

FILED
07-13-2022
CIRCUIT COURT
DANE COUNTY, WI
2018CV003122

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

PLAINTIFF

vs.

Case No. 2018-CV-003122

JAMES

FETZER,

DEFENDANT

**FETZER'S MOTION FOR RECONSIDERATION,
VACATION & OBJECTION TO POZNER'S VALUATION OF PROPERTY,
& DAMAGES FOR ABUSE OF PROCESS**

Now comes James H. Fetzer, Ph.D., pro se Defendant, and Judgment Debtor, with his Motion for Reconsideration of the ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT of June 29, 2022, as amended, referred to herein as the "Taking Order," and his Motion to Vacate the Taking Order, and Objection to Mr. Pozner's Valuation of Property, and Motion for Damages For Abuse of Process.

1. The property to be taken by said order consists of four website Domain Names and four versions of a book entitled *Nobody Died at Sandy Hook: It was a FEMA Drill to Promote Gun Control*, referred to herein as "Nobody Died."

2. Dr. Fetzer continues to maintain what he has said in the Taking Order hearing that the four versions of the book have monetary value only if they are marketed and that the property subject to the Taking Order has no monetary value that can be applied to Plaintiff's money judgment, as asserted in his Response Brief in Opposition to the Plaintiff's Notice of Motion and Motion for Turnover of Property to Apply Property to Satisfy Judgment (Exhibit A page 2). Dr.

Fetzer has also asserted that intellectual property cannot be taken to satisfy a money judgment but rather only the profits from it (Exhibit A page 1) citing *Ager v. Murray*, 105 U.S. 126, 127-31 (1881).

Judicial Estoppel Against Book Values over Zero Dollars

3. Now Dr. Fetzer adds that the Plaintiff and Judgment Creditor, Mr. Pozner, is judicially estopped from claiming the Nobody Died books have any value to him. He has won a judgment, the very basis of this property taking, finding that certain portions of the said books are defamatory to him and his son whom he claimed was killed at a mass shooting, the subject of the said books, which are filled with evidence that the shooting did not occur. Therefore, Mr. Pozner cannot now claim that he will be publishing and selling any of the four versions of Nobody Died containing material adjudged defamatory to him and the public memory of his son.

4. From *State v. Basil E. Ryan, Jr.*, 2012 WI 16, reversing 2011 WI App 21:

¶32 We begin by addressing the circuit court’s application of the equitable doctrine of judicial estoppel. Judicial estoppel is intended “to protect against a litigant playing ‘fast and loose with the courts’ by asserting inconsistent positions” in different legal proceedings. *State v. Petty*, 201 Wis. 2d 337, 347, 548 N.W.2d 817 (1996). “The doctrine precludes a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position.” *Id.* “[J]udicial estoppel is not directed to the relationship between the parties but is intended to protect the judiciary as an institution from the perversion of judicial machinery.” *Id.* at 346.

¶33 For judicial estoppel to be available, three elements must be satisfied: (1) the later position must be clearly inconsistent with the earlier position; (2) the facts at issue should be the same in both cases; and (3) the party to be estopped must have convinced the first court to adopt its position. *Id.* at 348.

5. Mr. Pozner convinced the court that some material in the Nobody Died books were defamatory, winning a money judgment of \$457,395.13 which he used to remove the said books from the public. He now claims that the said book and copyrights have monetary value to him, as if he would publish and sell books containing the slightest defamation against him. The case is

the same along with the facts thereof. Clearly all 3 elements of judicial estoppel are present to prevent Mr. Pozner from appraising and taking the Nobody Died books and copyrights, even if Dr. Fetzer held them.

6. Mr. Pozner has also used the summary judgment in this very case to obtain settlements with WWW, d/b/a Moon Rock Books Publishing to take the books off the market and never publish them again. Mr. Pozner is now judicially estopped from claiming these same books and their copyrights have any monetary value to him.

7. Mr. Pozner is also judicially estopped from claiming that he is going to use any of the four versions of Nobody Died to make money to reduce the money judgment while his use of the rulings of this court have successfully removed all versions of Nobody Died from public access, even free access. Mr. Pozner cannot now claim in the execution of the Taking Order in this same case that he is going to earn money from the publication and sale of those same books. Hence, the appraisals by the best experts on book values and sales history are completely inapplicable and irrelevant.

8. Mr. Pozner cannot remove the defamatory material and republish the Nobody Died books without establishing a new copyright for that version leaving Dr. Fetzer's presumed copyright unused and unpublished. Therefore, unless Mr. Pozner plans on publishing the books as they are and selling them he cannot show a value for them and cannot take them.

9. Mr. Pozner cannot prove that he can legally earn money from the removal of any or all versions of Nobody Died from the market, or from free access, to make money indirectly from the sale of any book he has published targeting the same market. Since all versions of Nobody Died have no monetary value to Mr. Pozner, he cannot take them, even if Mr. Pozner could show that Dr. Fetzer owns the copyright to them. If Mr. Pozner is being paid by other entities to

remove the Nobody Died books, he must supply that information as proof of money and its source to be applied to the reduction or discharge of the judgment debt and may be considered unlawful and subject to another cause of action.

10. Therefore, Mr. Pozner is judicially estopped from claiming that all four versions of Nobody Died have any value to him and hence the value of said books must be ZERO DOLLARS by law and cannot reduce the judgment debt by one cent and hence cannot be taken.

Judicial Estoppel Against Domain Name Values Over Zero Dollars

11. The website Domain Names (DNs) listed in the Taking Order are a little different from the Nobody Died books in that their content, which is copyrighted upon posting, is not static or held to fixed data or data type as are printed and copyrighted books. People rent or lease DN addressees on a recurring basis from web registration companies contracted by ICANN, a nonprofit corporation authorized by the U.S. Department of Commerce, to manage domain names. People can buy and sell DN leases and new lessees can be assigned to existing Domain Names held by others.

12. The taking of a Domain Name would entail the transfer of the lease and their assignment to Mr. Pozner as the new lessee of the four existing Domain Names listed in the Taking Order. Mr. Pozner would then take over the DN leases and would begin paying for the recurring rent on them. However, as Dr. Fetzer explained in his response brief and oral hearing, he is not the owner or lessee of any of the four DN's.

13. Even if Dr. Fetzer had registered the DN's and was the actual registrant and lessee of them, to which condition he has stated otherwise, Mr. Pozner must still prove to this court that he intends to maintain all four of these Domain Names and that he can earn money from them to satisfy some portion of the money judgment debt by his operation of them.

14. Under a completely unreal scenario where Mr. Pozner was able to take the Nobody Died books and Domain Names and operate them and make money from them, it would be highly unjust to earn 200,000 dollars from that which he reduced a money judgment by only 100,000 dollars. The listed Taking Order property must involve a monthly accounting until the ordered value is reached at which time all the property would be returned for Dr. Fetzer's use. This is one reason intellectual property cannot be taken to satisfy a money judgment, as it could hypothetically earn more than the judgment.

15. There are circumstances where the taking of Domain Names would be entirely feasible and profitable with names like "GoodHealth4U.net" or "GoodbyFat.com," However, in this case, two of the four domain names contain the term "JamesFetzer" (JamesFetzer.org and JamesFetzer.net) and the other two contain the term "FalseFlags" (FalseFlags.org and FalseFlags.net). Neither of these domain name prefixes could attract potential financial opportunity for Mr. Pozner.

16. In 2014 Mr. Pozner founded HONR¹, an organization dedicated to scouring the web of any hint of an event being described as a "false flag." HONR acts as self-appointed internet police and claim §230 USC Title 47 (Communications Decency Act) is misused, as quoted below from the HONR website:²

Section 230 has been misused by social media providers who have often used it to avoid taking action when their platform is being weaponized. One of the chief problems that we have had with platforms is the apathetic and inconsistent response in removals. In some cases, we have reported the same content in multiple places only to have one removed quickly and others stay up for weeks or even months.

Regardless of the motivation and intentions of HONR, it is undeniable that it is dedicated to removing websites and Domain Names from the internet that fall into the same category in

¹ <https://www.guidestar.org/profile/82-3556040>

² <https://www.honrnetwork.org/positions/>

which they would place "JamesFetzer" and "FalseFlags." The declaration by the founder of this group of their new intention to earn money from the taking and operation of these Domain Names is contradictory to their eight-year history. Therefore Mr. Pozner is judicially estopped from claiming any such intention or ability to earn money from the operation or sale of these website Domain Names, while his whole purpose is to remove them from the public. Therefore, the doctrine of judicial estoppel prevents Mr. Pozner from contradicting his eight-year behavior and earlier asserted court positions to now claim that the Domain Names listed in the Taking Order are worth anything over ZERO DOLLARS.

17. From *Adelphia Recovery Trust v. Goldman, Sachs & Co.*, 748 F.3d 110 (2nd Cir. 2014) quoting from the Supreme Court in *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001) on the doctrine of judicial estoppel:

The purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. Courts have recognized that the circumstances under which judicial estoppel may appropriately be invoked are not reducible to any general formulation. Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Third, courts ask whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

18. Mr. Pozner in his original complaint leading to this Taking Order has stated that the websites and domain names he is now trying to say he can profit from if maintained are on a list of conspiracy websites that those who threatened him cannot access as part of their punishment (Exhibit B Page 4,5 ¶15):

In January of 2016, Florida resident Lucy Richards left menacing voicemail messages and sent violent online threats to Plaintiff, including messages stating: "you gonna die, death is coming to you real soon" and "LOOK BEHIND YOU IT IS DEATH." When Richards was later sentenced, Senior U.S. District

Judge James Cohn stated: "I'm sure [Plaintiff Leonard Pozner] wishes this was false, and he could embrace [N.P.], hear [N.P.'s] heartbeat and hear [N.P.] say 'I love you, Dad'...Your words were cruel and insensitive. This is reality and there is no fiction. There are no alternative facts." As part of her sentence, Ms. Richards will not be permitted to access a list of conspiracy-based websites upon her release, including websites maintained by James Fetzer.

19. Now that Mr. Pozner has won a money judgment against Dr. Fetzer he wants to claim that he can make money to greatly satisfy a money judgment by using and maintaining "conspiracy-based websites...including websites maintained by James Fetzer." Clearly Mr. Pozner's exigencies have changed, and he wants to take anything from Dr. Fetzer even if he must alter the position that he has previously persuaded this court to accept. The acceptance of this new contradictory position would indicate that the court was either wrong in the beginning or wrong now. All that which was ruled defamatory by this court has been removed from the websites accessed by the listed Domain Names and their continued use Dr. Fetzer, regardless of what some may think of them, is his right in the United States of America, and would take a great deal of time and work to establish the same at some other site under some other DN. The taking of these Domain Names constitutes an unfair detriment to Dr Fetzer and cannot reduce the judgment debt by one cent and is inconsistent with Mr. Pozner's judicial and conventional position. Clearly Mr. Pozner is judicially estopped from now claiming he can take the Domain Names and earn money from their operation to reduce the judgment debt in complete contradiction to his earlier judicial position and awards.

20. Collection laws for money judgments do not contemplate or address the taking of property that cannot reduce a money judgment. This silence in debt collection law indicates no recognition of the lawfulness of taking property that is worthless to the money judgment creditor for any other purpose such as harassment, hatred, revenge, or interference with the ability to earn money. A motion to take property worthless to a money judgment creditor implies and reveals

such motivations that go beyond the intent and authorization of money judgment collection laws. This means, in essence, that the property listed in the Taking Order does not exist for Mr. Pozner regardless of the opinion of his appraisers or Dr. Fetzer's ability to turn it over to Mr. Pozner and the listing of such worthless property implies an ulterior purpose not intended in the taking process.

This Taking Process is Abuse of Process

21. By commencing this taking action against the listed property, worthless to Mr. Pozner in reducing a money judgment in this Taking Order, not only implies all the illegal purposes stated above but show motive to deny Dr. Fetzer's 1st Amendment rights to print and post evidence that comes to his attention concerning national events. Dr. Fetzer could simply remove the minor fragment of material ruled defamatory by this court from the Nobody Died books and republish them with over 400 pages of evidence. But, if Mr. Pozner could acquire Dr. Fetzer's presumed copyright of the whole book, then Dr. Fetzer could not republish any part of the book without infringing on a copyright taken and owned by Mr. Pozner. This is a purpose that well exceeds the purpose of this judicial Taking Order process. In this way Mr. Pozner can remove over 400 pages of evidence contradictory to his own version of Sandy Hook, by having only two or three pages ruled defamatory to him. The elements for abuse of process are here as shown from the Wisconsin Supreme Court in *Thompson v. Beecham*, 241 N.W.2d 163, 72 Wis.2d 356 (Wis. 1976):

The essential elements of abuse of process, as the tort has developed, have been stated to be: first, an ulterior purpose, and second, a wilful act in the use of the process not proper in the regular conduct of the proceeding. Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required;...

The ulterior motive or purpose may be inferred from what is said or done about the process, but the improper act may not be inferred from the motive.

In order to maintain an action for abuse of process, the process must be used for something more than a proper use with a bad motive. The plaintiff must allege and prove that something was done under the process which was not warranted by its terms.

22. The court can infer from Mr. Pozner's listing of property that he cannot possibly use to satisfy a money judgment, that Pozner has an ulterior motive to achieve something outside the intent of the judicial property execution process. The most likely motive, which is consistent with Mr. Pozner's behavior over the last eight years, is to prevent Dr. Fetzer, or anyone, else from publishing the vast amount of evidence about Sandy Hook after removing the tiny fraction of material in the books ruled defamatory by this court. The act of listing property Mr. Pozner knew was directly worthless to him to reduce a money judgment without claiming the property in its present form was no longer harmful to him, from which is judicially estopped, constitutes the use of this judicial taking process for a purpose it is not intended or authorized to perform. The process itself cannot take worthless property to satisfy a money judgment as he was so informed by Dr. Fetzer's Response Brief in Opposition to Plaintiff's Motion for Turnover of Property to Apply Property to Satisfy Judgment which is adopted in its entirety herein (Exhibit A). Both elements of abuse of process are evident in this taking process, first, improper use of process exceeding its authority, and second, inferred ulterior motive that conforms to the long history of Mr. Pozner. As a result of this abuse of process, Dr. Fetzer had to hire another attorney for Six Thousand Two Hundred Seventy Seven & 50/100 Dollars (\$6,277.50) and waste his time and mental energy (Exhibit C).

CONCLUSION

Mr. Pozner cannot alter any of the book's contents to remove the material ruled defamatory against him in this court without establishing a new copyright, leaving Dr. Fetzer's presumed copyright unused and unpublished. Therefore, Dr. Fetzer's presumed copyright remains of no

value to Mr. Pozner having no means to reduce the judgment debt and hence, cannot be taken to satisfy a money judgment.

Mr. Pozner is judicially estopped from claiming all four versions of Nobody Died have more than zero value to him as he has obtained a judgment in this very case finding parts of all of them defamatory to himself. He is also judicially estopped from claiming the said books have more than zero value as he has used the rulings of this court to establish settlements with publishers removing the books from the market, never to be sold again by those publishers.

Mr. Pozner is also judicially estopped from claiming any or all four Domain Names have more than zero value as he has worked for eight years removing websites and their domain names from the internet which are of the same profile as those listed in the Taking Order. Mr. Pozner's position in this court is that other courts have ruled websites listed in this Taking Order inaccessible to those who have threatened him. And now he wants this court to believe he can take them and maintain them and make money from them to reduce the money judgment debt. He is judicially estopped from doing so.

All property in Dr. Fetzer's possession that cannot have value to Mr. Pozner by law does not exist in the eyes of the law and cannot be appraised or taken by a court order to satisfy a money judgment. This court should set the lawful value of the property listed in the Taking Order to be zero dollars (\$0.00)

Based upon the preceding, Dr. Fetzer asks this court to:

1. Reconsider ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT, and
2. Set the value of the property listed in the ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT to be

ZERO DOLLARS (\$0.00), and

3. Vacate the ORDER GRANTING PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO SATISFY JUDGMENT with prejudice, and
4. Find all elements of an abuse of process commenced by Mr. Pozner and fine him \$6,277.50 in damages, and
5. Grant any other relief the law allows and to which the Defendant is entitled.

Respectfully Submitted,

James H. Fetzer Ph.D.

James H. Fetzer, Ph.D.
Pro Se

NOTICE OF SERVICE

On this 13th day of July 2022, I hereby certify that a copy of this Motion for Reconsideration has been emailed and forwarded by first-class mail (postage paid) to Plaintiff's Counsel, Randy Pflum, Attorney, Quarles & Brady LLP, 33 East Main Street, Suite 900, Madison, WI 53703; and randy.pflum@quarles.com.

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Exhibit A

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 8

DANE COUNTY

Leonard Pozner,

Plaintiff,

Case No.: 2018 CV 3122

v.

James Fetzer, et al.,

Defendants.

**DEFENDANT JAMES FETZER'S RESPONSE BRIEF IN OPPOSITION TO
PLAINTIFF'S MOTION FOR TURNOVER OF PROPERTY TO APPLY PROPERTY
TO SATISFY JUDGMENT**

Defendant, James Fetzer (hereinafter "Fetzer" and/or "Defendant") by his attorneys, Fuhrman & Dodge, S.C, by Attorney Jennifer M. Schank, respectfully submits the following Response Brief in Opposition to Plaintiff's Motion for Turnover of Property to Apply Property to Satisfy Judgment, as set forth below.

INTRODUCTION

Plaintiff filed his Motion for Turnover of Property to Apply Property to Satisfy Judgment on April 26, 2022, as Document No. 490 (the "Motion") and the Affidavit of Randy J. Pflum in Support of the Motion as Document No. 491 (the "Pflum Aff."). Plaintiff requests that Defendant James Fetzer turn over certain editions of books and certain domain names. *Id.*

The Motion should be denied. Intellectual property is exempt from execution. *Ager v. Murray*, 105 U.S. 126, 127–31 (1881). The Motion is not a proper mechanism for Plaintiff to gain

ownership of books and domain names. Further, the property subject to the motion has no monetary value that can be applied to Plaintiff's money judgment.

FACTS

Plaintiff obtained a money judgment against Fetzer on December 12, 2019, in Dane County Circuit Court, in the amount of \$457,395.13 (the "Money Judgment"). (Pflum Aff. ¶ 2). The Money Judgment remains unsatisfied. (Pflum Aff. ¶ 3). Plaintiff now seeks post-judgment collection action against Fetzer to be applied against the Money Judgment.

ARGUMENT

I. Fetzer does not own the property that Plaintiff requests he turn over.

Fetzer cannot turn over property that he does not own. Fetzer does not own the domain names and books Plaintiff lists in the Pflum Affidavit.

Domain names connect Internet Protocol (IP) Addresses (e.g., 146.197.184.71), to an alphanumeric designation (e.g., Nike.com). Emily Litka, *Establishing Rights in a New Domain: Defining Registration under the ACPA*, 90 Temp. L. Rev. 519, 522 (2018). Rights to use a domain name are licensed by a registrar, contracted by ICANN, a nonprofit corporation authorized by the U.S. Department of Commerce to manage domain names. *Id.* at 523.

"To reserve a domain name, a registrant must apply to register the name with a registrar. . . . The registrant will be required to enter into a contract with the registrar, . . ." and the holder of the contract "owns the rights to use that registration." *Id.* at 523–524 (quoting ICANN, *Beginner's Guide to Domain Names* 3 (2010), <https://www.icann.org/en/system/files/files/domain-names-beginners-guide-06dec10-en.pdf>.)

Fetzer did not register these domain names. (Affidavit of James Fetzer, Ph.D. “Fetzer Aff.,” filed herewith, ¶ 21). The domain names www.jamesfetzer.net and www.falseflagnews.org are available for purchase on the open market, making it clear that Fetzer does not own these domain names. (Fetzer Aff. ¶ 22). Further, www.falseflagnews.net has a registrant name Perfect Privacy LLC, an entity Fetzer is not affiliated with nor does he know the owner of this domain name. (Fetzer Aff. ¶ 23). Lastly, the registrar for the domain name www.jamesfetzer.org is namecheap.com and Fetzer believes that WWW owns this domain name. (Fetzer Aff. ¶ 24).

Fetzer manages his website at www.jamesfetzer.org, but he does not own the domain name. Plaintiff did not move to turnover websites owned by Fetzer, nor does the website found at www.jamesfetzer.org have any monetary value that could be applied to Plaintiff’s judgment. (Fetzer Aff. ¶ 26).

Further, Fetzer does not own the books that Plaintiff moves to be turned over. Books are assigned an International Standard Book Number (the “ISBN”) to distinguish each publication. (Fetzer Aff. ¶ 5). Plaintiff specifically requests four different versions of the book named *Nobody Died At Sandy Hook*. Fetzer cannot turn over the 1st edition or the banned edition of the book (2015) because Createspace owned the ISBN for this book, and he believes that it ceased to exist after it was banned by Amazon. (Fetzer Aff. ¶ 11). The PDF Version that Plaintiff requests was never published and is not a book. The last book listed on the Pflum Affidavit (2nd Edition 2016) was published by Wrongs Without Wremedies, LLC (“WWW”), d/b/a Moon Rock Books Publishing, and WWW would have obtained the ISBNs for the 2nd and any subsequent editions of books named *Nobody Died At Sandy Hook*. (Fetzer Aff. ¶ 14). Fetzer is not an owner of WWW.

(Fetzer Aff. ¶ 15). Fetzer cannot be ordered to turn over the properties because he does not own them.

II. Intellectual Property is not subject to execution.

Notwithstanding Fetzer's lack of ownership, Plaintiff has no right to order the property in question to be turned over. Copyrights and other intellectual properties are not available for seizure and sale in an execution at law. *Ager v. Murray*, 105 U.S. 126, 127–31 (1881). The U.S. Supreme Court in *Ager* quoted with approval *Stephens v. Cady*, 55 U.S. 528, 531 (1852):

The copperplate engraving, like any other tangible personal property, is the subject of seizure and sale on execution But the incorporeal right, secured by the statute to the author, to multiply copies of the map by the use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process.

Id. Because intellectual property is exempt from execution, “[t]he creditor’s only option is to have a receiver appointed . . . to carry out the sale.” Jessica Bozarth, *Copyrights and Creditors: What Will Be Left of the King of Pop’s Legacy?*, 29 *Cardozo Arts & Ent. L.J.* 85, 86–88 (2011) (citing California law).

Under Wisconsin law, executions may be made against “personal property” or “real property.” Wis. Stat. § 815.05(1s). Any property seized is sold at a public sale. Wis. Stat. § 815.29. By the terms of the statutes, the limitation of execution to “personal property” or “real property” excludes intangible property. *See* Wis. Stat. § 815.05(1s). *See generally* Aaron Perzanowski & Jason Schultz, *Reconciling Intellectual Property and Personal Property*, 90 *Notre Dame L. Rev.* 1211, 1217–25 (2015) (differentiating between personal property interests and intellectual property interests). Therefore, Plaintiff cannot simply “execute” against intellectual property and have it delivered to him.

III. Plaintiff's use of the Motion is an improper legal mechanism to achieve Plaintiff's goals.

Beyond an execution, a judgment creditor has two additional alternatives to levy on the property of a debtor. *Attorney's Title Guar. Fund, Inc. v. Town Bank*, 2014 WI 63, ¶ 26, 355 Wis. 2d 229, 850 N.W.2d 28. The creditor may garnish property owed to the debtor and held by a third party. *Id.* Or, the creditor may “apply specifically identified personal property to the satisfaction of the judgment, which a creditor may do with the assistance of a supplemental receiver.” *Id.*

Plaintiff has no right to an execution or direct transfer of the intellectual property allegedly held by Fetzer. Plaintiff has not requested the appointment of any receiver and simply asked the Court for the intellectual property to be “turned over and applied to satisfy the judgment.” (Motion 1.) Plaintiff is not automatically entitled to ownership and control of Fetzer's property under Wis. Stat. § 816.08 by the mere fact that Fetzer is indebted to him. Rather, Wis. Stat. § 816.08 sets forth the standards by which property may be applied toward satisfaction of a judgment.

816.08 Property to be applied to judgment. The court or judge may order any property of the judgment debtor or due to the judgment debtor, not exempt from execution, to be applied toward the satisfaction of the judgment; but if it appear that any person alleged to have property of the judgment debtor or to be indebted to the judgment debtor claims an adverse interest in the property or denies the debt, such interest or debt shall be recoverable only in an action against such person by the receiver; and a transfer or other disposition of such property or interest may be restrained till a sufficient opportunity be given to the receiver to commence the action and prosecute the same to judgment and execution or until security therefor shall be given as ordered.

That statute does not provide for a judgment debtor to relinquish his control and ownership rights in property to a judgment creditor to utilize as it sees fit. Plaintiff does not claim that he has

a security interest in any of the property he requests to be turned over nor does he show the Court any authority to grant a turnover of intellectual property.

Further, the Wisconsin Legislature did not contemplate the satisfaction of money judgments with anything other than either money or a “payment intangible.” *See Attorney’s Title Guar. Fund*, 2014 WI 63, ¶¶ 20–24. In *Attorney’s Title Guar. Fund*, the Wisconsin Supreme Court explained that while the rights to any proceeds of a legal malpractice claim may be assigned to a creditor, the rights themselves cannot. *Id.* In that case, the Wisconsin Supreme Court was concerned that assigning “the right to litigate the claim to a receiver would result in a stranger to the attorney-client relationship litigating the claim.” *Id.* ¶ 21. “[T]here is a real difference between the claim from which the proceeds arise and the proceeds themselves.” *Id.* ¶ 23.

Here, just as there is a real difference between a claim and proceeds from a claim, there is a real difference between intellectual property and proceeds from that intellectual property. Plaintiff intends to have intellectual property allegedly owned by Fetzer turned over to be applied to the judgment. This goes against the general principles of collection and the Wisconsin public policy that indicates that assignment of rights beyond a right to be paid is beyond the scope of collecting on a money judgment. *See id.* ¶¶ 20–24.

It appears that Plaintiff is not utilizing the Motion to reduce his money judgment against Fetzer. Rather, Plaintiff attempts to gain control of valueless assets, assets that Fetzer does not even own. Even if Plaintiff could prove Fetzer owns any of the property listed in the Pflum Affidavit and such property could be utilized to apply to Plaintiff’s money judgment, under Wisconsin law, Plaintiff does not gain indefinite ownership and control of said property. Rather, a

receivership and sale would be necessary, and any sale proceeds would subsequently be applied to Plaintiff's judgment. Under Wis. Stat. § 816.08, the creditor may "apply specifically identified personal property to the satisfaction of the judgment, which a creditor may do *with the assistance of a supplemental receiver.*" *Attorney's Title Guar. Fund*, 2014 WI 63, ¶ 26 (emphasis added).

It appears that Plaintiff is simply attempting to gain control of property for his own purposes, not to satisfy the Money Judgment. Plaintiff would rather not have anyone else be able to claim an ownership interest in the property, but it is not in the spirit of Wisconsin collections laws for a creditor to gain control over a judgment debtor's property for reasons other than debt collection. A judgment creditor cannot obtain an order to turn over purely sentimental property because it serves emotional value to the creditor. A money judgment entitles a judgment creditor to payment, not to control of property as in a replevin action or as a punitive tactic.

Finally, the property that Plaintiff requests be turned over has no value to apply to the Money Judgment. The distribution of the property would be impossible due to the litigation between the parties. (*Id.*) Distribution is also unlikely due to the works' apparent lack of value in the market after being banned by Amazon and having no other foreseeable sales. (*Id.* ¶¶ 11–17.)

Even if Fetzer were to have any rights to the property in question, the property would likely be exempt from execution under Wis. Stat. § 815.18. Fetzer reserves his right to object to execution against his property under the exemptions granted by Wis. Stat. § 815.18 or any other applicable law should there be a finding that he has any ownership interest in the property in question.

CONCLUSION

Plaintiff has made no showing that the proposed turnover is within the authority of the Court, or that it would further Plaintiff's interest in recovering on the Money Judgment. Plaintiff has made no showing that the intellectual property allegedly owned by Fetzer has any marketability or that the intellectual property rights are associated with any foreseeable proceeds. Therefore, Plaintiff's motion must be denied.

For the reasons stated herein, Defendant Fetzer respectfully requests that this Court deny Plaintiff's Motion for Turnover of Property to Apply Property to Satisfy Judgment, and grant Defendant James Fetzer such further relief as may be allowed by law.

Dated: June 3, 2022.

FUHRMAN & DODGE, S.C.
Attorneys for Defendant,
James Fetzer

Electronically Signed by Jennifer M. Schank
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Exhibit B

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CIRCUIT COURT
DANE COUNTY, WI
2018CV003122
Honorable Frank D.
Remington
Branch 8

STATE OF
WISCONSIN

CIRCUIT COURT

DANE COUNTY

CASE TYPE
DEFAMATION

LEONARD POZNER,

Court File No. _____
Judge: _____

vs.

JAMES FETZER,
MIKE PALECEK,
WRONGS WITHOUT
WREMEDIES, LLC

CIVIL COMPLAINT &
DEMAND FOR JURY
TRIAL

COMPLAINT

Plaintiff Leonard Pozner (hereinafter, "Plaintiff") brings this Complaint against James Fetzer, Mike Palecek, and Wrongs Without Wremedies, LLC (hereinafter collectively "Defendants") and, by and through his attorneys, alleges as follows:

INTRODUCTION

1. Plaintiff suffered a parent's worst nightmare: his son, N.P., was killed in a mass shooting on December 14, 2012 at Sandy Hook Elementary School. This case arises out of accusations made by Defendants in, among other places, their 2016 book, "Nobody Died At Sandy Hook." Defendant Fetzer has a long history of harassing Plaintiff and other Sandy Hook parents with defamatory lies, and has slandered Plaintiff repeatedly in the years since the tragedy at Sandy Hook. This

and that Plaintiff was complicit in a grand conspiracy to fake the massacre.

Plaintiff undertook efforts to respond to and debunk such falsehoods, and such effort is ongoing today. Those efforts included releasing his son, N.P.'s, death certificate to rebut claims that his son was not killed at Sandy Hook.

11. Prior to undertaking such responses, Plaintiff had no meaningful public presence.

12. Defendant Fetzer has claimed for years that the Sandy Hook shooting was a government conspiracy. Defendants Fetzer and Palecek released the original edition of "Nobody Died At Sandy Hook" in October of 2015.

13. In that book, Defendants asserted that Plaintiff's son, N.P., did not die at Sandy Hook. Defendant Fetzer has alternatively claimed that N.P. was not a real person. Defendant Fetzer has alternatively claimed that N.P. was not Plaintiff's son. Plaintiff has undertaken efforts to respond to and debunk false statements and denigration of the memory of his murdered son.

14. The harm to Plaintiff arising out of Defendants' wide-ranging accusations is neither imagined nor limited to emotional distress or mental pain. Plaintiff has had to move on several occasions. Conspiracy theorists, fueled by, among others, Defendants' falsehoods, have threatened Plaintiff's very life.

15. In January of 2016, Florida resident Lucy Richards left menacing voicemail messages and sent violent online threats to Plaintiff, including messages stating: "you gonna die, death is coming to you real soon" and "LOOK BEHIND

YOU IT IS DEATH.” When Richards was later sentenced, Senior U.S. District Judge James Cohn stated: “I’m sure [Plaintiff Leonard Pozner] wishes this was false, and he could embrace [N.P.], hear [N.P.’s] heartbeat and hear [N.P.] say ‘I love you, Dad’...Your words were cruel and insensitive. This is reality and there is no fiction. There are no alternative facts.” As part of her sentence, Ms. Richards will not be permitted to access a list of conspiracy-based websites upon her release, including websites maintained by James Fetzer.

16. Defendants published a second edition of “Nobody Died At Sandy Hook” in 2016. That edition does not purport to be a mere reprinting of the first edition, but is instead described as “Expanded” and “Revised.” The copyright page of that book states that it was published in May of 2016 by Moon Rock Books.

17. The second edition of “Nobody Died At Sandy Hook” accuses Plaintiff of issuing and/or possessing a forged copy of N.P.’s death certificate. In particular, page 183 of Nobody Died At Sandy Hook states: “Noah Pozner’s death certificate is a fake, which we have proven on a dozen or more grounds.” At page 232 the book states, [Mr. Pozner] sent her a death certificate, which turned out to be a fabrication.” At page 242, the book states, “As many Sandy Hook researchers are aware, the very document Pozner circulated in 2014, with its inconsistent tones, fonts, and clear digital manipulation, was clearly a forgery.”

18. Mr. Fetzer’s publication of this false accusation against Plaintiff was not limited to the book. He repeated that false statement on one or more blog posts,

JURY DEMAND

50. Plaintiff respectfully requests a jury of twelve persons on all claims so triable.

PRAYER FOR RELIEF

Rectangular Snip

51. WHEREFORE, the plaintiffs pray for judgment against the defendants as follows:

- A. Ordering compensation for all general, special, incidental, and consequential damages suffered by plaintiff as a result of the defendants' conduct;
- B. Awarding plaintiff his reasonable attorney's fees and costs, to the fullest extent allowed by law; and
- C. Granting all such additional or further relief as this Court deems just and equitable under the circumstances.

Dated: November 27, 2018

/s/ Genevieve M. Zimmerman
 Genevieve M. Zimmerman (WI#1100693)
 MESHBESHER & SPENCE, LTD.
 1616 Park Avenue
 Minneapolis, MN 55404
 Phone: (612) 339-9121
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 gzimmerman@meshbesh.com

THE ZIMMERMAN FIRM, LLC
/s/ Jacob S. Zimmerman
 Jacob Zimmerman (MN#0330656)
 1043 Grand Avenue #255
 Saint Paul, MN 55105
 jake@zimmerman-firm.com

Exhibit C

Fuhrman & Dodge, S.C.
 2501 Parmenter Street - Suite 100A
 Middleton, WI 53562
 Phone: 608-327-4200



James Fetzer
 800 Violet Lane
 Oregon, WI 53575

Invoice 37414

Date	Jul 12, 2022
Terms	Upon Receipt
Service Thru	Jun 30, 2022

In Reference To: Litigation (Legal Services)

Matter ID: 2861.00

Date	By	Services	Hours	Amount
06/01/2022	JMS	Email to Attorney Pflum regarding settlement offer(.1), emails with client regarding same(.2), phone call with Dave. (18:15).	0.60	\$ 150.00
06/02/2022	JMS	Phone call with Attorney Pflum regarding motion for turnover (.3), interoffice conference with Attorney Dodge(.2); brief research/analysis of copyright exemption (.4); phone call with client (.3).	1.20	\$ 300.00
06/02/2022	CJD	Review and work on e-mail to Jim; draft e-mail to Jen. (No Charge)	0.30	No Charge
06/03/2022	JMS	Work on response brief, research case law, review collection statutes, confer with client.	3.00	\$ 750.00
06/03/2022	JMS	Work on brief in opposition to motion to turn over. Courtesy discount.	2.00	No Charge
06/03/2022	EWB	Work on Affidavit and Exhibits.	0.70	\$ 87.50
06/03/2022	JTM	Research, write and file Response Brief in Opposition to Motion for Turnover. Call Attorney Schank to discuss same.	5.00	\$ 1,125.00
06/03/2022	EWB	Filing of Response Brief to Motion for Turnover and Affidavit with Court.	0.10	\$ 12.50
06/06/2022	JMS	Additional emails from client regarding amended affidavit, review transcript and advise client. (No Charge)	0.20	No Charge
06/10/2022	JTM	Review and consider Reply brief.	0.40	\$ 90.00
06/13/2022	JMS	Review, consider emails from various parties regarding strategy, email response to client, receive and consider additional client emails.	0.50	\$ 125.00

06/14/2022	JMS	Review additional client emails regarding strategy, interoffice conference with Attorney Dodge regarding same, respond to and advise client.	0.60	\$ 150.00
06/14/2022	CJD	Receipt and review e-mails from Jen; reply; edit letter. (No Charge)	0.40	No Charge
06/15/2022	JMS	Review and consider reply emails from client regarding strategy.	0.30	\$ 75.00
06/15/2022	JTM	Review and consider Reply brief.	0.50	\$ 112.50
06/20/2022	JMS	Work on oral argument preparation.	0.30	\$ 75.00
06/23/2022	JMS	Prepare for oral argument, review case law, prepare actual argument, email to client.	1.70	\$ 425.00
06/23/2022	JMS	Additional emails with client; review copyright laws and federal statutes. courtesy discount to client.	0.70	\$ 175.00
06/23/2022	EWB	Compilation of Cases cited in Reply Brief for Oral Arguments. (No Charge)	0.60	No Charge
06/24/2022	JMS	Continue preparation for oral argument.	0.50	\$ 125.00
06/24/2022	JMS	Attend oral argument on motion for turnover.	2.00	\$ 500.00
06/24/2022	JMS	Additional emails from client regarding case and hearing outcome questions.	0.20	\$ 50.00
06/27/2022	JMS	Review and consider emails from client, consider appeal, and post decision options, advise client regarding same.	0.50	\$ 125.00
06/27/2022	JMS	Review and consider proposed order; email to client, email to Attorney Pflum.	0.30	\$ 75.00
06/28/2022	JMS	Emails from Attorney Pflum regarding proposed order (.2), finalize summary letter to client (.4), review updated order(.1), consider all deadlines(.2); emails from client (.2).	1.00	\$ 250.00
06/28/2022	SLS	Review proposed Order.	0.20	\$ 25.00
06/28/2022	CJD	Telephone conference with Jen; review documents. (No Charge)	0.30	No Charge
06/28/2022	EWB	Work on Letter to Client.	0.10	\$ 12.50
06/29/2022	JMS	Review client emails, respond.	0.20	\$ 50.00
06/30/2022	JMS	Email exchange with Dr. Fetzer, review court order on motion for turnover, work on letter to court.	0.20	\$ 50.00

Total Hours	24.60 hrs
Total Legal Services	\$ 4,915.00
Total Invoice Amount	\$ 4,915.00
Previous Balance	\$ 1,362.50
6/27/2022 Payment - Check	(\$800.00)
7/5/2022 Payment - Check	(\$450.00)
Balance (Amount Due)	\$ 5,027.50

PAST DUE BALANCE - PLEASE REMIT PAYMENT IMMEDIATELY

Aged Balances

Current	30 Days	60 Days	90 Days
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Trust Account Summary**Billing Period: 06/01/2022 - 07/12/2022****Client: Fetzer, James | General Matter Trust**

Total Deposits	Total Disbursements	Current Balance
\$0.00	\$1,500.00	\$0.00

Date	Transaction	Deposit	Disbursement	Balance
06/09/2022	Applied to invoice #37031		\$1,500.00	\$0.00

Invoices are due in full upon receipt. Interest charges are calculated at 1½% per month and assessed on unpaid balances after 30 days. Thank you in advance for your prompt payment. For your convenience, online payments may be submitted via:
www.FuhrmanDodge.com/Pay-My-Bill