

**IN THE SUPREME COURT OF IOWA**

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**SUPREME COURT NO. 19-1674**

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**LUCAS COUNTY NO. LACV033187**

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**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**

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

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**APPELLANT'S RESISTANCE TO APPELLEE'S  
APPLICATION FOR FURTHER REVIEW  
OF COURT OF APPEALS OPINION OF 11/04/2020**

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**ATTORNEYS LISTED ON PAGE 2**

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**TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
<b>NAMES AND ADDRESSES OF ATTORNEYS</b>	<b>2</b>
<b>TABLE OF CONTENTS</b>	<b>3</b>
<b>ARGUMENT</b>	<b>4</b>
<b>CONCLUSION</b>	<b>5</b>
<b>CERTIFICATE OF COMPLIANCE</b>	<b>6</b>
<b>CERTIFICATE OF FILING AND SERVICE</b>	<b>7</b>

**APPELLANTS' RESISTANCE TO APPELLEE'S  
APPLICATION FOR FURTHER REVIEW**

**A. THE COURT OF APPEALS CORRECTLY STATED THE  
LAW: DISMISSAL IS NOT GRANTED IF THE PLEADINGS  
ON THEIR FACE SHOW THAT DEFENDANT MAY PREVAIL**

The Court of Appeals opinion filed in this action November 04, 2020 ruled that a Motion to Dismiss may not be granted unless the Motion on its face shows no possibility of success, citing *Rieff v. Evans*, 630 N.W.2d 278, 284, (Iowa 2001). This Court's decision in *Daniels v. Holtz*, 794 N.W.2d 813, 823 (Iowa 2010), cited *Cocks v. Izard*, 74 U.S. 559, 561-62 (1869). *Cocks, id.*, p. 562 ruled that the wrongful interference by a party at a sheriff's sale will require that a court in equity will afford redress by setting aside the proceedings. *See*, Appellants Brief in this action, pgs. 18-24, **A. The Law of Set Aside of Judicial Sales**, for a more complete review of the law concerning Daniels' right to recover under his Judgment of set-aside.

**B. HOLTZ ERRS IN STATING THAT THE APPELLATE COURTS  
HAVE ENJOINED DANIELS FROM PURSUING JUSTICE**

Holtz errs in implying that the Iowa Supreme Court granted Holtz's request that Daniels be enjoined from filing further actions against Holtz. *See* Order filed in 19-0078, attached as Ex. 1 in Appellant's Response to Appellees' Waiver to Submit Brief, filed in the instant case on 12/03/2019.

The Court denied Holtz's request for sanction to enjoin Daniels from filing further actions.

**C. DANIELS' ACTION(S) TO EXECUTE ON THE JUDGMENT OF SET-ASIDE HAVE BEEN SANCTIONED BY THE COURTS.**

The instant appeal devolved from the Court's opinion in *Daniels v. Holtz*, 794 N.W.2d 813 (Iowa 2010). *Daniels, id.* at p. 825, remanded the cause for a determination of whether Holtz committed fraud requiring the sheriff's sale of Daniels property to be set aside. On remand, after bench trial, the district court Ordered the sheriff's sale be set aside – finding that Holtz committed fraud at the sale. Holtz appealed the decision and in *Daniels v. Holtz*, 840 N.W.2d 727 (Iowa Ct. App. 2013) the Judgment of set-aside Ordered by the district court was affirmed. The actions Holtz complains of on pgs. 10-11 of Application for Further Review primarily recite Daniels' attempts to execute on the Judgment. Post Judgment action(s) to implement set-aside are usually required, *Varnell v. Lee*, 19 N.W.2d 205, **OVERVIEW** (Iowa 1945), and from final judgments generally, *Dunton v. McCook*, 94 N.W. 942, 943 (Iowa 1903).

**CONCLUSION**

Holtz's Application for Further Review lacks legal support and subverts the facts. Holtz's contrived the sheriff's sale of Daniels' property and engaged in fraud at the sale to gain unjust enrichment. Holtz's 14 year-long campaign

to profit from his fraudulence at the expense of Daniels needs to cease. The Court is urged to deny further review.

Respectfully submitted,

November 25, 2020  
Date

/s/ Curt Daniels  
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efiled November 25, 2020

Copy mailed to:  
John Holtz, dba, WSH Properties, LLC;  
Hunters Retreat, LLC; and Navajo Associates, LLC;  
c/o Robert Stewart & Associates, Attorneys  
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**CERTIFICATE OF COMPLIANCE**  
**WITH TYPE-VOLUME LIMITATION, TYPEFACE**  
**AND TYPESTYLE REQUIREMENTS**

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CONTAINS APPROXIMATELY 900 WORDS.

November 25,2020  
Date

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### **CERTIFICATE OF FILING**

I, Curt Daniels, hereby certify that I will file on November 25, 2020, the attached Appellant's Resistance to Appellee's Application for Further Review 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 November 25, 2020, I served the attached Appellant's Resistance to Appellee's Application for Further Review by mailing one copy thereof, U.S. postage prepaid, delivery confirmation requested, 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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