

IN THE SUPREME COURT OF IOWA

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Supreme Court No. 15-1344  
Polk County District Court No. LACL122849

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SAMIR M. SHAMS, )  
Plaintiff/Appellee, )  
vs. )  
SONA HASSAN, )  
Defendant/Appellant. )  
\_\_\_\_\_)  
SONA HASSAN, )  
Counterclaimant/Appellant, )  
vs. )  
SAMIR M. SHAMS, )  
Counterclaimant Defendant/ )  
Appellee. )

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APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY  
THE HONORABLE JEANIE KUNKLE VAUDT

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**APPELLANT'S FINAL REPLY BRIEF  
AND REQUEST FOR ORAL ARGUMENT**

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**STATEMENT OF ISSUES PRESENTED FOR REVIEW**

- I. THERE IS NO ISSUE THAT THERE WERE ERROS BY THE DISTRICT COURT ON THE IOWA STATUTE OF LIMITATIONS, SPECIFICALLY SECTION 614.1(4) WERE PRESERVED**

Iowa Code Section 614.1(4)

- II. THE DISTRICT COURT ERRED IN NOT GIVING TO THE JURY INSTRUCTION ON IOWA'S STATUTE OF LIMITATIONS, SPECIFICALLY SECTION 614.1(4) OF THE CODE OF IOWA**

Hallet Construction Company vs. Meister, 713 N.W.2d 225, 231 (Iowa 2006)

Coker v. Abell-Howe Co., 491 N.W.2d 143, 150 (Iowa 1992)

Hobbiebrunken v. G & S Enterprises, Inc., 470 N.W.2d 19, 21 (Iowa 1991)

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Sonnek v. Warren 5522 N.W.2d 45, 47 (Iowa 1994)

Dubuque Community School Dist. v. PERB, 424 N.W.2d 427, 431 (Iowa 1988)

## ROUTING STATEMENT

This case should be transferred to the Court of Appeals because no basis exists for the Supreme Court to retain this case for appellate review, as provided by Iowa Appellate Procedure Rule 6.1101. Further, this case should be transferred because it involves questions that can be resolved by applying existing legal principles. Iowa R. App. P. 6.1101(3)(a).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

This is an appeal from the Iowa District Court for Polk County on error by such court in its refusals to give jury instructions on an affirmative defense of Iowa's statute of limitations, under Section 614.1 of the Code of Iowa and adverse judgment against Sona Hassan on claims of Samir Shams.

## **STATEMENT OF THE FACTS**

Samir Shams, in his Appellee brief, stated that Sona Hassan fraudulently concealed her actions. Shams had pled fraud in his Petition filed July 26, 2011 (Petition, Page 4, Count IV). In fact, the jury did not find Hassan committed fraud on Shams (Jury Verdict, Question No. 4). In fact, the testimony of the Shams is that he knew at least in May, 2006, and June, 2006, that Hassan had disbursed the funds for which he complains (Trial Transcript Volume II, Pages 24, 85, 114-117, 137, 139, 144).

## **ARGUMENT**

- I. **There is no issue that there were errors by the district court on the Iowa Statute of Limitations, specifically Section 614.1(4), were preserved.**

There is no issue that at all times material from the Answer filed by Hassan, Hassan timely filed a motion for summary judgment based on Iowa's

statute of limitation, specifically Section 614.1(4) of the Code of Iowa, Hassan's Motion for Directed Verdict at close of Sham's case in chief, Hassan's Renewed Motion for Directed Verdict at conclusion of evidence at trial, and subsequently Hassan's Motion for Judgment Notwithstanding the Verdict and for New Trial has been asserted by the Shams (Defendant's Motion for Judgment Notwithstanding Verdict and Request for Hearing filed April 27, 2015, Pages 1-4; Defendant's Motion for New Trial and Request for Hearing filed April 27, 2015, Pages 1-3).

Implicit in Hassan's Motion for New Trial and Motion for Judgment Notwithstanding the Verdict in Hassan's claim that the trial court erred in not submitting an instruction to the jury on Iowa's Statute of Limitation, specifically 614.1(4) of the Code of Iowa by not sustaining such motions of Hassan, the trial court further erred.

**II. The District Court erred in not giving to the jury instruction on Iowa's statute of limitations, specifically Section 614.1(4) of the Code of Iowa.**

The district court did err by refusing to give Hassan's instruction regarding the statute of limitations of Iowa which may be applicable to the Sham claims.

There is substantial evidence that Shams knew his funds were exhausted (Trial Transcript Volume II, Page 114, Lines 22-25; Page 115, Lines 1-25; Page

116, Lines 1-20; Page 137, Lines 1-23; Page 144, Lines 1-25). As stated by Shams, quoting Hallet Construction Co. v. Meister, 713 N.W.2d 225, 231 (Iowa 2006):

*Once a claimant learns information that would inform a reasonable person of the need to investigate the claimant "is an inquiry notice of all the facts that would have been disclosed by a reasonable investigation."*

There is no dispute by Shams that the subject checking account was established by Samir Shams in his name (Petition and Jury Demand, Page 1, Paragraph 5).

Shams, in June, 2006, while visiting his brother, had access to his monthly checking account statements and obtained checks for the subject checking account (Trial Transcript Volume II, Page 114, Lines 22-25; Page 115, Lines 1-25; Page 116, Lines 1-20; Page 137, Lines 1-23; Page 144, Lines 1-25).

If the district court was of the opinion that the proposed jury instruction should be modified, it was charged to draft and submit to the jury an instruction on Iowa's statute of limitations, specifically Section 614.1(4) of the Code of Iowa. Coker v. Abell-Howe Co., 491 N.W.2d 143, 150 (Iowa 1992); Hobbiebrunken v. G & S Enterprises, Inc., 470 N.W.2d 19, 21 (Iowa 1991); Dotts v. Bennett, 382 N.W.2d 85, 90 (Iowa 1986).

Further, the trial court by its refusal to give jury instructions on Iowa's Statute of Limitations, specifically Section 614.1(4) of the Code of Iowa erred when there was substantial evidence in support of Hassan's affirmative defense.

Parties to lawsuits are entitled to have their legal theories submitted to the jury if supported by the pleadings and substantial evidence in the record. Sonnek v. Warren, 522 N.W.2d 45, 47 (Iowa 1994).

Evidence is substantial when a reasonable mind could accept it as adequate to reach a conclusion. Dubuque Community School Dist. V. PERB, 424 N.W.2d 427, 431 (Iowa 1988).

### **CONCLUSION**

This Court should reverse the Court's judgment against Hassan for its failure to give required jury instructions on Iowa's Statute of Limitations, specifically Section 614.1(4) of the Code of Iowa and remand the case back to the district court for further proceeding.

**REQUEST FOR ORAL ARGUMENT**

Counsel for Appellant respectfully requests to be heard in oral argument upon submission of this case.

Respectfully submitted,

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SONA HASSAN

**CERTIFICATE OF SERVICE**

On this 10<sup>th</sup> day of October, 2016, the undersigned did serve the written Appellant's Reply Brief on all parties to these proceedings by electronically filing and by mailing via United States Postal Service, ONE (1) copy thereof to the following counsel:

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/s/ Steven R. Reed

Steven C. Reed

## CERTIFICATE OF FILING

I hereby certify that I filed the Appellant's Reply Brief and Request for Oral Argument with the Clerk of the Iowa Supreme Court by electronically filing through EDMS on October 10th, 2016.

/s/ Steven R. Reed

Steven C. Reed

### CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 1,016 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(3) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Garamond Font.

/s/ Steven C. Reed

Signature

October 10, 2016

Date