IN THE IOWA DISTRICT COURT FOR LINN COUNTY

LORIANN BUSSE and LISA CARPENTIER, ALEXANDRA RENEE CARPENTIER; DEVAN MICHELE CARPENTIER; and MARIE JOSEE CARPENTIER, A Minor Through Her Mother and Next Best Friend LISA CARPENTIER, Plaintiffs, v. JEFFREY BUSSE; LAVERN T. BUSSE; BUSSE FINANCIAL ADVISORS, LLC; BUSSE FAMILY LIMITED PARTNERSHIP; AB BI NOTE LIMITED PARTNERSHIP; LAVERN T. BUSSE AND AUDREY BUSSE FOUNDATION and Nominal Defendants: LTB 2002 IRREVOCABLE TRUST; LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O LORIANN BUSSE; LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O ALEXANDRA RENEE CARPENTIER; LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O DEVAN MICHELE CARPENTIER; and LTB 2002 IRREVOCABLE TRUST U/D/O DECEMBER 20, 2002 F/B/O MARIE-JOSEE CARPENTIER, Defendants.	CIVIL NO. LACV083022 RULING ON DEFENDANTS JEFFREY BUSSE AND LAVERN BUSSE'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

Now before the Court is Defendants, Jeffrey Busse ("Jeff") and Lavern T. Busse ("Lavern") (collectively referred to hereinafter as "Defendants"), Second Motion for Partial Summary Judgment. This motion came before the Court without oral argument on December 12, 2016 together with a Memorandum and Statement of Undisputed Facts. Plaintiffs, LoriAnn Busse ("LoriAnn") and Lisa Carpentier ("Lisa") (collectively referred to hereinafter as "Plaintiffs"), filed a Resistance to Defendants' Second Motion for Partial Summary Judgment together with a Memorandum and Response to Defendants' Statement of Undisputed Facts on December 27, 2016. Defendants filed a Reply to Plaintiffs' Resistance on January 5, 2017.

The Court has considered counsels' briefs, the parties' exhibits, and the applicable law, and now makes the following ruling:

Factual Background and Proceedings

On October 20, 2016, Plaintiffs moved to amend their Petition to include additional requests in their prayer for relief on Counts IV, VIII, and X. No additional numbered paragraphs were alleged and no additional parties were proposed. The Amended Petition includes the following additional requests for relief in Counts IV, VIII, and X:

- Reformation of the terms of the note between LTB Family LP and BFLP to preserve the language: "The interest rate on this Note shall be Two and nineteen-hundreths Percent (2.19%) per year" and to strike all of the subsequent language: " , except if this note has not been assigned by Debtor to Busse Investments, Inc. as provided herein on or before December 31, 2018, the interest rate on this Note shall adjust on January 1, 2019 to a variable rate per year equal to the high prime interest rate published in the Wall Street Journal, as adjusted from time to time, plus three percent (3%)"

- Reformation of the terms of the note between LTB Family LP and BFLP to strike all language permitting and related to the assignability of the Debtor's (BFLP's) repayment obligations to BI.

(*See* Amended Petition, pp. 19, 24-25, 27 (seeking stated relief for Jeff's alleged undue influence in Count IV, alleged oppressive conduct as to BFA, BFLP and AB BI in Count VIII, alleged breach of fiduciary duty to BI in Count X)). The Amended Petition also sought the following additional relief under Count IV:

- Unwinding Lavern's March 30, 2015 capital contribution to BFLP (Pet'n ¶¶ 109 – 118, ¶¶ 164 – 166).

(*See* Amended Petition, p. 19 (seeking stated relief for Jeff's alleged undue influence in Count IV)).

The summary judgment deadline passed, so the Court granted Defendants an opportunity to challenge the additional equitable relief sought in a supplemental summary judgment motion. (*See* November 4, 2016, Order, ¶ 2 (extending summary judgment deadline to December 12, 2016 to address Plaintiffs' October 20, 2016 Amended Petition)).

On November 10, 2016, Plaintiffs served a supplemental answer to Defendants' Interrogatory No. 19 regarding damages. The supplemental answer includes a summary of the aforementioned relief sought regarding reformation of the terms of the Promissory Note between LTB Family Limited Partnership ("LTB Family LP") and Busse Family Limited Partnership ("BFLP").

On November 17, 2016, the Court granted Plaintiffs leave to amend their petition. (November 17, 2016, Order). On November 18, 2016, Plaintiffs filed their Amended Petition. Plaintiffs' Amended Petition seeks to unwind Lavern's March 30, 2015, capital contribution to BFLP for Jeff's alleged undue influence on Lavern. (Amended Petition, p. 19). The BFLP Partnership Agreement allows optional capital contributions:

> Optional Contributions. The Partners shall be permitted to make additional Capital Contributions to the Partnership. Optional Capital Contributions by a Limited Partner will be subject to the consent of the General Partner. Optional Capital Contributions by a General Partner will be subject to the consent of 70 Percent in Interest of Limited Partners. Any optional Capital Contributions may be on a non-pro rata basis. A General Partner is required to maintain a General Partnership Interest of at least one percent (1%) at all times. The required consent need not be in writing, and any optional Capital Contributions will be presumed to have been made with the required consent unless there is clear and convincing evidence to the contrary.

(BFLP Partnership Agreement Article VII, Section B, at 18, Entity App. 100). On March 30, 2015, Lavern, through his revocable trust, the LTB Revocable Trust, made an optional capital contribution of $2,812,597 into BFLP resulting in 9.49% ownership of BFLP ("Optional Capital Contribution"). (Def. App. 9, 32, 177-178, Lavern Dep. Tr. 74:10-14; Jeff Dep. Tr. 205:19-23). At the time of the Optional Capital Contribution, Lavern's personal trust, LTB Revocable Trust, was a limited partner of BFLP, having purchased a .05% interest from Jeff on December 17, 2014 for $9,147.67. (Entity App. 182; *see* Plfs response to Entity SOF ¶10; *see* Court's Ruling on Jeff and Lavern's First Motion for Partial Summary Judgment section III.B.2.a.i). It is undisputed that Jeff, acting on behalf of BFLP's General partner, BFA, approved the Optional Capital Contribution.

Plaintiffs' Amended Petition also seeks to reform the Promissory Note BFLP entered into with LTB Family LP on March 31, 2015 (the "BFLP Loan"). Under the BFLP Loan, LTB Family LP

loaned BFLP $3,425,000 at an interest rate of 2.19% through December 31, 2018. (Plfs. App. 501). Defendants allege the interest rate was the lowest allowable by law at the time without being considered a gift. (Def. December 12, 2016 App. 37, ¶ 5). The BFLP Loan was structured so that the note can be assigned to BI, and then ultimately to any BI shareholders, including Jeff. (Plfs. App. 501-505). If BFLP assigns its obligations to BI or MMB under the BFLP Loan, the interest rate would remain at 2.19%. (Plfs. App. 501, 503). However, if BFLP does not assign its obligations to BI or MMB under the BFLP Loan, then, on December 31, 2018, the interest rate increases to "the high prime interest rate published in the Wall Street Journal plus 3%." (Plfs. App. 501). If BFLP or BI prepays the Original Promissory Note, MMB may elect to take the payment and put itself under an obligation to repay the debt to LTB Family LP at a rate of 2.19%. (Plfs. App. 502-03).

On August 31, 2016 BFLP and LTB Family LP amended the BFLP Loan. (Defendants' December 12, 2016 App. 1-3). The pertinent changes were as follows:

1. Extended the maturity date from March 30, 2045, to August 30, 2046;
2. Lowered the initial interest rate to 1.9%
3. Extended the date on which BFLP's interest rate would increase to May 1, 2021 (as opposed to December 31, 2018);
4. Explicitly recognized that no third-party beneficiaries to the Promissory Note were contemplated;
5. Inserted several individuals and entities who could take assignment of the Amended Promissory note at 1.9% interest if either BFLP refused to assign the loan to BI or BI refused to assume it, in the following priority:

    a. Partners of LTB Family LP

    b. AFB Grantor Trust

    c. MMB Family Limited Partnership

    d. Partners of MMB Family Limited Partnership.

(*Id.*).

LTB Family LP formed in 2015, and is not a party to this case. (Def. December 12, 2016, App. 36, ¶ 2). None of the numbered paragraphs of the November 18, 2016, Amended Petition reference LTB Family LP. Plaintiffs' interrogatory answers describing the alleged basis for Counts IV, XIII, and X do not reference LTB Family LP. (*See* Defendants' December 12, 2016 App. 4-35, Plaintiff LoriAnn's Answers to Interrogatory Nos. 10, 12, 15, 18; Plaintiff Lisa's Answers to Interrogatory Nos. 10, 12, 15, 18).

In their Second Motion for Partial Summary Judgment, Defendants seek summary judgment with respect to the following: (1) Count IV – Undue Influence (Jeff) on the basis that Lavern has ratified any transaction allegedly brought about by undue influence; and (2) Counts IV, VIII, and X to the extent the Counts seek reformation of the BFLP Loan on the basis that Plaintiffs are not real parties in interest, lack standing, and they failed to name a necessary party as a defendant, LTB Family LP.

Applicable Law and Analysis

I. Summary Judgment Standard

A motion for summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3) (2015). The moving party carries the burden of proving the absence of a fact issue. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002) (citations omitted). "If reasonable minds could differ on how to resolve an issue, then a genuine issue of material fact exists." *Id.* However, speculation and mere allegations are not material facts. *Hlubek v. Pelecky*, 701 N.W.2d 93, 95-96 (Iowa 2005) (citations omitted).

In ruling on a motion for summary judgment, the court must look at the facts in a light most favorable to the nonmoving party. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000). The court must also consider on behalf of the nonmoving party every legitimate inference that

can be reasonably deduced from the record. *Id.* "An inference is legitimate if it is 'rational, reasonable, and otherwise permissible under the governing substantive law.'" *Smith v. Shagnasty's Inc.*, 688 N.W.2d 67, 71 (Iowa 2004) (quoting *McIlravy*, 653 N.W.2d at 328). But an inference based on "speculation or conjecture" is not to be indulged. *Id.*

If summary judgment cannot be granted with regard to the entire action, the Court may grant partial summary judgment on the material facts that "exist without substantial controversy and [determine] what material facts are actually and in good faith controverted." Iowa R. Civ. P. 1.981(4). The court will deem these material facts that are not controverted as established at trial. *Id.*

II. Count IV – Undue Influence

In their Second Motion for Partial Summary Judgment, Defendants contend Plaintiffs' claim for undue influence fails as a matter of law because Lavern has ratified any transaction allegedly brought about by undue influence.[1] To bolster this contention, Defendants note that transactions brought about by undue influence are voidable, not void. *See McCoy v. Tewksbury*, 165 N.W. 400, 401 (Iowa 1917) (recognizing that a conveyance brought about by undue influence would be "voidable but not void."); *Matter of Herm's Estate*, 284 N.W.2d 191, 200 (Iowa 1979) ("Where such a confidential relationship exists, a transaction by which the one having the advantage profits at the expense of the other will be held presumptively fraudulent and voidable."); *Kennedy v. Thomsen*, 320 N.W.2d 657, 659 (Iowa Ct. App. 1982) ("Undue influence by a third person renders a transaction voidable at the instance of the victim of undue influence if the other contracting party had reason to know of the undue influence."). "A voidable contract is one where one or more parties have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract, or by ratification of the contract to

[1] Defendants also allege that Plaintiffs' claim for undue influence fails as a matter of law for the same reasons set forth in their First Motion for Partial Summary Judgment. On January 5, 2017, the Court granted Defendants' summary judgment on Count IV to the extent Count IV relies on compensatory damages and punitive damages stemming from the MMB Loans or the BFLP Loan. (Ruling on Defendants' First Motion for Partial Summary Judgment p. 77). Defendants' First Motion for Partial Summary Judgment, with respect to Count IV, was otherwise denied. (*Id.*).

extinguish the power of avoidance." *Nichols v. City of Evansdale*, 687 N.W.2d 562, 571 (Iowa 2004) (quoting Restatement (Second) of Contracts § 7 (1981)).

According to Defendants, "Lavern has indisputably ratified the [Optional Capital Contribution] to render it valid to the extent alleged undue influence would put it in doubt." (Def. Second Motion for Partial Summary Judgment Brief p. 12). Defendants cite *Ridings v. Ridings*, 286 S.E.2d 614, 616 (N.C. App. 1982) for the proposition that "[a] transaction procured by undue influence may be ratified by the victim, foreclosing a subsequent suit to vitiate the contract." In *Ridings v. Ridings*, the plaintiff-husband sought to set aside a separation agreement on the grounds of mental incompetency and undue influence. *Id.* at 615. The trial court granted the defendant-wife's motion for summary judgment. *Id.* The *Ridings* Court affirmed the trial court on the grounds that the plaintiff had ratified the separation agreement. *Id.* at 617.

In reaching this conclusion, the *Ridings* Court first noted that the evidence in the record failed to reveal any undue influence occurring after the agreement was signed on June 8, 1978. *Id.* at 616. Then, the *Ridings* Court pointed out that from June 8, 1978 until November 29, 1978, when the plaintiff filed the action to rescind the agreement, the plaintiff "accepted and retained all benefit growing out of the agreement." *Id.* Specifically, the defendant-wife had made payments on the marital residence and contributed to its general maintenance and "transferred to plaintiff certain property listed in the separation agreement, including title to and possession of a 1974 Cadillac automobile." *Id.* Additionally, the plaintiff "recognized the legitimacy of the agreement by continued performance thereunder after any purported duress had terminated" by making alimony payments and "conveying full possession and title of the parties' 1967 Chevrolet automobile." *Id.* The *Ridings* Court concluded that where the plaintiff "acquiesced for months in the separation agreement," he failed to show grounds for rescission based upon undue influence. *Id.* at 616.

By contrast, in the present case, Plaintiffs do not simply allege that the Optional Capital Contribution was the product of undue influence. Plaintiffs allege that Jeff continues to exert undue

influence over Lavern based on the existence of a confidential relationship. For reasons that follow, the Court finds there is a genuine issue of material fact as to whether a confidential relationship exists between Jeff and Lavern. Thus, unlike *Ridings*, there is a genuine issue of material fact as to whether Jeff's alleged undue influence over Lavern is ongoing and persisted beyond the date of the Optional Capital Contribution. *See Pilos-Narron v. Narron*, 771 S.E.2d 633 (Table), 2015 WL 872193 (N.C. Ct. App. Mar. 3, 2015) (recognizing that the *Ridings* defense of ratification is inapplicable where the undue influence that lead to the formation of the voidable agreement is ongoing and induced the victim of undue influence to continue operating under the voidable agreement).

> A confidential relationship is present when one person has gained the complete confidence of another, purports to act with only the interest of the other party in mind, and discards any selfish advantage for himself. *It is particularly present in family relationships*.

Burns v. Nemo, 105 N.W.2d 217, 220 (Iowa 1960) (emphasis added); *accord Mendenhall v. Judy*, 671 N.W.2d 452, 455 (Iowa 2003) ("Such a [confidential] relationship is particularly likely to exist where there is a family relationship."). "Where such a confidential relationship exists, a transaction by which the one having the advantage profits at the expense of the other will be held presumptively fraudulent and voidable." *Matter of Herm's Estate*, 284 N.W.2d at 200. Therefore, "[w]here a confidential relationship is found to exist, and inter vivos conveyances are challenged, the burden of proof shifts to the benefited parties to prove-by clear, satisfactory, and convincing evidence-their freedom from undue influence." *Matter of Estate of Todd*, 585 N.W.2d 273, 277 (Iowa 1998) (footnote omitted).

The Court finds that Plaintiffs have engendered a genuine dispute of material fact as to whether a confidential relationship exists between Jeff and Lavern. In ruling on Defendants' First Motion for Partial Summary Judgment, the Court held "[a] reasonable jury could find Lavern did not understand Jeff's complex estate-planning efforts or have the ability to resist Jeff's influence on such matters." (Ruling on Defendants' First Motion for Summary Judgment p. 67). In addition, Lavern testified as follows during his deposition:

> **Q.** And do you remember why that decision was made to have Jeff be the sole trustee for each of those [Grantor Trusts]?
>
> **A.** Because he was working with me, and he knew exactly how I thought, and I trusted him to do what I wanted done.

(Lavern Dep. Tr. 19:19 – 24, Plfs. App. 217). Lavern testified further in his deposition:

> **Q.** And I guess how did you kind of come up with the LPs as a method of putting money down to the – to a generation or longer?
>
> **A.** How did we come up with a method?
>
> **Q.** Yeah. Was – Using all these LPs, was that your idea? Was it Jeff's idea?
>
> **A.** I think Jeff probably would come up with the idea. He talked to me about it. We'd talk about how it might be structured. Almost every one if not every one had many variations to it before the last one. You know, we'd – and he drew them up, and he'd – and he'd come up with things to change, and we'd go over them and decided we would change it, and that's how they came about.

(Lavern Dep. Vol. I 80:2 – 21, Plfs. App. 221). In addition, Jeff's testimony, to some extent, corroborates the existence of a confidential relationship:

> **Q.** Let me ask you – I want to focus on the grantor trust. And what do you recall was the reason for the formation of the grantor trust?
>
> **A.** The grantor trust was formed in late 2002. Dad made an initial cash gift into the grantor trust. But the primary reason and the use of that cash was to be used as a down payment to purchase the Busse Investments stock from Dad.
>
> **Q.** Was that a point in time when your father was getting less involved in Busse Investments, or he just simply wanted to transfer the stock if you remember?
>
> **A.** No, I do remember. I don't think that he made a conscious decision to get less involved. *What happened was that I came up with the idea to do the estate planning move, and I talked him into making that move at that point in time.*

(Jeff Dep. Tr. Vol. I 134:1 -17, Plfs. App. 154 (emphasis added)). Viewing these deposition excerpts in the light most favorable to the nonmoving party, a jury might infer a confidential relationship exists between Jeff and Lavern, and has existed as early as 2002. Accordingly, the Court finds there is a genuine issue of material fact as to whether a confidential relationship existed between Jeff and Lavern

on the date Lavern made the Optional Capital Contribution, and whether the confidential relationship is ongoing.

In the event the jury resolves these fact issues in favor of Plaintiffs at trial, then the jury will have to resolve whether the alleged confidential relationship between Jeff and Lavern induced Lavern to adopt Defendants' litigation positions.[2] *See Harmon v. Harmon*, 404 A.2d 1020, 1024-25 (Me. 1979) ("[i]f there had been no undue influence the testator, prior to death, could still have disinherited them or bequeathed the property to another person. Nevertheless, the wrongful conduct deprived the plaintiffs of the possibility that the testator would not have changed his mind, absent the undue influence."). If the jury resolves these issues in favor of Plaintiffs at trial, and finds the alleged confidential relationship between Jeff and Lavern induced Lavern to adopt Defendants' litigation positions, then Lavern's stance in the lawsuit may have failed to ratify the transactions Plaintiffs allege are the product of Jeff's undue influence. *See Pilos-Narron v. Narron*, 771 S.E.2d 633 (Table), 2015 WL 872193 (N.C. Ct. App. Mar. 3, 2015) (finding the defense of ratification is inapplicable where the undue influence that lead to the formation of the voidable agreement is ongoing and induced the victim of undue influence to continue operating under the voidable agreement). Because there are genuine disputes of material fact on these issues, the Court finds the jury should determine, if necessary, whether Lavern's alleged ratification is the product of undue influence that stems from an alleged abuse of a confidential relationship. Accordingly, Defendants are not entitled to summary judgment on Count IV on the basis that Lavern has ratified any transaction allegedly brought about by undue influence.

III. Counts IV, VIII, and X – Reformation of the BFLP Loan

[2] To the extent the jury finds a confidential relationship exists between Jeff and Lavern, Defendants will bear the burden of rebutting the presumption of undue influence that flows from the relationship. *Matter of Estate of Todd*, 585 N.W.2d at 277. Specifically, to the extent the jury finds a confidential relationship exists between Jeff and Lavern, Defendants will be required "to prove by clear, satisfactory, and convincing evidence that [Jeff] acted in good faith throughout the [challenged] transaction[s] and [Lavern] acted freely, intelligently, and voluntarily." *Jackson v. Schrader*, 676 N.W.2d 599, 605 (Iowa 2003).

Next, Defendants assert they are entitled to summary judgment on Counts IV, VIII, and X to the extent those counts seek reformation of the BFLP Loan. According to Defendants, Plaintiffs' requested relief to reform the BFLP Loan fails as a matter of law because: (1) Plaintiffs present no evidence to suggest the BFLP Loan is contrary to BFLP and LTB Family LP's intentions; (2) Plaintiffs are not real parties in interest to maintain an action regarding the BFLP Loan; (3) Plaintiffs lack standing to obtain reformation of the BFLP Loan; and (4) Plaintiffs failed to name an indispensable party to obtain reformation of the BFLP Loan, LTB Family LP. Because the Court finds Plaintiffs lack standing to reform the BFLP Loan, the Court need not reach the remaining issues raised in Defendants' Second Motion for Partial Summary Judgment.

A. Standing

To maintain standing in Iowa, plaintiffs "must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008) (citations omitted); *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004). To satisfy the first element, Iowa courts "require the litigant to allege some type of injury different from the population in general." *Godfrey*, 752 N.W.2d at 418. To satisfy the second element, "the injury cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent.' " *Id.* at 423 (citation omitted). "This inquiry is separate from, and precedes, the merits of a case." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 452 (Iowa 2013) (citing *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 864 (Iowa 2005) ("Even if the claim could be meritorious, the court will not hear the claim if the party bringing it lacks standing."). "With state courts, standing is a self-imposed rule of restraint." *Hawkeye Bancorporation v. Iowa Coll. Aid Comm'n*, 360 N.W.2d 798, 802 (Iowa 1985). "Iowa, like many states, essentially follows the federal doctrine on standing," but may carve out exceptions "to resolve certain questions of great public importance and interest in our system of government." *Godfrey*, 752 N.W.2d at 424-25. "Although general factual allegations by the plaintiff of injury resulting from the defendant's conduct may suffice at the pleading stage, the

plaintiff can no longer rest on mere allegations in response to a defendant's summary judgment motion." *Brunkhorst v. Iowa Public Employees' Retirement System*, No. 13-0606, 2014 WL 1714457 (Iowa Ct. App. April 30, 2014) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1993)).

In this case, Plaintiffs characterize their claim relating to reformation of the BFLP Loan as one seeking redress for potential harm:

> Plaintiffs *could* be injured, as beneficiaries of the Grantor Trusts, by assignment of the BFLP Loan to their Grantor Trusts. Under the Amended BFLP Loan terms, Defendants *could* assign the loan to Plaintiffs' Grantor Trusts, whereupon Plaintiffs Grantor Trusts *would* prepay the loan with the loan proceeds. Since BFLP is required to give the assignee cash equal to the amount of debt the assignee is taking on, this *would* be a wash, as the assignee *would* pay back LTB Family LP with the cash it receives.
>
> The wrinkle that Jeff added to the BFLP Loan is that MMB *could* then exercise its rights to take the prepayment at the expense of LTB Family LP as a loan on the same terms of the Amended BFLP Loan. MMB *would* then owe the Grantor Trusts $3.425 million, with nearly thirty-years of interest-only payments at 1.9%, and then a balloon payment to the Grantor Trusts of $3.425 million in 2046. This *would* be a terrible outcome for the Grantor Trusts, as they *would* be giving up the option to invest a significant amount of cash it acquired at 1.9% interest rate, in exchange for receiving a fixed 1.9% return for thirty years. *If* Jeff regains control of BI through the litigation, Plaintiffs *could* be similarly exposed as BI shareholders.
>
> If the interest-rate hike *is allowed to occur*, Plaintiffs' limited partnership interest in BFLP will be diminished, as BFLP *will* have to outperform an approximate 6.5% interest rate, instead of a 1.9% rate. Eliminating the interest-rate hike provision *would prevent this harm from occurring*, preserving the value of Plaintiffs' limited partnership interests.

(Plfs. Resistance to Defendants' Second Motion for Partial Summary Judgment Brief p. 10-11) (emphasis added). As outlined above, Plaintiffs allege they have standing to reform the BFLP Loan as beneficiaries of the Grantor Trusts,[3] and through their limited partnership interests in BFLP. For reasons that follow, the Court finds neither theory persuasive.

First, the Court finds Plaintiffs, as beneficiaries of the Grantor Trusts, do not have standing to reform the BFLP Loan because the specific chain of events necessary to assign the BFLP Loan to LoriAnn and Lisa's daughters' Grantor Trusts is too attenuated to confer standing upon Plaintiffs. The

[3] LoriAnn and Lisa's daughters are beneficiaries of their respective Grantor Trusts. Lisa does not have a Grantor Trust.

BFLP Loan may only be assigned to the partners of MMB, which include LoriAnn and Lisa's daughters' Grantor Trusts, in the event (1) assignment of the BFLP Loan to BI does not occur pursuant to the terms contained in the original and amended promissory notes (Def. December 12, 2016 App. 1); and (2) the Partners of LTB Family LP, AFB Grantor Trust, and MMB Family Limited Partnership do not accept assignment of the BFLP Loan. (Def. December 12, 2016 App. 1-2 (Right of First Refusal)). The May 1, 2021 assignment trigger date has not occurred, and BI has not been presented the opportunity to take assignment of the BFLP Loan. Furthermore, even if the Court speculates that BI would not agree to assume the BFLP Loan, the terms of the BFLP Loan allow BFLP to repay the loan early. In the event the BFLP Loan is not assigned to BI and BFLP does not repay the loan early, the Partners of LTB Family LP, AFB Grantor Trust, and MMB Family Limited Partnership would have to refuse to accept assignment of the BFLP Loan before the loan could be assigned to LoriAnn and Lisa's daughters' Grantor Trusts. Therefore, assignment of the BFLP Loan to LoriAnn and Lisa's daughters' Grantor Trusts is conjectural.

Setting aside problems of attenuation, Plaintiffs theory has a more fundamental flaw. Specifically, even if the Court assumes the BFLP Loan will be assigned to Plaintiffs' Grantor Trusts, Plaintiffs have failed to allege an actual injury attributable to the BFLP Loan. Plaintiffs acknowledge that assignment of the BFLP Loan is a cash-neutral event: "BFLP is required to give the assignee cash equal to the amount of debt the assignee is taking on, [which] would be a wash, as the assignee would pay back LTB Family LP with the cash it receives." (Plfs. Resistance to Defendants' Second Motion for Partial Summary Judgment Brief p.10). Plaintiffs acknowledge further that acquiring $3.425 million with approximately thirty-years of interest-only payments at 1.9% and then a balloon payment of $3.425 million in the year 2046 is a benefit. Indeed, Plaintiffs alleged harm is that the BFLP Loan will be assigned to LoriAnn and Lisa's daughters' Grantor Trusts, but the Grantor Trusts will prepay the obligation, which "would be a terrible outcome for the Grantor Trusts, as they would be giving up

the option to invest a significant amount of cash it acquired at 1.9% interest rate…"[4] (Plaintiffs' Resistance to Jeff and Lavern's Second Motion for Partial Summary Judgment Brief p. 11). In the event of prepayment, LoriAnn and Lisa daughters' Grantor Trusts would be relieved of any obligation associated with the portion of the BFLP Loan that is prepaid. (Plfs. App. 502 ("At the option of the MMB Family Limited Partnership, any such Note prepayment(s) shall be deemed to be an assignment of Debtor's interest in that portion of this Note to the MMB Family Limited Partnership for the remainder of the original term, subject only to: i) *the MMB Family Limited Partnership's formal assumption of that portion of the Note obligations*…); *id.* ("Any such assignment of the Note from Debtor to Holder's partners shall relieve Debtor from its obligations associated with the portion of the Note so assigned."); *see, e.g.,* Defendants December 12, 2016, App. 2 ("On the date of such Note assignment, Debtor shall be relieved of the portion of the Note obligations so assigned…")). Furthermore, neither Plaintiffs nor their Grantor Trusts are entitled to any proceeds from the BFLP Loan. Therefore, Plaintiffs alleged harm with respect to the BFLP Loan is that LoriAnn and Lisa's daughters' Grantor Trusts could theoretically obtain a benefit, but then fail to fully realize the benefit in the future. This is insufficient to satisfy the "injuriously affected" element of standing. *See Godfrey*, 752 N.W.2d at 423 (to satisfy the "injuriously affected" element of standing, *the injury* "must be 'concrete' and 'actual or imminent' ") (emphasis added) (citation omitted). Accordingly, Plaintiffs, as beneficiaries of the Grantor Trusts, lack standing to reform the BFLP Loan.

The Court finds further that Plaintiffs, as limited partners in BFLP, lack standing to reform the BFLP Loan. Plaintiffs acknowledge "there is presently no basis for the Court to conclude, either way, that the return on BFLP's investment of the $3 million will exceed its payment of loan obligations." (Plfs. Resistance to Defs. First Motion for Partial Summary Judgment p. 38). There is no basis to assume the limited partners of BFLP will be harmed by the BFLP Loan because BFLP currently enjoys the returns on the proceeds from the BFLP Loan generated above 1.9%. Furthermore, the May

[4] Furthermore, if the low interest rate were not beneficial, Plaintiffs would not be seeking to reform the note merely to eliminate the expiration of the rate increase and otherwise allow BFLP to enjoy the benefits of the loan.

1, 2021 assignment trigger date has not occurred, and BI has not been presented the opportunity to take assignment of the BFLP Loan. Even if the Court speculates that BI would not agree to assume the BFLP Loan, the terms of the BFLP Loan allow BFLP to repay the loan early. Thus, any harm to the limited partners in BFLP attributable to the BFLP Loan is entirely conjectural and hypothetical. *See Godfrey*, 752 N.W.2d at 423 (to satisfy the "injuriously affected" element of standing, "the injury cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent.' ") (citation omitted).

Accordingly, the Court finds Plaintiffs have failed to establish standing to reform the BFLP Loan and Defendants are entitled to summary judgment as a matter of law on Counts IV, VIII, and X to the extent those counts seek reformation of the BFLP Loan.

RULING

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants, Jeffrey Busse and Lavern T. Busse's Second Motion for Partial Summary Judgment is GRANTED IN PART and DENIED IN PART as follows:

1. Defendants' Motion for Summary Judgment on Count IV – Undue Influence is GRANTED IN PART and DENIED IN PART:

    a. Defendants are entitled to Summary Judgment on Count IV to the extent Count IV seeks reformation of the BFLP Loan. Defendants are also entitled to Summary Judgment on Count IV to the extent Count IV relies on compensatory damages and punitive damages stemming from the MMB loans or the BFLP Loan.

    b. Defendants' Motion for Summary Judgment on Count IV is otherwise DENIED.

2. Defendants' Motion for Summary Judgment on Count VII is GRANTED IN PART and DENIED IN PART:

    a. Defendants are entitled to Summary Judgment on Count VII to the extent Count VII seeks reformation of the BFLP Loan. Defendants are also entitled to Summary Judgment on Count VIII to the extent Count VIII relies on compensatory damages and punitive damages stemming from the BFLP Loan.

    b. Defendants' Motion for Summary Judgment on Count VII is otherwise denied.

3. Defendants' Motion for Summary Judgment on Count X is GRANTED IN PART and DENIED IN PART:

    a. Defendants are entitled to Summary Judgment on Count X to the extent Count X seeks reformation of the BFLP Loan. Defendants are also entitled to Summary Judgment on Count X to the extent Count X relies on compensatory damages and punitive damages stemming from the BFLP Loan.

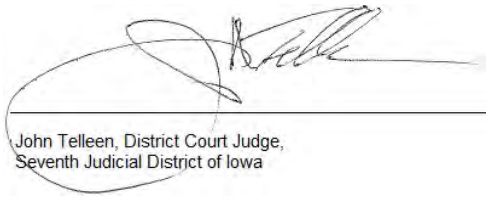
    b. Defendants' Motion for Summary Judgment on Count X is otherwise denied.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
LACV083022	(BC)LORIANN BUSSE & LISA CARPENTIER ET AL VS JEFFREY BUSSE

So Ordered



John Telleen, District Court Judge,
Seventh Judicial District of Iowa