

No. 05-22-00439-CV

IN THE COURT OF APPEALS
FOR THE FIFTH DISTRICT OF TEXAS
AT DALLAS

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HOLLY BONE-MARTIN AND BRIAN MARTIN,

Appellants

v.

DAVID TYLER MOSS, ET AL.,

Appellees.

On appeal from the 68th Judicial District Court
Cause No. DC-20-09893, Dallas County, Texas
the Honorable Martin Hoffman, presiding

BRIEF OF APPELLANTS

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES

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Appellees/Defendants:	Fidelissimus, LLC David Tyler Moss
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Trial Court Judge:	Honorable Martin Hoffman 68 th Judicial District Court Dallas County, Texas

TABLE OF CONTENTS

IDENTITY OF PARTIES	ii
INDEX OF AUTHORITIES.....	vi
STATEMENT OF THE CASE	1
STATEMENT REGARDING ORAL ARGUMENT	2
ISSUES PRESENTED.....	3
STATEMENT OF FACTS.....	4
SUMMARY OF THE ARGUMENT	13
STANDARD OF REVIEW.....	15
ARGUMENT AND AUTHORITIES	16
I. The district court’s Final Judgment and Permanent Injunction must be vacated because the claim filed by the Appellees is barred by the statute of repose, therefore negating the court’s subject matter jurisdiction over the suit...16	
A. The four-year statute of repose applies whether the cause of action is brought against the original transferee or subsequent transferee, as the original transfer is the date in which the statute of repose begins to run.....18	
B. Since Appellees’ causes of action were extinguished before it filed suit, its claims were barred by the statute of repose.....20	
C. Holly sufficiently met the pleading requirements to plead the affirmative defensive of statute of repose.22	
II. The district court lacked jurisdiction to divest Holly Bone-Martin and Brian Martin of their federal copyrights, therefore the portion of the final judgment granting Appellees’ the copyrights to the Minecraft videos must be vacated.23	

A. Appellees’ Texas tort claims are preempted by the Copyright Act because divesting Brian Martin and Holly Bone of their federal copyrights of the Minecraft Videos fall within the scope of the exclusive rights set out in the Federal Copyright Act, therefor voiding the transfer in the final judgment.	23
B. The Federal Copyright Act prohibits involuntary transfer of copyrights, which voids the district court’s judgment divesting Holly Bone-Martin and Brian Martin of their federal copyrights, and the district court’s finding that it may order the transfer because Holly and Brian have previously transferred the videos is erroneous.	26
C. Since the order granting Appellees the ownership of the copyrighted videos is void, the permanent injunction must be vacated.	29
III. The district court lacked subject matter jurisdiction to assign ownership of the YouTube channels because Holly and Brian never had ownership of the channels.....	30
IV. The evidence is legally insufficient to support the damages awarded to Appellees because Appellees failed to produce any evidence to support the damages verdict, therefore this Court should vacate the damages award and render a take nothing judgment.	31
A. Appellees failed to produce any evidence regarding the value of the disputed videos as required under TUFTA.	31
B. Appellees failed to produce any evidence showing that they are entitled to monetary damages and ownership of the videos, and the district court improperly allowed a double recovery.	34
C. Appellees failed to produce any evidence showing they are entitled to “lost profits” from the video revenue.....	36
CONCLUSION	40
CERTIFICATE OF SERVICE.....	42

CERTIFICATE OF COMPLIANCE42

APPENDIX..... 1a

INDEX OF AUTHORITIES

	Page(s)
Cases	
<i>Advance Magazine Publishers, Inc v. Leach</i> , 466 F.Supp.2d 628 (D. Md. 2006)	26
<i>Anderson v. City of Seven Points</i> , 806 S.W.2d 791 (Tex. 1991).....	15
<i>Archer v. Nissan Motor Acceptance Corp.</i> , 550 F.3d 506 (5th Cir. 2008).....	18
<i>Barton v. Resort Dev. Latin Am., Inc.</i> , 413 S.W.3d 232 (Tex. App. – Dallas 2013, pet. denied).....	39
<i>Bhatia v. Woodlands N. Houston Heart Ctr., PLLC</i> , 396 S.W.3d 658 n. 11 (Tex. App. – Houston [14th Dist.] 2013, pet. denied).....	34
<i>Burlington N. R.R. v. Gen. Projection Sys.</i> , 2000 WL 1100874 (Tex. App. – Dallas Aug. 8, 2000, pet. denied).....	39
<i>Burns v. Rochon</i> , 190 S.W.3d 263 (Tex. App. – Houston [1st Dist.] 2006, no pet.)	39
<i>Byrd v. Woodruff</i> , 891 S.W.2d 689 (Tex. App. – Dallas 1994, writ denied)	35
<i>Cadle Co. v. Wilson</i> , 136 S.W.3d 345 (Tex. App.—Austin 2004, no pet.)	18, 19, 22
<i>California Public Emps’ Ret. Sys. v. ANZ Sec., Inc.</i> , 137 S.Ct. 2042 (2017)	18
<i>Ching Enterprises, Inc. v. Barahona</i> , 2016 WL 4706074 (Tex. App.—Houston [14th Dist.] Sep. 8, 2016, pet. denied).....	23
<i>Chu v. Chong Hui Hong</i> , 249 S.W.3d 441 (Tex. 2008).....	33

<i>City of Keller v. Wilson</i> , 168 S.W.3d 802 (Tex. 2005).....	16
<i>City of Pasadena v. Gennedy</i> , 125 S.W.3d 687 (Tex. App. – Houston [1st Dist.] 2003, pet. denied)	15, 16
<i>Effects Assocs., Inc. v. Cohen</i> , 908 F.2d 555 (9th Cir. 1990).....	29
<i>Enshikar v. Zaid</i> , 2020 WL 6203348 (Tex. App. – Houston [14th Dist.] Oct. 22, 2020, no pet.).....	33
<i>Examination Mgmt. Servs., Inc. v. Kersh Risk Mgmt., Inc.</i> , 367 S.W.3d 835 (Tex. App. – Dallas 2012, no pet.).....	38, 39
<i>Flores v. Robinson Roofing & Const. Co.</i> , 161 S.W.3d 750 (Tex. App. – Fort Worth 2005, pet. denied)	33
<i>Foley v. Cap. One Bank, N.A.</i> , 383 S.W.3d 644 (Tex. App. – Houston [14th Dist.] 2012, no pet.).....	16
<i>Helena Chem. Co. v. Wilkins</i> , 47 S.W.3d 486 (Tex. 2001).....	38, 39
<i>Hendricks & Lewis PLLC v. Clinton</i> , 766 F.3d 991 (9th Cir. 2014).....	29
<i>Hernandez v. Sovereign Cherokee Nation Tejas</i> , 343 S.W.3d 162 (Tex. App. – Dallas 2011, pet. denied).....	32
<i>Holt Atherton Indus., Inc. v. Heine</i> , 835 S.W.2d 80 (Tex. 1992).....	38, 39
<i>Horizon/CMS Healthcare Corp. v. Auld</i> , 34 S.W.3d 887 (Tex. 2000).....	22
<i>In re Margaux Texas Ventures, Inc.</i> , 545 B.R. 506 (Bankr. N.D. Tex. 2014).....	18
<i>Janvey v. GMAG, L.L.C.</i> , 592 S.W.3d 125 (Tex. 2019).....	13

<i>Janvey v. Golf Channel, Inc.</i> , 487 S.W.3d 560 (Tex. 2016).....	33
<i>Methodist Healthcare Sys. of San Antonio, Ltd. v. Rankin</i> , 307 S.W.3d 283 (Tex. 2010).....	17, 18
<i>Nathan v. Whittington</i> , 408 S.W.3d 870 (Tex. 2013).....	17, 18, 21
<i>Osadon v. C&N Renovation, Inc.</i> , 2018 WL 2126821 (Tex. App. – Dallas May 9, 2018, pet. denied)	19
<i>Phillips v. Carlton Energy Grp., LLC</i> , 475 S.W.3d 265 (Tex. 2015).....	34
<i>Pyle v. First Nat. Bank in Cameron</i> , 2000 WL 422894 (Tex. App. – Austin Apr. 20, 2000, no pet.).....	35, 36
<i>Qui Phuoc Ho v. MacArthur Ranch, LLC</i> , 395 S.W.3d 325 (Tex. App. – Dallas 2013, no pet.).....	32, 33
<i>Richardson Indep. Sch. Dist. v. GE Cap. Corp.</i> , 58 S.W.3d 290 (Tex. App. – Dallas 2001, no pet.).....	15
<i>Robertson v. Morin</i> , 2009 WL 2902720 (Tex. App. – Austin Aug. 27, 2009, no pet.).....	38
<i>Rosciszewski v. Arete Assocs., Inc.</i> , 1 F.3d 225 (4th Cir. 1993).....	26
<i>Sepulveda v. Krishnan</i> , 839 S.W.2d 132 (Tex. App. – Corpus Christ-Edinburg 1992)	22
<i>Small Justice LLC v. Xcentric Ventures LLC</i> , 99 F.Supp.3d 190 (D. Mass. 2015)	28
<i>Song Fi Inc. v. Google, Inc.</i> , 108 F. Supp. 3d 876 (N.D. Cal. 2015)	31
<i>Sony Corp. v. Universal City Studios, Inc.</i> , 464 U.S. 417 (1984).....	24

<i>Southwest Battery Corp. v. Owen</i> , 131 Tex. 423, 115 S.W.2d 1097 (Tex. 1938)	38
<i>Spear Mktg. Inc. v. BancorpSouth Bank</i> , 791 F.3d 586 (5th Cir. 2015).....	24
<i>Springs Window Fashions Div., Inc. v. Blind Maker, Inc.</i> , 184 S.W.3d 840 (Tex. App. – Austin 2006, pet. granted, remanded by agr.)	38
<i>Stanley v. Reef Securities, Inc.</i> , 314 S.W.3d 659 (Tex. App. – Dallas 2010, no pet.).....	31
<i>Star Electricity, Inc. v. Northpark Office Tower, LP</i> , 2020 WL 3969588 (Tex. App. – Houston [1st Dist.] Jul. 14, 2020, no pet.)	20
<i>Stewart Title Guar. Co. v. Sterling</i> , 822 S.W.2d 1 (Tex. 1991).....	35
<i>Szczepanik v. First Southern Trust Co.</i> , 883 S.W.2d 648 (Tex. 1994).....	38, 39
<i>Texas Instruments, Inc. v. Teletron Energy Mgt., Inc.</i> , 877 S.W.2d 276 (Tex. 1994).....	38
<i>Total Clean, L.L.C. v. Cox Smith Matthews, Inc.</i> , 330 S.W.3d 657 (Tex. App. – San Antonio 2010, pet. denied)	39
<i>Wiese v. Pro Am Servs., Inc.</i> , 317 S.W.3d 857 (Tex. App. – Houston [14th Dist.] 2010, no pet. h.).....	39

Statutes

17 U.S.C. § 102	25
17 U.S.C. § 106	24, 25, 26, 30
17 U.S.C. § 201(e)	27, 28, 29
17 U.S.C. § 204(a)	28
17 U.S.C. § 301(a)	24

28 U.S.C. § 1338(a)	23
Tex. Bus. & Com. Code § 24.002(3)	17
Tex. Bus. & Com. Code § 24.005.....	16
Tex. Bus. & Com. Code § 24.008.....	32, 33
Tex. Bus. & Com. Code § 24.008(a)(1).....	33, 36
Tex. Bus. & Com. Code § 24.009(b)	19, 32, 33
Tex. Bus. & Com. Code § 24.010.....	19, 23
Tex. Bus. & Com. Code § 24.010(a)(1).....	17, 18, 21
Tex. Bus. & Com. Code § 24.002(4)	20
U.S. Const. Art. 6, cl. 2	24
U.S. Const. Art. I, § 8, cl. 8.....	23

Rules

Tex. R. App. P. 9.4(e)	42
Tex. R. App. P. 9.4(i)(1)	42
Tex. R. App. P. 9.4(i)(2)	42
Tex. R. App. P. 25.1.....	1
Tex. R. App. P. 38.1, 39.1 and 39.2.....	2

Other Authorities

Act of November 6, 1978, Pub. L. 95-598, tit. III, § 313, 92 Stat. 2549, 2676	27
H.R. Rep. 94–1476, at 123 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5739..	28
https://www.youtube.com/static?template=terms	31
Uniform Fraudulent Transfer Act § 9	19

STATEMENT OF THE CASE

Nature of the case:	A suit for fraudulent transfer, civil conspiracy, aiding and abetting, conversion, common law fraud, and statutory fraud in a real estate transaction. C.R. at 237-64.
Judge who signed underlying judgment:	Honorable Martin Hoffman
Trial court's designation and county:	68th Judicial District Court, Dallas County, Texas
Disposition of the case:	The trial court entered judgment and permanent injunction, ruling in favor of Plaintiffs on all causes of action, signed on April 12, 2022. C.R. at 334-41; 7 R.R. at 255-26.
Plaintiffs in the district court:	Davis Tyler Moss, Fidelissimus, LLC
Defendants in the district court:	Brian D. Martin, Holly Bone-Martin, Carolyn M. Martin, FuturisticHub, Wildcraft, Creamworks Animations
Court of Appeals Jurisdiction:	Notice of Appeal filed on May 9, 2022. C.R. at 349. <i>See</i> Tex. R. App. P. 25.1.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rules of Appellate Procedure 38.1, 39.1 and 39.2, Appellants, Holly Bone-Martin and Brian Martin request oral argument before this Court of Appeals. Although Appellants represent that the facts and legal arguments are thoroughly presented in this brief and in the record, Appellants also believe that the decisional process of the Court of Appeals will be significantly aided by oral argument. This appeal raises novel legal questions to this Court as well as this State. It also involves a complex factual record, with intensive legal analysis. Appellants believe that oral argument will better help this Court of Appeals understand the legal arguments it makes in this regard. Accordingly, Appellants request oral argument.

ISSUES PRESENTED

1. The district court's Final Judgment and Permanent Injunction must be vacated because the claim filed by the Appellees is barred by the statute of repose, therefore negating the court's subject matter jurisdiction over the suit.
2. The district court lacked jurisdiction to divest Holly Bone-Martin and Brian Martin of their federal copyrights, therefore the portion of the final judgment granting Appellees' the copyrights to the Minecraft videos must be vacated.
3. The district court lacked subject matter jurisdiction to assign ownership of the YouTube channels because Holly and Brian never had ownership of the channels.
4. The evidence is legally insufficient to support the damages awarded to Appellees because Appellees failed to produce any evidence to support the damages verdict, therefore this Court should vacate the damages award and render a take nothing judgment.

STATEMENT OF FACTS

This case arises from a judgment in federal court against Brian Martin, et. al., in the amount of \$18,600,000 on April 15, 2016.¹ C.R. at 42; 7 R.R. at 126. The Plaintiffs in the underlying suit, Fidelissimus, LLC and David Tyler Moss, were the judgment creditors from the federal lawsuit. C.R. at 237-64. They alleged claims against Brian Martin and Holly Bone-Martin for fraudulent transfer, among others, and sought damages, a permanent injunction, and declaratory judgment that the intellectual property assets are subject to execution and turnover to satisfy the federal judgment. C.R. at 237-64.

Brian's wife, Holly Bone, grew up in the United Kingdom, raised by a single dad. 7 R.R. at 94. She had a difficult childhood, felt different than her peers, and did not make friends easily. 7 R.R. at 95. Later discovering she had autism, Holly became the subject of relentless and severe bullying from other kids in grade school. 6 R.R. at 112-13; 7 R.R. at 95-96. Eventually, Holly discovered Minecraft and video games, which she thoroughly enjoyed. 7 R.R. at 96-97. She also started creating her own animations, and according to her father, Paul Bone, she spent hours upon hours working on them. 7 R.R. at 97. He testified that even in the early days, they were quite good. 7 R.R. at 97.

¹ In the federal lawsuit, the jury awarded Brian Martin 20 percent of VideoGames, worth tens of millions of dollars, which he subsequently transferred ownership to the plaintiffs in this suit and never received any offset. 7 R.R. at 156.

Holly's father worked as a motor mechanic, and even with limited means, he bought Holly a very expensive computer and animation software because of how much joy she felt creating animations. 7 R.R. at 92-93, 98. At twelve-years-old, Holly testified she began animating videos to upload to YouTube. 5 R.R. at 39-40. As a youth, creating animations was a hobby, and she focused on making content her fans enjoyed rather than on the revenue. 5 R.R. at 66-67. Some of the early animations had pornographic related content, which she "generally thought it was hilarious." 6 R.R. at 113-14. Despite her new and exciting interest, Holly worried if the kids at school learned she created the animations, the kids might bully her even more than they already did. 6 R.R. at 114-15.

Holly first met Brian Martin while playing Minecraft. 6 R.R. at 110-11. Brian worked as a scout for VideoGames, a community channel, that uploads other people's content to promote their YouTube channels. 7 R.R. at 135. VideoGames generated income through advertising revenue on the VideoGames YouTube channel. 7 R.R. at 135. Content creators joined VideoGames in order to obtain subscribers, which then led to higher revenue. 7 R.R. at 137. Brian met Holly in his pursuit of scouting new talent. 7 R.R. at 131.

Due to the concern about her privacy, Holly asked Brian Martin to step in and help her, which he agreed to do. 5 R.R. at 60; 6 R.R. at 114-15. Brian protected Holly's anonymity while she was a minor, took the criticism and bullying himself,

representing to the public he created the channel.² 5 R.R. at 60. Other YouTubers openly and brutally commented on the videos online, which manifested as suicidal ideations for Holly. 7 R.R. at 149-54. Brian testified he protected Holly by telling people he did videos and things related to her channel, because she did not want anyone to know about her. 7 R.R. at 145. The record indicates Holly felt grateful for him doing that. 6 R.R. at 115. Holly testified while Brian does not animate for the channels, he sometimes voices characters on the videos. 5 R.R. at 61-62.

Besides managing Holly and public relations, Brian also helped Holly with rendering the videos before Holly had a sophisticated enough computer to do it herself. 5 R.R. at 64. She also granted him some authority to act on her behalf, especially in business matters. 5 R.R. at 80-81. In return, she let him have the income from the channel. 5 R.R. at 65, 67; Pl. Ex. 17. Holly testified that when she was a kid, she had no interest in making money, but she realized when she became an adult that she needed to, so she started managing her videos herself. 6 R.R. at 117-18. Holly first met Brian face to face in 2018 when he visited her in Britain. 6 R.R. at 111, 116. What began as a business trip ended up with the two falling in love. 6 R.R. at 116. Brian proposed in May 2019. 6 R.R. at 118.

In 2019, she contracted with Freedom Family, which managed her income

² Stating in February 2017, “I am still sometimes referred to as FuturisticHub on-line by people simply because I animate and voice the characters for the children who watch the content. I also animate for other Minecraft channels.” 5 R.R. at 60-61.

from the channels, including sending out payments. 5 R.R. at 65; 6 R.R. at 110. The following chart illustrates the monthly deposits made by Freedom Family from the FuturisticHub channel's generated revenue:

Date	Amount	Record cites
June 19, 2019	\$21,824	5 R.R. at 123; Pl. Ex. 46
July 22, 2019	\$31,743	5 R.R. at 124; Pl. Ex. 46
August 20, 2019	\$28,401	5 R.R. at 124; Pl. Ex. 46
October 21, 2019	\$40,908	5 R.R. at 124; Pl. Ex. 46
November 19, 2019	\$41,800	5 R.R. at 124; Pl. Ex. 46
December 19, 2019	\$44,210	5 R.R. at 124. Pl. Ex. 46
January 21, 2020	\$43,000	5 R.R. at 124-25; Pl. Ex. 46
February 18, 2020	\$53,088	5 R.R. at 125; Ex. 46
March 19, 2020	\$36,149	5 R.R. at 125; Ex 46
Apr 20, 2020	\$58,712	5 R.R. at 125; Ex. 46
May 19, 2020	\$65,005	5 R.R. at 125; Ex. 46

This totaled \$464,840. *See* 5 R.R. at 123-25. Holly later testified she thought FuturisticHub made \$80,000 to \$100,000 per month from 2019 onwards. 7 R.R. at 216-17.

Holly testified in January 2020, her new mother-in-law, Carolyn Martin, approached her and told her she wanted to gift her a house, and even though she was in shock, Holly accepted it. 6 R.R. at 119. Carolyn wired \$336,584.98 to Holly to purchase a house at 12452 Cajun Drive, in Frisco Texas ("Frisco House"). 5 R.R. at 133-35. Only a few months after moving to Texas, Holly became homesick and began preparations to move back to the UK. 5 R.R. at 135-36; 6 R.R. at 121. Soon thereafter, she sold the Frisco House on November 25, 2020 for \$250,000, but

indicated she was not aware she was not supposed to sell the property. 5 R.R. at 97-98, 136-37. She testified she sold the house at a loss so she could get it done and over with and move back. 5 R.R. at 137. She confirmed that the deposit into her account on December 3, 2020 in the amount of \$244,000 was the money received from the sale of the Frisco House. 5 R.R. at 99.

Testimony at trial indicated at the time of their wedding, Brian did not disclose the federal judgment against him. 6 R.R. at 23; 7 R.R. at 180-81. When Holly found out about it in August 2020, she felt shocked, and her knee-jerk response was to file for divorce. 6 R.R. at 23; 7 R.R. at 182-83. Holly filed a petition for divorce against Brian on August 7, 2020, but ten days later, she withdrew the petition because she loved Brian, and she did not want the fact that he was part of this lawsuit to destroy their relationship. 5 R.R. at 139-40. After they nonsuited the divorce, the couple signed a post-marital agreement. 6 R.R. at 23; 7 R.R. at 196; Pl. Ex. 26. The post-marital agreement references property she owned prior to marrying Brian. 6 R.R. at 23-24. It also references property she acquired after the marriage to be classified as separate property. 6 R.R. at 24.

Brian further helped Holly considerably, as many testified, he is brilliantly skilled at SEO, analytics, and managing YouTube channels. 7 R.R. at 207. Brian also helped others, including mentoring Holly's father to make money from an off-roading YouTube channel, and he helped his longtime friend, Kyle Lomax, with the

SEO and analytics on two of his video channels. 7 R.R. at 99-102, 207.

There is voluminous, yet conflicting testimony throughout trial about whether Holly, Brian, or Brian's ex-wife, Chrissie had ownership rights to the YouTube channels themselves. 5 R.R. at 59, 62-63; 6 R.R. at 16-18; 7 R.R. at 63, 69, 71, 105-06, 108, 159, 165, 168-69; Pl. Ex. 11-12, 21, 27. Also, on June 7, 2016, Brian and Chrissie Martin formed FuturisticHub, LLC, a limited liability company registered with the Texas Secretary of State. 6 R.R. at 13-14, 101-03, 106; 7 R.R. at 172; Pl. Ex. 13. Brian testified the LLC had nothing to do with the FuturisticHub YouTube channel. 7 R.R. at 141, 173.

Exhibit 3 contains 78-80 videos which were uploaded to the FuturisticHub channel from 2018 to 2020. 5 R.R. at 44. The same videos were uploaded to the Wildcraft channel around December 22, 2020. 5 R.R. at 44. When asked why she uploaded the videos to the Wildcraft channel, Holly said it was because she lost everything, and she had to make an income, so she rebranded and started over. 5 R.R. at 106. She said this work is all she knows how to do. 5 R.R. at 106.

Holly then incorporated Wild MC Limited, a United Kingdom Corporation on September 23, 2020.³ 6 R.R. at 133; Def. Ex. 18. Holly testified she transferred the ownership of the videos out of her name to Wild MC, Limited. 5 R.R. at 96. When

³ The Wildcraft trademark was registered with the Great Britain and Northern Ireland Trade Marks Registry effective October 21, 2021. 6 R.R. at 138; Ex. 24.

asked when she transferred the videos out of her name to Wild MC, Limited, if that was a violation of the temporary injunction, Holly explained:

To be honest with you, I don't understand what I've done or what I violated. I've just done what I wanted to do. I wanted to make my own business. I wanted to make videos and carry on that way. I didn't know I was violating anything. I didn't know it was a bad thing to continue doing my work.

5 R.R. at 96.

Holly also paid taxes from income derived from the WildCraft channel on Wild MC, Ltd.'s corporate tax return. 6 R.R. at 133; D's Ex. 19. Plaintiff's Exhibit 4 contains videos currently on the Wildcraft channel, which Holly characterizes as "the new ones." 5 R.R. at 44. These videos were uploaded from December 2020 through March 7, 2022. 5 R.R. at 44-45.

At trial, when asked about current bank accounts, Holly testified she held a savings account at Halifax, and she believed the balance to be around \$500,000. 5 R.R. at 100-02. Holly also indicated she has other accounts at Revolut, holding a balance around \$200,000, the money originating from the Wildcraft revenue payouts from Elite Alliance, her multi-channel network provider. 5 R.R. at 112-14. The Plaintiffs, over objection that a turnover order is improper prior to a judgment, asked the court to order the money from Holly's accounts deposited into the court's registry, and the court ordered it. 5 R.R. at 110-11; 6 R.R. at 8. Holly reacted as follows:

I'm sorry, I'm a little bit of shock right now. . . .So you're saying – you're saying you want to take all my income so I have nothing.

5 R.R. at 118.

Brandon Keating a representative of Fidelissimus, LLC, presented his lay person opinion on damages, stating the damages began accruing on April 15, 2016. 7 R.R. at 117. He testified he took the median of Holly's estimate of FuturisticHub's revenue of \$90,000 per month and multiplied it by twelve months, and then multiplied that by six years to cover April 15 through April 7, 2022, equating \$6,480,000. 7 R.R. at 110-11, 126-27 ($\$90,000 \times 12 \times 6 = \$6,480,000$). 7 R.R. at 110-11, 126-27. Then, based on Holly's testimony that Wildcraft's revenue's monthly average is \$35,000 per month, he multiplied \$35,000 by 15 months, equaling \$525,000. 7 R.R. at 113, 127-28. He also asked the court to award damages in the amount of \$340,000 due to sale of Frisco house in violation of the October 15, 2020 Temporary Injunction order. 7 R.R. at 114. Brandon admits he does not have the precise amount of earnings for the FuturisticHub channel and is basing it on Holly's estimation in her testimony that it earned between \$80-\$100k per month. 7 R.R. at 118. He also asked the court to award a permanent injunction so that Mr. Martin is required to turn over the email addresses and passwords, and they would change the email address to one belonging to them, and they would have control over the YouTube channel going forward. 7 R.R. at 115.

The district court awarded Fidelissimus, LLC a judgment in the amount of

\$4,563,980.04 against Brian Martin and \$2,808,662.87 against Holly Bone-Martin. C.R. at 335. The district court separately awarded David Tyler Moss a judgment in the amount of \$4,563,980.04 against Brian Martin and \$2,808,662.87 against Holly Bone-Martin. C.R. at 335-36. Moreover, the district court transferred legal and equitable ownership and title to the FuturisticHub, WildCraft Animations, CreamWorks Animations, Top Trends, and BlockTastic YouTube channels (“the YouTube Channels”) to Fidelissimus, LLC and David Tyler Moss. C.R. at 338. Further, the district court transferred the ownership of all videos on the YouTube channels to Fidelissimus, LLC and David Tyler Moss. C.R. at 338. The court also transferred the content management system, content id and Google AdSense for which the videos are contained to Fidelissimus, LLC and David Tyler Moss. C.R. at 338. Next, the district court declared Holy Bone-Martin’s transfer of the ownership of the videos to Wild MC Ltd VOID as a fraudulent transfer. C.R. at 338. Finally, the district court entered a permanent injunction against Brian Martin and Holly Bone-Martin from (1) removing any videos from the YouTube Channels; (2) filing any copyright strikes on any videos on the YouTube Channels; (3) filing any BOT attacks in attempt to remove videos on the YouTube Channels; (4) filing any artificial BOT views in an attempt to remove videos on the YouTube Channels; and (5) filing any content id claims against the videos on the YouTube Channels. C.R. at 339-40.

SUMMARY OF THE ARGUMENT

“Where is the money? Show me the money.”⁴

Stated by counsel for Appellees during trial, this statement, while cliché, fits the theme of this trial. The Texas Uniform Fraudulent Transfer Act is “designed to protect creditors from being defrauded or left without recourse due to the actions of unscrupulous debtors.” *Janvey v. GMAG, L.L.C.*, 592 S.W.3d 125, 126 (Tex. 2019). But what about unscrupulous creditors? The Act does not grant carte blanche rights to collect on a judgment by unlawful means, and cases such as here, disastrous consequences may occur.

Appellant, Holly Bone-Martin, did not have a creditor/debtor relationship with Appellees despite being treated as such, in fact, she had no relationship with them at all. Rather, she formed a martial relationship with Brian Martin, a judgment debtor, several years after Appellees obtained a federal judgment against him.

Holly Bone-Martin has autism. She struggled to fit in from early childhood, suffered from depression, and felt like she did not measure up. When she discovered animating and gaming, she finally found her calling. Individuals with such a disability rarely achieve the kind of success she did. She became a YouTube star, her videos attracting millions of views. With success often comes money, and she made a lot of it. But more importantly, animating made her happy. See Video Exhibit

⁴ 7 R.R. at 176.

57-J of her animating for reference.

The district court's final judgment and permanent injunction must be vacated. First, Appellees filed their claim more than four years after the first instance of alleged fraudulent transfer, therefore the claims are barred by the statute of repose. Unlike the statute of limitations, the statute of repose extinguishes a cause of action when it runs. That occurred before the filing of the Original Petition in this case.

Next, the district court lacked jurisdiction to divest Holly and Brian of their federal copyrights, because the claims are preempted by the Copyright Act, and the Act prohibits involuntary transfer of copyrights, thus voiding the district court's judgment granting Appellees copyrights in the videos.

Furthermore, the district court lacked jurisdiction to assign ownership of the YouTube channels to Appellees because Holly and Brian never had ownership interests in the channels themselves. Rather, YouTube's terms of service, which each user must agree to in order to post a video, retains ownership rights of the channels.

Finally, the damage award in the final judgment is not supported by legally sufficient evidence. The Appellees presented absolutely no evidence to prove the value of the assets they alleged were fraudulently transferred. Further, the district court improperly permitted double recovery, awarding Appellees both monetary damages and ownership of the videos. Finally, while the Appellees appeared to argue they were entitled to "lost profits" as economic damages, it is unclear what theory

of recovery they sought to recover such lost profits. Even so, Appellees failed to produce any evidence showing they are entitled to lost profits from the video revenue.

STANDARD OF REVIEW

In an appeal from a bench trial, the court of appeals reviews the trial court's conclusions of law *de novo*. *Richardson Indep. Sch. Dist. v. GE Cap. Corp.*, 58 S.W.3d 290, 293 (Tex. App. – Dallas 2001, no pet.). Such findings, if challenged, are reviewable for legal and factual sufficiency of the evidence by the same standards applicable in reviewing the sufficiency of the evidence supporting a jury's findings. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991); *City of Pasadena v. Gennedy*, 125 S.W.3d 687, 691 (Tex. App. – Houston [1st Dist.] 2003, pet. denied).

In a legal sufficiency challenge, the complaining party challenging an adverse finding on which the party did not have the burden of proof must demonstrate on appeal that there is no more than a scintilla of evidence to support the finding. *Gennedy*, 125 S.W.3d at 691-92. In such a review, the reviewing court considers all the evidence in the light most favorable to the prevailing party, indulging every reasonable inference in that party's favor, and disregards all evidence and inferences to the contrary. *Id.* at 692. The court of appeals does not disregard contrary evidence if the prevailing party presented no favorable evidence, or if contrary evidence

renders supporting evidence incompetent or conclusively establishes the opposite. *City of Keller v. Wilson*, 168 S.W.3d 802, 810–11 (Tex. 2005).

When a party challenges the trial court's construction of a statute or application of the law, the standard of review is *de novo*. *Foley v. Cap. One Bank, N.A.*, 383 S.W.3d 644, 647 (Tex. App. – Houston [14th Dist.] 2012, no pet.).

ARGUMENT AND AUTHORITIES

I. The district court’s Final Judgment and Permanent Injunction must be vacated because the claim filed by the Appellees is barred by the statute of repose, therefore negating the court’s subject matter jurisdiction over the suit.

Appellees brought this action for fraudulent transfer under the Texas Uniform Fraudulent Transfer Act (“TUFTA”). *See* TEX. BUS. & COM. CODE § 24.005. Appellees’ claims for civil conspiracy, aiding and abetting, money had and received, conversion, fraud, statutory fraud in a real estate transaction constitute claims under TUFTA. *See* TEX. BUS. & COM. CODE § 24.002(3) (defining “claim” as “a right to payment or property, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured”); C.R. at 256-60.

Section 24.010, entitled “Extinguishment of Cause of Action” provides:

a cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought ... within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

TEX. BUS. & COM. CODE § 24.010(a)(1). The Supreme Court of Texas recognizes this provision as a statute of repose rather than a statute of limitations. *Nathan v. Whittington*, 408 S.W.3d 870, 874 (Tex. 2013). “[W]hile statutes of limitations operate procedurally to bar the enforcement of a right, a statute of repose takes away the right altogether, creating a substantive right to be free of liability after a specified time.” *Id.* at 873 (quoting *Methodist Healthcare Sys. of San Antonio, Ltd. v. Rankin*, 307 S.W.3d 283, 287 (Tex. 2010)). Statutes of repose are of an “absolute nature,” and their “key purpose ... is to eliminate uncertainties under the related statute of limitations and to create a final deadline for filing suit that is not subject to any exceptions, except perhaps those clear exceptions in the statute itself.” *Id.* (quoting *Rankin*, 307 S.W.3d at 286-87).

In other words, by its own terms the statute does not just procedurally bar an untimely claim, it substantively “extinguishes” the cause of action. *Id.* at 874. The statute of repose extinguishes the cause of action ***before*** the filing of the suit. *Id.* Section 24.010 is to be strictly construed, and it “bars the right and not merely the remedy.” *Cadle Co. v. Wilson*, 136 S.W.3d 345, 350 (Tex. App.—Austin 2004, no pet.). The Fifth Circuit recognizes the statute of repose as a “jurisdictional bar” under which the claims expire before they were brought. *See Archer v. Nissan Motor Acceptance Corp.*, 550 F.3d 506, 508 (5th Cir. 2008); *see also In re Margaux Texas Ventures, Inc.*, 545 B.R. 506, 526 (Bankr. N.D. Tex. 2014) (“[S]ection 24.010 of

TUFTA operates as a statute of repose. Statutes of repose are jurisdictional in nature. They operate as an absolute bar on a plaintiff's ability to bring suit when the time thereunder has expired.”).

As the Supreme Court of the United States has clearly explained:

The purpose and effect of a statute of repose ... is to override customary tolling rules arising from the equitable powers of courts. By establishing a fixed limit, a statute of repose implements a legislative decision that as a matter of policy there should be a specific time beyond which a defendant should no longer be subjected to protracted liability. The unqualified nature of that determination supersedes the courts' residual authority and forecloses the extension of the statutory period based on equitable principles. For this reason, the Court repeatedly has stated in broad terms that statutes of repose are not subject to equitable tolling.

California Public Emps' Ret. Sys. v. ANZ Sec., Inc., 137 S.Ct. 2042, 2051 (2017)

(internal quotations and citations omitted) (cleaned up).

- A. The four-year statute of repose applies whether the cause of action is brought against the original transferee or subsequent transferee, as the original transfer is the date in which the statute of repose begins to run.**

Section 24.009 provides that, “to the extent a transfer is voidable in an action by a creditor, the creditor may recover judgment for the value of the asset transferred ... or the amount necessary to satisfy the creditor's claim....” TEX. BUS. & COM. CODE § 24.009(b). The judgment may be rendered against:

- (1) the first transferee of the asset or the person for whose benefit the transfer was made; or
- (2) any subsequent transferee other than a good faith transferee who

took for value or from any subsequent transferee.

Id. The statute permits recovery from the debtor, the transferee, or a subsequent transferee. *Osadon v. C&N Renovation, Inc.*, No. 05-17-00453-CV, 2018 WL 2126821, at *4 (Tex. App. – Dallas May 9, 2018, pet. denied) (mem. op.).

“The periods prescribed apply ... whether the action is brought against the original transferee or subsequent transferee.” Uniform Fraudulent Transfer Act § 9 cmt. 2. Therefore, if a judgment creditor's cause of action under TUFTA is extinguished by the statute of repose, there can be no remedy against a transferee. *See Cadle Co.*, 136 S.W.3d at 350 (stating section 24.010 bars right and remedy). Thus, the first transfer begins the four-year period of the statute of limitations.

The First District Court of Appeals examines a limited exception to the rule that the first transfer is determinative and begins the running of the statute of repose. In *Star Electricity*, even though the initial fraudulent transfer fell outside the statute of repose, the subsequent fraudulent transferee was a judgment debtor at the time of the suit, and therefore the determinative date for the running of the statute of repose for that transferee. *Star Electricity, Inc. v. Northpark Office Tower, LP*, 2020 WL 3969588, at *20, *24 (Tex. App. – Houston [1st Dist.] Jul. 14, 2020, no pet.) (mem. op.); *see also* TEX. BUS. & COM. CODE §§ 24.002(4) (defining “creditor” as “a person ... who has a claim”), 24.002(6) (defining “debtor” as “a person who is liable on a claim”), 24.002(9) (defining “person” to include “individual, partnership,

corporation ... or any other legal or commercial entity”). Since that claim occurred within four years of the transfer, the First Court of Appeals determined it was not barred by the statute of repose. *Id.*

Here, the initial transfer occurred in June 2016, more than four years before the Appellees filed suit in September 2020. At the time of the suit, Holly Bone-Martin was *not* a judgment debtor and did not have a creditor/debtor relationship with the Appellees. This makes the date of the initial transfer determinative for purposes of the statute of repose.

B. Since Appellees’ causes of action were extinguished before it filed suit, its claims were barred by the statute of repose.

Here, Appellees filed their Original Petition on September 15, 2020. 1 Supp. C.R. at 193. In its Original Petition, Appellees pleaded the first fraudulent transfer occurred two months after the federal judgment was entered, where Brian Martin and Chrissie Martin forms FuturisticHub LLC and began posting videos with animation style, voice acting, and subject matter the same or substantially similar to the videos that were posted on the channel subject of the underlying federal judgment. 1 Supp. C.R. at 200. Appellees alleged that by forming a new YouTube channel and continuing to produce the same content as the prior YouTube channel that was subject of the federal judgment, Brian Martin committed and is continuing to commit a fraudulent transfer. 1 Supp. C.R. at 201.

It is indisputable that the federal judgment was entered on April 15, 2016. 1

Supp. C.R. at 220-23. It is also indisputable that two months after April 2016 is June 2016. The date June 7, 2016 coincides with Appellees' evidence where they allege Brian Martin formed the entity FuturisticHub, LLC. 6 R.R. at 13-14; 7 R.R. at 172; Pl. Ex. 13.

At the time of the filing of the Original Petition, the claims had already been extinguished, and the court had no jurisdiction to continue the case. *See Nathan*, 408 S.W.3d at 874; TEX. BUS. & COM. CODE § 24.010(a)(1).

Even considering the Second Amended Petition, the operative pleading in the case, the first alleged fraudulent transfer occurred in June 2016. C.R. at 248-49.

Furthermore, in opening statement, counsel for Appellees openly concedes the first alleged transfer occurred in June 2016:

Also another important date, Your Honor, is June 7, 2016. That's the date that Brian Martin and Chrissie Martin formed FuturisticHub, LLC with the Texas Secretary of State. Why is that date important? Because, Your Honor, that was two months after the \$18 million judgment in the federal court. ***So this is the beginning of Brian Martin attempting to protect his assets through videos***, right.

5 R.R. at 10 (emphasis added).

While the district court did not resolve this issue in its findings, this Court may determine the claims were extinguished as a matter of law, because if reasonable minds could not differ about the conclusion to be drawn from the facts in the record, the start date before the claim is extinguished may be determined as a matter of law. *See generally, Cadle*, 136 S.W.3d at 352. Counsel's statements on

behalf of his client may serve as judicial admissions, further supporting the undeniable start date as June 2016. *See Sepulveda v. Krishnan*, 839 S.W.2d 132, 135 (Tex. App. – Corpus Christ-Edinburg 1992), *aff'd*, 916 S.W.2d 478 (Tex. 1995).

C. Holly sufficiently met the pleading requirements to plead the affirmative defensive of statute of repose.

Texas courts apply a fair-notice standard to pleadings. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000). This standard considers whether the opposing party can ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant. *Id.*

Although Holly pleaded statute of limitations as an affirmative defense, Texas courts have liberally construed this as pleading a statute of repose. For example, in *Ching*, the court of appeals held that by raising the statute of limitations in its answer alleging the suit is barred, it gave sufficient notice of its intent to raise a defense that the time to bring the claims had expired before the plaintiff filed suit. *Ching Enterprises, Inc. v. Barahona*, No. 14-14-00171-CV, 2016 WL 4706074, at *3 (Tex. App.—Houston [14th Dist.] Sep. 8, 2016, *pet. denied*) (mem. op.). And the court noted that for fraudulent-transfer claims, the only statutory provision relevant to the bar raised by appellants is TUFTA section 24.010,” therefore the court liberally construed the pleading in favor of the appellant.

Likewise, here, Holly pleaded the affirmative defense of statute of limitations in her First Amended Answer. C.R. at 183. This suffices to put Appellees on notice

that their suit was untimely filed.

II. The district court lacked jurisdiction to divest Holly Bone-Martin and Brian Martin of their federal copyrights, therefore the portion of the final judgment granting Appellees' the copyrights to the Minecraft videos must be vacated.

A. Appellees' Texas tort claims are preempted by the Copyright Act because divesting Brian Martin and Holly Bone of their federal copyrights of the Minecraft Videos fall within the scope of the exclusive rights set out in the Federal Copyright Act, therefore voiding the transfer in the final judgment.

Claims for relief that arise under the Copyright Act fall within the exclusive jurisdiction of the federal courts, to the exclusion of any state court. 28 U.S.C. § 1338(a). The United States Constitution vests Congress with exclusive authority to regulate copyrights. U.S. CONST. ART. I, § 8, cl. 8. “[T]he Copyright Act grants the copyright holder ‘exclusive’ rights to use and to authorize the use of his work in five qualified ways,” namely, (1) to reproduce the work, (2) to prepare derivative works, (3) to distribute copies of the work to the public, (4) to perform the work publicly, and (5) to display the work publicly. *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 432–33 (1984); 17 U.S.C. § 106. The Copyright Act, clarifies the relationship between the Act and state law:

On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled

to any such right or equivalent right in any such work under the common law or statutes of any State.

17 U.S.C. § 301(a).

Under the Supremacy Clause in the United States Constitution, a state law that interferes with or is contrary to federal law is invalid. U.S. CONST. ART. 6, cl. 2. It follows then that after an alleged violation of state law, the remedy thereafter cannot grant rights reserved by the United States Constitution to have exclusive federal jurisdiction.

Generally, courts have adopted a two-part test to determine whether a state law claim is preempted by the Copyright Act. *Spear Mktg. Inc. v. BancorpSouth Bank*, 791 F.3d 586, 594 (5th Cir. 2015). First, the claim is examined to determine whether it falls “within the subject matter of copyright” as defined by 17 U.S.C. § 102. *Id.* Second, “the cause of action is examined to determine if it protects rights that are equivalent to any of the exclusive rights of a federal copyright, as provided in 17 U.S.C. § 106.” *Id.*

The issue at hand presents a novel question where strictly state law claims result in a state court granting rights exclusively created by federal law under the Copyright Act. In other words, a state court does not have jurisdiction to divest a party of federal copyrights set out in the Copyright Act.

Notably, the district court here, in its conclusions of law, focuses only on the first prong of the general preemption test above, concluding the claims asserted by

Appellees do not arise out of the Copyright Act. 2 Supp. C.R. at 66 (§ 2.02, 2.03). The cases cited by the district court also pertain to claims asserted rather than rights granted. 2 Supp. C.R. at 67. Certainly, Texas tort claims so not arise out of the Copyright Act. The problem arises in the rights **granted** in the judgment rather than the claims asserted in the petition. *Compare* C.R. at 334-41 (Judgment), *with* C.R. at 237-64 (Pl. Second Amended Petition.) While the Copyright Act does not preempt state law tort claims, it does, however, preempt divesting the non-prevailing party of its federal copyright, a right exclusively within the scope of federal copyright law, exclusively reserved for federal courts by Congress, by the authority of the United States Constitution. Said, another way, the Copyright Act “preempts state law claims if the rights **granted** under state law are equivalent to any exclusive rights within the scope of federal copyright as set out in 17 U.S.C. § 106.” *Rosciszewski v. Arete Assocs., Inc.*, 1 F.3d 225, 229 (4th Cir. 1993) (emphasis added). Indeed, the rights granted here fall within the exclusive rights of the scope of the Copyright Act.

A federal district court faced an analogous novel question, providing helpful guidance to this Court. In *Advance Magazine*, the defendant asserted the state law doctrine of adverse possession in seeking to divest the original copyright owner of his federal copyrights. *Advance Magazine Publishers, Inc v. Leach*, 466 F.Supp.2d 628, 633-34 (D. Md. 2006). The court found that applying the state law doctrine would result in transfer of the original owner’s rights, which “would be equivalent

to the rights set out in § 106 of the Copyright Act.” *Id.* at 635. Noting that Section 301(a) expressly preempts any state law granting equivalent rights, the state law doctrine is preempted by the Copyright Act and cannot divest the original copyright owner of its federal copyrights. *Id.*

Similarly, here, the district court, finding in favor of Appellees in state law tort claims, granted Holly Bone-Martin and Brian Martin’s federal copyrights, which are equivalent rights set out in the Copyright Act. As such, the relief granted for Appellees’ claims is preempted by the federal Copyright Act, rendering the Dallas County district court without jurisdiction, thus voiding the portions of the final judgment purporting to transfer copyright ownership, specifically paragraphs 14, 15, and 16. *See* C.R. at 338.

B. The Federal Copyright Act prohibits involuntary transfer of copyrights, which voids the district court’s judgment divesting Holly Bone-Martin and Brian Martin of their federal copyrights, and the district court’s finding that it may order the transfer because Holly and Brian have previously transferred the videos is erroneous.

Section 201(e) of the Copyright Act provides:

When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.

17 U.S.C. § 201(e). Congress amended this clause of the Copyright Act in 1978 to

explicitly indicate the prohibition on involuntary transfers did not apply to bankruptcy. *See* Act of November 6, 1978, Pub. L. 95-598, tit. III, § 313, 92 Stat. 2549, 2676 (adding a comma and the words "except as provided under title 11" to the last sentence of 17 U.S.C.A. § 201(e)). If Congress intended another exception, it would have explicitly written it into the statute.

The plain language of the statute indicates that a judgment against a copyright holder cannot be enforced by a judicial lien or transfer on a copyright or any of the exclusive rights in a copyright that had not been subject to a prior transfer by the creator. The legislative history of Section 201(e) explains that “[t]he purpose of this subsection is to reaffirm the basic principle that the United States copyright of an individual author shall be secured to that author, and cannot be taken away by any involuntary transfer.” H.R. Rep. 94–1476, at 123 (1976), reprinted in 1976 U.S.C.C.A.N. 5659, 5739.

In *Small Justice LLC*, the court examined the effect of an order purporting to transfer of copyright ownership to satisfy a default judgment under Section 201(e) of the Copyright Act. *Small Justice LLC v. Xcentric Ventures LLC*, 99 F.Supp.3d 190, 199 (D. Mass. 2015), *aff’d*, 873 F.3d 313 (1st Cir. 2017). The court concluded that the purported transfer of the copyright to satisfy the default judgment was ineffective and barred by section 201(e). *Id.* As such, the transferee in the order acquired no rights to the copyrights. *Id.*

The district court, here, concluded that Holly and Brian “have previously transferred the videos to YouTube and other entities for re-publication as the Court has already previously found.” 2 Supp C.R. at 67. This conclusion mischaracterizes the statute’s meaning of “transfer.” *See* 17 U.S.C. § 201(e).

Transfers of copyrights must comply with section 204(a) of the Copyright Act, providing:

A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

17 U.S.C. § 204(a). Unless the transfer is in a form that complies with the statute, the transfer is not valid. *Id.* The requirement that the transfer of a copyright be in writing “ensures that the creator of a work will not give away his copyright inadvertently.” *Effects Assocs., Inc. v. Cohen*, 908 F.2d 555, 556–57 (9th Cir. 1990).

Conversely, *Clinton* provides an example where a previous transfer of copyright permits involuntary transfers to satisfy a judgment under Section 201(e). *See Hendricks & Lewis PLLC v. Clinton*, 766 F.3d 991 (9th Cir. 2014). In *Clinton*, the Ninth Circuit held that Section 201(e) does not protect Clinton from the involuntary transfer of his copyrighted works to satisfy a judgment. *Id.* at 997. The court indicated there is no question that Clinton previously transferred his interest in the copyrights as part of a written settlement agreement arising from unrelated litigation. *Id.* at 998. The transferee subsequently agreed to transfer ownership of the

copyrights back to Clinton. *Id.* The Ninth Circuit determined that these voluntary, and statutorily valid transfers form a sufficient basis for Clinton invoking Section 201(e) protection. *Id.*

Here, no such transfers occurred, and the district court's legal conclusion that Holly and Brian previously transferred their copyrights has no merit and misapplies the plain language of the Copyright Act. As such, the purported transfers of copyright ownership in the final judgment had no legal effect, and paragraphs 14, 15, and 16 of the district court's final judgment must be vacated. *See* C.R. at 338.

C. Since the order granting Appellees the ownership of the copyrighted videos is void, the permanent injunction must be vacated.

The Copyright Act provides that owners of a federal copyright enjoy certain exclusive rights to do and to authorize the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work

publicly by means of a digital audio transmission.

17 U.S.C. § 106. The district court’s injunctive relief in paragraphs 18 through 22, prohibit the exact rights that the Copyright Act grants to the copyright owners. Therefore, upon vacating the portions of the judgment involuntarily transferring Holly Bone-Martin and Brian Martin’s federal copyrights, the permanent injunction must also be vacated accordingly.

III. The district court lacked subject matter jurisdiction to assign ownership of the YouTube channels because Holly and Brian never had ownership of the channels.

According to YouTube’s Terms of Service, using the platform does not grant ownership rights to the channels themselves. *See* YouTube Terms of Service, ¶ “Reservation” (“Using the Service does not give you ownership of or rights to any aspect of the Service, including user names or any other Content posted by others or YouTube”); ¶ “Rights you Grant” (“You retain ownership rights in your Content. However, we do require you to grant certain rights to YouTube and other users of the Service, as described below”).⁵

For instance, in *Song fi Inc.*, the district court acknowledged the YouTube Terms of Service, to which all users must agree to in order to post a video, authorize YouTube exclusive rights to remove videos, thus indicating lack of ownership of the channel itself. *Song Fi Inc. v. Google, Inc.*, 108 F. Supp. 3d 876, 884-85, 888 (N.D.

⁵ <https://www.youtube.com/static?template=terms> (last visited Mar. 20, 2023).

Cal. 2015).

Appellees conflate the ownership of the channels with the ownership of the copyrighted material. 6 R.R. at 28-29. The court does not have the power to grant ownership in something that Brian Martin and Holly Bone-Martin never had an ownership interest. *See Stanley v. Reef Securities, Inc.*, 314 S.W.3d 659, 669 (Tex. App. – Dallas 2010, no pet.) This renders paragraphs 13 and 14 of the district court's final judgment void.

IV. The evidence is legally insufficient to support the damages awarded to Appellees because Appellees failed to produce any evidence to support the damages verdict, therefore this Court should vacate the damages award and render a take nothing judgment.⁶

A. Appellees failed to produce any evidence regarding the value of the disputed videos as required under TUFTA.

Appellees produced no evidence proving the value of the videos in question, and thus their claims for fraudulent transfer as to the videos fail as a matter of law for legally insufficient evidence. Remedies under TUFTA for a fraudulent transfer include (1) avoidance of the transfer to the extent necessary to satisfy the creditor's claim; (2) an attachment or other provisional remedy; (3) other equitable remedies such as injunctions and appointment of receivers; or (4) execution on the asset

⁶ This Court may, on its own motion, suggest a remittitur if it agrees the evidence is insufficient to support the damages award but concludes there is sufficient evidence to support a lesser award. *Hernandez v. Sovereign Cherokee Nation Tejas*, 343 S.W.3d 162, 176 (Tex. App. – Dallas 2011, pet. denied).

transferred or its proceeds. *Qui Phuoc Ho v. MacArthur Ranch, LLC*, 395 S.W.3d 325, 334 (Tex. App. – Dallas 2013, no pet.) (citing TEX. BUS. & COM. CODE § 24.008). Under section 24.009(b), a plaintiff alternatively may recover judgment for the value of the asset transferred or the amount necessary to satisfy its claim, whichever is less. *Id.* (citing TEX. BUS. & COM. CODE § 24.009(b)).

Under the statute, a creditor may set aside a debtor's fraudulent transfer of assets or obtain a judgment for money damages up to the value of the assets transferred. *Id.* (citing TEX. BUS. & COM. CODE §§ 24.008, 24.009(b)–(c); *Chu v. Chong Hui Hong*, 249 S.W.3d 441, 446 (Tex. 2008)). When a plaintiff seeks the avoidance of a transfer under Section 24.008(a)(1), the value of transferred assets is an issue on which the plaintiff has the burden of proof. *See Flores v. Robinson Roofing & Const. Co.*, 161 S.W.3d 750, 756 (Tex. App. – Fort Worth 2005, pet. denied). When a plaintiff seeks a judgment to recover for the lesser of the value of the asset or the amount necessary to satisfy the claim, the plaintiff is required to prove two numbers: the value of the underlying judgment, and the value of the asset. *Qui Phuoc Ho v. MacArthur Ranch, LLC*, 395 S.W.3d 325, 334.⁷

Here, Appellees wholly failed to present any evidence of the value of the videos contained on the FuturisticHub, WildCraft Animations, Creamworks

⁷ See also *Enshikar v. Zaid*, No. 14-18-00933-CV, 2020 WL 6203348, at *7 (Tex. App. – Houston [14th Dist.] Oct. 22, 2020, no pet.) (“Since he is limited to recovering the lesser of the value of the transfer and the amount of his claim, he must show proof of both amounts”).

Animations, Top Trends, and BlockTastic YouTube channels; such evidence was required under TUFTA regardless of the remedy ultimately elected by Appellees. As the Texas Supreme Court observed, under TUFTA “both value and reasonable equivalency are determined as of the time of the transaction, not in hindsight,” and “the concept of reasonably equivalent value is a means of determining if the debtor received a fair exchange in the market place for the asset transferred.” *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 569–70 (Tex. 2016) (cleaned up). An asset’s fair market value is what a willing buyer would pay a willing seller, neither acting under any compulsion. *See Phillips v. Carlton Energy Grp., LLC*, 475 S.W.3d 265, 278 (Tex. 2015); *see also Bhatia v. Woodlands N. Houston Heart Ctr., PLLC*, 396 S.W.3d 658, 667 n. 11 (Tex. App. – Houston [14th Dist.] 2013, pet. denied) (*quoting* Black's Law Dictionary 743 (2d Pocket ed. 2001) (“Fair market value is ‘[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction’”). But absolutely no evidence was presented establishing the fair market value of the videos in question.⁸

It is crucial to remember that, under Appellees’ own “estimation,” the videos on the FuturisticHub channel alone earn \$1,080,000 a year. 7 R.R. at 110. As

⁸ In the ancillary proceedings that resulted in the underlying judgement, Plaintiffs allegedly argued that the video-content was worth “tens of million of dollars.” 7 R.R. at 156-57. No such evidence was put on here, and instead Plaintiffs sought to recover both a judgment for money damages *and* “legal and equitable ownership and title” in the incoming-producing videos, resulting in an extraordinary windfall and truly staggering miscarriage of justice.

Appellees concede, these are income producing videos that will continue to generate revenue into perpetuity. *See* 7 R.R. at 110-13, 126-28. Yet Appellees failed to produce any evidence on the fair market value for these assets. And the district court, in granting Appellees “legal and equitable ownership and title to all the videos,” assigned the videos ***no value***, allowing Appellees to gain ownership of the videos ***in addition to*** \$14,745,285.80 in monetary damages in satisfaction for \$18,600,000.00 judgement-debt.

B. Appellees failed to produce any evidence showing that they are entitled to monetary damages and ownership of the videos, and the district court improperly allowed a double recovery.

Appellees failed to produce legally sufficient evidence showing that they are entitled to a damages award of both \$14,745,285.80 and ownership of the videos, and the district court erred in entering an order that resulted in a double recovery.

An injured party is entitled to only one satisfaction for her injuries. *Byrd v. Woodruff*, 891 S.W.2d 689, 702 (Tex. App. – Dallas 1994, writ denied) (*citing Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 5 (Tex. 1991)). This rule, known as the one satisfaction rule, prevents a plaintiff from obtaining more than one recovery for the same injury. *Id.* (*citing Stewart Title*, 822 S.W.2d at 7). The one satisfaction rule applies in situations where the defendants commit the same act and where defendants commit technically differing acts that result in a single injury. *Id.* (*citing Stewart Title*, 822 S.W.2d at 7). “A finding of damages does not necessarily

mean that the plaintiff may recover them. The one satisfaction rule operates to determine a plaintiff's recoverable damages.” *Id.* (citing *Stewart Title*, 822 S.W.2d at 8-10).

In *Pyle*, a bank sued a defendant over an unpaid loan and received a judgment. *Pyle v. First Nat. Bank in Cameron*, No. 03-98-00008-CV, 2000 WL 422894, at *1 (Tex. App. – Austin Apr. 20, 2000, no pet.) (mem. op.). The defendant subsequently transferred the disputed property, and the bank filed a suit predicated on TUFTA. *Id.* A judgment was again entered in favor of the bank, and the defendant appealed, arguing in part that the judgment was fatally inconsistent because it both voided the real estate transfer and awarded the bank monetary relief. *Id.* at *1, *4.

On appeal, the defendant asserted that setting aside the allegedly fraudulent transfer was one form of relief potentially available to the bank under the fraudulent transfer statute, and that judgment against the transferee for the value of the asset transferred or the amount of the bank's claim, whichever is less, was a second form of relief potentially available to the bank, but only as an alternative to voiding the transfer. *Id.* at *4 (citing TEX. BUS. & COM. CODE §§ 24.008(a)(1), 24.009(b)). In ultimately rejecting the defendant's argument, the Third Court of Appeals stated:

One problem with [defendant's] argument is that he has misinterpreted the judgment. The judgment set aside the transfer with regard to the [b]ank's claim. It did not, however, attempt to award the land to the [b]ank; it simply returned the land to the status of an asset of [the defendant]. Merely setting aside the transfer did not satisfy the [b]ank's claim. The monetary relief awarded in this judgment was not an award

of the value of the asset transferred. The [b]ank brought this suit to enforce an existing judgment. The judgment in this second suit basically “incorporated” that first judgment, added the accrued interest, and awarded that monetary relief to the [b]ank. Accordingly, the judgment in this cause does not award a double recovery.

Id. at *5.

The present matter is readily distinguishable from *Pyle*. While in *Pyle*, the court of appeals found that the bank did not violate the “one satisfaction” rule because the judgement did not both provide monetary relief and “award the land to the [b]ank,” here the opposite is true. The district court awarded Appellees ***both*** \$14,745,285.80 in monetary damages ***and*** “legal and equitable ownership and title to all the videos.” 2 Supp. C.R. at 69, 75. As Appellees admit, these are income producing videos that will continue to generate income into perpetuity. *See* 7 R.R. at 110-13, 126-28. Indeed, by Appellees own “estimation,” the videos on the FuturisticHub channel alone earn \$1,080,000 a year. 7 R.R. at 110. The monetary award and granting of “legal and equitable ownership and title” to the videos results in an extraordinary windfall to Appellees in violation of the one satisfaction rule, rendering the damages award legally insufficient.

C. Appellees failed to produce any evidence showing they are entitled to “lost profits” from the video revenue.

Appellees appeared to argue that they were entitled to “lost profits” in the amount of \$7,005,000 as “economic damages...due to the wrongful taking of the videos” on the WildCraft channel and the FuturisticHub channel. 7. R.R. 127-28. It

is completely unclear under what theory of recovery Appellees believed they were entitled to such lost profits. And it's is equally unclear under what theory the district court awarded both Appellees this amount individually. 2 Supp. C.R. at 69. But even if Appellees were somehow entitled to these "lost profit" damages, they nevertheless wholly failed to present any evidence proving such damages.

Under Texas law, "to recover lost profits, by whatever method calculated, the amount of the loss must be shown by competent evidence with reasonable certainty." *Robertson v. Morin*, No. 03-08-00527-CV, 2009 WL 2902720, at *6 (Tex. App. – Austin Aug. 27, 2009, no pet.) (citing *Springs Window Fashions Div., Inc. v. Blind Maker, Inc.*, 184 S.W.3d 840, 884 (Tex. App. – Austin 2006, pet. granted, remanded by agr.); *Southwest Battery Corp. v. Owen*, 131 Tex. 423, 115 S.W.2d 1097, 1098 (Tex. 1938); see also *Texas Instruments, Inc. v. Teletron Energy Mgt., Inc.*, 877 S.W.2d 276, 279 (Tex. 1994) ("We have consistently reaffirmed the *Southwest Battery* decision")). Although recovery for lost profits does not require that the loss be susceptible to exact calculation, the injured party must do more than show it suffered "some" lost profits. *Examination Mgmt. Servs., Inc. v. Kersh Risk Mgmt., Inc.*, 367 S.W.3d 835, 842 (Tex. App. – Dallas 2012, no pet.) (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 498 (Tex. 2001)). Texas law requires supporting facts, figures, or data. *Id.* (citing *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 84-85 (Tex. 1992)). In particular, the injured party must prove the amount of the loss

by competent evidence with reasonable certainty. *Id.* (citing *Helena Chem. Co.*, 47 S.W.3d at 504; *Szczepanik v. First Southern Trust Co.*, 883 S.W.2d 648, 649 (Tex. 1994)). “Reasonable certainty” is not shown when the profits claimed to be lost are largely speculative. *Id.* (citing *Texas Instruments*, 877 S.W.2d at 279. This determination is fact-intensive, and opinions on lost profit estimates must, “at a minimum,” be based on objective facts, figures, or data from which the lost profits amount may be ascertained. *Id.* at 843 (citing *Helena Chem. Co.*, 47 S.W.3d at 504; *Szczepanik*, 883 S.W.2d at 649; *Holt Atherton*, 835 S.W.2d at 84)). While an owner may be competent to testify regarding lost profits, such testimony will not sustain a verdict in the presence of controverting evidence. *See generally Wiese v. Pro Am Servs., Inc.*, 317 S.W.3d 857, 862 (Tex. App. – Houston [14th Dist.] 2010, no pet. h.) (citing *Burns v. Rochon*, 190 S.W.3d 263, 270–71 (Tex. App. – Houston [1st Dist.] 2006, no pet.); *Burlington N. R.R. v. Gen. Projection Sys.*, No. 05–97–00425–CV, 2000 WL 1100874, at *8 (Tex. App. – Dallas Aug. 8, 2000, pet. denied). Lost-profit damages that are without any evidentiary foundation and are purely speculative and conclusory do not prove the existence or amounts of lost profits with reasonable certainty. *See generally Barton v. Resort Dev. Latin Am., Inc.*, 413 S.W.3d 232, 239 (Tex. App. – Dallas 2013, pet. denied) (citing *Szczepanik*, 883 S.W.2d at 650; *Total Clean, L.L.C. v. Cox Smith Matthews, Inc.*, 330 S.W.3d 657, 667 (Tex. App. – San Antonio 2010, pet. denied).

Here, Appellees wholly failed to prove the amount of any loss of revenue from the videos by competent evidence with reasonable certainty. In an attempt to establish a loss of revenue from the videos on the FuturisticHub channel, Brandon Keating testified that he took the “median” of Holly’s estimate of FuturisticHub’s revenue per month and multiplied it by twelve months, and then multiplied that by six years to cover April 15, 2016 through April 7, 2022. 7 R.R. at 110-11, 126-27. Keating confirmed that he arrived at the “median” of \$90,000 based on Holly’s alleged testimony that “since April 15, 2016 to the present, [the] channel was earning approximately \$80,000 to \$100,000 per month.” *See* 7 R.R. at 110. However, it is indisputable that Holly never made such an affirmative statement. Indeed, the basis for the supposed \$80,000 - \$100,000 range did not originate from objective facts, figures, or data from a financial account controlled by any party, but “a Google document” introduced by Appellees that purportedly showed “that \$290,000 [was] deposited into the Court’s registry,” introduced by Appellees. 6 R.R. at 21-22. Holly repeatedly testified that she had no knowledge regarding the contents of this “Google document.” 6 R.R. at 21-22. In fact, the only evidence that Holly gave conclusively established that the FuturisticHub content never made anything close to \$80,000 to \$100,000 per month, and certainly not over a period of six years. *See* 5 R.R. at 123-25.

Notably, if Appellees obtained the YouTube channels at the time of the 2016

judgment, they never would have produced the amount of revenue because the revenue is directly tied to the amount of views, which is directly tied to the animation content, which is created by the Appellants. In other words, how can there be “lost profits” when they would not have profited at all had the channels been in their possession?

Appellees neither pleaded nor urged at trial a legal basis for obtaining “lost profit” damages under the fraudulent transfer scheme; but even if they could recover these damages, Appellees failed to produce any competent evidence demonstrating lost profits with reasonable certainty, and thus their claim for damages fails as a matter of law. Accordingly, this Court should vacate the damages award and enter a take nothing judgment.

CONCLUSION

For the foregoing reasons, Appellants, Holly Bone-Martin and Brian Martin, respectfully request the Court vacate the trial court’s final judgment and render judgment in its favor. Alternatively, Appellants requests the Court vacate the trial court’s order on damages and render a take nothing judgment in their favor.

March 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2023, a true and correct copy of Appellant's Brief was e-served to:

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of TEX. R. APP. P. 9.4(i)(2) because this brief contains 10,075 words, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1). This brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because this brief has been prepared in a conventional typeface using Microsoft Word 365 in Times New Roman font size 14.

/s/ Susan J. Clouthier

Susan J. Clouthier

APPENDIX

Judgment and Permanent Injunction.....	2a
Findings of Fact and Conclusions of Law	10a
17 U.S.C. § 102.....	42a
17 U.S.C. § 106.....	43a
17 U.S.C. § 201	44a
17 U.S.C. § 204.....	45a
17 U.S.C. § 301	46a
28 U.S.C. § 1338.....	48a
Tex. Bus. & Com. Code § 24.002.....	49a
Tex. Bus. & Com. Code § 24.005.....	53a
Tex. Bus. & Com. Code § 24.008.....	55a
Tex. Bus. & Com. Code § 24.009	56a
Tex. Bus. & Com. Code § 24.010.....	58a
U.S. Const. Art. 6, cl. 2.....	60a
U.S. Const. Art. I, § 8, cl. 8.....	61a

CAUSE NO. DC-20-09893

DAVID TYLER MOSS, et al.

Plaintiffs,

vs.

HOLLY BONE-MARTIN, et al.,

Defendants.

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IN THE DISTRICT COURT

68TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

JUDGMENT AND PERMANENT INJUNCTION

At the trial on this cause which began on April 5, 2022, Mr. Craig A. Capua, Mr. Royce West and Mr. Dan Wyde, counsel for Plaintiffs/Judgment Creditors which are Fidelissimus, LLC and David Tyler Moss (collectively "Judgment Creditors") appeared and announced that they were ready for trial. Mr. Gene DuBose, who is counsel for Defendant Holly Susan Bone-Martin ("Defendant Holly Bone") appeared and announced that she was ready for trial. Defendant Brian Dennis Martin ("Defendant Brian Martin") appeared Pro Se and announced ready for trial. Defendant Carolyn Martin failed to appear at trial. A jury trial was requested by Defendant Holly Bone, but she subsequently agreed to waive a jury trial. Judgment Creditors also agreed to waive a jury trial. The Court decided all the fact questions in this case.

The Court has considered the pleadings and official records on file in this cause, the evidence, testimony, and the arguments of counsel and is of the opinion that a judgment and a permanent injunction shall be rendered for Judgment Creditors against Defendants Holly Bone, Brian Martin, and Carolyn Martin on the causes of action of Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction.

It is **HEREBY ORDERED, ADJUDGED, DECLARED, AND DECREED** that:

1. Judgment Creditor Fidelissimus, LLC shall recover and have a judgment entered against Defendant Brian Martin on Fidelissimus, LLC's claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Judgment Creditor Fidelissimus, LLC shall recover from Defendant Brian Martin the amount of \$4,563,980.04 (USD);

2. Judgment Creditor Fidelissimus, LLC shall recover and have a judgment entered against Defendant Holly Bone on Fidelissimus, LLC's claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Judgment Creditor Fidelissimus, LLC shall recover from Defendant Holly Bone the amount of \$2,808,662.87 (USD);

3. Judgment Creditor Fidelissimus, LLC shall recover and have a judgment entered against Defendant Carolyn Martin on Fidelissimus, LLC's claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Judgment Creditor Fidelissimus, LLC shall recover from Defendant Carolyn Martin the amount of \$125,000.00 (USD);

4. Judgment Creditor David Tyler Moss shall recover and have a judgment entered against Defendant Brian Martin on David Tyler Moss' claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Judgment Creditor

David Tyler Moss shall recover from Defendant Brian Martin the amount of \$4,563,980.04 (USD);

5. Judgment Creditor David Tyler Moss shall recover and have a judgment entered against Defendant Holly Bone on David Tyler Moss' claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Judgment Creditor David Tyler Moss shall recover from Defendant Holly Bone the amount of \$2,808,662.87 (USD);

6. Judgment Creditor David Tyler Moss shall recover and have a judgment entered against Defendant Carolyn Martin on David Tyler Moss' claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Judgment Creditor David Tyler Moss shall recover from Defendant Carolyn Martin the amount of \$125,000.00 (USD);

7. The Court further enters judgment against Defendant Brian Martin on Judgment Creditor Fidelissimus, LLC's claim for exemplary damages, and in view of the statutory cap imposed by Chapter 41 of the Texas Civil Practice & Remedies Code, the Court hereby orders that Judgment Creditor Fidelissimus, LLC shall recover exemplary damages from Defendant Brian Martin in the amount of \$9,127,960.08 (USD);

8. The Court further enters judgment against Defendant Holly Bone on Judgment Creditor Fidelissimus, LLC's claim for exemplary damages, and in view of the statutory cap imposed by Chapter 41 of the Texas Civil Practice & Remedies Code, the

Court hereby orders that Judgment Creditor Fidelissimus, LLC shall recover exemplary damages from Defendant Holly Bone in the amount of \$2,808,662.87 (USD);

9. The Court further enters judgment against Defendant Carolyn Martin on Judgment Creditor Fidelissimus, LLC's claim for exemplary damages, and in view of the statutory cap imposed by Chapter 41 of the Texas Civil Practice & Remedies Code, the Court hereby orders that Judgment Creditor Fidelissimus, LLC shall recover exemplary damages from Defendant Carolyn Martin in the amount of \$125,000.00 (USD);

10. The Court further enters judgment against Defendant Brian Martin on Judgment Creditor David Tyler Moss' claim for exemplary damages, and in view of the statutory cap imposed by Chapter 41 of the Texas Civil Practice & Remedies Code, the Court hereby orders that Judgment Creditor David Tyler Moss shall recover exemplary damages from Defendant Brian Martin in the amount of \$9,127,960.08 (USD);

11. The Court further enters judgment against Defendant Holly Bone on Judgment Creditor David Tyler Moss' claim for exemplary damages, and in view of the statutory cap imposed by Chapter 41 of the Texas Civil Practice & Remedies Code, the Court hereby orders that Judgment Creditor David Tyler Moss shall recover exemplary damages from Defendant Holly Bone in the amount of \$2,808,662.87 (USD); and

12. The Court further enters judgment against Defendant Carolyn Martin on Judgment Creditor David Tyler Moss' claim for exemplary damages, and in view of the statutory cap imposed by Chapter 41 of the Texas Civil Practice & Remedies Code, the Court hereby orders that Judgment Creditor David Tyler Moss shall recover exemplary damages from Defendant Carolyn Martin in the amount of \$125,000.00 (USD).

13. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels shall immediately be transferred to Judgment Creditors which now have legal and equitable ownership and title to these channels.

14. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that all of the videos which are contained on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels shall immediately be transferred in equal shares to Judgment Creditors which now have legal and equitable ownership and title to all the videos.

15. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Judgment Creditors are the legal and equitable owners of all the videos which are contained on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

16. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that the content management system, content id, and Google AdSense accounts for all of the videos which are contained on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels shall immediately be transferred in equal shares to Judgment Creditors which now have legal and equitable ownership and title to all these videos.

17. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Defendant Holly Bone's purported transfer of all the videos and assets from Defendant Holly Bone and/or Wildcraft Animations to Wild MC Ltd. is declared **VOID** because it was a fraudulent transfer.

18. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Defendants Brian Martin, Holly Bone, ~~Carolyn Martin~~, and their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from removing any videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

19. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Defendants Brian Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any copyright strikes against any videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

20. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Defendants Brian Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any BOT attacks in an attempt to remove videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

21. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Defendants Brian Martin, Holly Bone, Carolyn Martin, their officers, agents,

servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any artificial BOT views in an attempt to remove videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

22. It is **FURTHER ORDERED, ADJUDGED, DECLARED, AND DECREED** that Defendants Brian Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any content id claims against the videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

23. Plaintiffs/Judgment Creditors are entitled to attorney's fees in the amount of \$15,000.00 if Defendants Brian Martin, Holly Bone, and/or Carolyn Martin file a Motion for New Trial, plus the amount of \$35,000.00 if an appeal of this cause is made to the Court of Appeals, plus the amount of \$25,000.00 in the event either party files a Petition for Review in the Supreme Court of Texas, plus the amount of \$20,000.00 in the event the Petition for Review is granted, plus the amount of \$15,000.00 in the event that either party seeks rehearing in the Texas Supreme Court, and all post-trial attorney's fees awarded in this paragraph are contingent on Plaintiffs/Judgment Creditors prevailing.

24. Judgment Creditors shall receive \$1,264.00 for costs of court.

25. Judgment Creditors shall receive interest at the rate of 5% per year on the total judgment from the date of judgment until paid.

It is **FURTHER ORDERED** that Plaintiffs/Judgment Creditors shall have all writs of execution and other process necessary to enforce and collect this judgment. All relief requested in this case and not expressly granted is denied.

It is **FURTHER ORDERED** that Plaintiffs/Judgment Creditors may levy execution on the assets transferred or their proceeds pursuant to Section 24.008 of the Texas Uniform Fraudulent Transfer Act.

The clerk shall forthwith, when so requested by Plaintiffs/Judgment Creditors, issue a writ of injunction in conformity with the law and the terms of this judgment.

This judgment finally disposes of all parties and all claims and is appealable.

SIGNED on April 12, 2022.



JUDGE PRESIDING

CAUSE NO. DC-20-09893

DAVID TYLER MOSS, et al.,
Plaintiffs,

vs.

HOLLY BONE-MARTIN, et al.,
Defendants.

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IN THE DISTRICT COURT

68TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following findings of fact (FF) and conclusions of law (CL):

I.

FINDINGS OF FACT

1.01 This case came before the Court as a bench trial beginning on Tuesday, April 5, 2022. Although a jury had been previously requested, all parties waived the right to a jury on the record. After considering the pleadings, the evidence, the testimony and the arguments from counsel, the Court rendered its decision to issue Judgment and Permanent Injunction in favor of Plaintiffs on April 12, 2022.

1.02 On April 15, 2016, an \$18,600,000.00 Judgment was rendered in Cause No.3:14-CV-03088-BF styled "*David Tyler Moss and Brandon Keating vs. Marko Princip, Brian D. Martin, et. al.*" in the U.S. District Court for the Northern District of Texas (Dallas Division) in favor of Judgment Creditors and against Marko Princip and Brian D. Martin (sometimes referred to as "Judgment Debtors") individually and doing business as several entities. Brian D. Martin testified in federal court that the FuturisticHub YouTube channel was his animation channel.

1. On or about June 7, 2016, Brian D. Martin and Chrissie Martin filed a Certificate of Formation for FuturisticHub, LLC with the Secretary of State of the State of Texas.

2. On or about February 17, 2017, Brian D. Martin executed a Declaration which was filed in federal court which stated that, “[I] am still sometimes referred to as “FuturisticHub” online by people simply because I animate and voice the characters for the children who watch the content. I also animate for other Minecraft channels.” He further stated that his wife at the time, who was Chrissie Martin, created the FuturisticHub channel in the year 2012.

3. The Judgment was affirmed by the United States Fifth Circuit Court of Appeals on January 16, 2019.

4. The Judgment was for claims of fraud, conspiracy, and other claims.

5. The Judgment remains fully unpaid and unsatisfied.

6. On or about March 18, 2019, Brian D. Martin and Chrissie Martin executed a Divorce Decree. In the Decree, Brian D. Martin was awarded as his sole and separate property, “[A]ll duties, rights, title, interest copyrights, patents, intellectual property, taxes and earnings past, present and future to his YouTube Channel “FuturisticHub” business.”

7. In April, 2019, Holly Bone allegedly entered into a Talent Agreement with Freedom! Family Limited, a Hong Kong Company. The CEO of this Multi-Channel Network (“MCN”) is George Vanous. Holly Bone allegedly agreed to allow Freedom! Family Limited to represent her regarding the monetization of the FuturisticHub YouTube channel and the CreamWorks Animations YouTube channel. The Talent Agreement referenced herein did not contain signatures. It is a click-thru agreement. The Talent clicks the “I agree” button on the agreement during the sign-up process. The Court finds this is no evidence of ownership by Holly Bone of any of the disputed videos and channels.

8. On or about June 4, 2019, Holly Bone and Brian D. Martin married in Collin County, Texas.

9. On or about January 27, 2020, Carolyn Martin, who is Brian D. Martin's mother, wired the total amount of approximately Three Hundred Forty Thousand and No/100 Dollars (\$340,000.00) to Holly Bone so she could purchase a house located at 12452 Cajun Drive, Frisco, Texas 75035. Carolyn Martin received the money from a Swiss bank account controlled by Brian D. Martin. The only name on the deed to the Frisco house was Holly Bone. The deed did not list Brian D. Martin as an owner, even though his mother wired the money to Holly Bone so she could purchase it.

10. On or about August 7, 2020, Holly Bone filed an Original Petition for Divorce against Brian D. Martin in Collin County, Texas.

11. In response to collection attempts, on August 8, 2020, Brian D. Martin wrote to Judgment Creditor Brandon Keating on a Skype messaging program, "Here's the offer. \$500k upfront. And we walk. ... I am aware of his bullsh*t papers [lightly redacted] ... He [attorney Dan Wyde] will get nothing from me as I have nothing to trace.", which is contained in the Affidavit of Brandon Keating and screenshot of Skype messages.

12. On or about August 17, 2020, Holly Bone filed a Notice of Nonsuit of the Divorce in Collin County, Texas. On or about August 21, 2020, Holly Bone and Brian D. Martin executed a Post-Marital Agreement. The Post-Marital Agreement did not reference Brian D. Martin's ownership of the videos which are contained on the FuturisticHub YouTube channel. The videos and the FuturisticHub YouTube channel remained the separate property of Brian D. Martin.

13. This Court ordered on October 15, 2020, that a Temporary Injunction be

issued which restrained Brian D. Martin and Holly Bone from withdrawing, receiving, disbursing, transferring, or otherwise disposing of any funds generated by the following YouTube Channels and their associated Google AdSense accounts:

- a. FuturisticHub
<https://www.youtube.com/user/FuturisticHub>
- b. CreamWorks Animations
<https://www.youtube.com/channel/UC5gHYu0VKehW-N6VaaQIHMw>
- c. TopTrends
<https://www.youtube.com/channel/UCY3J7ceowh1kNrx283xtuYw>
- d. BlockTastic
<https://www.youtube.com/channel/UCDH7rvHSmgdJI1w8PwXgK0Q>

14. Brian D. Martin and Holly Bone were also restrained and enjoined from requesting transfer, effecting transfer, assisting in transfer, or taking any action whatsoever to transfer ownership or control of the FuturisticHub, CreamWorks Animations, TopTrends, and BlockTastic YouTube channels.

15. Brian D. Martin and Holly Bone were also restrained and enjoined from selling, transferring, issuing a deed, or otherwise encumbering or changing the title to the single-family home with the residential address 12452 Cajun Drive, Frisco, Texas 75035, unless said transfer is to Judgment Creditors or their attorneys.

16. On or about November 27, 2020, Holly Bone conveyed the real property located at 12452 Cajun Drive, Frisco, Texas 75035, to JMC Property Group LLC, which was a violation of the Temporary Injunction.

17. On or about June 29, 2018, to December 11, 2020, Brian D. Martin created approximately eighty (80) Minecraft videos which were uploaded to the FuturisticHub YouTube channel.

18. On or about December 14-22, 2020, Brian D. Martin and/or Holly Bone

redirected approximately 80 videos which were uploaded to the FuturisticHub YouTube channel, to the WildCraft YouTube channel in an attempt to prevent Judgment Creditors from receiving money from the monetization of the videos. The redirection/uploading of the approximate eighty (80) videos by Brian D. Martin and/or Holly Bone was a violation of the Temporary Injunction dated October 15, 2020. The Wildcraft channel “looks and feels” identical to the Futuristichub channel.

19. In December, 2020, Google LLC was served with a Writ of Garnishment at the request of Judgment Creditors. The purpose of the Garnishment was to execute on all the monetization revenue from the videos which were on the FuturisticHub channel. The Garnishment caused Google on or about February 17, 2021, and March 1, 2021, to deposit into the registry of the Court the total amount of Two Hundred Ninety Thousand Nine Hundred Forty-Seven and 46/100 Dollars (\$290,947.46). Brian D. Martin testified at trial that he never owned the videos on the FuturisticHub channel. The court did not find this testimony credible given the extensive evidence to the contrary. On or about May 4, 2021, the Court executed an Order which stated that:

- a. Brian D. Martin is found to be in contempt of Court;
- b. Brian D. Martin failed to produce financial information fully and completely;
- c. Brian D. Martin’s pleadings be stricken in this case for his failure to comply with all of the Court’s Orders; and
- d. Judgment Creditors are entitled to a Default Judgment as to liability against Brian D. Martin.

22. The Court finds that Brian D. Martin has always owned the content on the FuturisticHub channel. He attempted to disavow ownership after his marriage to Holly Bone in 2019 when Judgment Creditors were attempting to collect on their Judgment.

Now, Brian D. Martin stated that he never owned content (*i.e.* videos) on the FuturisticHub channel to prevent the funds in Court's registry to be paid to Judgment Creditors.

23. In December, 2020, Brian D. Martin and/or Holly Bone redirected/uploaded the videos from the FuturisticHub channel to the WildCraft YouTube channel. Brian D. Martin does not want to share monetization revenue with the Judgment Creditors; therefore, he and/or Holly Bone took the content which was on the FuturisticHub channel and redirected it to the WildCraft channel. Although Holly Bone on the surface appears to be the alleged owner of the WildCraft channel, the videos on the WildCraft channel are the same or very similar to the videos on the FuturisticHub channel. Holly Bone's alleged ownership of the videos on the WildCraft channel is another example in this case of a fraudulent transfer by Brian D. Martin with the actual intent to hinder, delay, or defraud Judgment Creditors pursuant to Tex. Bus. & Com. Code §24.005. The funds associated with the WildCraft channel should have been used to benefit Judgment Creditors. These funds are non-exempt personal property which are subject to execution.

24. On or about December 14, 2020, the WildCraft channel deleted and/or removed every video from the channel and then rebranded the channel's banner with the same banner used on the FuturisticHub channel, but with the name "WildCraft." On or about December 17, 2020, the National Archives took a snapshot of the empty WildCraft channel. Subsequently, the WildCraft channel began migrating approximately eighty (80) videos directly from the FuturisticHub channel.

25. On or about December 21, 2020, Google locked all parties out of the FuturisticHub channel, but continued to monetize and draw revenue from the videos to the present. Later in the same evening, every video on the FuturisticHub channel is "copyright

struck” and removed in most countries. A copyright strike occurs when the owner of the content files a copyright infringement claim with Google/YouTube by claiming that the content was unlawfully taken from the owner. The videos subject to the copyright strike are then removed from the channel until an investigation occurs. Google is holding approximately Four Hundred Sixty-Five Thousand and No/100 Dollars (\$465,000.00) of monetization revenue from the FuturisticHub channel which has accrued from January, 2021, to the present.

26. Freedom! Family Limited filed the copyright strike takedowns under the content owner name “Moss Vs Martin-Do Not Edit-Legal Co” at Brian D. Martin and/or Holly Bone’s direction. When a subscriber of FuturisticHub noticed the takedowns and tweeted about it, a twitter account named @WildCrafYTC responded, “Im still here, Just rebranding the content.”

27. On or about December 23, 2020, the WildCraft channel placed all videos back on the channel which is now rebranded. The Wildcraft channel is now designed to look identical to the FuturisticHub channel. ~~The National Archives took snapshots of the WildCraft channel and FuturisticHub channel about the same time.~~

28. On or about January 14, 2021, Mr. Brandon Keating, who is one of the Judgment Creditors, attempted to visit the FuturisticHub YouTube channel by typing www.youtube.com/futuristichub. This link is assigned as the shortened version of the custom URL that prevents the audience from having to type:

<https://www.youtube.com/channel/UC-L9KNntvOrGkFRmD9SE4fw> in order to reach the FuturisticHub channel.

29. After Mr. Keating typed the shortened custom URL, he was redirected to a

new YouTube channel with the URL of:

https://www.youtube.com/channel/UCY15ZY_idpibqIBUgoMLOOw. The new channel which Mr. Keating was directed to was created on December 14, 2020. The channel had one single video uploaded entitled "NEW OFFICIAL MESSAGE FROM FUTURISTICHUB." The video has a voice which appeared to be Brian D. Martin's. He announced that the WildCraft YouTube channel is the secret new home for FuturisticHub. The video instructs users to subscribe to the following URL: https://www.youtube.com/channel/UCUM9kh5pOIRjuVz4yL6zNg?sub_confirmation=1 which takes the users to the WildCraft YouTube channel and forces them to confirm their subscription.

30. On or about January 14, 2021, Brian D. Martin began redirecting subscribers from the FuturisticHub channel to a channel created in December, 2020, called "FuturisticHubs." If a person typed www.youtube.com/futuristichub with the intent to be directed to the FuturisticHub channel, they would be automatically redirected to the FuturisticHubs channel. Once you arrive at the FuturisticHubs channel, the feature video begins automatically playing on the screen. This video's URL is:

https://www.youtube.com/watch?v=Diko7b_4E64.

31. The video on the FuturisticHubs channel featured Brian D. Martin's voice telling viewers, "We're moving to a new home, come join us at WildCraft for the new Piggybook 2, they're not going to be on this channel, they are going to be exclusively on WildCraft." Then, the video instructs viewers to click a link that redirects them to the WildCraft channel and gives them a pop-up to subscribe. The WildCraft channel can be seen in the comments of the video reassuring viewers the WildCraft channel would be

exactly the same as the FuturisticHub channel. The comments are, "here's the new secret channel," "I am FH," and "Don't worry, it's the same here!" The goal was to redirect viewers from the FuturisticHub channel to the WildCraft channel, so the revenue generated is not subject to the Garnishment served on Google.

32. On or about January 15, 2021, the WildCraft channel began uploading brand new videos, which were created by Brian D. Martin, that should have been uploaded to the FuturisticHub channel.

33. Social Blade, which is a YouTube certified analytics company, contained a report regarding the WildCraft channel's subscribers, total views, and earnings. This Social Blade report clearly showed that the WildCraft channel had a small amount of subscribers, views, and earnings until January, 2021. Then, all the videos intended for the FuturisticHub channel were redirected to the WildCraft channel which caused all the subscriber, total views, and earnings numbers to increase exponentially.

34. The court finds that Brian D. Martin did not want the revenue from the FuturisticHub channel to continue to be placed into the registry of the Court. Brian D. Martin developed a scheme by placing his videos on the WildCraft channel which was not contained in the first Temporary Injunction Order.

35. The fraudulent transfer scheme of Brian D. Martin and Holly Bone did not end here. On or about September 23, 2020, Holly Bone created Wild MC Limited, which is a United Kingdom company. Ms. Bone is the sole officer, director, and shareholder of this company. The purpose of this new company was to transfer the videos/WildCraft channel from Holly Bone's name to Wild MC Limited. All the monetization revenue of the videos on the WildCraft channel was received by Google and then paid to Elite Alliance,

which was a multi-channel network for Wild MC Limited. Then, the revenue is paid to Wild MC Limited. This is another attempt by Brian D. Martin and Holly Bone to transfer the videos and the revenue to another entity in the event a judgment is awarded against Holly Bone.

36. The Judgment dated April 15, 2016, found that Brian D. Martin was in partnership with Plaintiffs regarding the VideoGames YouTube channel. About two months after the Judgment was entered, Brian D. Martin formed an entity called FuturisticHub, LLC with the Secretary of State on or about June 7, 2016, although the FuturisticHub YouTube channel was already created by Brian D. Martin in 2012. Brian D. Martin continued posting videos, gained a significant following, and began earning significant revenue.

37. The animation style, voice acting, and subject matter of the videos posted on the FuturisticHub YouTube channel were the same or substantially similar to the videos which were later fraudulently redirected to the WildCraft channel on or about December, 2020.

38. ~~Plaintiffs are in possession of evidence that indicated~~ Brian D. Martin received substantial payments of \$80,502.49 and \$102,960.21 in late 2018 and early 2019, respectively, from Google LLC. This is non-exempt personal property that is subject to execution. The current disposition of these and other payments to Brian D. Martin from Google LLC is unknown.

39. Brian D. Martin fraudulently transferred the videos from the FuturisticHub YouTube channel to Holly Bone, and Brian D. Martin and/or Holly Bone created the WildCraft YouTube channel and uploaded the videos on this channel. Holly Bone later

transferred the videos/Wildcraft channel to Wild MC Limited, in an attempt to evade the collection efforts by Plaintiffs.

40. After the Judgment was rendered in the underlying Federal Court case, records obtained via subpoena to Paypal, Inc. showed that \$710,863.80 was transferred to Brian D. Martin and FuturisticHub. These funds were fraudulently diverted from Plaintiffs.

41. Brian D. Martin used his mother, Carolyn M. Martin and Holly Bone in an attempt to evade Judgment Creditors, to purchase a home at 12452 Cajun Drive, Frisco, Texas 75035, that he resided in as his permanent residence but he did not have title or a Warranty Deed.

42. On or around January 16, 2020, Defendant Carolyn M. Martin wired Three Thousand Four Hundred and No/100 Dollars (\$3,400.00) from JP Morgan Chase Bank to Republic Title of Texas from her Chase Bank account ending in 8920. The payor on the wire is Defendant Holly Bone. The description of the funds is "Earnest Money Deposit." The "Originator to Beneficiary" is "Address: 12452 Cajun Drive, Frisco, TX 75035."

43. On January 27, 2020, Defendant Carolyn M. Martin wired Three Hundred Thirty-Six Thousand Five Hundred Eighty-Four and 98/100 Dollars (\$336,584.98) to Republic Title from the same Chase Bank account ending in 8920. The Payor was Holly Bone and the description of the funds was "Funds for Closing."

44. Defendant Holly Bone, a 20-year-old at the time of the house purchase, claimed she had approximately **two conversations** with Defendant Carolyn Martin prior to Carolyn Martin "gifting" the residence to Holly Bone only. The court does not find

persuasive the testimony that even though Holly Bone and Brian D. Martin were married at the time, Carolyn Martin deeded the property to Holly Bone ONLY.

45. Brian D. Martin provided access to \$339,984.98 (\$3,400 earnest money plus \$336,584.98 purchase money) to his mother, Carolyn M. Martin. Defendant Carolyn M. Martin then initiated two wire transfers for Holly Bone to purchase 12452 Cajun Drive, Frisco, TX 75035.

46. Holly Bone fraudulently purchased this property as a "straw man" for the benefit of Brian D. Martin.

47. Carolyn M. Martin and Holly Bone knew that Brian D. Martin was the subject of a valid Judgment against him, but proceeded to make this fraudulent transfer with full intent and knowledge of the fraud they were perpetrating.

48. Holly Bone held the property located at 12452 Cajun Drive, Frisco, TX 75035, in trust for the benefit of Brian D. Martin until she sold it on or about November 27, 2020, for the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

49. On or about August 21, 2020, Holly Bone and Brian D. Martin executed a Post-Marital Agreement ("Agreement"). The purpose of the Agreement was to defraud Plaintiffs from collecting on their Judgment. The Agreement stated that following the partition of the property, no community estate will arise during the remainder of their marriage. Further, the Agreement also stated that the following is the separate property of Holly Bone:

- a. Any property that may come to her by gift during the parties' marriage (i.e. the property in Frisco which was paid for by Carolyn Martin in January, 2020, which originated from Brian Martin's Suisse bank account; and
- b. Any and all interest in any businesses operated or owned by Holly Martin (i.e. the videos on the FuturisticHub channel and WildCraft channel).

Brian D. Martin and Holly Bone believed that by creating this Agreement, all of Brian D. Martin's property became Holly Bone's separate property to the detriment of Plaintiffs. Texas law and statutes do not recognize this type of transfer as legal. Brian D. Martin continually represented until June, 2019, that he was the owner and animator of the videos on the FuturisticHub channel. When he realized that Plaintiffs would start seizing his assets, he had to develop a new scheme by convincing Holly Bone to falsely claim that she created the FuturisticHub channel and the videos in 2012.

50. The transfers made by Brian D. Martin, Holly Bone, and Carolyn Martin were made with intent to defraud Plaintiffs. Each of the transfers of funds were made by Brian D. Martin, Holly Bone, and/or Carolyn Martin, and the funds associated with these transfers should have been used to benefit Plaintiffs. These funds are non-exempt personal property that is properly subject to execution.

51. The Court finds Brian D. Martin transferred the videos currently displayed on the WildCraft channel from the FuturisticHub channel. The purpose of this fraudulent transfer was to prevent Plaintiffs from freezing the Google AdSense revenue generated by the transferred videos and having those funds deposited into the registry of the Court, as other FuturisticHub revenues had been so ordered and deposited.

52. The Court finds many of the indicia of fraud are present with these transfers. The transfers were to insiders. The transfers were concealed using the names of individuals other than Brian D. Martin. The transfers occurred during and after the underlying federal court judgment had been entered. The property transferred was and is a major asset of Brian D. Martin. Brian D. Martin and Holly Bone did not receive reasonably equivalent value for the transfers. Brian D. Martin claims to be insolvent. Many

of the transfers occurred shortly after the Judgment was entered. The most valuable asset, the FuturisticHub YouTube channel and the videos on this channel, was effectively shut down and the videos were transferred to the WildCraft YouTube channel, by an insider. *C.f.*, Tex. Bus. & Com. Code §24.005(b).

53. All of the transferred assets are personal property which is non-exempt and subject to execution, levy or garnishment by Plaintiffs.

54. By creating the new WildCraft YouTube channel and uploading the videos on it from FuturisticHub, it was a duplication of the same content which was already on the FuturisticHub YouTube channel. Brian D. Martin and Holly Bone made a fraudulent transfer by uploading the videos from FuturisticHub to the WildCraft channel since they knew that the WildCraft channel was not part of the Temporary Injunction Order. The videos from FuturisticHub were uploaded to WildCraft shortly before the funds from the FuturisticHub channel were garnished by Plaintiffs. This course of action was done with intent to defraud Plaintiffs. Brian D. Martin continued to create videos and upload them on the WildCraft channel but claimed that Holly Bone created them. Then, Holly Bone allegedly created Wild MC Limited in an attempt to transfer the videos/WildCraft Channel to this company in an attempt to defraud Plaintiffs.

55. Brian D. Martin executed the Post-Marital Agreement with Holly Bone with actual intent to hinder, delay or defraud Plaintiffs pursuant to Tex. Bus. & Com. Code §24.005. The Agreement is replete with the badges of fraud, including:

- a. Brian D. Martin transferred the assets to an insider, his wife;
- b. Brian D. Martin made the transfers after he had been sued and the Judgment was rendered against him;

- c. Brian D. Martin transferred substantially all of his assets, including the right to future income from the assets;
- d. Holly Bone provided no consideration for the transfers of the assets;
- e. Brian D. Martin maintained possession and control of the assets after the transfer.

56. Plaintiffs are entitled to avoidance of the Post-Marital Agreement to satisfy their Judgment pursuant to Tex. Bus. & Com. Code §24.001, *et seq.* and any other relief the circumstances may otherwise warrant, including the recovery of attorney's fees.

57. Pursuant to Tex. Fam. Code §4.106, the Post-Marital Agreement by Brian D. Martin and Holly Bone, a purported partition or exchange agreements under the Texas Family Code, is void with respect to the rights of Plaintiffs, who were pre-existing creditors. Brian D. Martin and Holly Bone intended to defraud Plaintiffs by entering into this Post-Marital Agreement.

58. This is an action which combines Texas Uniform Fraudulent Transfer Act claims with claims to void alleged "transfers" of assets (i.e., FuturisticHub channel and the videos on this channel) between spouses via the Post-Marital Agreement under Tex. Fam. Code §4.106(a). The transfer/designation of assets in the Post-Marital Agreement were void.

59. The Court finds that all of the videos contained in the FuturisticHub and WildCraft channels are the separate property of Brian D. Martin, and/or the community property of Brian D. Martin and Holly Bone. Under either designation of this property, it is subject to execution to satisfy the Judgment.

60. The purchase of the property located at 12452 Cajun Drive, Frisco, Texas

75035, in the name of Holly Bone when Brian D. Martin retained possession or control of the home was made with intent to defraud Plaintiffs.

61. Brian D. Martin and Holly Bone, jointly and severally, knowingly and with intent to defraud, took several overt actions in furtherance of the conspiracy to shield Brian D. Martin from collection of the underlying Judgment. These actions include, but are not limited to:

- a. Creating a new YouTube channel (i.e., WildCraft channel) with substantially the same content as the FuturisticHub channel after the Judgment was rendered.
- b. Carolyn Martin and Holly Bone worked together with Brian D. Martin to purchase a home through a "straw man" purchaser.

62. This conspiracy proximately caused harm to Plaintiffs. Plaintiffs have suffered injury as a proximate result of these wrongful acts.

63. Brian D. Martin was adjudicated liable for fraud, breach of fiduciary duty, tortious interference with a contract, and civil conspiracy in the federal court Judgment.

64. Holly Bone and Carolyn Martin had knowledge that Brian D. Martin was a Judgment Debtor as a result of a finding of fraud and was liable to Plaintiffs, but assisted Brian D. Martin in the fraudulent transfers herein to the detriment of Plaintiffs.

65. Holly Bone and Carolyn Martin had the intent to assist Brian D. Martin in committing fraudulent transfers.

66. Holly Bone and Carolyn Martin gave Brian D. Martin assistance or encouragement in committing the fraudulent transfers.

67. This assistance or encouragement was a substantial factor in causing and facilitating the fraudulent transfers.

68. Plaintiffs suffered damages as a result of this aiding and abetting.

69. Brian D. Martin and Holly Bone hold money that rightfully belongs to Plaintiffs.

70. Plaintiffs have the right to immediate possession of funds earned from the FuturisticHub YouTube channel, WildCraft YouTube channel, BlockTastic YouTube channel TopTrends YouTube channel, and CreamWorks Animations YouTube channel. This is personal property, non-exempt, and property subject to execution, levy or garnishment.

71. Brian D. Martin and Holly Bone jointly and severally exercised dominion or control over the channels, videos, money, and the property located at 12452 Cajun Drive, Frisco, Texas 75035.

72. The exercise of control over funds earned from the FuturisticHub YouTube channel, WildCraft YouTube channel, and CreamWorks Animations YouTube channel have caused Plaintiffs to suffer injury.

73. Brian D. Martin represented that he has “nothing to trace” and that counsel for Plaintiffs “will get nothing from me.” The Court finds that Brian D. Martin has been and continues to be in control of and the owner of the FuturisticHub channel and its video content.

74. “Holly,” at the time her email was sent was actually prepared by Brian D. Martin. She falsely claimed to own the FuturisticHub YouTube channel. Holly Bone and Brian D. Martin committed fraud by transferring the videos from the FuturisticHub channel to the WildCraft channel. The Court finds that Brian D. Martin has been and continues to be in control of and the owner of the WildCraft channel and its video content.

75. The Court finds that Brian D. Martin and/or Holly Bone committed fraud by

transferring the WildCraft channel and its video content to Wild MC Limited.

76. The Court finds the purchase money used to purchase the property located at 12452 Cajun Drive, Frisco, Texas 75035 was from non-exempt funds owned and controlled by Brian D. Martin. These funds were fraudulently transferred to conceal the fact they belonged to Brian D. Martin. The funds were transferred through Vontobel, A.G. Bank to other banks and eventually to a bank account in the name of Carolyn Martin. Carolyn Martin withdrew the funds and deposited them into another bank, JP Morgan Chase. The Court finds that Carolyn Martin wired approximately \$340,000 to Republic Title Frisco, which applied the funds toward the purchase of 12452 Cajun Drive, Frisco, Texas 75035. The Court finds the property was titled in the name of "Holly Martin." The Court finds that Holly Martin did not provide in any manner any of the purchase money for the property, and that these funds were not any gift from anyone to Holly Martin.

77. Brian D. Martin and Holly Bone, jointly and severally, knowingly and with intent to defraud Plaintiffs, concealed the true assets and personal finances of Brian D. Martin, including the video content of each of the channels, the corresponding Google AdSense revenue generated from the channels, and the purchase money for the property located at 12452 Cajun Drive, Frisco, Texas 75035.

78. The purchase of the home at 12452 Cajun Drive, Frisco, TX 75035, constituted a real estate transaction as contemplated by the legislature in Tex. Bus. & Com. Code §27.01.

79. Brian D. Martin, Holly Bone, and Carolyn Martin made false representations which caused injuries and damages to Plaintiffs, including the sale of the property located at 12452 Cajun Drive, Frisco, Texas 75035, in November, 2020.

80. All the videos on the FuturisticHub channel were created by Brian D. Martin who also set up the channel in 2012. Further, Brian Martin uploaded these same videos on the WildCraft channel on or about December, 2020. Lastly, Brian Martin continued to upload videos on the WildCraft channel after December, 2020, to the present. All of this property is either the separate property of Brian D. Martin, and/or the joint management, disposition, and control of community property of Brian D. Martin. The Court further finds no evidence exists to rebut the presumption of community property, and the Court declares all assets standing in the name of Holly Bone as community property and is subject to execution and turnover to satisfy Plaintiffs' Judgment against Brian D. Martin.

81. Google LLC and YouTube shall deposit all money into the Registry of the Court that it is currently holding in its possession from the monetization of the FuturisticHub and WildCraft Animations channels.

82. Google LLC and YouTube shall transfer the FuturisticHub, WildCraft Animations, CreamWorks Animations, Top Trends, and Blocktastic YouTube channels to Plaintiffs.

II. **PERMANENT INJUNCTION**

2.01 This Court finds that Brian D. Martin and Holly Bone are permanently enjoined from receiving any revenue from the videos contained in the FuturisticHub channel, the WildCraft channel, the CreamWorks Animations channel, the TopTrends channel, and the BlockTastic channel. This Court further finds that Holly Bone and Brian D. Martin shall not remove and/or re-direct the videos contained on the FuturisticHub channel, WildCraft channel, the CreamWorks Animations Channel, the TopTrends channel, and the BlockTastic channel, and they shall not change, in any manner, the AdSense

accounts related to these channels and the videos, and they shall not file any copyright claims relating to the videos on the FuturisticHub channel, WildCraft channel, CreamWorks Animations channel, TopTrends channel, and the BlockTastic channel.

2.02 Plaintiffs have not asserted any claim for relief arising under the Copyright Act in their Second Amended Petition. Specifically, Plaintiffs have not asserted a claim for relief under 17 U.S.C. §§ 501–513, which provides the federal grounds for relief under the Copyright Act. The claims asserted in Plaintiffs’ Second Amended Petition do not arise under the Copyright Act.

2.03 Plaintiffs have only sought a declaration of ownership pertaining to “all the videos” and that is not a claim arising under the Copyright Act. *See Efremov v. GeoSteering, LLC*, No. 01-16-00358-CV, 2017 Tex. App. LEXIS 2166, at *12 (Tex. App.—Houston [1st Dist.] Mar. 14, 2017, pet. denied). A claim arises under the federal Copyright Act “if and only if the complaint is for a remedy expressly granted by the Act,” like a suit for infringement or to recoup royalties. *Ultraflo Corp. v. Pelican Tank Parts, Inc.*, 823 F. Supp. 2d 578, 584 (S.D. Tex. 2011). The claims relating to ownership of the videos do not arise under the Copyright Act for purposes of federal jurisdiction because the declaration of ownership does not turn on a particular interpretation or application of the Copyright Act. *See Efremov*, 2017 Tex. App. LEXIS 2166, at *12.

2.04 Determining the video’s ownership did not require construction of the Copyright Act. Instead, all of Plaintiffs’ claims revolve around Brian D. Martin and Holly Bone obtaining several benefits by fraud and other tortious conduct, which requires

qualitatively different elements than that required to prove copyright infringement.¹ The contracts transferring the ownership of the videos required construction to resolve the ownership issue. See *Kelley v. Di Angelo Publ'ns, Inc.*, No. H-21-1666, 2021 U.S. Dist. LEXIS 140595, at *7–8 (S.D. Tex. July 28, 2021). Indeed, as the Ninth Circuit has explained, “[m]ost courts have held that the Copyright Act does *not* preempt the enforcement of contractual rights.” *Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079, 1089 (9th Cir. 2005).² All of these issues are determined by state law. See 17 U.S.C. § 201(d).

2.05 The Court may order the transfer of the property at issue under Texas law in accordance with 17 U.S.C. § 201(d)(1).³ Brian D. Martin and Holly Bone have previously transferred the videos to YouTube and other entities for re-publication as the Court has already previously found. With such a finding, for example, the Texas Uniform Fraudulent Transfer Act permits the Court to grant the requested relief because Plaintiffs may obtain “an injunction against further disposition . . . of the asset,” an “appointment of a receiver,” or even “levy execution on the asset transferred or its proceeds.” TEX. BUS.

¹ See *Dig. Drilling Data Sys., L.L.C. v. Petrolink Servs.*, 965 F.3d 365, 378 (5th Cir. 2020) (“Four years ago in *GlobeRanger*, we held the Copyright Act did not preempt a Texas misappropriation-of-trade-secrets claim.”). The *Butler* opinion cited by Google is irrelevant. This opinion was wrongly decided and has been implicitly overruled by the operative Fifth Circuit opinions that reach directly opposite conclusions on whether the Copyright Act’s preemption provision applies. Compare *Butler v. Cont’l Airlines, Inc.*, 31 S.W.3d 642, 652 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (holding that the Copyright Act preempted misappropriation claim and unjust enrichment claim), with *Dig. Drilling*, 965 F.3d at 378 (holding that the Copyright Act did not preempt unjust enrichment claim), and *GlobeRanger Corp. v. Software AG United States of Am., Inc.*, 836 F.3d 477, 488 (5th Cir. 2016) (same with misappropriation claim).

² The Ninth Circuit is particularly relevant because it is where Google admits it is subject to in personam jurisdiction. This Ninth Circuit conclusion has been cited with approval by federal courts in the Fifth Circuit. See, e.g., *Recursion Software, Inc. v. Interactive Intelligence, Inc.*, 425 F. Supp. 2d 756, 766 (N.D. Tex. 2006). Notably, Google does not articulate how this Court lacks *in rem* jurisdiction over the property of the judgment debtors.

³ 17 U.S.C. § 201(d)(1) (“The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.”).

& COM. CODE § 24.008(a)(3), (b).

2.06 The Court ordering a turnover of the YouTube accounts does not constitute an involuntary transfer prohibited under § 201(e). Section 201(e) provides: “When an *individual author’s* ownership of a copyright, or of any of the exclusive rights under a copyright, *has not previously been transferred voluntarily* by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.” 17 U.S.C. § 201(e) (emphasis added).

2.07 The Court has heard evidence that the “individual author” of these videos transferred the videos in violation of the underlying judgment and to others who are not Brian D. Martin. Accordingly, § 201(e) *does not* apply where the videos have previously been transferred voluntarily by Brian D. Martin. The Court ordering that Google take certain actions pertaining to “videos” on a YouTube channel solely pertain to property that is presently vested in Google and not the “individual author.” Defendants Brian D. Martin and Holly Bone have already voluntarily transferred such exclusive rights to YouTube and have transferred related rights to other entities. Because some of these exclusive rights have been transferred by agreement, this Court may order the transfer of these rights. Finally, the rights at issue are not the exclusive rights protected by § 201(e). Generally, “the exclusive rights” for the owner of a copyright are to “reproduce the copyrighted work in copies or phonorecords,” “prepare derivative works based upon the copyrighted work,” and “distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending.” 17 U.S.C. § 106. None of

these rights are implicated by transferring access to a YouTube account to Plaintiffs or a receiver.

III. DAMAGES

3.01 Plaintiff Fidelissimus, LLC shall recover and have a judgment entered against Defendant Brian D. Martin on Fidelissimus, LLC's claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Plaintiff Fidelissimus, LLC shall recover from Defendant Brian D. Martin the amount of \$4,563,980.04 (USD).

3.02 Plaintiff Fidelissimus, LLC shall recover and have a judgment entered against Defendant Holly Bone on Fidelissimus, LLC's claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Plaintiff Fidelissimus, LLC shall recover from Defendant Holly Bone the amount of \$2,808,662.87 (USD).

3.03 Plaintiff David Tyler Moss shall recover and have a judgment entered against Defendant Brian D. Martin on David Tyler Moss' claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Plaintiff David Tyler Moss shall recover from Defendant Brian D. Martin the amount of \$4,563,980.04 (USD).

3.04 Plaintiff David Tyler Moss shall recover and have a judgment entered against Defendant Holly Bone on David Tyler Moss' claims for Fraudulent Transfers, Civil Conspiracy, Aiding and Abetting, Conversion, Common Law Fraud, and Statutory Fraud in a Real Estate Transaction. On these claims, Plaintiff David Tyler Moss shall recover from Defendant Holly Bone the amount of \$2,808,662.87 (USD).

IV.

CONCLUSIONS OF LAW

4.01 **Fraudulent Transfers.** Each of the above-referenced transfers were made or obligations incurred by Brian D. Martin and Holly Bone were fraudulent as to Plaintiffs as they were made with actual intent to hinder, delay, or defraud Plaintiffs, or were made without receiving a reasonable equivalent value in exchange for the transfer. Tex. Bus. & Com. Code §24.005.

4.02 Factors which occurred which caused the fraud included but are not limited to the following:

- (1) The transfer or obligation was to an insider;
- (2) The debtor retained possession or control of the property transferred after the transfer;
- (3) The transfer or obligation was concealed;
- (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) The transfer was of substantially all the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was not reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) The debtor transferred the essential assets of the business to a lien or who transferred the assets to an insider of the debtor.

Tex. Bus. & Com. Code §24.005(b)(12).

4.03 An "insider" includes "a relative of the debtor or of a general partner of the debtor." Tex. Bus. & Com. Code §24.002(7).

4.04 A transfer made or obligation incurred by Brian D. Martin and Holly Bone was fraudulent as to Plaintiffs whose claim arose before the transfer was made or the obligation was incurred, because Brian D. Martin and Holly Bone made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and Brian D. Martin was insolvent at that time as a result of the transfer or obligation. Tex. Bus. & Com. Code §24.006.

4.05 The Court concludes as a matter of law that Plaintiffs proved Brian D. Martin and Holly Bone violated Tex. Bus. & Com. Code Chapter 24.

4.06 **Civil Conspiracy.** The elements of a conspiracy are: "(1) two or more persons; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result." *See Agar Corp. v. Electro Circuits Int'l*, 580 S.W.3d 136, 141 (Tex. 2019).

4.07 A conspiracy allegation extends liability in tort beyond the active wrongdoer to those who may have merely planned, assisted, or encouraged the wrongdoer's acts. *See Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d 922, 925-26 (Tex.1979).

4.08 Members of a family can conspire with each other, as did Brian D. Martin with Carolyn Martin, Brian D. Martin with Holly Bone and Carolyn Martin with Holly Bone. *Akin v. Dahl*, 661 S.W.2d 917, 921 (Tex.1983). Two or more business entities can conspire with each other. *Berry v. Golden Light Coffee Co.*, 327 S.W.2d 436, 440 (Tex.1959).

4.09 Because conspiracy requires intent, the underlying tort must be an

intentional tort. *Firestone Steel Prods. v. Barajas*, 927 S.W.2d 608, 617 (Tex.1996).

4.10 Fraud is an intentional tort and can be the basis of a conspiracy claim. *Ernst & Young, LLP v. Pacific Mut. Life Ins.*, 51 S.W.3d 573, 583 (Tex.2001).

4.11 The Court concludes as a matter of law Brian D. Martin, Holly Bone, and Carolyn Martin engaged in a civil conspiracy with each other to engage in fraudulent transfers to the detriment of Plaintiffs.

4.12 **Aiding and Abetting.** Brian D. Martin assisted or encouraged Holly Bone and Carolyn Martin, and he knew that Holly Bone and Carolyn Martin's conduct constituted torts against Plaintiffs. With the intent to assist Holly Bone and Carolyn Martin in committing the torts, Brian D. Martin substantially assisted and encouraged Holly Bone and Carolyn Martin in committing fraudulent transfers, common law fraud, fraud in a real estate transaction, money had and received, and conversion. Brian D. Martin's assistance and encouragement was a substantial factor in causing these torts.

4.13 Holly Bone assisted or encouraged Brian D. Martin and Carolyn Martin, and she knew that Brian D. Martin and Carolyn Martin's conduct constituted torts against Plaintiffs. With the intent to assist Brian D. Martin and Carolyn Martin in committing the torts, Holly Bone substantially assisted and encouraged Brian D. Martin and Carolyn Martin in committing fraudulent transfers, common law fraud, fraud in a real estate transaction, money had and received, and conversion. Holly Bone's assistance/encouragement was a substantial factor in causing these torts.

4.14 Carolyn Martin assisted or encouraged Brian D. Martin and Holly Bone and knew that Brian D. Martin and Holly Bone's conduct constituted torts against Plaintiffs. With the intent to assist Brian D. Martin and Holly Bone in committing the torts, Carolyn

Martin substantially assisted and encouraged Brian D. Martin and Holly Bone in committing fraudulent transfers, common law fraud, fraud in a real estate transaction, money had and received, and conversion. Defendant Carolyn Martin's assistance/encouragement was a substantial factor in causing these torts.

4.15 The Court concludes as a matter of law Brian D. Martin, Holly Bone, and Carolyn Martin engaged in aiding and abetting, assisting or encouraging, assisting and participating, and concert of action with each other to engage in fraudulent transfers, common law fraud, fraud in a real estate transaction, money had and received, and conversion.

4.16 **Conversion.** Plaintiffs are holders of equitable title and own the real property located at 12452 Cajun Drive, Frisco, TX 75035. Plaintiffs are holders of equitable title of personal property. Plaintiffs had a right to immediate possession of the real and personal property. Brian D. Martin, Holly Bone, and Carolyn Martin wrongfully acquired and exercised dominion and control over Plaintiffs' property. Brian D. Martin, Holly Bone, and Carolyn Martin refused to return the property to Plaintiffs. Brian D. Martin, Holly Bone, and Carolyn Martin's acts amounted to a clear repudiation of Plaintiffs' rights. Brian D. Martin, Holly Bone, and Carolyn Martin's wrongful acts proximately caused injury to Plaintiffs, which resulted in economic damages.

4.17 The Court concludes as a matter of law that Brian D. Martin, Holly Bone, and Carolyn Martin engaged in conversion of Plaintiffs' personal property.

4.18 **Common Law Fraud.** Brian D. Martin and Holly Bone committed fraud by transferring the videos from the FuturisticHub channel to the WildCraft channel, and then committed fraud again by transferring the videos/WildCraft channel to Wild MC Limited.

Brian D. Martin and Holly Bone knowingly and with intent to defraud Plaintiffs, have concealed the true assets and personal finances of Brian D. Martin. These materially false representations caused injury and damages to Plaintiffs.

4.19 **Statutory Fraud in a Real Estate Transaction.** The purchase of the home at 12452 Cajun Drive, Frisco, TX 75035 constituted a real estate transaction as contemplated by the legislature in Tex. Bus. & Com. Code §27.01. Brian D. Martin, Holly Bone, and Carolyn Martin, jointly and severally, made multiple material misrepresentations regarding the financing and intended use of the property. These false representations caused injuries and damages to Plaintiffs, including the sale of the property in November, 2020.

4.20 **Intellectual Property.** The claims asserted in Plaintiffs' Second Amended Petition do not arise under the Copyright Act.

4.21 The claims relating to ownership of the videos do not arise under the Copyright Act for purposes of federal jurisdiction because the declaration of ownership does not turn on a particular interpretation or application of the Copyright Act. See *Efremov*, 2017 Tex. App. LEXIS 2166, at *12.

4.22 Determining the video's ownership did not require construction of the Copyright Act. Instead, all of the claims revolve around Brian D. Martin and Holly Bone obtaining several benefits by fraud and other tortious conduct, which requires qualitatively different elements than that required to prove copyright infringement.⁴ The contracts

⁴ See *Dig. Drilling Data Sys., L.L.C. v. Petrolink Servs.*, 965 F.3d 365, 378 (5th Cir. 2020) ("Four years ago in *GlobeRanger*, we held the Copyright Act did not preempt a Texas misappropriation-of-trade-secrets claim."). The *Butler* opinion cited by Google is irrelevant. This opinion was wrongly decided and has been implicitly overruled by the operative Fifth Circuit opinions that reach directly opposite conclusions on whether the Copyright Act's preemption provision applies. Compare *Butler v. Cont'l Airlines, Inc.*, 31 S.W.3d 642, 652 (Tex. App.—Houston [1st Dist.] 2000, pet. denied) (holding that the Copyright Act

transferring the ownership of the videos required construction to resolve the ownership issue. See *Kelley v. Di Angelo Publ'ns, Inc.*, No. H-21-1666, 2021 U.S. Dist. LEXIS 140595, at *7–8 (S.D. Tex. July 28, 2021). All of these issues are determined by state law. See 17 U.S.C. § 201(d).

4.23 The Copyright Act's preemption provision in § 301 or involuntary-transfer provision in § 201(e) does not deprive the Court of jurisdiction to grant the requested relief because qualitatively different elements are required for these claims and this relief.

4.24 The Court orders that the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels shall immediately be transferred to Plaintiffs which now have legal and equitable ownership and title to these channels.

4.25 The Court orders that all of the videos which are contained on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels shall immediately be transferred in equal shares to Plaintiffs which now have legal and equitable ownership and title to all the videos.

4.26 The Court orders that Plaintiffs are the legal and equitable owners of all the videos which are contained on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

4.27 The Court orders that the content management system, content id, and Google AdSense accounts for all of the videos which are contained on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube

preempted misappropriation claim and unjust enrichment claim), with *Dig. Drilling*, 965 F.3d at 378 (holding that the Copyright Act did not preempt unjust enrichment claim), and *GlobeRanger Corp. v. Software AG United States of Am., Inc.*, 836 F.3d 477, 488 (5th Cir. 2016) (same with misappropriation claim).

channels shall immediately be transferred in equal shares to Plaintiffs which now have legal and equitable ownership and title to all these videos.

4.28 The Court orders that Defendant Holly Bone's purported transfer of all the videos and assets from Defendant Holly Bone and/or Wildcraft Animations to Wild MC Ltd. is declared **VOID** because it was a fraudulent transfer.

4.29 The Court orders that Defendants Brian D. Martin, Holly Bone, Carolyn Martin, and their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from removing any videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

4.30 The Court orders that Defendants Brian D. Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any copyright strikes against any videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

4.31 The Court orders that Defendants Brian D. Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any BOT attacks in an attempt to remove videos on the FuturisticHub, WildCraft

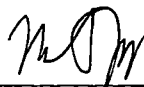
Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

4.32 The Court orders that Defendants Brian D. Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any artificial BOT views in an attempt to remove videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

4.33 The Court orders that Defendants Brian D. Martin, Holly Bone, Carolyn Martin, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise be, and hereby are commanded to desist and refrain from filing any content id claims against the videos on the FuturisticHub, WildCraft Animations, Creamworks Animations, Top Trends, and BlockTastic YouTube channels.

The judgment of the Court is a final, appealable judgment, disposing of all parties and all claims, and all relief not otherwise granted is DENIED by the judgment.

SIGNED on September 22, 2022.



HON. MARTIN HOFFMAN, PRESIDING
68TH JUDICIAL DISTRICT
DALLAS COUNTY, TEXAS

United States Code Annotated
Title 17. Copyrights (Refs & Annos)
Chapter 1. Subject Matter and Scope of Copyright (Refs & Annos)

17 U.S.C.A. § 102

§ 102. Subject matter of copyright: In general

Currentness

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

CREDIT(S)

(Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2544; Pub.L. 101-650, Title VII, § 703, Dec. 1, 1990, 104 Stat. 5133.)

United States Code Annotated
Title 17. Copyrights (Refs & Annos)
Chapter 1. Subject Matter and Scope of Copyright (Refs & Annos)

17 U.S.C.A. § 106

§ 106. Exclusive rights in copyrighted works

Effective: November 2, 2002

Currentness

Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

CREDIT(S)

(Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2546; Pub.L. 101-318, § 3(d), July 3, 1990, 104 Stat. 288; Pub.L. 101-650, Title VII, § 704(b)(2), Dec. 1, 1990, 104 Stat. 5134; Pub.L. 104-39, § 2, Nov. 1, 1995, 109 Stat. 336; Pub.L. 106-44, § 1(g)(2), Aug. 5, 1999, 113 Stat. 222; Pub.L. 107-273, Div. C, Title III, § 13210(4)(A), Nov. 2, 2002, 116 Stat. 1909.)

United States Code Annotated
Title 17. Copyrights (Refs & Annos)
Chapter 2. Copyright Ownership and Transfer (Refs & Annos)

17 U.S.C.A. § 201

§ 201. Ownership of copyright

Currentness

(a) Initial Ownership.--Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.

(b) Works Made for Hire.--In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.

(c) Contributions to Collective Works.--Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

(d) Transfer of Ownership.--

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

(e) Involuntary Transfer.--When an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright, shall be given effect under this title, except as provided under title 11.

CREDIT(S)

(Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2568; Pub.L. 95-598, Title III, § 313, Nov. 6, 1978, 92 Stat. 2676.)

United States Code Annotated
Title 17. Copyrights (Refs & Annos)
Chapter 2. Copyright Ownership and Transfer (Refs & Annos)

17 U.S.C.A. § 204

§ 204. Execution of transfers of copyright ownership

Currentness

(a) A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent.

(b) A certificate of acknowledgement is not required for the validity of a transfer, but is prima facie evidence of the execution of the transfer if--

(1) in the case of a transfer executed in the United States, the certificate is issued by a person authorized to administer oaths within the United States; or

(2) in the case of a transfer executed in a foreign country, the certificate is issued by a diplomatic or consular officer of the United States, or by a person authorized to administer oaths whose authority is proved by a certificate of such an officer.

CREDIT(S)

(Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2570.)

United States Code Annotated
Title 17. Copyrights (Refs & Annos)
Chapter 3. Duration of Copyright (Refs & Annos)

17 U.S.C.A. § 301

§ 301. Preemption with respect to other laws

Effective: October 11, 2018

Currentness

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103, whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

(b) Nothing in this title annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

(1) subject matter that does not come within the subject matter of copyright as specified by sections 102 and 103, including works of authorship not fixed in any tangible medium of expression; or

(2) any cause of action arising from undertakings commenced before January 1, 1978;

(3) activities violating legal or equitable rights that are not equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106; or

(4) State and local landmarks, historic preservation, zoning, or building codes, relating to architectural works protected under section 102(a)(8).

(c) Notwithstanding the provisions of section 303, and in accordance with chapter 14, no sound recording fixed before February 15, 1972, shall be subject to copyright under this title. With respect to sound recordings fixed before February 15, 1972, the preemptive provisions of subsection (a) shall apply to activities that are commenced on and after the date of enactment of the Classics Protection and Access Act. Nothing in this subsection may be construed to affirm or negate the preemption of rights and remedies pertaining to any cause of action arising from the nonsubscription broadcast transmission of sound recordings under the common law or statutes of any State for activities that do not qualify as covered activities under chapter 14 undertaken during the period between the date of enactment of the Classics Protection and Access Act and the date on which the term of prohibition on unauthorized acts under section 1401(a)(2) expires for such sound recordings. Any potential preemption of rights and remedies related to such activities undertaken during that period shall apply in all respects as it did the day before the date of enactment of the Classics Protection and Access Act.

(d) Nothing in this title annuls or limits any rights or remedies under any other Federal statute.

(e) The scope of Federal preemption under this section is not affected by the adherence of the United States to the Berne Convention or the satisfaction of obligations of the United States thereunder.

(f)(1) On or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, all legal or equitable rights that are equivalent to any of the rights conferred by section 106A with respect to works of visual art to which the rights conferred by section 106A apply are governed exclusively by section 106A and section 113(d) and the provisions of this title relating to such sections. Thereafter, no person is entitled to any such right or equivalent right in any work of visual art under the common law or statutes of any State.

(2) Nothing in paragraph (1) annuls or limits any rights or remedies under the common law or statutes of any State with respect to--

(A) any cause of action from undertakings commenced before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990;

(B) activities violating legal or equitable rights that are not equivalent to any of the rights conferred by section 106A with respect to works of visual art; or

(C) activities violating legal or equitable rights which extend beyond the life of the author.

CREDIT(S)

(Pub.L. 94-553, Title I, § 101, Oct. 19, 1976, 90 Stat. 2572; Pub.L. 100-568, § 6, Oct. 31, 1988, 102 Stat. 2857; Pub.L. 101-650, Title VI, § 605, Title VII, § 705, Dec. 1, 1990, 104 Stat. 5131, 5134; Pub.L. 105-298, Title I, § 102(a), Oct. 27, 1998, 112 Stat. 2827; Pub.L. 115-264, Title II, § 202(a)(1), Oct. 11, 2018, 132 Stat. 3728.)

United States Code Annotated

Title 28. Judiciary and Judicial Procedure (Refs & Annos)

Part IV. Jurisdiction and Venue (Refs & Annos)

Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1338

§ 1338. Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition

Effective: September 16, 2011

Currentness

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 931; Pub.L. 91-577, Title III, § 143(b), Dec. 24, 1970, 84 Stat. 1559; Pub.L. 100-702, Title X, § 1020(a)(4), Nov. 19, 1988, 102 Stat. 4671; Pub.L. 105-304, Title V, § 503(b)(1), (2)(A), Oct. 28, 1998, 112 Stat. 2917; Pub.L. 106-113, Div. B, § 1000(a)(9) [Title III, § 3009(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-551; Pub.L. 112-29, § 19(a), Sept. 16, 2011, 125 Stat. 331.)

28 U.S.C.A. § 1338, 28 USCA § 1338

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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Vernon's Texas Statutes and Codes Annotated
Business and Commerce Code (Refs & Annos)
Title 3. Insolvency, Fraudulent Transfers, and Fraud
Chapter 24. Uniform Fraudulent Transfer Act (Refs & Annos)

V.T.C.A., Bus. & C. § 24.002
Formerly cited as TX BUS & COM § 24.01

§ 24.002. Definitions

Effective: September 1, 2015
Currentness

In this chapter:

(1) “Affiliate” means:

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) “Asset” means property of a debtor, but the term does not include:

- (A) property to the extent it is encumbered by a valid lien;
 - (B) property to the extent it is generally exempt under nonbankruptcy law; or
 - (C) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant, under the law of another jurisdiction.
- (3) “Claim” means a right to payment or property, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) “Creditor” means a person, including a spouse, minor, person entitled to receive court or administratively ordered child support for the benefit of a child, or ward, who has a claim.
- (5) “Debt” means a liability on a claim.
- (6) “Debtor” means a person who is liable on a claim.
- (7) “Insider” includes:
- (A) if the debtor is an individual:
 - (i) a relative of the debtor or of a general partner of the debtor;
 - (ii) a partnership in which the debtor is a general partner;
 - (iii) a general partner in a partnership described in Subparagraph (ii) of this paragraph; or
 - (iv) a corporation of which the debtor is a director, officer, or person in control;
 - (B) if the debtor is a corporation:
 - (i) a director of the debtor;
 - (ii) an officer of the debtor;
 - (iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in Subparagraph (iv) of this paragraph; or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in Subparagraph (iii) of this paragraph; or

(v) a person in control of the debtor;

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

(8) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) “Person” means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) “Property” means anything that may be the subject of ownership.

(11) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The term does not include a transfer under a disclaimer filed under Chapter 240, Property Code.

(13) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Credits

Amended by Acts 1987, 70th Leg., ch. 1004, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 846, § 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 911, § 95, eff. Sept. 1, 1997; Acts 2015, 84th Leg., ch. 562 (H.B. 2428), § 1, eff. Sept. 1, 2015.

Vernon's Texas Statutes and Codes Annotated
Business and Commerce Code (Refs & Annos)
Title 3. Insolvency, Fraudulent Transfers, and Fraud
Chapter 24. Uniform Fraudulent Transfer Act (Refs & Annos)

V.T.C.A., Bus. & C. § 24.005
Formerly cited as TX BUS & COM § 24.02(a)

§ 24.005. Transfers Fraudulent as to Present and Future Creditors

Currentness

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under Subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

- (1) the transfer or obligation was to an insider;
- (2) the debtor retained possession or control of the property transferred after the transfer;
- (3) the transfer or obligation was concealed;
- (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) the transfer was of substantially all the debtor's assets;

- (6) the debtor absconded;
- (7) the debtor removed or concealed assets;
- (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Credits

Amended by Acts 1987, 70th Leg., ch. 1004, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, § 10, eff. Sept. 1, 1993.

property with the intent to defraud creditors is ordinarily a question for the jury or the court passing on the fact.... Intent is

Vernon's Texas Statutes and Codes Annotated
Business and Commerce Code (Refs & Annos)
Title 3. Insolvency, Fraudulent Transfers, and Fraud
Chapter 24. Uniform Fraudulent Transfer Act (Refs & Annos)

V.T.C.A., Bus. & C. § 24.008
Formerly cited as TX BUS & COM § 24.05

§ 24.008. Remedies of Creditors

Currentness

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 24.009 of this code, may obtain:

- (1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
- (2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code relating to ancillary proceedings;
or
- (3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - (A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (C) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Credits

Amended by Acts 1987, 70th Leg., ch. 1004, § 1, eff. Sept. 1, 1987.

Vernon's Texas Statutes and Codes Annotated
Business and Commerce Code (Refs & Annos)
Title 3. Insolvency, Fraudulent Transfers, and Fraud
Chapter 24. Uniform Fraudulent Transfer Act (Refs & Annos)

V.T.C.A., Bus. & C. § 24.009
Formerly cited as TX BUS & COM § 24.02(b)

§ 24.009. Defenses, Liability, and Protection of Transferee

Currentness

(a) A transfer or obligation is not voidable under Section 24.005(a)(1) of this code against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section 24.008(a)(1) of this code, the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c)(1) Except as provided by Subdivision (2) of this subsection, if the judgment under Subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(2) The value of the asset transferred is not to be adjusted to include the value of improvements made by a good faith transferee, including:

(A) physical additions or changes to the asset transferred;

(B) repairs to the asset;

(C) payment of any tax on the asset;

(D) payment of any debt secured by a lien on the asset that is superior or equal to the rights of a voiding creditor under this chapter; and

(E) preservation of the asset.

(d)(1) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, at the transferee's or obligee's election, to the extent of the value given the debtor for the transfer or obligation, to:

(A) a lien, prior to the rights of a voiding creditor under this chapter, or a right to retain any interest in the asset transferred;

(B) enforcement of any obligation incurred; or

(C) a reduction in the amount of the liability on the judgment.

(2) Notwithstanding voidability of a transfer under this chapter, to the extent of the value of any improvements made by a good faith transferee, the good faith transferee is entitled to a lien on the asset transferred prior to the rights of a voiding creditor under this chapter

(e) A transfer is not voidable under Section 24.005(a)(2) or Section 24.006 of this code if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with Chapter 9 of this code.

(f) A transfer is not voidable under Section 24.006(b) of this code:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Credits

Amended by Acts 1987, 70th Leg., ch. 1004, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, § 11, eff. Sept. 1, 1993.

Vernon's Texas Statutes and Codes Annotated
Business and Commerce Code (Refs & Annos)
Title 3. Insolvency, Fraudulent Transfers, and Fraud
Chapter 24. Uniform Fraudulent Transfer Act (Refs & Annos)

V.T.C.A., Bus. & C. § 24.010

§ 24.010. Extinguishment of Cause of Action

Currentness

(a) Except as provided by Subsection (b) of this section, a cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Section 24.005(a)(1) of this code, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Section 24.005(a)(2) or 24.006(a) of this code, within four years after the transfer was made or the obligation was incurred; or

(3) under Section 24.006(b) of this code, within one year after the transfer was made.

(b) A cause of action on behalf of a spouse, minor, or ward with respect to a fraudulent transfer or obligation under this chapter is extinguished unless the action is brought:

(1) under Section 24.005(a) or 24.006(a) of this code, within two years after the cause of action accrues, or if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or

(2) under Section 24.006(b) of this code within one year after the date the transfer was made.

(c) If a creditor entitled to bring an action under this chapter is under a legal disability when a time period prescribed by this section starts, the time of the disability is not included in the period. A disability that arises after the period starts does not suspend the running of the period. A creditor may not tack one legal disability to another to extend the period. For the purposes of this subsection, a creditor is under a legal disability if the creditor is:

(1) younger than 18 years of age, regardless of whether the person is married; or

(2) of unsound mind.

Credits

Amended by Acts 1987, 70th Leg., ch. 1004, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, § 12, eff. Sept. 1, 1993.

United States Code Annotated
Constitution of the United States
Annotated
Article VI. Debts Validated--Supreme Law of Land--Oath of Office

U.S.C.A. Const. Art. VI cl. 2

Clause 2. Supreme Law of Land

Currentness

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S.C.A. Const. Art. VI cl. 2, USCA CONST Art. VI cl. 2

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 8, cl. 8

Section 8, Clause 8. Patents and Copyrights

Currentness

The Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

U.S.C.A. Const. Art. I § 8, cl. 8, USCA CONST Art. I § 8, cl. 8

Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

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