IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 19-1674

LUCAS COUNTY NO. LACV033187

CURT DANIELS and
INDIAN CREEK CORPORATION
PLAINTIFF -APPELLANT

VS.

JOHN HOLTZ, personally, and JOHN HOLTZ, dba
WSH PROPERTIES, LLC, dba HUNTERS RETREAT, LLC,
and, dba NAVAJO ASSOCIATES, LLC.
APPELLEES

APPEAL FROM THE IOWA DISTRICT COURT
FOR LUCAS COUNTY
THE HONORABLE JOHN LLOYD, JUDGE

APPELLANT'S FINAL BRIEF

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CERTIFICATE OF FILING

I, Curt Daniels, hereby certify that I will file on January 16, 2020 the attached Appellant's Final Brief by electronic filing with the clerk of the Iowa Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50309.

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CERTIFICATE OF SERVICE

I, Curt Daniels, hereby certify that on January 16, 2020, I served the attached Appellant's Final Brief by mailing one copy U.S. postage prepaid, delivery confirmation requested, one copy thereof addressed to John Holtz and Holtz's alter ego co-defendants. Such copy was addressed to John Holtz, c/o Robert Stewart & Associates, Attorneys, 1747 East Morten Avenue, Suite 105, Phoenix, Arizona 85020.

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AND TYPESTYLE REQUIREMENTS

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ISSUE I: DISMISSAL OF DANIELS' PETITION WAS ILLEGAL AND GROUNDLESS AND FATALLY DEFICIENT.

A. THE LAW OF SET ASIDE OF JUDICIAL SALES.

Jasper Co. v. Stergios, 5 N.W.2d 192 (Iowa 1942)

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B. THE DISTRICT COURT ORDER(S) SUSTAINING DEFENDANT'S MOTION TO DISMISS WERE FACTUALLY ERRED, CONTRARY TO THE LAW AND OTHERWISE FATALLY DEFICIENT.

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ISSUE II: THE JUDGMENT WAS A PROPERTY RIGHT GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION. DISMISSAL WAS ILLEGAL.

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ISSUE III: NEITHER THE DISTRICT NOR APPELLATE COURT HAS REVOKED OR HAD THE LEGAL AUTHORITY TO REVOKE THE JUDGMENT OF SET ASIDE. IN CONSEQUENCE THE JUDGMENT OF SET ASIDE OF THE SHERIFF'S SALE REMAINS ACTIONABLE.

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ISSUE IV: THE DISTRICT COURT'S FAILURE TO IMPLEMENT THE JUDGMENT SETTING ASIDE THE JUDICIAL SALE OF INDIAN CREEK CORPORATION ALLOWS HOLTZ TO RETAIN THE PRODUCTS OF HIS FRAUDULENT AGENDA WHICH IS CONTRARY TO IOWA LAW AND OVER 150 YEARS OF JUDICIAL HISTORY AND SHOULD NOT BE PERMITTED.

Daniels v. Holtz, 840 N.W.2d 727 (2013), Iowa Ct. App. LEXIS 1081, October 23, 2013

Eliason v. Stephens et al., 246 N.W. 771, 774 (Iowa 1933).

Credit Bureau Enterprises, Inc. v. Pelo, 608 N.W.2d 20, 25 (Iowa 2000).

ROUTING STATEMENT

This case concerns the denial of the right to property secured by the U.S. Constitution, Fourteenth Amendment. Accordingly, this case should be retained by the Iowa Supreme Court.

STATEMENT OF THE CASE

The instant case devolves from *Daniels v. Holtz,* 794 N.W.2d 813 (Iowa 2010). In *Daniels, id.* **Conclusion** p. 825, the Court remanded the cause to determine whether Holtz' actions "unfairly and fraudulently" interfered with a sheriff's sale held on July 26, 2006 of Daniels' property and requires the sale to be set aside.

Following remand, bench trial was held on December 13 and 14 of 2011. On March 07, 2012, Judgment & Ruling After Trial to The Court, (hereinafter Judgment), (LACV033187 Plaintiff's Petition Exhibits, Ex. A, p. 8-9), was issued setting aside the sheriff's sale. Holtz appealed the Judgment. The Court of Appeals affirmed the Judgment on October 23, 2013, *Daniels v. Holtz,* 840 N.W.2d 727 (Iowa Ct. App. 2013, LEXIS 1081), (LACV033187, Plaintiff's Petition Exhibits, Ex. B). On or about December 02, 2013 Daniels filed Plaintiffs' Motion for Court Imposition of Constructive Trust, Order for Restitution and Request for Punitive Damages, (Appendix, Ex. 1, p. 05), seeking to implement the Judgment that set aside the sheriff's sale of Daniels' property. Hearing was held on January 31, 2014.

Following the January 31, 2014 Hearing an Order & Ruling on Posttrial Motions was entered on July 14, 2014, (Order & Ruling on Posttrial

Motions, LACV033187, Petition Exhibits, Ex. C.) The Order & Ruling on Posttrial Motions, (hereinafter Ruling), to the extent that it was drafted, interpreted and/or applied to revoke or circumscribe the Judgment is void. For appellants argument on this issue *see*, Appellants' Brief, Issue III, pgs. 36-42, herein. Daniels appealed the Ruling. The Court of Appeals issued a decision on April 6, 2016, *Daniels v. Holtz*, 883 N.W.2d 538, (Iowa Ct. App. 2016, *Unpublished*, 2016 Iowa App. LEXIS 303), (LACV033187, Petition Exhibits, Ex. D). The decision *held* that the remedy of a Constructive Trust and punitive damages sought by Daniels in his December 02, 2013, Motion, (*id.*, Appendix Exhibit 1, page 01), was a second suit barred by claim preclusion: "Accordingly, the district court did not err in denying the motion/action on res judicata grounds," (*id.* LACV033187, Petition Ex. D, p. 5-6).

Continued failure by the court to fully implement the Judgment allows Holtz to retain the products of his fraudulent agenda. Such a result is antithetical to justice and contrary to Iowa law and over 150 years of judicial history, *Penny v. Cook, et ux.*, 19 Iowa 538 (Iowa 1865), *Cocks v. Izard*, 74 U.S. 559, 562 (1869). For further discussion on this issue *see*, Appellants Brief, Issue IV, pgs. 42-43, herein. Although Holtz received sheriff deeds to Daniels' real property, consisting of a 1220-acre m/l farm

and to Daniels' personally deeded residence located on 11 acres contiguous to the farm property, these real estate parcels were required by the Judgment to be restored to Daniels, *see*, Appellants' Petition Brief, Issue I and II, pgs. 2-8, herein.

The issue in this appeal is narrowed to, and should focus on, reversing the dismissal of Daniels' LACV033187 Petition At law for Possession of Real Property and Damages for Wrongful Possession and Conversion and Petition in Equity to Quiet Title and remanding the cause for implementation of the Judgment.

ARGUMENT

ISSUE I: DISMISSAL OF DANIELS' PETITION WAS ILLEGAL AND GROUNDLESS

Scope of Review: Scope of review is presented at sub-issue, A, B and C.

Preservation of Issue: Preservation of sub-issues A, B, and C is presented at each sub-issue.

A. THE LAW OF SET ASIDE OF JUDICIAL SALES

Scope of Review: This issue concerns elements of both law and equity. The Iowa Supreme Court reviews the record de novo if the civil action was an equitable proceeding, *West Des Moines State Bank v. Pameco*, 501 N.W.2d 555 (Iowa Ct. App. 1993). On a motion to dismiss, the review is for

corrections of errors at law, unless the motion to dismiss is on a constitutional issue, in which case the review is de novo. *Godfrey v. State*, 898 N.W.2d 844, 847 (Iowa 2017); *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016)

Preservation of Issue: This issue was preserved in Daniels' LACV033187 Petition, ¶6, and Plaintiffs' Petition Brief, Issue II

A review of *Jersild v. Sarcone*, 163 N.W.2d 78 (Iowa 1968) is helpful in providing a perspective on the instant litigation. Jersild brought action to have certain storage tanks removed arguing that the tanks were built without a legal building permit. Jersild thought that the tanks, *sans* a legal building permit, would be required to be removed. Jersild did not request such removal in his action; he equated absence of a legal building permit with the requirement for removal, *id*. p. 79. The Court ruled that the tanks were built without a legal building permit **but** the lack of the permit, by itself, did not require the tanks removal, *id.* p. 80. Jersild did not gain the remedy he sought - the tanks remained. "The judgment originally entered did no more than declare the building permit void." *Id*. p. 80.

This understanding of *Jersild*, *id.*, is helpful in understanding the present litigation. Here, the Judgment **Ordered** that the sheriff's sale was set aside.

Unlike *Jersild, id*. **set aside requires specific court implementation.** This legal requirement(s) of set aside is discussed below.

Daniels sought set aside of the sheriff's sale of ICC. The Iowa Court, *Daniels, id.* p. 821 and the district court understood that Daniels requested the set aside of the sheriff's sale. Both *Daniels, id*. p. 823, and the district court's Judgment, (LACV033187 Plaintiffs' Petition Exhibits, Ex. A, p. 8), cited *Cocks v. Izard*, 74 U.S. 559 (1869) in support of their decisions concerning set aside. On March 07, 2012 the Judgment was entered setting aside the July 26, 2006 sheriff's sale of Daniels' business and personal property, (LACV003187 Petition Exhibits, Ex. A, p. 9).

Set aside is a final order that provides remedy(s) that generally require further action on the judgment, *Varnell v. Lee*, 19 N.W.2d 205 (Iowa 1945): "**OVERVIEW:** . . . when the partition judgment was reversed, [set aside], an action was filed for an accounting and restitution between the landowner and the purchaser." *Id*. p. 205.

Under Iowa law the set aside required that the court restore the status quo that existed in the contested property prior to the sale, *Varnell*, *id.* Additionally, the fraudulent purchaser is required to account for the money received, rents and profits from the land he deprived the rightful owner from receiving during the fraudulent purchaser's unlawful possession, *Varnell, id.*

p. 206. This is the law of Iowa and is the federal common-law, *Cocks v Izard*, 74 U.S. 559, 562 (1869); *Gelfert v. National City Bank of New York*, 313 U.S. 221 (1941), *Graffam & Another v. Burgess*, 117 U.S. 180, 184-85 (1886). *Daniels id.*, p. 823, cited *Cocks, id.*, for the principle that the sheriff's sale of Daniels' property should be set aside if Holtz had engaged in fraud in the conduct of the sale. The district court cited *Cocks, id.* in support of the Judgment of set aside, (*id.*, Plaintiffs' Ex. A. p. 8). *Cocks*, id. p. 561 was a post set aside action for the disgorgement of rents collected by Izard during his unlawful dominion of Cocks' property, *Cocks, id.* Prior History, p. 559. The Court required that the rents Izard deprived from Cocks be paid over to Cocks, *id*. p. 562.

The Iowa Court and the Lucas County District Court, in their citation to *Cocks, id.* establishes that the decision in *Cocks, id.* controls the instant case. Daniels relied on the Iowa Courts citation of *Cocks, id.* as controlling the outcome of the case.

The cases concerning the effect of a set aside judgment have been summarized:

> "Where a sale is declared void and is set aside, its incidents and consequences are also void," Am. Jur.2d, Vol. 47, *Judicial Sales*, Effect of Vacation, §222, p. 597, §123, p. 307. And:

> "Where a judicial sale is vacated, all parties should be placed in status quo as for as possible'" CJS, Vol. 50A, *Judicial Sales*, XXI, Effect of Invalid or Vacated Sale, §123, p. 121.

This is the law of the land – extensive research found no exceptions.

Set aside, by centuries of sacro sanct common law, established the right to recover property lost through fraud and unjust enrichment, *Penny v. Cook et ux.*, 19 Iowa 538 (Iowa 1865), *Cocks, id.* Set aside of a sale is immutable in its requirement for the return of the property and the products thereof to the rightful owner, Am. Jur.2d, §222, §123, *id.*, CJS, *id*.

The Judgment was *res judicata*. In the Order & Ruling on Posttrial Motions, (LACV033187 Plaintiffs' Petition Exhibits, Ex. C), Ruling, the court states: "Under Iowa law, 'a party must litigate all matters growing out of a claim' or they may be precluded from bringing a second action seeking relief which could and should have been brought in the first action." (*Id.* p. 2). Daniels was not seeking additional relief. As stated previously set aside of the sheriff's sale was the relief Daniels' requested and was the relief instructed in *Daniels, id.*, Conclusion, p. 825, and was subsequently granted by the district court's Judgment, (*id.* LACV033187 Petition Exhibits, Ex. A, p. 9). The judgment of set aside, had it been implemented, was the relief Daniels' sought – the return to Daniels of the real property transferred,

restitution for personal property converted by Holtz, (Appendix Ex. 1, p.11-12, ¶24); rents deprived from Daniels, (Appendix Ex. 1, p. 07, ¶ 11; p. 08-10, ¶ 15-23) and waste, (Appendix Ex. 1, p. 08, ¶ 26-27), if such occurred, as provided for in I.C. 658, *Hamilton v. Mercantile Bank of Cedar Rapids*, 621 N.W.2d 401, 409 (Iowa 2001). All such injuries and damages occurring as a result of Holtz fraudulent actions achieving control of Daniels' property following the sheriff's sale.

By every court precedent, legal treatise or other authority, set aside is an immutable final order, previously discussed in Issue I, A. The Judgment was conclusive: "In Iowa a final judgment is a judgment that conclusively determines the rights of the parties and is finally decisive of the controversy." *Snyder v. Allamakee County*, 402 N.W.2d 416, 418 (Iowa 1987).

An accounting or some similar procedure was necessary to implement the Judgment. But such procedure does not lessen the finality of the Judgment. "This decree, [Judgment], is not final, in the strict technical sense of the word, for something remains for the Court below to do. . . .this Court has not therefore understood the words 'final decrees' in this strict and technical sense, but has given to them a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention . . ."

Bronson v. Railroad Company, 67 U.S. 524, 531 (1862), citing authority. An accounting may, under Iowa precedence, *Varnell, id*., be necessary to fulfill the mandate of the set aside of a sheriff's sale. Citing *Varnell, id.*, as authority, the Wyoming Court in *Frost v. Eggeman*, 638 P.2d 141, 143 (Wyo. 1981), ordered an accounting following the vacation of a judicial sale.

"The jurisdiction of a Court is not exhausted until the judgment shall be satisfied . . . if the power is conferred to render the judgment to enter the decree, it also includes the power to issue proper process to enforce such judgment or decree, citing authority," *U.S.I. Properties Corp. v. M.D. Const. Co.*, 230 F.3d 489, 496 (1st Cir. 2000). The trial court always retains jurisdiction to implement the decree, *Kern v. Woodbury County*, 14 N.W.2d 687, 688 (Iowa 1944), citing *Dunton v. McCook*, 94 N.W. 942, 943 (Iowa 1903).

B. THE DISTRICT COURT ORDER(S) SUSTAINING DEFENDANT'S MOTION TO DISMISS WERE FACTUALLY ERRED, CONTRARY TO THE LAW AND OTHERWISE FATALLY DEFICIENT

Standard of Review: Review is to correct errors of law, *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016).

Preservation of Issue: Issue was preserved by Daniels in his Motion for Reconsideration of Motion to Dismiss filed August 21, 2019.

Dismissal of Daniels' LACV033187 Petition for Possession of Real Property, filed July 15, 2019, is the basis for the instant appeal. Daniels' Petition was dismissed by the district court for, as the court ruled, the "reasons set out" in Holtz's Motion to Dismiss, *see,* Order, filed Aug. 16, 2019, (Combined General Docket, CDIS). Additionally, the court further supported its dismissal stating that "the plaintiff's action are barred by the statute of limitations," that Daniels' action was not brought within the 5-year limitation of I.C. §614.1(4), *id.*

Holtz's Motion to Dismiss, [Combined General Docket, MTSD], was filed Thursday, August 15, 2019, at 12:23 P.M. The district court filed Order sustaining Holtz's Motion to Dismiss on August 16, 2019 at 9:59 A.M, [*id.*, Combined General Docket, CDIS]. This abbreviated time period between the filing of the Motion to Dismiss and sustaining such motion did not permit Daniels time to file a Resistance thereto. Daniels timely filed Motion for Reconsideration on August 21, 2019, [Combined General Docket, MOOT]. Motion for Reconsideration was denied on September 06, 2019, [Combined General Docket, OROT]. It is from this final adjudication of Daniels' Petition sustaining the Order dismissing the Motion for Reconsideration that this appeal is taken.

Holtz's Motion to Dismiss, *id.*, was not relevant to Daniels' LACV033187 Petition. Holtz's Motion was based on three court decisions that were not involved or germane to the Judgment, and/or pre-dated the decision in *Daniels, id.,* 2010 decision. The Judgment was granted after trial following remand in *Daniels, id.* The set aside of the sheriff's sale was Ordered based on Holtz's fraudulence in the conduct of a sheriff's sale Holtz contrived of Daniels' property[1]. Additionally, the district court erred in not recognizing that Daniels' did meet the Statute of Limitation requirement - Daniels filed his action, Petition for Relief, to set aside the sheriff's sale 7 months after Holtz's fraudulent interference with the July 26, 2006, sheriff's sale, (Appendix. Exhibit 2, p. 17, file stamp Feb. 26, 2007).

The district court denied Daniels,' Aug. 21, 2019, Motion for Reconsideration, (OROT), *id*. The denial of Reconsideration referenced the erred rationale, cited in the Aug. 16, 2019 Order, *id.,* dismissing LACV033187. Additionally, in the court's Order denying Reconsideration, *id.,* the District Court ruled that the co-plaintiff, Indian Creek Corporation, (ICC), is not legally authorized to bring this suit for reason that it is listed by

[1] Holtz fraudulence was not limited to his activities at the sheriff's sale. An uncontroverted litany of Holtz's fraudulent activities is documented in Daniels' SCOTUS Writ for Certiorari, [LACV033187 Plaintiff's Exhibits, Ex. E, pgs. 4-8].

the Iowa Secretary of State as an inactive Iowa corporation and thus without authority to transact business in Iowa. It was an **impossibility** for Daniels to maintain the active status of ICC with the Iowa Secretary of State – Holtz took control of ICC on 9-7-2006, (Statement of Change of Office and/or Registered Agent, Appendix. Exhibit. 3, p. 25). Subsequently, on August 11, 2014, Certificate of Dissolution was issued after Holtz's failed to file a 2014 Biennial Report, (Appendix, Exhibit. 4, p. 27).

The Iowa Court has *held* that the lack of a *de jure* corporation is of no consequence in maintaining a lawsuit. In *Jasper Co. v. Stergios,* 5 N.W.2d 192, 194 (Iowa 1942), the Court *held*, "nor shall any person . . . .be permitted to set up a want of such legal organization, [lack of *de jure* incorporation], in his defense," and: "The law looks beyond the nominal parties to the real parties in interest and determines the case according to the rights of the latter." Citing authority, *id.* p. 195. In *Hunt v. Wright*, 131 N.W.2d 266, 269 (Iowa 1964), the Court repeated the ruling in *Jasper Co.*, *id.*: "the law looks beyond the nominal parties to the real parties in interest and determines the case according to the rights of the later."

Daniels has annually filed a federal corporate tax return for ICC to preserve ICC's taxation status and as a viable corporation, (Appendix Exhibit 5, p, 29, Federal corporate tax return for 2018).

C. DANIELS SUPPORTED HIS PETITION WITH CITATION TO THE LAW, MEMORANDUM BRIEF AND EVIDENTIARY EXHIBITS.

Scope of Review: This issue concerns elements of both law and equity. The Iowa Supreme Court reviews the record de novo if the civil action was an equitable proceeding, *West Des Moines State Bank v. Pameco*, 501 N.W.2d 555 (Iowa Ct. App. 1993). On a motion to dismiss, the review is for corrections of errors at law, unless the motion to dismiss is on a constitutional issue, in which case the review is de novo. *Godfrey v. State*, 898 N.W.2d 844, 847 (Iowa 2017); *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016)**.** For review of rulings regarding subject matter jurisdiction the review is for errors of law, *Schaefer v. Putnam*, 841 N.W.2d 68, 74 (Iowa 2013).

Preservation of Issue: Daniels' LACV033187 Petition, p. 8, ¶'s 11 – 14 and Plaintiffs' LACV033187 Brief, Issue II, pgs. 7-8, and Plaintiffs' LACV033187 Petition Exhibits A, B, C, and D preserved this issue.

Daniels' Petition, from which this appeal devolves, was predicated to execute on the Judgment. Daniels asked, inter alia, for immediate possession of the real property transferred by the sheriff's sale now set aside, LACV033187 Petition, *id.*, First Claim for Relief in Law, pgs. 9-12 and Second Claim for Relief in Equity, pgs. 12-13. Daniels' right to immediate

possession is well understood under Iowa law, *Marks v. McGookin*, 104 N.W. 373 (Iowa 1905).

Holtz has no right of ownership in the subject property, *Cocks, id.*, *Gelfert, id.*, *Varnell, id.,* Am. Jur., *id.*, CJS, *id.*, et al. The Judgment set aside, *voided,* the sheriff's sale – title of ownership of the subject properties was reinvested in Daniels. Accordingly, Daniels' has the strength of title required by I.C.§646.3 to recover these properties, *Detmers v. Russell,* 237 N.W.2d 494, 496 (Iowa 1931).

Iowa Code §614.1(6) provides that the Judgment is actionable for a period of 20 years post judgment. The Judgment was affirmed on 10/23/2013, *Daniels v. Holtz*, 840 N.W.2d 727 (Ia. Ct. App. 2013, LEXIS 1081). Accordingly, the Judgment is not time barred.

I.C. Chapter 646 codifies the requirements for Recovery of Real Property; the action is to be at law, *Usailis v. Jasper*, 271 N.W. 524, 526 (Iowa 1937); *The Christian Church at Pella v. Scholta*, 2 Iowa 27, 29, (Iowa 1855), [Iowa Sup LEXIS 10 (Iowa 1855)]. I.C. Chapter 646.1 provides that proceedings under this chapter are to be ordinary and there shall be no joinder or counterclaim, *Detmers, id.,* p. 495. *Detmers, id.*, was decided under I.C. §12230, (1931). I.C. §12230 is identical in language to the current

I.C. Chapter 646. Indian Creek Corporation and/or Daniels are persons under I.C. 646.2 and have right to immediate possession, *Detmers, id.*, p. 496.

Immediately prior to the sheriff's sale the 1220-acre farm property was owned by Indian Creek Corporation, a family farm corporation solely owned by Daniels. Daniels personally owned his separately deeded residence which was situated on an 11-acre parcel contiguous to the 1220-acre farm property. The mortgages on both of these real properties were listed on the sheriff's designated appraisal, required by I.C. §626.93, and were transferred by the sheriff's sale, (LACV033187 Plaintiff's Petition Exhibits, Ex. H, Sheriff's Appraisal).

Actions to quiet title lie in equity, I.C. §649.6, *Moser v. Thorpe Sales Corp.*, 312 N.W.2d 881, 886 (Iowa 1981). Daniels cited *Moser, id.*, as authority in his LACV033187 Petition, p. 7, ¶ 8. Daniels asked the district court that he be restored to ownership of and title quieted in the 1220-acre farm and to the 11-acres on which his residence is situated, (*id.*, LACV033187 Petition, First Claim for Relief, p. 9-12, and Second Claim for Relief, p. 12-13, *id.*

The court's Dismissal of Daniels' LACV031187 Petition is error. "Wherever a situation exists which is contrary to the principles of equity and which can be redressed within the scope of judicial action, a court in equity

will devise a remedy to meet the situation," *Moser, id.*, p. 893, citing *McClintock on Equity*, §29 at 76 (2d ed. 1948). "It is a well-settled rule that, where a court of equity obtains jurisdiction of a cause, it will retain it until all questions involved in the case are adjudicated, doing complete justice between the parties" *Donnelly v. Nolan,* 15 N.W.2d 924, 926 (Iowa 1944), citing authority. The *Donnelly, id.,* court continued, "But it is the policy of chancery to fully settle the rights of the parties to actions while they are before the court and not send them out to bring new suits." The appellant, [Daniels in the instant action], is entitled to the full relief as to all matters involved in the case to which the court has jurisdiction." *Id.* citing authority. The trial court always retains jurisdiction to implement the decree, *Kern, id.*

ISSUE II: THE JUDGMENT WAS A PROPERTY RIGHT GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION. DISMISSAL WAS ILLEGAL.

Scope of Review: On a motion to dismiss, the review is for corrections of errors at law, unless the motion to dismiss is on a constitutional issue, in which case the review is de novo. *Godfrey v. State*, 898 N.W.2d 844, 847 (Iowa 2017); *Vaarnum v. Brien*, 763 N.W.2d 862, 874 (Iowa 2009).

Preservation of Issue: Issue was preserved by Daniels' in his LACV033187 Petition, Factual Allegations, p. 6, ¶ 7 and Plaintiff's Brief in Support of LACV033187 Petition, Issue V, pgs. 14-21.

The Judgment is a property interest protected guaranteed by the U.S. Const. 14th Amendment, *Logan v, Zimmerman Brush Co*. 455 U.S. 422, 430-31 (1981). This property interest continues to be violated by the Iowa courts failure to enforce the Judgment. The July 14, 2014, Ruling, (LACV033187 Plaintiffs' Petition Exhibits, Ex. C) and the affirmance thereof, *Daniels v. Holtz*, 883 N.W.2d 538, *id.*, (Ia. Ct. App. 2016, LEXIS 303, Plaintiffs' Ex. D), if interpreted and applied as a cancellation of the Judgment by invoking the doctrine of claim preclusion, is a violation of the U.S. Const., 14th Amend. guarantee of property. "It is evident that, where a, [fraudulent], sale has culminated in the execution and delivery of a deed to the purchaser, . . . no remedy is complete, which does not go to the cancellation of such deed, and the complete reinvestment of the title in the plaintiff." *Schroeder v. Young*, 161 U.S. 334, 345 (1896).

To evaluate if the court's failure to enforce the Judgment violated Daniels' Fourteenth Amendment guarantee, courts generally apply the *Mathews* test, *Mathews v. Eldridge*, 424 U.S. 319 (1976). Mathews was arguing that he had a substantive claim for Social Security disability benefits prior to the conclusion of a procedural hearing on his claim, *id*., p. 331-32. *Mathews*, *id*. at p. 335 devised a three-factor test: *First*, the private interest that is affected by the court's action. Here, the District Court, Ruling, *id.*,

terminated the Judgment of set aside and Daniels has been barred from recovering his property. *Second*, the risk of erroneous deprivation of Daniels' interest. It is obvious that the court granted the Judgment for cause - Holtz engaged in fraud concerning the sale, (LACV033187 Petition Exhibits, Ex. A, p. 3-5, 8-9). The subsequent failure to impose the Judgment remedy(s) was error. *Thirdly*, the government's interest. What interest could the government have? The Iowa court's only interest appears to be judicial economy. But, the quest for judicial economy was at the expense of, and contrary to, justice.

In *Gilbert v. Homar*, 520 U.S. 924, (1997), it was ruled that Homar failed the *Mathews* test, *id*., p. 935. Homar did not have a significant private interest in uninterrupted receipt of his paycheck after he was discharged for committing a felony. The Court found that Homar had no substantive due process right that was infringed and the state had significant interest in immediately terminating Homar's employment, *id*., p. 931-32. Daniels submits that that the *Mathews* test is applicable to the court's Ruling, *id.* The Ruling fails the *Mathews* test concerning substantive government interest – there was none.

Daniels' Fourteenth Amendment guarantee of rights to property were violated when the court, Ruling, (LACV033187 Plaintiff's Petition Exhibits,

Ex. C, p. 2-3), failed to implement the remedy(s) **embodied** in the Judgment, [s*ee*, Issue I, A, previously cited herein for discussion of remedy(s) embodied in a judgment of set aside]. The Ruling, *id*., wrongly states: "All these remedies, however, even if supported by Iowa law, were lost to the Plaintiff when he did not bring these claims in the initial action and when he failed to appeal the Court's final decision," *id.* Ruling, p. 2. As previously discussed in Issue I. A. herein, the Judgment was a **final action that embodied and mandated, by law, specific remedies – remedies that Daniels requested.**

The Fourteenth Amendment's substantive protection of property is a safeguard of the security interest that a person has already acquired, *Lugar v. Edmondson Oil Co., et al*., 457 U.S. 922, 942 (1982). Here, the Judgment is a specific benefit. The Judgment is "a species of property protected by the fourteenth Amendment's Due Process Clause," *Logan, id.,* p. 428, citing authority.

For a property interest to be protected by the Fourteenth Amendment a person must have a real, not abstract, interest in the benefit, and, have a legitimate claim of entitlement to the benefit to be actionable, *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). In *Roth, id.*, the Court found that Roth did not have a right to a continued employment benefit. Roth's contract

contained a specific termination date and he was terminated on that date – Roth had no entitlement to continued employment. Here the Judgment was a benefit. When implemented it would return to Daniels his real property, rents from which he was deprived, restitution for property converted by Holtz, and otherwise. The parties to be returned to the status quo that existed immediately prior to the sheriff's sale, C.J.S. *id*. This was not an abstract benefit; it was a real benefit.

A further requirement for the Fourteenth Amendment guarantees to be actionable is that the property right is a right created by state law. Property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law, *Roth, id*., p. 577. The Judgment setting aside the sheriff's sale was issued by the Iowa court, fulfilling the "state created" requirement set forth in *Roth, id*.

State courts are generally free to develop their own rules for protecting against relitigation of common issue or piecemeal resolution of disputes, *Jason Richards et al. v. Jefferson County, Alabama*, 517 U.S. 793, 798, (1996). However, the U.S. Supreme Court has long held that extreme application of the doctrine of res judicata may be inconsistent with a federal right that is "fundamental in character," *Postal Telegraph Cable Co., v. City of Newport, Kentucky*, 247 U.S. 464, 475 (1918). The U.S. Supreme Court's

due process cases has recognized, either explicitly or implicitly, that because "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified it own procedures that may deem adequate for determining the preconditions to adverse official action," *Logan, id.,* p. 432, citing authority.

In the instant case the Iowa court based its failure to implement the set aside judgment, Ruling *id.,* on claim preclusion. The issue is whether the decision of claim preclusion reached by the court is sufficiently well founded to furnish adequate support for the Ruling, *Postal Telegraph, id*., 473. In the Ruling the court explained: "Under Iowa law, 'a party must litigate all matters growing out of a claim' or they may be precluded from bringing a second action seeking relief which could and should have been brought in the first action," *id.* at page 2. Daniels was not seeking additional relief. The judgment of set aside, had it been implemented, was the relief sought, *Daniels v. Holtz,* 794 N.W.2d 813 (Iowa 2010), at **[6]**, p. 821.

For the past half century, the Supreme Court has spoken of a cognizable level of executive abuse of power as that which shocks the conscience, *County of Sacramento, et al., v. Estate of Lewis*, 523 U.S. 833, 846-47 (1997). The Constitution does not just guarantee "process"; it guarantees a process of law, *County of Sacramento, et al.,* id., p. 840, citing authority.

Substantive due process guarantees that the government will accord the citizen of lawful treatment. That life, liberty, or property will be taken away only in accordance with the principles of *lawfulness.* The touch stone of due process is protection of the individual against arbitrary action of the government – barring certain actions regardless of the fairness of the procedures used to implement them, *Daniels v. Williams,* 474 U.S. 327, 331 (1986), citing authority.

Violation of substantive procedural rights, which offend a "sense of justice," should not be limited to criminal procedures, e.g. illegally forced extraction of stomach contents, *Rochin v. California,* 342 U.S. 165, 172 (1952). The requirements of the Due Process Clause "inescapably imposes on this Court an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express notions of justice," *Rochin, id.,* p. 169. Comparing a procedure of forced stomach pumping conducted by medical personnel, *Rochin, id*., Syllabus, p. 165, to being permanently deprived of substantial property interests and being evicted from their home, as in the instant case – anyone would elect the former over the latter. This case is about the court arbitrarily wresting property from the rightful owner and

giving it to the person that acquired the property by fraud. The Iowa court's action was outside the law.

Historically the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty or property without any reasonable justification, *Daniels v. Williams, id.* at page 331. Failure to impose the remedy(s) embodied in the Judgment is barred by the substantive due process requirement of the Fourteenth Amendment. The court's failure to implement the Judgment is oppressive, arbitrary and without reasonable justification, *Daniels v. Williams, id.*

Here, the Iowa court "dressed up" claim preclusion as the principle rule to deny Daniels the set aside remedy(s). But this does not satisfy; it is arbitrary, lacking any valid guiding principle. Substantive arbitrariness renders formal regularity hollow. The substance, and not merely the form, must weigh in the analysis of the outcome. Otherwise, it is too easy to evade any barrier by easy fictions and disguises. Sandefur, Timothy, *In Defense of Substantive Due Process*, Harvard Journal of Law and Public Policy, Vol. 35, p. 332 (Winter 2012).

ISSUE III: NEITHER THE DISTRICT NOR APPELLATE COURT HAS REVOKED OR HAD THE LEGAL AUTHORITY TO REVOKE THE JUDGMENT OF SET ASIDE. IN CONSEQUENCE THE JUDGMENT OF SET ASIDE OF THE SHERIFF'S SALE REMAINS ACTIONABLE.

Scope of Review: This issue concerns elements of both law and equity. The Iowa Supreme Court reviews the record de novo if the civil action was an equitable proceeding, *West Des Moines State Bank v. Pameco*, 501 N.W.2d 555 (Iowa Ct. App. 1993). On a motion to dismiss, the review is for corrections of errors at law, unless the motion to dismiss is on a constitutional issue, in which case the review is de novo. *Godfrey v. State*, 898 N.W.2d 844, 847 (Iowa 2017); *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016)**.** For review of rulings regarding subject matter jurisdiction the review is for errors of law, *Schaefer v. Putnam*, 841 N.W.2d 68, 74 (Iowa 2013).

Preservation of Issue: Issue was preserved by Daniels' in his LACV033187 Petition, ¶'s, 2, 3, 6, 9, 14, and First, Third and Fourth Claims for Relief at Law, Petition pgs. 9, 13 and 15 respectively and Plaintiffs' LACV033187 Brief, Issue III.

Following the Judgment's affirmance on appeal, *Daniels v. Holtz*, (840 N.W.2d 727 (2013), Iowa Ct. App. LEXIS 1081, October 23, 2013, (*id.*, Plaintiffs' LACV033187 Petition Exhibits, Ex. B), all jurisdiction of the courts, other than implementation of the set aside as required by the Judgment was impermissible. The suit was ended. "The original action was at an end, so far, at least, as the district court was concerned . . . the suit

upon affirmance, became part of the irrevocable past . . . **though the court lost jurisdiction of the suit, it had not of the decree and still retained the inherent power to enter appropriate orders for enforcement**." Emphasis added, *Dunton v. McCook*, 94 N.W. 942, 943 (Iowa 1903).

The Ruling, *id*., is **void** to the extent that it was/is applied to cancel the Judgment. The Ruling was appealed by Daniels. The appellate court affirmed the Ruling, *Daniels v. Holtz,* 883 N.W.2d 538 (Ia. Ct. App. 2016, *Unpublished*, LEXIS 303, LACV033187 Plaintiff's Petition Exhibits, Ex. D). The Court of Appeals summarized: "Because the relief Daniels sought in the second suit is the same relief Daniels sought in the original action, we conclude claim preclusion barred the second suit. Accordingly, the district court did not err in denying the motion/action on res judicata grounds," *id.*, Ex. D, p. 5. The decision, *id.*, spoke only of claim preclusion affecting Daniels' Motion, (Plaintiffs' Motion for Court Imposition of Constructive Trust, Order for Restitution and Request for Punitive Damages, filed on or about Dec. 02, 2013), asking the for court for imposition of a Constructive Trust and punitive damages - the decision, *id.,* did not affect the validity of the Judgment.

The district court's July 14, 2014, Ruling, (LACV033187 Plaintiffs' Petition Exhibits, Ex. C), was error. The Ruling was incapable of

establishing a Statute of Limitations time bar – a void Order is without force and effect and is appealable without time limitation. "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it are void." *Mohler v. Shank*, 61 N.W.981, 984 (Iowa 1895), quoting Freeman on Judgments.

The district and appellate courts relied upon *Pavone v. Kirke*, 807 N.W.2d 828 (Iowa 2011), *id.* as authority for denying Daniels' Motion, *id.*, under the doctrine of claim preclusion. *Pavone, id*. stands for the legal requirement that a litigant must fully request all the remedies being sought prior to the final judgment in the case being rendered. Pavone wished to include breach of a second contract, which was not sued upon, into the final judgment. Pavone's request was denied, the court applying claim preclusion. Similarly, in a more recent case, *Villerreal v. United Fire & Cas. Co.*, 873 N.W.2d 714 (Iowa 2016), Villerreal wished to include punitive damages, which were not requested during trial, in his award for fire insurance damages to his property. Villerreal's request for punitive damages was denied, the court invoking claim preclusion. **In *Jersild, id., Pavone, id.* and *Villerreal, id.* the claim preclusion did not revoke the final judgment.**

The post final judgment requests were precluded but the final judgment remedy(s) remained valid and enforceable. The instant case is distinguished from *Jersild, Pavone,* and *Villerreal*, and the numerous other claim preclusion cases not cited herein – here, Daniels has been denied execution on the Judgment.

The Ruling is jurisdictionally impermissible to the extent that it has been applied in Daniels' subsequent actions seeking implementation of the Judgment. The Ruling illegally invades the finality of the Judgment previously awarded and sustained on appeal. **"**A judgment is a solemn record upon which the parties had a right to rely, and it should not lightly be disturbed, 46 Am. Jur.2d, Judgments, §77, p. 451. The courts' failure to enforce the Judgment by erred application of the Doctrine of Claim Preclusion did not, could not, revoke Daniels' rights in the Judgment. The Judgment remains enforceable, *Dunton, id*.

When the Judgment was affirmed by the Court of Appeals, *Daniels, id.*, (Ia. Ct. App, 2013, LEXIS 1081), (Plaintiffs' LACV033187 Petition Exhibits, Ex. B), the set aside became "the law of the case. A district court that misconstrues or acts inconsistently with the mandate acts illegally by failing to apply the correct rule of law or exceeding its jurisdiction." *City of Okoboji v. Iowa District Court for Dickinson County*, 744 N.W.2d 327, 330

(Iowa 2008). To the extent that the Ruling is employed to limit or revoke the Judgment is a nullity. "[W]hen the record shows that the court had no jurisdiction over either the person or the subject matter, the judgment is void and may be impeached either collaterally or in any other manner in which the question may arise. . . [W]here the law does not confer jurisdiction upon the court, no acts of the parties can confer it." *Dicks v. Hatch*, 10 Iowa 380, 384 (Iowa 1860). The courts, both district and appellate lacked subject matter jurisdiction to cancel the Judgment, *Mohler, id.*

On page 30 herein it is quoted: "It is a well-settled rule that, where a court of equity obtains jurisdiction of a cause, it will retain it until all questions involved in the case are adjudicated, doing complete justice between the parties. . . . it is the policy of chancery to fully settle the rights of the parties to actions while they are before the court, and not send them out to bring new suits." *Donnelly, id.* at p. 926. Certainly, in the cause of justice and concern for judicial economy, the district court, upon dismissal of Plaintiffs' Motion for Implementation of a Constructive Trust, should have implemented the remedy(s) embodied in a judgment of set aside instead of acting to cancel the Judgment - such a procedure is what case precedent directs, *Kern, id.*, p. 688; *City of Okoboji, id.*, p. 331-32.

The "law of the case" is not the Ruling. The "law of the case" is the Judgment. The Judgment was a final order that terminated, after being affirmed on appeal, *Daniels, id.*, (Iowa Ct. App. 2013, LEXIS 1081), (Plaintiffs' LACV033187 Exhibits, Ex. B), the jurisdiction of the court. Jurisdiction was lost except to implement the Judgment, *Dunton*, *id*. All the district court was left with was to "implement both the letter and the spirit of the mandate," *Cawthorn v. Catholic Health Initiatives*, 806 N.W.2d 282, 287 (Iowa 2011).

The court must have the authority to enforce the set aside. Without the ability to enforce judgments the judicial power would be incomplete, and entirely inadequate to the purposes for which it was intended, citing authority, *U.S.I. Properties Corp. v. M.D. Const. Co.*, 230 F.3d 489, 496 (1st Cir. 2000). "Consequently, the jurisdiction of a Court is not exhausted until the judgment shall be satisfied . . . if the power is conferred to render the judgment to enter the decree, it also includes the power to issue proper process to enforce such judgment or decree." Citing authority.

ISSUE IV: THE DISTRICT COURT'S FAILURE TO IMPLEMENT THE JUDGMENT SETTING ASIDE THE JUDICIAL SALE OF INDIAN CREEK CORPORATION ALLOWS HOLTZ TO RETAIN THE PRODUCTS OF HIS FRAUDULENT AGENDA WHICH IS CONTRARY TO IOWA LAW AND OVER 150 YEARS OF JUDICIAL HISTORY AND SHOULD NOT BE PERMITTED.

Scope of Review: The Iowa Supreme Court reviews the record de novo if the civil action was an equitable proceeding, *West Des Moines State Bank v. Pameco*, 501 N.W.2d 555 (Iowa Ct. App. 1993).

Preservation of Issue: Issue was preserved by Daniels' in his LACV033187 Petition, ¶'s 4, 5, 6, and 10, and Daniels' Petition's Third Claim for Relief, p.13 and Plaintiffs' LACV033187 Brief, Issue IV.

After the judgment setting aside the sheriff's sale of Daniels property was sustained on appellate review, *Daniels, id.*, (Iowa Ct. App. 2013, LEXIS 1081, LACV033187 Plaintiffs' Exhibits, Ex. B), the case was ripe for action on the Judgment. Such action, had it been taken prior to appellate review, may have further complicated the party's efforts to resolve the matter and could have resulted in an inefficient use of judicial resources.

The application of the remedies inherent in set aside to afford redress is buttressed by other legal maxims such as:

"The general rule is that fraud in the procurement of any written instrument vitiates it in the hands of one seeking to benefit thereby, and it is a familiar rule that fraud vitiates every transaction in which it enters, and equity will interpose to prevent that which, if allowed, would work a manifest fraud, and it is unnecessary to cite authorities in support of these fundamental propositions." *Eliason v. Stephens et al.*, 246 N.W. 771, 774 (Iowa 1933).

If Holtz is allowed to retain Daniels' real and personal property, which Holtz obtained by his fraudulence, Holtz will be unjustly enriched. "Unjust enrichment is an equitable principle **mandating** that one shall not be permitted to unjustly enrich oneself at the expense of another or to receive property or benefits without making compensation for them." Citing authority, emphasis added. *Credit Bureau Enterprises, Inc. v. Pelo*, 608 N.W.2d 20, 25 (Iowa 2000).

CONCLUSION

The district court's March 07, 2012 Judgment setting aside the sheriff's sale required, by law, that the parties be returned to the position(s) they held in the subject property immediately prior to the sale. The Court is urged to Remand the cause only for the purpose of Ordering the real property consisting of a 1220 m/l acre farm and Daniels' residence on 11 acres m/l, both parcels owned by Daniels immediately prior to the sheriff's sale, be returned by Holtz to Daniels and title quieted in Daniels. Additionally, Holtz to be Ordered to reimburse Daniels for the rents Daniels was deprived from receiving by Holtz's' fraudulent dominion plus interest from the time the rents accrued. Holtz to pay restitution to Daniels for the personal property that was converted by Holtz, waste that may have occurred to the real

property under Holtz dominion and the expenses incurred by Daniels to recover his property.

Daniels to reimburse Holtz for property taxes paid by Holtz and to reimburse Holtz for the judgments Holtz held against Daniels prior to the sheriff's sale. The mortgages to Heritage Bank, N. A. and Constance Daniels Holtz retired on the properties by Holtz to be recovered by Holtz along with any reasonable expenses Holtz paid to protect or improve Daniels' property.

REQUEST FOR NONORAL ARGUMENT

The law requiring the set aside of judicial sales infected with fraud has been immutable and sacrosanct for over 150 years. Daniels LACV033187 Petition, Petition Exhibits and Brief in Support of the Petition fully present the issues involved in the instant action. Accordingly, oral argument should not be necessary. However, if the Court would benefit from oral argument Daniels would be pleased to respond to such request.

Respectfully submitted,

January 14, 2020
Date

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