanding of the proposed offer." Ms. Young's counsel then stated that Ms. Young "found out the license alone is worth significantly more than previously believed. . . . [Ms. Young's] offer is off the table for now. My client has the money [to payoff the Provencio Judgment] and the value of the shares are worth considerably more than [Ms. Young's $3 million] offer below." Ms. Young's counsel also stated "[Ms. Young] asked me to pay off the [Mr. Provencio] judgment and stop the sheriff sale first. Then, [Ms. Young] is willing to negotiate directly with Ms. Mahoney." [Ex. 46]

March 28-April 1, 2019
Mr. Paige Transfers $300,000 to Ms. Young

133. On March 28, 2019, Mr. Paige's Canadian bank confirmed that it was ready to wire $300,000 to Ms. Young. [Ex. 38; SF ¶ 56]

134. On March 29, 2019, Mr. Provencio provided Ms. Young with the wire instructions. [SF ¶ 60]

135. Later on March 29, 2019, Ms. Young emailed her counsel, copying Mr. Paige and stating: "[Ms. Young and Mr. Paige] would like some assurance, 20% of DMC, in exchange for payment, has free and clear title." The email was signed "Tiffany (and Lee)." [SF ¶ 61; Ex. 41]

136. Ms. Young's counsel responded to the email, copying Mr. Paige, confirming that he has permission to send the wire to Mr. Provencio's counsel, and stating: "As to free and clear, it is free and clear from [Mr. Provencio]. There are no other judgments [owing to Mr. Provencio]. Mahoney is a different story as they are moving to get at the assets." [SF ¶ 61; Ex. 41] (emphasis added)

137. Accordingly, as of at least March 29, 2019, Mr. Paige and Ms. Young knew or should have known that Ms. Mahoney was going to garnish the Subject Shares. [Ex. 41]

138. On March 29, 2019, Mr. Paige instructed his Canadian bank to wire $300,000 to Ms. Young. [SF ¶ 62]

139. On Monday, April 1, 2019, Ms. Young received the net wire proceeds ($299,980.00, reduced by the wire fee). [SF ¶ 64]

140. After Ms. Young received the wire, Mr. Paige texted Ms. Young: "The only thing now is to have Jim [Webster] discuss focus [sic] on [Mr. Young's] IP. Change the sent. Off of dmc to IP." [Ex. 31, p. TY.1176]

April 1, 2019
Ms. Mahoney Garnishes the Subject Shares

141. On April 1, 2019, the Court issued a writ of garnishment in connection with the Mahoney Judgment (the "Mahoney-DMC Garnishment"). [SF ¶ 65]

142. On April 1, 2019, Ms. Mahoney's counsel asked Ms. Young's counsel if Ms. Young had paid off the Provencio Judgment. [Ex. 43, 46; Hearing Tr. 22:19-25]

143. On April 1, 2019, Ms. Young's counsel responded via email (copying Mr. Young's counsel), stating that he has not confirmed payment to Mr. Provencio, but he was confident the Sheriff's sale was going to be stopped. Ms. Young's counsel then reiterated that "[o]nce this is finished, my client wants to have a discussion about your client's proposal as to the shares." He also noted than any agreement required Mr. Young's approval as the Subject Shares are community assets. [Ex. 46] (emphasis added)

144. Ms. Young did not inform Ms. Mahoney at that time that she had already allegedly sold the Subject Shares to Mr. Paige. [SF ¶ 92] Moreover, it appears Ms. Young further failed to notify her own attorney that she sold the shares to Mr. Paige before or after making the payoff.

April 2, 2019
Ms. Young Continues to Treat the Subject Shares as Her Own

145. On or before April 2, 2019, the entire email string between Ms. Young's counsel and Ms. Mahoney's counsel related to the March 28, 2019 negotiations was forward to Ms. Young and Mr. Paige. [Ex. 46]

146. On April 2, 2019, Ms. Young wired Mr. Provencio's counsel $286,878.12 to satisfy the Provencio Judgment. [SF ¶ 66]

147. Later on April 2, 2019, Mr. Provencio's counsel confirmed receipt of the funds. [Ex. 49; SF ¶ 66]

148. That same day, Mr. Provencio and Ms. Young filed their Stipulated Motion to Quash the Sheriff's Sale Set on April 4, 2019 at 10:00 AM and Satisfaction of Judgment and Release of Lien ARS § 33-964, 967 in the Provencio-Young Litigation. [Ex. 22; SF ¶ 67]

149. The Stipulation noted that the Provencio Judgment was recorded in Maricopa County. It also stated that the lien created by the recording was released as part of the stipulation, adding "[i]f the lien is recorded in any other County, this Stipulation releases said lien." The Stipulation specifically referenced A.R.S. § 33-964 and 967 as the basis of the relief, which deals only with judgment liens not garnishments. [Ex. 22]

150. The stipulation did not: (i) mention the Alleged Sale of the Subject Shares to Mr. Paige on April 1, 2019, (ii) seek to quash the garnishment transfer restrictions, or (iii) request that the Court vacate the Provencio-DMC Garnishment Judgment. [Ex. 22]

151. On April 2, 2019, after the stipulation was filed and after she allegedly sold the Subject Shares to Mr. Paige, Ms. Young's counsel emailed Mr. Provencio's counsel confirming the filing and stating: "As we talked about, my client is open to settling with your client and to sell her shares. She is willing to sell them to a number of people but if your client is interested, she ready to have a discussion." [Ex. 44] (emphasis added)

152. Ms. Young did not inform Mr. Provencio at that time that she had already allegedly sold the Subject Shares to Mr. Paige. [SF ¶ 92]

April 3, 2019
Mr. Paige's Loan Documented

153. The Court signed its "Stipulated Order on Motion to Quash the Sheriff's Sale Set on April 4, 2019 at 10:00 AM and Satisfaction of Judgment and Release of Lien ARS § 33-964, 967" on April 3, 2019, which was entered on April 4, 2019. [Ex. 23]

154. The stipulated order did not: (i) mention the Alleged Sale of the Subject Shares to Mr. Paige on April 1, 2019, (ii) quash the garnishment transfer restrictions, or (iii) request that the Court vacate the Provencio-DMC Garnishment Judgment.

155. On April 3, 2019, Ms. Young's counsel emailed Ms. Young and Mr. Paige, seeking approval of a draft "Rule 69 Agreement" to file in Ms. Young's Divorce Proceedings. [Ex. 50; SF ¶ 69]

156. In the email, Ms. Young's counsel noted that Mr. Young would be better off owing Mr. Paige the money used to payoff the Provencio Judgment, which was a community debt, rather than owing Ms. Young the funds through an equalization payment because the equalization payment is non-dischargable under bankruptcy law. [Ex. 50]

157. The draft Rule 69 Agreement attached to the email summarized the true nature of the Paige-Young transaction:

> ¶ 2. During the marriage, the parties accrued certain assets.
>
> ¶ 3. Among those assets are a twenty percent share in Desert Medical Campus Incorporated ("DMC").
>
> . . .
>
> ¶ 6. On April 4, 2019, a Sheriff's Sale was set to sell the DMC Shares.
>
> ¶ 7. Prior to the Sheriff's Sale, the Parties spoke regarding the nature of how to resolve the pending sale.
>
> ¶ 8. Wife was able to procure funds to prevent the assets to be sold for less than the assets were worth.
>
> ¶ 9. The lender who provided the funds understands other creditors exist and may attempt to take the shares through supplemental proceedings.
>
> ¶ 10. The lender wants security as to the monies lent.
>
> ¶ 11. The total amount required to stop the Sheriff's Sale is $286,578.12.
>
> ¶ 12. The total amount being requested as a lien against the community assets is in the same amount.

¶ 13. At least one of the judgment creditors hired counsel and is actively pursuing the assets of the community.

¶ 14. An agreement was reach by the parties and in order to effectuate the lien, the Court needs to modify the preliminary injunction to allow for the lien to be placed on the community assets.

. . .

¶ 20. The Parties allow and agree for Tiffany Young to grant a voluntary lien against the community interests for the purpose of protecting the lender's investment in the community assets.

[Ex. 50; SF ¶ 69]

158. The draft Rule 69 agreement did not mention any sale of the Subject Shares to Mr. Paige. [Ex. 50]

159. Neither Ms. Young or Mr. Paige responded to Ms. Young's counsel to allege that Mr. Paige bought the Subject Shares on April 1, 2019.

160. Later on April 3, 2019, Ms. Young's counsel again emailed Ms. Young and Mr. Paige seeking approval of the draft Rule 69 Agreement. [Ex. 51]

161. Neither Ms. Young or Mr. Paige responded to Ms. Young's counsel to allege that Mr. Paige bought the Subject Shares on April 1, 2019.

April 4, 2019
Ms. Mahoney Serves the Mahoney-DMC Garnishment

162. On April 4, 2019, Ms. Mahoney served DMC with the Mahoney-DMC Garnishment. [Ex. 102; SF ¶ 73]

April 5, 2019
Ms. Young Attempts to Obtain Certificate No. 2 from Sheriff

163. On April 5, 2019, after he allegedly bought 20% of DMC, Mr. Paige texted Ms. Young: "Don't send me anything to do with dmc or your custody divorce." [Ex. 31; SF ¶ 74]

164. Ms. Young did not respond to Mr. Paige noting that she allegedly sold him the Subject Shares on April 1, 2019, as she later did on April 22, 2019. [Ex. 31; SF ¶ 91]

165. On April 5, 2019, the Sheriff's office informed Ms. Young's attorney: "I just spoke with Mr. Keyt [DMC's attorney]. MCSO will be turning the Certificate back over to him. He said they would arrange to have the Certificate turned over to the owner." [Ex. 52; SF ¶ 75]

166. In response, Ms. Young's counsel asked that the Sheriff hold on to Certificate No. 2 so she can obtain a court order to release it directly to her. [Ex. 52; SF ¶ 76]

167. Ms. Young's attorney did not inform the Sheriff that Ms. Young allegedly sold the Subject Shares to Mr. Paige on April 1, 2019. The record establishes that Ms. Young's attorney was not aware of the alleged sale until several weeks later. This fact supports a conclusion that Ms. Young was either hiding or withholding information from her attorney or that she and Mr. Paige came up with the sale theory after Ms. Young paid off the judgment with funds received from Mr. Paige.

168. The Sheriff responded on April 5, 2019, indicating that Certificate No. 2 was "picked up less than 2 minutes ago" by someone from Keyt Law. [SF ¶ 77]

169. On April 5, 2019, Ms. Young's attorney contacted DMC's corporate counsel—Richard Keyt—stating: "From what I have been told, your office picked up the DMC shares that are the property of Tiffany Young." [Ex. 53; SF ¶ 78] (emphasis added)

170. Ms. Young did not inform DMC at that time that she allegedly sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 92]

171. Mr. Keyt responded, stating "I'm out of the office today. I'll arrange for a pick up Monday." [SF ¶ 79]

April 8, 2019
Courtesy Copy of Mahoney-DMC Garnishment

172. On April 8, 2019, Ms. Mahoney's counsel sent a courtesy copy of the Mahoney-DMC Garnishment to Ms. Young's counsel, Mr. Provencio's counsel, and DMC's corporate counsel, Richard Keyt. [Ex. 54; SF ¶ 80]

173. In the April 8, 2019 email, Ms. Mahoney's counsel reminded Mr. Provencio, DMC, and Ms. Young that, by statute, neither Ms. Young nor DMC could transfer or sell the Subject Shares. [Ex. 54; SF ¶ 80]

174. On April 8, 2019, Mr. Keyt then emailed Ms. Young's counsel, noting the email he received from Ms. Mahoney's counsel and stating: "As a result of the Writ of Garnishment and [Mahoney's counsel's] demand . . . Desert Medical Campus, Inc[.], cannot deliver Tiffany Young's stock certificate to Tiffany until she causes Lucinda Mahoney to authorize the delivery or she gets a court order directing DMC to deliver the stock certificate to her." [SF ¶ 81]

175. After Ms. Young learned of the Mahoney-DMC Garnishment on April 8, 2019, Ms. Young called Mr. Mahoney to attempt to negotiate a settlement of the Mahoney-DMC Garnishment. Mr. Paige was also on the call. [Hearing Tr. 26:2-25; *see also* Ex. 31]

176. Ms. Young and Mr. Mahoney continued to negotiate terms through approximately April 15, 2019, when Ms. Young broke off discussions apparently to pursue her Alleged Sale theory. [Hearing Tr. 27:7-24; *see also* Ex. 31]

177. During those negotiations, neither Ms. Young nor Mr. Paige informed Mr. Mahoney that Ms. Young had allegedly sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 92; Hearing Tr. 26:18-25]

April 9, 2019
Ms. Young Tries to Unwind the Provencio Payoff and Consent to A Sheriff's Sale

178. Notwithstanding, Ms. Young's actual knowledge of the Mahoney-DMC Garnishment, on April 9, 2019, Ms. Young texted Mr. Paige suggesting that she could use the threat of an alleged ethics violation by DMC's attorney, Mr. Keyt, as leverage to convince him to give her Certificate No. 2. [Ex. 31, p. TY.1185]

179. On April 9, 2019, Ms. Young also attempted to unwind the Provencio payoff. Ms. Young's counsel emailed to Mr. Provencio's counsel, Thomas Moring at Jaburg Wilk, stating:

> My client has not received her stock certificates as was her right after paying the Judgment. From the best my client can tell, Parties are colluding to interfere with her rights as a shareholder. As a result, my client was never given the opportunity to receive her shares of stock. This was done

> with the intention of making my client's actions in paying this judgment a way to deplete her resources and not provide her shares.
>
> As a result, the money held by your firm, in trust, NOT to be released to Mr. Provencio and immediately returned to my client. My client will cooperate fully with any actions taken to allow Mr. Provencio to sell the shares at auction.

[Ex. 55; SF ¶ 82] (emphasis added)

180. Neither Ms. Young herself nor through counsel, informed Mr. Provencio at that time that she allegedly sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 92] The Court finds the lack of candor telling given that the shares were the subject of the sheriff sale and the subject of negotiations with both Mr. Provencio and the Mahoneys.

April 10-11, 2019
Ms. Young Attempts to Obtain Certificate No. 2 From DMC

181. On April 10, 2019, Ms. Young's counsel sent the Sheriff an email inquiring as to why Certificate No. 2 was turned over to Mr. Keyt. The Sheriff responded, confirming that after the sale was cancelled, it held Certificate No. 2 on behalf of DMC: "MCSO seized the stock from [Mr. Keyt's] office that is why MCSO returned the stock certificate to his possession." [Ex 58; SF ¶ 84]

182. On April 10, 2019, Ms. Young's counsel sent Ms. Young and Mr. Paige a draft letter to counsel for Mr. Provencio and DMC. In the draft letter, notwithstanding actual knowledge of the Mahoney-DMC Garnishment, Ms. Young's counsel demands that DMC deliver Certificate No. 2 to Ms. Young and repeatedly refers to the Subject Shares as Ms. Young's property. [Ex 57, pp. TY.064-065; SF ¶ 85]

183. Neither Ms. Young nor Mr. Paige responded to the draft letter to allege the Mr. Paige bought the Subject Shares on April 1, 2019.

184. Notwithstanding Ms. Young's actual knowledge of the Mahoney-DMC Garnishment, on April 10, 2019, Ms. Young's counsel sent Ms. Young an email (which was forwarded to Mr. Paige) stating: 8

> Attached is the letter we discussed to allow you to speak with DMC's counsel – or alleged counsel.

> Ask him for any paperwork for the company related to the shares that has taken place over the last year.
>
> Ask him by what authority he picked up your shares.
>
> Ask him if he will give you your shares right now.
>
> Ask for any document that gave him authority to give away your property to anyone.
>
> Ask him if he represents DMC.
>
> Make sure you record it. Video can work well if you have a pocketed shirt. It helps to put a face to the voice.
>
> Good luck.

[Ex. 56; SF ¶ 86] (emphasis added)

185. Ms. Young forwarded the email to Mr. Paige stating, "Hmmm . . . see attached" (ellipses in original). [Ex. 56; SF ¶ 87]

186. Mr. Paige responded: "You . . . Tiffany to speak directly to counsel ????????" Then, in a later email, Mr. Paige added: "I'm out." [Ex. 56; SF ¶ 87]

187. Neither Mr. Paige nor Ms. Young responded to counsel's email to allege that the Subject Shares were sold to Mr. Paige on April 1, 2019.

188. Although she allegedly sold the Subject Shares on April 1, 2019 and notwithstanding Ms. Young's actual knowledge of the Mahoney-DMC Garnishment, on April 11, 2019, Ms. Young appeared at Mr. Keyt's office demanding Certificate No. 2, a conversation Ms. Young recorded. [Ex. 7, 60; SF ¶ 88]

189. In the recorded conversation, Ms. Young informs DMC's counsel that Certificate No. 2 is "my personal property." [Ex. 7 at minute 15:53-16:04; SF ¶ 88] Ms. Young's statements were directly contrary to the assertion that she had sold the shares in late March or early April.

190. Ms. Young did not inform DMC at that time that she allegedly sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 92]

April 17, 2019
Ms. Young Continues to Assert That She Owns the Subject Shares

191. On April 17, 2019, Ms. Mahoney's counsel sent Ms. Young's counsel an email stating that he understood that Ms. Young had appeared at Mr. Keyt's office trying to get Certificate No. 2. Ms. Mahoney's counsel again asserted that such transfer was prohibited by A.R.S. § 12-1578(A). [Ex. 61; SF ¶ 89]

192. Counsel did not respond to the email by alleging that Ms. Young sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 92]

193. In fact, Ms. Young's attorney responded to the email on April 17, 2019 by stating that Mr. Keyt "tried to have a shareholder arrested when [she] came to see the alleged DMC attorney. . . . . It is Mr[.] Keyt who is tricking Ms. Mahoney." [Ex. 61] (emphasis added)

194. Later on April 17, 2019, Ms. Young's counsel emailed Ms. Mahoney's counsel stating that "Tiffany Young believes Mr. Keyt should turn over her shares. [Ex. 63] Then, notwithstanding Ms. Mahoney's repeated notice to Ms. Young that the Subject Shares are frozen by the Mahoney-DMC Garnishment, Ms. Young's counsel asked Ms. Mahoney's counsel: "What is your client's position on my client's ability to transfer the shares upon payment of the shares?" [Ex. 63]

195. Ms. Young's counsel did not inform Ms. Mahoney at that time that she allegedly sold the Subject Shares to Mr. Paige on April 1, 2019. [SF ¶ 92]

April 22-23, 2019
Sale-Theory Emerges

196. On April 22, 2019, the written record contains the first mention of an Alleged Sale of the Subject Shares to Mr. Paige, through the following text string between Mr. Paige and Ms. Young:

Mr. Paige: I'll call Steve [Mahoney] and clear things up to deal with you.

Ms. Young: Re: Steve.
No interest.

These are your shares.

Mr. Paige: Ok

Ms. Young: Not mine
Do whatever you deem fit.

Mr. Paige: I don't want anything to do with you or the people your involved with

Ms. Young: Up to you.

Mr. Paige: You owe Steve Mahoney a call
If I call. I will take me out of the situation

Ms. Young: It's too late. Jim [Webster] has the sell agreement and has distributed.

It's your stock, your company
As agreed.
Let me know how I can help.
You [are] stronger . . . than you think.
You know what to do.
Let me know how I can help.
Call re: DMC

Mr. Paige: When you can speak

[Ex. 31; SF ¶ 91; Ex. 121, Paige Depo. at 162:7-25] (emphasis added)

197. The next day, on April 23, 2019, Ms. Young's counsel—Jim Webster—emailed Ms. Mahoney's counsel, copying Mr. Keyt, providing, for the first time, the "sell agreement", which was a Bill of Sale Ms. Young alleges was dated April 1, 2019, purportedly evidencing a sale of the Subject Shares to Mr. Paige. [Ex. 63, 100; SF ¶ 92]

198. Ms. Young's counsel claimed he did not know of the Alleged Sale, as the Bill of Sale was "prepared by my client and without input from my office. If I had known about this transfer, I would have brought it up earlier. My client is seeking the

Shares of Desert Medical Campus for the purpose of delivering them to the Buyer of the Shares." [Ex. 63]

199. Ms. Young drafted the Bill of Sale using an undisclosed website. [Hearing Tr. 187:13-20; Ex. 121, Young Depo. at 141:16-23]

200. The Bill of Sale allegedly evidenced a putative sale of the following property: "20% Ownership (Exhibit A) in Desert Medical Campus, LLC." [Ex. 100] (emphasis added)

201. No record of Exhibit A exists, and Ms. Young could not definitively state what Exhibit A was. [Ex. 121, Young Depo. at 143:22-144:21]

202. Mr. Paige testified that he had never seen Exhibit A to the Bill of Sale. [Ex. 121, Paige Depo. at 107:12-20]

203. In the Bill of Sale, Ms. Young allegedly warrants to Mr. Paige that the "property" is free from liens and encumbrances and that Ms. Young has "the full right and authority to sell and deliver the Property." [Ex. 100]

204. Although the Bill of Sale states that it was signed, sealed, and delivered on April 1, 2019, neither Mr. Paige nor Ms. Young could remember when the Bill of Sale was signed or delivered. [Ex. 121, Paige Depo. at 104:17-106:7, Young Depo. at 141:24-143:9, 145:4-7]

205. Prior to April 23, 2019, neither Ms. Mahoney, DMC, nor Mr. Provencio had any knowledge of the Alleged Sale to Mr. Paige. [SF ¶ 92]

April 26, 2019
DMC Answers the Garnishment

206. On April 26, 2019, DMC filed its Answer to the Mahoney-DMC Garnishment, stating, it was (i) holding personal property or money belonging to Ms. Young and Mr. Young, (ii) in possession of "40 shares of DMC stock evidenced by certificate", and (iii) "Garnishee is a corporation in which the judgment debtor(s) owns these shares or interests: 40 Share of DMC, Inc." [Ex. 66, 71; SF ¶ 99]

207. At the Hearing, Mr. Provencio confirmed that DMC's answer was accurate. [Hearing Tr. 66:14-67:14]

April 29, 2019
Mr. Paige and Ms. Young's Continue to Discuss Issues Related to DMC

208. On April 29, 2019, Mr. Paige texted Ms. Young: "Call Provencio and set up a lunch with only him and you." [Ex. 31; SF ¶ 102]

209. Ms. Young responded, "Let's talk about it." [Ex. 31; SF ¶ 102]

May 1, 2019
Mr. Paige Acknowledges His Alleged Ownership of the DMC Shares

210. On May 1, 2019, Mr. Paige voluntarily inserted himself into these proceedings by claiming that he purchased the Subject Shares on or before April 1, 2019.

CONCLUSIONS OF LAW

Based on the foregoing and the entire record before the Court in this matter, the Court concludes the following with respect to the allegation that the Subject Shares were sold to Mr. Paige prior to April 4, 2019: (i) the Alleged Sale did not occur as a matter law prior to April 4, 2019; (ii) the $300,000 Mr. Paige transferred to Ms. Young was a loan or gift and not consideration paid for a purchase of the Subject Shares; (iii) the Alleged Sale was concocted in late-April 2019 in attempt to avoid the Mahoney-DMC Garnishment.

Moreover, although Ms. Mahoney's fraudulent transfer claims are moot based on the foregoing conclusions, the Court also finds that even if the Alleged Sale occurred, such sale was actually and constructively fraudulent.

A. The Alleged Sale Did Not Occur Prior To April 4, 2019 As A Matter Of Law And Fact.

The Alleged Sale did not occur as a matter of law because: (i) A.R.S. § 12-1578(A) and the Provencio-DMC Garnishment Judgment prevented such sale; (ii) Ms. Young and Mr. Paige did not comply with the Article 8 of the Arizona Uniform Commercial Code; and (iii) the 2011 Bylaws prohibited Ms. Young from transferring the Subject Shares without majority shareholder approval, which she did not obtain. In addition, the Alleged Sale did not occur as a matter of fact; the $300,000 Mr. Paige transferred to Ms. Young was a loan or gift not a sale.

1. The Alleged Sale Is Void Under A.R.S. § 12-1578(A).

To execute upon a judgment debtor's shares in a corporation, the judgment creditor may garnish the issuing corporation. *See* A.R.S. §§ 12-1570.1(A)(4), 12-1578(A), 12-1579(D)(9)-(10), 12-1581(B), and 12-1588. Once a corporation receives the writ of garnishment, the corporation "shall not permit or recognize any sale or transfer of the judgment debtor's shares or interest, if it is within the legal power of the [corporation] to do so." A.R.S. § 12-1578(A) (emphasis added). In other words, upon receiving a writ, the corporation must do everything in its legal power to refuse to recognize and to prevent a transfer of the shares. If the corporation fails to comply with this mandate, it "does so at [its] own peril." *Triple E Produce Corp. v. Valencia*, 170 Ariz. 375, 379, 824 P.2d 771, 775 (App. 1991).

If "as shown on the corporate records," the judgment debtor owned the shares at the time a writ was served, any alleged transfer of such shares is void as a matter of law. A.R.S. § 12-1578(A) ("Any such payment, delivery, sale or transfer is void and of no effect. . . ."); A.R.S. § 12-1579(9)-(10). The plain language of A.R.S. § 12-1578(A) appears to give judgment creditors priority over "secret" or alleged "retroactive" sales of corporate stock that have not been recognized by the corporation, which dovetails with UCC Article 8 (discussed below).

On June 5, 2018, Mr. Provencio served DMC with a writ of garnishment. [Ex. 15; SF ¶ 19] Upon such service, A.R.S. § 12-1578(A) prevented the transfer of the Subject Shares. In addition, on August 30, 2018, the Court entered the Provencio-DMC Garnishment Judgment, which it expressly ordered DMC to hold the Subject Shares and also prohibited DMC and Ms. Young "from transferring, conveying, selling, exchanging, or otherwise disposing of [the Subject Shares]. . . ." [Ex. 17; SF ¶ 20]

Mr. Paige and Ms. Young both testified that the Alleged Sale occurred prior to March 29, 2019, but Ms. Young did not receive the alleged consideration until April 1, 2019. [Ex. 121, Paige Depo. at 99:11-16, 134:22-135:8, Young Depo. at 129:5-131:12, 162:9-11; Hearing Tr. 127:17-19; SF ¶ 64] Therefore, the Alleged Sale occurred (if ever) on or before April 1, 2019. *See K–Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212, 677 P.2d 1317, 1320 (App. 1983) (Under Arizona law, an enforceable contract is formed when there is "an offer, an acceptance, consideration, and sufficient specification of terms so that obligations involved can be ascertained."); *Armiros v. Rohr*, 243 Ariz. 600, 605, ¶ 17, 416 P.3d 864, 869 (App. 2018). On April 1, 2019, the transfer restrictions of A.R.S. § 12-1578(A) and the Provencio-DMC Garnishment Judgment were still in effect. Therefore, the Alleged Sale was void as a matter of law.

Mr. Paige and Ms. Young appear to argue that the Alleged Sale occurred on April 1, 2019 but did not become effective until April 2, 2019, when Ms. Young paid the Provencio Judgment in full. Nothing in the record suggests that Ms. Young and Mr. Paige agreed that the sale would only become effective when the Provencio Judgment was paid in full. In fact, they testified that

the sale occurred prior to March 29, 2019. [Ex. 121, Paige Depo. at 99:11-16, 134:22-135:8, Young Depo. at 129:5-131:12, 162:9-11; Hearing Tr. 127:17-19]

However, even if the Alleged Sale became effective on April 2, 2019, the garnishment transfer restrictions still prevented the sale. The order approving the parties' stipulation to quash the April 4, 2019 Sheriff's sale was not entered until April 4, 2019. [Ex. 23] Therefore, April 4, 2019 is the earliest the transfer restrictions could have been lifted. But that is the same day Ms. Mahoney served the Mahoney-DMC Garnishment on DMC, thereby setting new transfer restrictions in place. Nevertheless, neither the stipulation nor the order approving the stipulation addressed the garnishment, transfer restrictions, or the Provencio-DMC Garnishment Order at all. [Ex. 22-23]

While Ms. Young argues that the order released all liens associated with the Provencio Judgment, a plain reading of the stipulation and order establishes that the release language referenced any judgment liens created when Mr. Provencio recorded his judgment. *See* Ex. 22 (specifically referencing A.R.S. § 33-964 and 33-967 as the basis of the relief, which deals only with judgment liens not garnishments). Therefore, Mr. Paige and Ms. Young have not met their burden to show that Ms. Young could transfer the Subject Shares without violating A.R.S. § 12-1578(A) and the Provencio-DMC Garnishment Judgment.

Finally, the arguments asserted by Mr. Paige and Ms. Young all ignore the plain language of the garnishment statutes, which focuses on the corporation's duty to prevent the transfer when it is in the corporation's legal power to do so. A.R.S. § 12-1578(A); *cf*. A.R.S. § 47-8401. DMC appears to have largely complied with its duty under A.R.S. § 12-1578(A). DMC never recognized or permitted any sale of the Subject Shares, either during the pendency of the Mr. Provencio garnishment or at any time after the Mahoney-DMC Garnishment was served. [Hearing Tr. 68:3-16] Moreover, after service of the Mahoney garnishment, DMC retrieved Certificate No. 2 from the Sheriff and refused to surrender it to Ms. Young (despite her repeated demands) to ensure A.R.S. § 12-1578(A) was not violated. [SF ¶ 77] DMC then filed a garnishment answer, confirming that on April 4, 2019, Ms. Young owned the Subject Shares, "as shown on the corporate records." *See* A.R.S. § 12-1579(9)-(10); [Ex. 66, 71; SF ¶ 99; Hearing Tr. 66:14-67:14] In fact, Ms. Young never requested that DMC recognize or approve the Alleged Sale. [Hearing Tr. 68:3-16] DMC learned of the Alleged Sale on April 23, 2019—well after the Mahoney-DMC Garnishment was served. [SF ¶ 92]

Under the facts in the record, Ms. Young's attempt to retroactively sell the Subject Shares is "void and of no effect." A.R.S. § 12-1578(A). Her argument that she could do so without violating A.R.S. § 12-1578(A) is unpersuasive.

Accordingly, Ms. Mahoney is entitled to entry of a judgment against DMC to facilitate the sale of the Subject Shares to satisfy some or all of the Mahoney Judgment. *See* A.R.S. § 12-1588. Ms. Mahoney is directed to lodge such order.

2. The Subject Shares Were Not Legally Transferred Under UCC Article 8.

In addition to the garnishment statute, the Alleged Sale did not occur because Ms. Young and Mr. Paige failed to comply with Article 8 of the Arizona Uniform Commercial Code ("Article 8"), A.R.S. § 47-8101, et. seq. Article 8 governs the transfer of securities. *See* 6 ARIZ. LEGAL FORMS, COMM. TRANSACTIONS § 8.1 (2d ed.) (Article 8 "deals with the mechanisms by which interests in securities are transferred, and with the rights and obligations of those involved in the transfer process."). Article 8 provides that a "person acquires a security," such as the Subject Shares, if such security is "delivered" to the purchaser under A.R.S. § 47-8301. A.R.S. § 47-8104(A)(1); *see also* A.R.S. § 47-8301, cmt. 1 ("Delivery is used in Article 8 to describe the formal steps necessary for a purchaser to acquire a direct interest in a security under this Article."). The requirements for "delivery" differ depending on whether the security is "certificated" or "uncertificated." *See* A.R.S. § 47-8301; A.R.S. § 47-8102(A)(4), (18) (defining certificated and uncertificated securities).

For a certificated security, delivery occurs (in relevant part) when either: (1) "[t]he purchaser acquires possession of the security certificate"; or (2) "[a]nother person . . . either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser." A.R.S. § 47-8301(A). To satisfy subsection (A)(1), the purchaser must obtain "physical possession" of the certificate. A.R.S. § 47-8301, cmt. 2. To satisfy subsection (A)(2), a third party must have physical possession of the certificate and acknowledge that such third party is holding the certificate on behalf of the purchaser. *Id.*

For an uncertificated security, delivery occurs when either (1) "[t]he issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or (2) "[a]nother person . . . either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser." A.R.S. § 47-8301(B). To satisfy subsection (B)(1), the purchaser must become the "registered owner" of the certificate in the corporation's books and records. A.R.S. § 47-8301, cmt. 3. Until the issuer-corporation registers the transfer, the corporation is entitled to treat the registered owner as the person entitled to exercise ownership rights. *See* A.R.S. § 47-8207. To satisfy A.R.S. § 47-8301(B)(2), a third party that is the registered owner of the certificate must become the registered owner on behalf of the purchaser or, if already a registered owner, acknowledge that such third party is holding the certificate on behalf of the purchaser. A.R.S. §

47-8301(B)(2), cmt. 3 ("Paragraph (2) provides for delivery of an uncertificated security through a third person, in a fashion analogous to subsection (a)(2).").

Here, Ms. Young and Mr. Paige failed to comply with Article 8 because, among other deficiencies, the Subject Shares (whether certificated or uncertificated) were never "delivered" in accordance with Article 8. First, DMC asserts that the Subject Shares are certificated in the form of Certificate No. 2. [Ex. 5; SF ¶ 17; Hearing Tr. 55:6-57:13] If the Subject Shares were certificated, neither Mr. Paige nor any third-party agent acting on his behalf ever physically possessed Certificate No. 2. *See* A.R.S. § 47-8301(A)(1)-(2). Therefore, the Subject Shares, if certificated, were not validly transferred to Mr. Paige. *See, e.g., Arnold v. KJD Real Estate, L.L.C.*, 120 F. Supp. 3d 832, 840 (S.D. Ill. 2015), *aff'd*, 682 F. App'x 483 (7th Cir. 2017) ("Without delivery, the Stock Purchase Agreement, in itself, could not act to validly transfer ownership of the stock."); *Ash v. First Nat'l Bank of E. Arkansas*, 2017 Ark. App. 57, 4, 513 S.W.3d 268, 271 (App. 2017), *reh'g denied* (Mar. 8, 2017) (same); *Citizens Bank & Tr. v. Piggly Wiggly Alabama Distrib. Co., Inc.*, 228 So. 3d 469, 475 (Ala. Civ. App. 2017) (a receipt could not effectuate transfer without compliance with Article 8); *Butler v. MaxiStorage, Inc.*, 33 So. 3d 1221, 1225 (Ala. Civ. App. 2009) (a bill of sale could not effectuate transfer without compliance with Article 8).

Second, if the Subject Shares are uncertificated, Ms. Young failed to validly transfer them. *See* A.R.S. § 47-8301(B); *Frierdich v. Mottaz*, 294 F.3d 864, 868 (7th Cir. 2002). The Seventh Circuit's *Mottaz* case is instructive. In *Mottaz*, Mr. Mottaz owned 360 of the 1,000 shares issued in a close-held corporation, represented by a stock certificate. *Id*. at 865. Mr. Mottaz wanted to marry Ms. Oswald. *Id.* As part of a prenuptial arrangement, Mr. Mottaz agreed to transfer his 360 shares to Ms. Oswald. *Id*. In January 1998, he instructed the corporation to transfer the shares to Ms. Oswald, but the stock certificate was never given to Ms. Oswald and the corporate records did not reflect the transfer. *Id*. An executed prenuptial agreement expressly stated that Mr. Mottz transferred the shares to Ms. Oswald. *Id*. at 865-866. Three days later, the couple were married. *Id*. at 866. Later, in September 1998, the corporation repurchased the shares for $400,000, which was given to Ms. Oswald. *Id.*

Mr. Mottaz filed bankruptcy several months later. *Id.* at 865. The bankruptcy trustee filed a fraudulent transfer claim against Ms. Oswald to recover the $400,000. *Id*. In defense of the claim, Ms. Oswald asserted that the shares (and the right to proceeds from the shares) were transferred to her in January 1998, which is after the one-year look-back period under the Bankruptcy Code. *Id*. at 868. Therefore, the $400,000 was not a transfer from Mr. Mottaz; it was a transfer directly from the non-debtor corporation. *Id*.

The Seventh Circuit rejected Ms. Oswald's arguments because the shares were never delivered under Illinois's version of Article 8. *Id.* Ms. Oswald disputed that the shares were certificated; therefore, the Seventh Circuit analyzed delivery under the assumption that the shares

were uncertificated. *Id*. The Seventh Circuit first noted that the corporation did not register her as the owner of the shares, as required under UCC § 8-301(b)(1). *Id*. at 868-869. The Seventh Circuit also found that the shares were not delivered under UCC § 8-301(b)(2) because Mr. Mottaz did not "hold" the shares on behalf of Ms. Oswald. *Id*. at 869. The Seventh Circuit also found that events after the alleged transfer indicated that Mr. Mottaz was still considered the owner of the shares. *Id*. Finally, the Seventh Circuit noted that some commentators do not consider Article 8 to be the exclusive means of delivery, but the court quickly added that "Oswald has not cited Illinois law validating other types of deliver (and our research has uncovered none). . . ." *Id*. at 868. Therefore, because Mr. Mottaz and Ms. Oswald did not comply with Article 8, the shares were not effectively transferred. *Id*. at 869.

Mottaz is persuasive. Similar to *Mottaz,* DMC never registered the Alleged Sale (or recognized it in anyway), and neither Ms. Young nor Mr. Paige ever requested that DMC recognize the Alleged Sale. [Hearing Tr. 68:3-16]; 7A Hawkland UCC Series § 8-301:4 (Rev.) ("[U]ntil registration no "delivery" would occur, hence the property interest of the transferor would not pass to the transferee under Article 8."). In fact, DMC did not learn of the Alleged Sale until April 23, 2019. [SF ¶ 92] And, even if Ms. Young or Mr. Paige delivered an instruction to DMC, DMC would not be required to register Mr. Paige as the owner because, among other things, the 2011 Bylaws (discussed below) prevented such transfer and A.R.S. § 12-1578(A) expressly prohibited DMC from recognizing such transfer. *See* A.R.S. § 47-8401. Moreover, a third-party never registered as owner of the Subject Shares on Mr. Paige's behalf, and Ms. Young (the current registered owner) testified that she was not holding the Subject Shares on Mr. Paige's behalf. [Hearing Tr. 155:4-6] Finally, as discussed below and similar to *Mottaz*, Ms. Young continued to hold herself out as the owner of the Subject Shares after the Alleged Sale until at least April 23, 2019. Accordingly, Ms. Young failed to comply with Article 8, and the Subject Shares were never effectively transferred to Mr. Paige.

The Court acknowledges that some commentators note that Article 8 is not the exclusive means of delivering stock, but those same commentators provide examples of non-Article 8 deliveries that are unrelated to a voluntary oral sale of corporate stock under the facts of this case. *See* A.R.S. § 47-8302, cmt. 2 (noting that security interests in stock are perfected through U.C.C. Article 9, and Article 8 may not govern the law of gifts, trusts, equitable remedies, or transfers by operations of law, such as probate and bankruptcy transfers). Nevertheless, research has not uncovered a single Arizona case that has recognized the sale of stock through an alleged oral agreement, such as the Alleged Sale. Permitting such a transfer would effectively write Article 8 out of the law. The Arizona legislature expressly adopted Article 8, and it must have expected that parties would be required to comply with it. *See, e.g., Ash*, 513 S.W.3d at 271 ("The General Assembly adopted and enacted section 8 of the Uniform Commercial Code, and those statues govern how a security is effectively transferred . . . ."); A.R.S. § 47-1103, cmt. 2, stating:

> [T]he Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by its drafters and the enacting legislatures about the appropriate policies to be furthered in the transactions it covers. Therefore, while principles of common law and equity may supplement provisions of the Uniform Commercial Code, they may not be used to supplant its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the Uniform Commercial Code provides otherwise. In the absence of such a provision, the Uniform Commercial Code preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.

(emphasis original); *cf. Moore v. Browning*, 203 Ariz. 102, 108, ¶ 20, 50 P.3d 852, 858, (App. 2002) ("Considering the legal history and the . . . authorities, we conclude that [Uniform Fraudulent Transfer Act] has displaced any common law cause of action for fraudulent conveyance and find that the respondent judge erred in concluding otherwise.").

Moreover, even in jurisdictions that recognize so-called "equitable" or "constructive" delivery, those states require strict compliance with Article 8 when the rights of third-parties are effected. *See, e.g.*, *Mortg. Investments Corp. v. Battle Mountain Corp.*, 93 P.3d 557, 560 (Colo. App. 2003) (refusing to recognize an "equitable transfer" of stock that did not comply with Article 8 because the rights of a third-party creditor were affected); *Butler*, 33 So. 3d at 1225 (refusing to recognize an equitable or constructive transfer, in part, because the parties were transferring the stock to avoid liabilities); *cf. Citizens Bank*, 228 So. 3d at 475 (confining equitable transfers to transfers of partial ownership in a stock certificate because only one person can be in possession of the stock certificate at a given one time).

Regardless, the Court could not find any case in Arizona that has recognized equitable or constructive transfers of stock, and, on the fact of this case, the Court declines to recognize a transfer of the Subject Shares in favor of Mr. Paige.

In short, Mr. Paige and Ms. Young did not comply with the delivery requirements of Article 8, and they have not cited to any controlling Arizona law that would allow delivery by any other means. Therefore, whether the Subject Shares were certificated or uncertificated, as a matter of Arizona law, Ms. Young never effectively transferred the Subject Shares to Mr. Paige.

3. The 2011 Bylaws Prevented The Transfer Of The Subject Shares.

In addition, the 2011 Bylaws prohibited Ms. Young from transferring the Subject Shares.

With respect to the transfer of shares, Article III, Section 2 of the 2011 Bylaws (the "2011 Transfer Restriction") state as follows:

> Section 2. Approval Rights of Shareholders. The following actions shall not be taken by the Corporation without the written approval of a majority of the shareholders:
> . . .
>
> (14) The issuance, redemption, purchase, sale, or transfer of any shares of stock of the Corporation by the Corporation, any shareholder, the Board, or any other person or entity.

[Ex. 3, pp. 5-6]. Ms. Young never obtained majority shareholder approval; therefore, she could not transfer the Subject Shares.

a) The 2011 Transfer Restriction Applies To Shareholders.

Ms. Young appears to argue that the 2011 Transfer Restriction applied only to DMC, not shareholders, because the introductory phrases states: "The following actions shall not be taken by the Corporation . . . ." [Ex. 3, p. 5] (Emphasis added.) In other words, Ms. Young asserts that only DMC is prohibited from transferring shares without majority shareholder approval. As a threshold matter, such assertion does not further Ms. Young's argument because, as noted above, to effectuate a transfer of the Subject Shares, DMC must participate in some manner, whether by registering the transfer on the corporate records or delivering Certificate No. 2 to the alleged purchaser. If the 2011 Transfer Restriction prevents DMC from taking such actions, Ms. Young could not effectuate her Alleged Sale to Mr. Paige.

In addition, while the introductory phrase appears to limit the restriction to the corporation, subsection 14 does not; it specifically references the ". . . sale, or transfer of any shares of stock of [DMC] by the Corporation, any shareholder, the Board, or **any other person** or entity." [Ex. 3, p. 6] (emphasis added)

The language is not a model of clarity, but the Court must look to the parties' intent to discover its meaning. *See Taylor v. State Farm Mut. Auto. Ins. Co.*, 175 Ariz. 148, 152, 854 P.2d 1134, 1138 (1993) (*In Banc*) ("Generally, and in Arizona, a court will attempt to enforce a contract according to the parties' intent."). Extrinsic evidence of intent in admissible to interpret the meaning of a contract provision. *Id*. at 155 ("[T]he parol evidence rule is not violated [when] evidence . . . is being offered to explain what the parties truly may have intended."). In contract interpretation, the Court's "proper and primary function" is "to enforce the meaning intended by the contracting parties." *Id*. at 153 "The judge, therefore, must avoid the often irresistible

temptation to automatically interpret contract language as he or she would understand the words." *Id*.

At the Hearing, Mr. Provencio testified that the Board of Directors intended the 2011 Transfer Restriction to prevent shareholders from transferring their shares without first obtaining majority shareholder approval. [Hearing Tr. 53:12-54:17] Ms. Young presented no evidence or testimony controverting Mr. Provencio's statements regarding the 2011 Transfer Restriction, and Mr. Provencio's interpretation is not "clearly contradicting and wholly unpersuasive" in light of the language of the 2011 Transfer Restriction. *Taylor*, 175 Ariz. at 152, 854 P.2d at 1138. Therefore, the Court finds the 2011 Transfer Restriction was intended to prevent shareholders, such as Ms. Young, from transferring DMC stock without majority shareholder approval. Mr. Provencio is the majority shareholder. He did not approve the Alleged Sale. [Hearing Tr. 68:3-16; SF ¶ 92]

b) The 2011 Transfer Restriction Is Enforceable Against Ms. Young.

In Arizona, a restriction on the transfer of shares in a corporation is enforceable under Arizona law if the shareholder had knowledge of the transfer restriction and the transfer restriction is not "manifestly unreasonable." *See* A.R.S. § 10-627. A shareholder can have knowledge of the transfer restriction in a number of ways, including, without limitation: (i) the shareholder was a party to agreement imposing the restriction; (ii) the shareholder voted in favor of the restriction; (iii) the restriction was conspicuously noted on the front or back of the stock certificate; (iv) the restriction was contained in an information statement required under A.R.S. § 10-626(B); or (v) the person had actual knowledge of the restriction. *See* A.R.S. § 10-627(A)-(B); *see also* A.R.S. § 47-8204 (noting that transfer restrictions are enforceable against persons with knowledge of them).

Here, the 2011 Transfer Restriction is enforceable against Ms. Young because she had actual knowledge of it. Ms. Young testified that she and Mr. Provencio were the original shareholders and directors of DMC. [SF ¶¶ 2-3] On May 25, 2011, Ms. Young and Mr. Provencio (as the two directors comprising the Board of Directors of DMC) voted to adopt the 2011 Bylaws, which included the 2011 Transfer Restriction. [SF ¶ 3] Ms. Young not only voted to adopt the 2011 Bylaws, but she signed them, certifying that they are the true and correct bylaws of DMC. [SF ¶ 3 and n.1; Ex. 3] At the time the 2011 Bylaws were adopted, Ms. Young was DMC's director, vice president, and corporate secretary. [SF ¶ 2]

c) The 2011 Transfer Restriction Is Not Manifestly Unreasonable.

A.R.S. § 10-626(D) provides that a valid transfer restriction includes a provision that: (i) "[r]equire[s] the corporation, the holders of any class of its shares or another person to approve the

transfer of the restricted shares, if the requirement is not manifestly unreasonable; and (ii) "[i]mpose[s] any other restriction on transfer or registration that is not manifestly unreasonable." Here, the 2011 Transfer Restriction, which required majority shareholder approval, is not manifestly unreasonable. Mr. Provencio testified that DMC adopted the 2011 Transfer Restriction to protect DMC by, among other reasons, preventing a felon from obtaining shares in DMC, which could prompt the State of Arizona to revoke DMC's medical marijuana license. [Hearing Tr. 54:18-55:5]; *see also* A.R.S. § 36-2804(B)(1). Although, based on the shareholder structure, the 2011 Transfer Restriction effectively gives Mr. Provencio veto right over any transfer, Mr. Provencio acknowledged that he must exercise that right reasonably based on what is in the best interest of DMC. [Hearing Tr. 118:13-119:12] Thus, under the facts of this case, the 2011 Transfer Restriction is not manifestly unreasonable.

Accordingly, the 2011 Transfer Restriction in the 2011 Bylaws is enforceable and prevented Ms. Young from transferring the Subject Shares to Mr. Paige without Mr. Provencio's consent, which she never obtained (or even asked for).

4. The Young-Paige Transaction Was A Loan or Gift, Not A Sale.

Regardless of whether Ms. Young could legally transfer the Subject Shares, the evidence shows that, in fact, she did not. Both before and after April 1, 2019, Ms. Young and Mr. Paige both considered the $300,000 to be a loan or a gift not a sale. The record is void of a single communication or document created prior to April 22, 2019 where Ms. Young, Mr. Paige, or their agents characterized the transaction as a sale. The following facts, among others, are inconsistent with Ms. Young's sale-theory:

- Ms. Young (through her counsel—Jim Webster) repeatedly requested that Ms. Young's husband—Mr. Young—agree to modify the Preliminary Injunction issued in the Young Divorce Proceedings so that Ms. Young could obtain a loan from Mr. Paige, secured by the Subject Shares. [SF ¶¶ 37-38, 42-44; Ex. 32, 34-35].

- After the Alleged Sale, Ms. Young (through her counsel) represented that she would consider selling the Subject Shares to third parties. [SF ¶ 68; Ex. 43-44, 46]

- For weeks after the Alleged Sale, Ms. Young (directly or through her counsel) repeatedly referred to the Subject Shares as her property. [SF ¶¶ 78, 82, 85, 86, 88; Ex. 53, 55-57]

- For weeks after the Alleged Sale, Mr. Paige made multiple statements, indicating that he did not own the Subject Shares. [SF ¶¶ 74, 87, 91; Ex. 31]

- On April 3, 2019, after the Alleged Sale, Jim Webster prepared and sent to Ms. Young and Mr. Paige a draft "Rule 69 Stipulation" seeking to modify the Preliminary Injunction to permit Mr. Paige to obtain a lien on the Subject Shares on account of Mr. Paige's loan. [SF ¶¶ 69, 71; Ex. 50]

- On April 9, 2019, after the Alleged Sale, Ms. Young's counsel attempted to unwind the Provencio payoff, stating that upon return of the $300,000, "[Ms. Young] will cooperate fully with any actions taken to allow Mr. Provencio to sell the [Subject Shares] at auction." [SF ¶¶ 82-83; Ex. 55]

- On April 11, 2019, after the Alleged Sale, Ms. Young appeared at the offices of DMC's counsel and demanded Certificate No. 2; in an authenticated audio recording, Ms. Young did not state that she sold the Subject Shares, and she specifically referred to Certificate No. 2 as her "personal property." [SF ¶ 88; Ex. 7]

- No written communication or document created prior to April 22, 2019 refers to Mr. Paige allegedly purchasing the Subject Shares from Ms. Young. [Ex. 31; SF ¶ 91; Ex. 121, Paige Depo. at 162:7-25]

- Although Ms. Young engaged in multiple discussions with DMC, Mr. Provencio, and Mr. Mahoney regarding the Subject Shares after April 1, 2019, at no time prior to April 23, 2019, did Ms. Young inform any one that she allegedly sold the Subject Shares to Mr. Paige. [SF ¶ 92]

- Even as late as August 6, 2019, Ms. Young was still treating the $300,000 as a loan. In the August 7, 2019 Minute Entry in her Divorce Proceedings, the court stated that: "The parties agree . . . Mr. Mr. Paige's payment of the [Provencio Judgment] shall be treated as payment by [Ms. Young] and that [Mr. Young] shall be attributed ½ of that amount in an increased allocation of the parties' remaining community debt as equalization for the payoff of that debt in full." [SF ¶ 29; Ex. 26] If Ms. Young had sold community property—the Subject Shares—to payoff a community debt, no basis exists to treat the $300,000 payment as a payment by Ms. Young. That statement is rational only if Ms. Young obtained a personal loan to payoff a community debt. This language is also consistent with Ms. Young's pre-April 22, 2019 statements related to Mr. Young.

Whatever the transaction was that resulted in Mr. Paige paying off the Provencio Judgment for his fiancée, it was not a sale of the Subject Shares.

The only evidence of an Alleged Sale presented by Mr. Paige and Ms. Young is their oral testimony and the Bill of Sale. Based on the record before the Court (some of which is noted above), the Court does not find the testimony of Mr. Paige and Ms. Young credible on this point. Such testimony is wholly inconsistent with their actions and written communications.

Moreover, the Court does not find the Bill of Sale to be reliable evidence of a sale that occurred on or before April 4, 2019. Ms. Young testified that she created the Bill of Sale "online", but could not remember when or where. [Hearing Tr. 187:13-20; Ex. 121, Young Depo. at 141:16-23] Moreover, the Bill of Sale did not include Exhibit A and Ms. Young could not remember what Exhibit A was. [Ex. 121, Young Depo. at 143:22-144:21] Mr. Paige testified that he never saw Exhibit A, and he could not remember how or when the Bill of Sale was delivered to him. [Ex. 121, Paige Depo. at 107:12-20] Moreover, the Bill of Sale purported to sell Mr. Paige 20% of Desert Medical Campus, LLC, which appears to be a non-existent entity. [Ex. 100] Finally, and most critically, the Bill of Sale was not provided to anyone in this litigation (including, Ms. Young's counsel, allegedly) until April 23, 2019, the same time Ms. Young appears to have concocted her sale-theory. [Ex. 31] In short, based on the record before the Court, the Bill of Sale is not persuasive evidence that Ms. Young sold the Subject Shares to Mr. Paige prior to April 4, 2019. The Court finds that the Alleged Sale was a fiction Ms. Young created in an attempt to avoid Ms. Mahoney's garnishment.

B. Even If Ms. Young Sold The Subject Shares To Mr. Paige, Such Sale Was Fraudulent.

Arizona enacted the Uniform Fraudulent Transfer Act ("UFTA") in 1990. *Hullett v. Cousin*, 204 Ariz. 292, 295, ¶ 11, 63 P.3d 1029, 1032 (2003). The Arizona UFTA recognizes two types of fraudulent transfers: (1) actual fraudulent transfers under A.R.S. § 44-1004(A)(1); and (2) constructive fraudulent transfers under A.R.S. §§ 44-1004(A)(2), 44-1005. *Id*. To the extent the Alleged Sale occurred, such transfer was actually and constructively fraudulent under A.R.S. §§ 44-1004(A) and 44-1005.

1. The Alleged Sale Was Actually Fraudulent.

When property is transferred "[w]ith actual intent to hinder, delay or defraud any creditor of the debtor," such transfer is actually fraudulent. A.R.S. § 44-1004(A)(1) (emphasis added). Under the UFTA, the Court may find actual intent even if no "fraud" exists and regardless of the amount paid for the asset: "While intent to defraud is the usual rubric, the intended effect of the transfer need only be hindrance of a creditor or delay of a creditor. Any of the three—intent to hinder, intent to delay, or intent to defraud—qualifies a transfer for UFTA avoidance, even if adequate consideration is paid. . . ." *In re Beverly*, 374 B.R. 221, 235 (B.A.P. 9th Cir. 2007), aff'd in part, dismissed in part on other grounds, 551 F.3d 1092 (9th Cir. 2008) (emphasis added); *see*

also Shapiro v. Wilgus, 287 U.S. 348, 354 (1932) ("A conveyance is illegal if made with an intent to defraud the creditors of the grantor, but equally it is illegal if made with an intent to hinder and delay them.").

A court may find actual intent by direct proof or by circumstantial evidence. *Gerow v. Covill*, 192 Ariz. 9, 17, ¶ 34, 960 P.2d 55, 63 (App. 1998), as amended (Aug. 26, 1998). Circumstantial evidence includes the existence of "badges of fraud," some of which are listed in A.R.S. § 44-1004(B). "In addition to the A.R.S. § 44-1004(B) factors, the common law recognizes additional 'badges of fraud.'" *Carey v. Soucy*, 245 Ariz. 547, 553, ¶ 24, 431 P.3d 1200, 1206 (App. 2018), *review denied* (Apr. 22, 2019). The common-law "badges of fraud" are "facts which throw suspicion on a transaction, and which call for an explanation. . . . [T]hey are the signs or marks of fraud." *Carey*, 245 Ariz. at 553, ¶ 24, 431 P.3d at 1206 (quoting *Torosian v. Paulos*, 82 Ariz. 304, 312, 313 P.2d 382 (1957)). A suspicious chronology of events can itself be a badge of fraud. *Id*. ("Here, it was not clearly erroneous for the superior court to consider the chronology of events as a badge of fraud.").

The existence of even one badge of fraud is sufficient to establish actual fraud. *See Covill*, 192 Ariz. at 17, ¶ 34, 960 P.2d at 63 (citing cases); *Carey*, 245 Ariz. at 553, ¶ 23, 431 P.3d at 1206. But, "[w]hen . . . several statutory factors are present, 'strong, clear evidence will be required to repel the conclusion of fraudulent intent.'" *Carey*, 245 Ariz. at 553, ¶ 23, 431 P.3d at 1206.

a) Actual Intent and Multiple Badges of Fraud Exist.

In this case, the Alleged Sale (to the extent it occurred) was actually fraudulent based on the parties' actual intent and the existence of multiple badges of fraud, including, without limitation, the following:

1. Mr. Paige And Ms. Young Testified That They Acted With Actual Intent To Hinder, Delay, Or Defraud Creditors (A.R.S. § 44-1004(A)(1)): Mr. Paige knew almost nothing about DMC, even after he allegedly purchased the Subject Shares; he did no due diligence, and only decided to "purchase" the Subject Shares on the eve of a Sheriff's sale because "[i]t helped Tiffany." [Hearing Tr. 124:6-125:19, 140:24-141:2] Mr. Paige testified that he allegedly bought the Subject Shares to keep them out of the hands of Ms. Young's creditors. [Hearing Tr. 126:21-127:2, 145:4-7] Specifically, Mr. Paige testified:

> Q: And you allegedly purchased the shares so that Ms. Young would not have any assets in her name, correct?
>
> A: Yes.

> Q: Because you understood that if she didn't have any assets to seize, then Ms. Young's creditors would have nothing to go after her on, correct?
>
> A: Yes.
>
> . . .
>
> Q: And [the Alleged Sale was simple] because all you really needed to do was document a sale so that you could keep [the Subject Shares] out of the hands of creditors, right?
>
> A: Absolutely.

[Hearing Tr. 126:21-127:2, 145:4-7]

Similarly, Ms. Young testified that she allegedly sold the Subject Shares to Mr. Paige because she did not want Mr. Provencio (a creditor) to obtain them. [Ex. 121, Young Depo. at 138:5-19] Moreover, the evidence shows that Ms. Young knew, prior to the Alleged Sale, that transferring the Subject Shares for $300,000 would constitute a fraudulent transfer. [Ex. 46] Yet, she did it anyway. Under the facts presented, Ms. Young has demonstrated an actual intent to either hinder, delay, or defraud her creditors.

2. Chronology of Events (*Carey*, 245 Ariz. at 553, ¶ 24, 431 P.3d at 1206). The chronology of events and the testimony of Ms. Young and Mr. Paige show that Ms. Young obtained $300,000 from Mr. Paige on the eve of the Sheriff's sale to prevent creditors from obtaining the Subject Shares, but then came up with a sale-theory weeks later in an attempt to avoid Ms. Mahoney's garnishment. *See Matter of Wiggains*, 848 F.3d 655, 663 (5th Cir. 2017) (timing of events a badge of fraud).

3. Mr. Paige Was An Insider (A.R.S. § 44-1004(B)(1)). Mr. Paige and Ms. Young have been romantically involved for three years. [Hearing Tr. 122:4-5] They have been engaged for approximately 2 years. [SF ¶ 22] They have discussed marriage as early as this fall. [Hearing Tr. 122:6-8] Ms. Young sometimes lives with Mr. Paige in Arizona. [SF ¶ 27] Mr. Paige manages her finances, has made multiple written and unwritten loans and gifts, and pays all her daily-living expenses. [SF ¶ 26; Hearing Tr. 123:8-10] Ms. Young and Mr. Paige also share an email address, where Ms. Young goes by the name "Tiff Paige". [Ex. 38; Hearing Tr. 153:23-25] Moreover, Mr. Paige was not an arm's length purchaser. The whole purpose of the transaction was to keep the Subject Shares out of creditors' hands and/or to facilitate Ms. Young's anticipated bankruptcy.

[Hearing Tr. 126:21-127:2, 145:4-7; Ex. 121, Young Depo. at 138:5-19] Accordingly, for purposes of this transaction, Mr. Paige was an insider within the meaning of A.R.S. § 44-1004(B)(1).[8]

4. Ms. Young Maintained De Facto Control of the Subject Shares (A.R.S. § 44-1004(B)(2)). To the extent the Alleged Sale occurred, Ms. Young has retained de facto control of the Subject Shares after the Alleged Sale because Ms. Young and Mr. Paige are not arms-length parties and Ms. Young stands to gain from the transfer now and after the couple are married. Mr. Paige appears to know almost nothing about DMC, and even after he allegedly purchased the Subject Shares, he expressed no interest in managing the Subject Shares. [Ex. 31] Moreover, as noted above, Ms. Young repeatedly asserted "shareholder" rights in DMC for weeks after the Alleged Sale, and she only stopped asserting that she was a shareholder when she attempted to avoid the Mahoney-DMC Garnishment.

5. Ms. Young Concealed the Alleged Sale (A.R.S. § 44-1004(B)(3)). Ms. Young concealed the Alleged Sale until it was discovered through these proceedings. *Carey*, 245 Ariz. at 552, ¶ 22, 431 P.3d at 1205 ("[B]ut for the garnishment proceeding, there is no evidence that the Assignment would have been disclosed to either the Garnishee or [creditor]."). Although she had multiple discussions with Mr. Provencio, DMC, the Sheriff, and Mr. Mahoney throughout April

[8] *See, e.g.*, *Browning Interests v. Allison* (*In re Holloway*), 955 F.2d 1008 (5th Cir. 1992) (former wife who loaned debtor money after divorce deemed insider in view of their continuing friendly relationship and joint hostility toward other party in litigation); In re *Three Flint Hill Ltd. Partnership*, 213 B.R. 292 (D. Md. 1997) (party deemed insider when agreement entered into for the primary purpose of facilitating the debtor's bankruptcy efforts); *Freund v. Heath (In re McIver)*, 177 B.R. 366 (Bankr. N.D. Fla. 1995) (party deemed insider because debtor and insider had a personal and financial relationship and lived together for over two years; insider financed the debtor's investments; debtor appointed insider to be a director of his corporation; insider allowed debtor to use her credit cards; and debtor executed holographic will to insure that the insider would be repaid); *Wiswall v. Tanner (In re Tanner)*, 145 B.R. 672 (Bankr. W.D. Wash. 1992) (party deemed insider because debtor and insider lived together in an intimate relationship); *Rush v. Riddle (In re Standard Stores, Inc.)*, 124 B.R. 318 (Bankr. C.D. Cal. 1991) (former brother-in-law of debtor's principal deemed insider even after divorce because of continued friendship as evidenced by loan and status as long-time general manager of debtor); *Grant v. Podes (In re O'Connell)*, 119 B.R. 311 (Bankr. M.D. Fla. 1990) (parties deemed insiders because debtor and insiders were personal friends and over $400,000 of loans were exchanged between them); *Castellani v. Kohne (In re Kucharek)*, 79 B.R. 393 (Bankr. E.D. Wis. 1987) (same); *Loftis v. Minar (In re Montanino)*, 15 B.R. 307 (Bankr. D. N.J. 1981) (parties deemed insider when debtor lived with the insiders' daughter and indicated they were his relatives in a deed conveying real property to them).

2019, she did not disclose the Alleged Sale until April 23, 2019, when settlement discussions with Ms. Mahoney ended.

6. Ms. Young Had Creditors Chasing The Subject Shares (A.R.S. § 44-1004(B)(4), (10)). Prior to Alleged Sale, Ms. Young had been sued, filed bankruptcy, and had millions of dollars of judgments pending against her. [Ex. 25, 27, 30] Moreover, she knew both Mr. Provencio and Ms. Mahoney were taking actions to execute on the Subject Shares. [SF ¶ 61; Ex. 41; Hearing Tr. 123:22-124:1]

7. The Subject Shares Were Ms. Young's Only Asset (A.R.S. § 44-1004(B)(5)). The Subject Shares were substantially all of Ms. Young's unencumbered assets that could be used to pay creditors. [SF ¶ 109; Ex. 25, 27]; *Carey*, 245 Ariz. at 552, ¶ 22, 431 P.3d at 1205 (fact that creditor had to resort to garnishment and debtor did not have money to pay attorney was evidence of this factor).

8. Ms. Young Attempted To Remove Certificate No. 2 From Her Creditors' Reach (A.R.S. § 44-1004(B)(7)). After the Alleged Sale, Ms. Young attempted to obtain Certificate No. 2 from the Sheriff and DMC in an apparent attempt to prevent Ms. Mahoney from being able to garnish the Subject Shares. [Ex. 61, p. TY.010, in response to email asserting garnishment rights, alleging that DMC did not have Certificate No. 2]

9. $300,000 Is Not Reasonable Equivalent Value (A.R.S. § 44-1004(B)(8)). Ms. Young made the Alleged Sale for less than reasonable equivalent value. See constructive fraud discussion, *infra*. In any event, regardless of the actual value of the Subject Shares, the evidence shows that at the time of the Alleged Sale, Ms. Young believed the Subject Shares were worth considerably more than $300,000. For example, Ms. Young demanded $5 million from Mr. Provencio for the Subject Shares. [Hearing Tr. 58:7-10] Ms. Young expressly stated two days before the Alleged Sale that she believed the Subject Shares were worth "considerably more" than $3 million. [Ex. 46] Whatever the value, Ms. Young knew that she was transferring the Subject Shares for less than she believed they were worth, which is circumstantial evidence of actual fraud. *See* Ex. 46 (where Ms. Young's counsel noted that payment of $300,000 for the Subject Shares "would all but cement this as a fraudulent transfer as my client would be paying money to give away assets worth well in excess of the judgments of both Mr. Provencio and Ms. Mahoney").

10. Ms. Young Was Insolvent Before and After the Alleged Sale (A.R.S. § 44-1004(B)(9)). The parties stipulated that Ms. Young was insolvent at the time of the Alleged Sale. [SF ¶ 109]; *see also* A.R.S. § 44-1002(A)-(B).

11. The Alleged Sale Violated the 2011 Bylaws and At Least Two Court Orders. As discussed above, the Alleged Sale was in direct violation of the 2011 Bylaws (which Ms. Young

voted to adopt and signed), the Provencio-DMC Garnishment Judgment, and the Preliminary Injunction entered in Ms. Young's divorce proceedings. [Ex. 3, 17, 24] The Alleged Sale was also inconsistent with Ms. Young's representations to the court in her divorce proceedings. [Ex. 26]

These factors, along with the totality of the circumstances surrounding the Alleged Sale, demonstrate that the Alleged Sale was actually fraudulent.

b) Ms. Young Did Not Produce Strong, Clear Evidence To Repel The Conclusion Of Fraud.

Because express testimony of actual intent, as well as multiple badges of fraud, exist here, Ms. Young had the burden to produce '"strong, clear evidence . . . to repel the conclusion of fraudulent intent.'" *Carey*, 245 Ariz. at 553, ¶ 23, 431 P.3d at 1206. Ms. Young has failed to do so. Ms. Young claims that she attempted to sell the Subject Shares to Mr. Paige to prevent Mr. Provencio from credit-bidding a penny at the Sheriff's sale and preserving a large deficiency against her. But Mr. Provencio had already informed Ms. Young that he would bid the entire amount of the Provencio Judgment (and more if necessary) at the Sheriff's sale. [SF ¶ 49; Ex. 36] Nothing in the record suggests that Ms. Young actually or reasonably believed Mr. Provencio was the only party allowed to bid at the Sheriff's sale and he would bid a penny. Moreover, Ms. Young does not explain why Mr. Paige could not prevent a deficiency by bidding $300,000 at the Sheriff's sale. The only reason to allegedly purchase the Subject Shares in secret was to prevent creditors from obtaining them. Finally, if Ms. Young intended to file bankruptcy once she divested herself of the Subject Shares (as the evidence suggests), then a deficiency judgment should not have concerned her; it would likely be dischargeable in bankruptcy. *See* 11 U.S.C. § 727(b).

In addition, Mr. Paige asserts that he allegedly bought the Subject Shares, in part, to allow Ms. Young to file bankruptcy. But Mr. Paige does not explain how purchasing assets that would otherwise be available to pay creditors is not evidence of actual intent to hinder, delay, or defraud creditors simply because Ms. Young wanted to qualify for bankruptcy.

In short, the justifications for the Alleged Sale cannot overcome the overwhelming evidence of fraud present in this case. Therefore, Mr. Paige and Ms. Young have failed to present strong, clear evidence to repel the Court's finding of actual intent to hinder, delay, or defraud creditors.

c) Mr. Paige Is Not A Good Faith Purchaser.

Under the facts of this case, Mr. Paige does not qualify for good-faith purchaser protections under A.R.S. § 44-1008. Under that provision, the purchaser of fraudulently transferred assets

may obtain certain protections from actual fraudulent transfer (not constructive fraudulent transfer), if the purchaser "took in good faith." *See* A.R.S. § 44-1008(A), (D). A purchaser does not take in good faith if the purchaser "knew, or should have known, that" the transferor '"was not trading normally, but that on the contrary, the purpose of the trade, so far as the debtor was concerned, was the defrauding of his creditors."' *Carey*, 245 Ariz. at 553-54, ¶ 29, 431 P.3d at 1206-7 (citations omitted). In addition, '"[n]otice of facts and circumstances which would put a man of ordinary prudence and intelligence on inquiry is. . . equivalent to knowledge of all of the facts a reasonably diligent inquiry would disclose."' *Id*. (citations omitted).

Here, Mr. Paige knew or should have known that Ms. Young was not trading the Subject Shares normally. Mr. Paige was involved in multiple communications regarding Ms. Young's creditors, and he was well-aware of her insolvency; he was funding her daily living expenses. In fact, as discussed above, Mr. Paige testified that he knew that creditors were chasing the Subject Shares and that he provided the $300,000 to Ms. Young to prevent the shares from being seized by creditors. [SF ¶ 61; Ex. 41; Hearing Tr. 126:21-127:2, 145:4-7] Under such circumstances, Mr. Paige is not a good-faith purchaser, regardless of whether he gave sufficient value for the Subject Shares.

2. The Alleged Sale Was Constructively Fraudulent.

In addition, the Alleged Sale was constructively fraudulent. When property is transferred for less than reasonably equivalent value at a time when the transferor was or became insolvent, the transfer is constructively fraudulent under A.R.S. § 44-1004(A)(2) and 44-1005. In this case, the parties have stipulated that Ms. Young was insolvent before and after the Alleged Sale, and the evidence will also show that Ms. Young did not receive reasonably equivalent value in exchange for the Subject Shares. Therefore, the Alleged Sale was fraudulent under A.R.S. § 44-1004(A)(2) and 44-1005.

In a fraudulent transfer action, "reasonably equivalent value" means the fair market value of the asset at the time of the transfer. *In re Viscount Air Servs., Inc.*, 232 B.R. 416, 435 (Bankr. D. Ariz. 1998) ("The assets involved in the contested transfer should be measured at their market value at the time of transfer."); *In re Pajaro Dunes Rental Agency, Inc*., 174 B.R. 557, 578 (Bankr. N.D. Cal. 1994) (same). Fair market value means what a willing buyer would pay a willing seller. *See In re Ozark Rest. Equip. Co., Inc.*, 850 F.2d 342, 345 (8th Cir. 1988) ("Reasonably equivalent value depends on the market conditions faced by a willing seller and a willing buyer and not on the financial demands of the seller."). Value must be considered from the standpoint of the creditor not the debtor. *Zellerbach*, 13 Ariz. App. at 436, 477 P.2d at 555.

Here, the evidence shows that $300,000 is not reasonably equivalent to value of the Subject Shares in the hands of Ms. Mahoney. Mr. Paige testified that he only bought the Subject Shares to

keep them out of the reach of creditors. He did no research regarding DMC or the value of the Subject Shares. The price was set solely based on what was required to stop the April 4, 2019 Sheriff's sale. In addition, Ms. Young received at least one $350,000 offer for the Subject Shares from Mr. Provencio, yet she did not take it. Ms. Young did not market the Subject Shares or even try to negotiate a better price from Mr. Paige. The whole transaction was meant only to prevent creditors from obtaining the Subject Shares.

In addition, Ms. Young made multiple statements that indicate that she believed the Subject Shares were worth as much as $5 million. [Hearing Tr. 58:7-10; Ex. 46] Further, Mr. Provencio testified that he would pay up to a $1 million for the Subject Shares at any Sheriff's sale, including one held for Ms. Mahoney's benefit. [Hearing Tr. 62:13-63:1] Therefore, in the hands of Ms. Mahoney, the Subject Shares are worth at least $1 million.

Finally, Donald Wenk, an expert appraiser specializing is the appraisal of Arizona marijuana dispensaries, testified as to the value of a 20% interest in DMC as of April 1, 2019. Mr. Wenk based his opinion on the market approach to value; more specifically he analyzed the per-license market value of nine recent cannabis transactions in Arizona. [Ex. 1 at KVP000026.] The value of the licenses in those Arizona sales varied between $7.69 million and $25.3 million. [*Id*.] Using that data, Mr. Wenk determined that a reasonable value range for the license held by DMC is between $8 and $10 million. [*Id*. at KVP000027.] Mr. Wenk then confirmed the reasonableness of that range through discussions with various market participants, including lawyers and business brokers, who each confirmed that $8 - $10 million is a reasonable value for an Arizona dispensary license. [Hearing Tr. 252:13-253:20] Mr. Wenk further confirmed the reasonableness of his enterprise value range by applying market multiples to DMC's 2018 revenues. Mr. Wenk first obtained a reasonable multiple by looking to the revenue multiples for seventeen publicly-traded cannabis companies. That methodology provided an enterprise value for DMC of approximately $13 million. [Ex. 1 at KVP000018-23] Mr. Wenk next obtained a reasonable multiple by looking to the revenue multiples recently paid for seventeen different cannabis companies. That methodology provided an enterprise value for DMC of approximately $9.87 million. [*Id*. at KVP000024-25] The guideline company multiple and the guideline transaction multiple, therefore, confirmed the $8 - $10 million range. [*Id*. at KVP000028]

Mr. Wenk next determined the proper amount of debt to subtract from DMC's enterprise value. He did so by taking DMC's 2018 audited financials and making adjustments to the amount of debt shown, based primarily on Judge Warner's prior rulings in the litigation between Mr. Provencio and Ms. Young. [*Id*. at KVP000016-17] In those rulings, Judge Warner determined the amount of debt and interest that were owed by DMC to Mr. Provencio. [Ex. 10 at 5] Mr. Wenk utilized only the amounts reflected in those rulings. Mr. Provencio also testified that the higher debt amount reflected in the 2018 audited financials were for tax purposes; he acknowledged that the higher amount may not be enforceable against a minority shareholder.

[Hearing Tr. 83:4-85:13] Mr. Wenk also made adjustments to the amount of interest owed on a management fee payable because he had not been provided a company of any agreement between DMC and a management company, the amount did not represent an arms-length amount, and the interest payable was merely an attempt by the majority shareholder to deprive the minority shareholder of future value. [Ex. 1 at KVP000017] Mr. Wenk determined that the proper amount of debt to be subtracted from the enterprise value is $1,916,089. [*Id*.] Subtracting that amount out results in a low value for all of DMC of $6,083,911 and a high value of $8,083,911. [*Id*. at KVP000029]

Mr. Wenk then applied discounts to those amounts to arrive at a value of a 20% interest in DMC. Mr. Wenk determined that discounts for lack of control and lack of marketability should apply, and determined that a reasonable discount for lack of control is 18% and lack of marketability is 32%. [*Id*. at KVP000030] The Court agrees with those amounts.

After applying the foregoing discounts and multiplying the resulting values by 20%, Mr. Wenk determined the value of Ms. Young's 20% interest in DMC on April 1, 2019 was between $678,000 (on the low end of the reasonable range) and $902,000 (on the high end of the reasonable range). [*Id*. at KVP000036-37] Both values are substantially greater than the $300,000 Ms. Young obtained from Mr. Paige. *Zellerbach Paper Co.*, 13 Ariz. App. at 436, 477 P.2d at 555 (finding that a transfer for 56% of the fair market value was not reasonably equivalent). The Court found Mr. Wenk's testimony regarding value persuasive and supported by Ms. Young's own conduct with respect to the value of the shares.

Based on the evidence presented at the hearing, the Court finds that the value of a 20% interest in DMC as of April 1, 2019 was between $678,000 and $902,000, and may have been as high as $1 million based on what Mr. Provencio was willing to bid at the Sheriff's sale. Ms. Young, however, only obtained $300,000, allegedly for the Subject Shares. Accordingly, the Alleged Sale (if it occurred) was not made for reasonably equivalent value, and was constructively fraudulent.

3. Ms. Young's Unclean Hands Defense Fails.

Ms. Young asserts that Ms. Mahoney is barred from succeeding on her fraudulent transfer claim because she "came into court seeking equitable relief lacking clean hands." *Barr v. Petzhold*, 77 Ariz. 399, 407, 273 P.2d 161, 166 (1954). Specifically, Ms. Young asserts that Ms. Mahoney has treated her unfairly in the past and somehow colluded with Mr. Provencio. Ms. Young's unclean hands defense fails for the following reasons.

As a threshold matter, Ms. Mahoney is seeking fraudulent transfer relief under a specific statute—A.R.S. § 44-1001, *et. seq*. Ms. Young has not articulated the "equitable relief" that Ms.

Mahoney is seeking that an unclean hands defense would prevent. In any event, in Arizona, to succeed on an unclean hands defense, the "unclean" acts must "relate to the very activity that is the basis of [plaintiff's] claim". *Id.*; *Smith v. Neely*, 93 Ariz. 291, 293, 380 P.2d 148, 149 (1963) ("The dirt upon his hands must be his bad conduct in the transaction complained of. . . . We find no evidence that the plaintiff was guilty of any bad conduct toward the defendant in this transaction.") (emphasis original; citations omitted). The basis of Ms. Mahoney's fraudulent transfer claim is the Alleged Sale, which occurred on or before April 1, 2019. Ms. Mahoney did not know of the Alleged Sale until April 23, 2019. [SF ¶ 92] Therefore, Ms. Mahoney's alleged "bad conduct" could not and does not relate to the Alleged Sale. *See Barr*, 77 Ariz. at 407, 273 P.2d at 166 ("It is nowhere claimed here that plaintiff engaged in any such conduct with regard to the execution of the option contract, which is the foundation of his claim here, and certainly none of the specific acts alleged by defendants, and discussed above, fall within the scope of that transaction.").

In addition, Ms. Mahoney's conduct was not "unconscionable," as required by Arizona law. *Id*. The communications that Ms. Young cites as evidence of Ms. Mahoney's unclean hands fall into two categories (i) attempts to obtain information regarding Ms. Young for collections purposes, and (ii) apparent attempts to negotiate a three-way settlement between Ms. Young, Mr. Provencio, and Ms. Mahoney. [Ex. 109] Neither of these categories rises to the level of unconscionable conduct such that the Court can ignore a clear fraudulent transfer. Moreover, most of the communications took place after Ms. Mahoney's garnishment was served on DMC. Therefore, those communications (no matter how unconscionable) have no relevance to the Alleged Sale, which such sale necessarily occurred before the Mahoney Garnishment or not at all.

Finally, Ms. Mahoney's conduct was not done with willful, immoral intent, as required by Arizona law. *Weiner v. Romley*, 94 Ariz. 40, 42, 381 P.2d 581, 582-83 (1963) ("This Court laid down the principle . . . that in determining the applicability of the clean hands doctrine it is the moral intent of the party seeking relief, and not the actual injury done, that is controlling.") (citations omitted). Ms. Young asserts that Ms. Mahoney and Mr. Provencio coordinated their collections efforts. For example, Ms. Young asserts that Mr. Provencio delayed providing a payoff amount to Ms. Young until after Ms. Mahoney had recorded her judgment. Ms. Young also asserts that Mr. Mahoney and Mr. Provencio coordinated the ultimate payoff of the Provencio Judgment to occur just before Ms. Mahoney served her garnishment on DMC. But Ms. Young presents no evidence that Mr. Mahoney acted with willful intent related to the Alleged Sale. Mr. Mahoney knew nothing about Mr. Provencio's communications with Ms. Young regarding a payoff amount, and Mr. Mahoney never told Mr. Provencio about the Mahoney-DMC Garnishment before it was served. In fact, Mr. Mahoney and Mr. Provencio both testified that they had no coordinated plan regarding Ms. Young. [Hearing Tr. 19:10-36:7, 46:5-25, 69:19-70:14] Rather, both creditors were competing for the same asset, and Mr. Provencio testified that he was "surprised" by the Mahoney-DMC Garnishment.

Ms. Young, however, asserts that the timing of the creditors' actions is suspicious. The Court agrees. But Mr. Provencio and Ms. Mahoney were both racing to collect on Ms. Young's only asset after Ms. Young's bankruptcy was dismissed. The fact that their respective collections efforts overlapped is not surprising. In addition, the timing of the creditors' actions appears to have been driven by the April 4, 2019 Sheriff's sale rather than some alleged plan between Ms. Mahoney and Mr. Provencio. Accordingly, under the facts before the Court, Ms. Young has failed to demonstrate that Ms. Mahoney's alleged unclean conduct was willful.

Finally, even if Mr. Provencio and Mr. Mahoney did coordinate their collections efforts in a manner that prevented Ms. Young from transferring the Subject Shares to a third-party, such efforts are not prohibited. Creditors often take actions to prevent a debtor from transferring assets out of their reach, such as recording a lis pendens, freezing funds under the creditor's control, or seeking a writ of attachment. This case is an example of why creditors often seek to prevent a debtor from transferring assets. Ms. Young has not cited to any Arizona law (and the Court had found none) that would prohibit two creditors from coordinating their efforts in an attempt to maximize collections from a common debtor. The actions taken by Ms. Mahoney were lawful; in fact, they are expressly permitted by statute. Therefore, the Court finds no evidence on unconscionable conduct on the record before it, and Ms. Young's unclean hands defense fails.

4. Ms. Mahoney is Entitled to Relief in the Form of an Order Avoiding the Alleged Sale; Judgment Against Mr. Paige and DMC, and a Constructive Trust.

Under A.R.S. § 12-1584(B), if, after hearing evidence and argument, the Court determines that a writ of garnishment against a judgment debtor is valid, the Court "shall" enter judgment against the garnishee – here, Mr. Paige and DMC. Ms. Mahoney is also entitled to a remedy avoiding the Alleged Sale such that Ms. Mahoney is permitted to proceed with the Mahoney-DMC Garnishment and the imposition of a constructive trust. A.R.S. §§ 44-1007(A)(2) and (4). [9] Based on the findings and conclusions set forth above,

[9] *See* A.R.S. § 44-1007(A)(4)(c); *Mezey v. Fioramonti*, 204 Ariz. 599, 606, ¶ 24, 65 P.3d 980, 987 (App. 2003), disapproved on other grounds by *Bilke v. State*, 206 Ariz. 462, ¶ 24, 80 P.3d 269 (2003) (imposition of a constructive trust is an appropriate remedy for a fraudulent transfer); *Turley v. Ethington*, 213 Ariz. 640, 643, ¶ 9, 146 P.3d 1282, 1285 (App. 2006) ("A court may impose a constructive trust 'whenever title to property has been obtained through actual fraud, misrepresentation, concealment, undue influence, duress or through any other means which render it unconscionable for the holder of legal title to continue to retain and enjoy its beneficial interest.'") (citations omitted). Based on the imposition of this constructive trust (which is effective upon entry of this Order), the Subject Shares will not constitute property of Ms. Young's potential bankruptcy estate. *See In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994).

IT IS ORDERED as follows:

1. Avoiding the Alleged Sale in its entirety; and
2. Imposing a constructive trust over the Subject Shares in favor of Ms. Mahoney.

Although the constructive trust is effective upon the entry of this Order, counsel for Ms. Mahoney is directed to lodge judgments consistent with the remedies imposed on or before **January 24, 2020.**

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5. Ms. Mahoney Is Entitled To Her Attorneys' Fees.

In accordance with A.R.S. § 12-1580(E), Ms. Mahoney, as prevailing party, is entitled to her attorneys' fees in this matter. Section 12-1580(E) of the Arizona Revised Statutes authorizes the Court to award attorneys' fees to the prevailing party in any hearing on an objection to a garnishment. With respect to any award against Ms. Young, the statute permits the Court to enter an award of attorneys' fees only if Ms. Young's objection was filed solely for the purpose of delay or to harass Ms. Mahoney. A.R.S. § 12-1580(E). That limitation, however, does not apply to Mr. Paige.

Based on the record, the Court awards attorneys' fees in favor of Ms. Mahoney and against Mr. Paige and Ms. Young, jointly and severally. Both Ms. Young and Mr. Paige objected to the Mahoney-DMC Garnishment. Mr. Paige voluntarily inserted himself in this proceeding by filing an objection, which was based on an improper transfer of the Subject Shares and actual fraud. In addition, Mr. Paige, as a garnishee, disputed that he was holding any property belonging to Ms. Young. As set forth herein, Mr. Paige's objection to the Mahoney-DMC Garnishment has been overruled, and his answer to the Mahoney-Paige Garnishment was inaccurate. Moreover, the Court finds that Ms. Young's objection was filed solely to delay Ms. Mahoney's collections efforts for all the reasons set forth in this Order. Accordingly, Ms. Mahoney is directed to submit an application for fees and costs for the Court's consideration on or before **January 24, 2020**.