IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHRISTINA L. KRUSE; THE GUARDIANSHIP AND CONSERVATORSHIP OF CHRISTINA KRUSE, by and through VERDA KRUSE, as sole surviving guardian and conservator of CHRISTINA KRUSE; and HARLEY J. HUDSON, Plaintiffs, v. DAVID M. REPP; DICKINSON, MACKAMAN, TYLER & HAGEN, P.C.; ZACHARY I. GUINN; BRADLEY J. VAN VARK; and FIRST STATE BANK OF LYNNVILLE, IOWA, Defendants.	)	Case No. 4:19-cv-00106-SMR-SBJ ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

In 2012, Steven J. Weller caused a car accident that resulted in the need for Plaintiff Christina L. Kruse to require twenty-four hour care for the rest of her life. Adding insult to injury, he then set out on a campaign to shield his valuable farmland—his only real source of wealth—and obstruct Kruse's efforts to hold him responsible for her injuries. After several transparent attempts to fraudulently hide his money from Kruse, Weller formed a limited liability company and transferred all of his assets, including his valuable real estate, to the entity. He then reorganized his financing and obtained further credit to continue operating his farm and living as if he did not owe millions of dollars to pay for the damage he had caused.

This is the third lawsuit in the Weller saga. The first resulted in a $2.5 million personal injury judgment against Weller. The second successfully set aside a series of financial transactions

that were found to have been intentionally designed to fraudulently shield Weller's assets from satisfying Kruse's judgment lien.

Plaintiffs[1] filed this action against the attorneys and bankers who, they claim, furthered Weller's fraud and enabled his efforts to frustrate Kruse's collection efforts. The crux of Plaintiffs' claims in this case centers on the role of Defendants' services as legal and banking professionals. They charge the Bank Defendants with engaging in a series of abnormal financial transactions that defied standard banking practices to refinance and further encumber Weller's valuable real estate despite knowing of his efforts to transfer and devalue his assets in the face of his fault for the collision; they indict the Attorney Defendants with creating a sham legal entity for the purpose of enabling Weller to continue benefitting from the ownership of his land despite being informed of Weller's impending liability and previous unlawful attempts to hide his assets.

Defendants now move for judgment as a matter of law. Because this case turns on Defendants' knowledge of Weller's scheme, intent in rendering professional services, and credibility in denying culpability, dispositive issues hinge on disputed questions of material fact. Accordingly, Defendants' Motions for Summary Judgment, [ECF Nos. 51; 53], are DENIED.

[1] Kruse brings suit on her own accord, as well as through her mother acting as legal guardian and conservator. Kruse's adult son, Harley J. Hudson, is also a named plaintiff.

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I. BACKGROUND

The undisputed facts, viewed in the light most favorable to Plaintiffs as the nonmoving parties, reveal the following:

A. Introduction: The Automobile Accident

On January 28, 2012, Steven Weller ran a stop sign in rural Davis County, Iowa, striking Kruse broadside in a catastrophic automobile accident. [ECF No. 59-2 ¶¶ 1–2]. The passengers in Kruse's vehicle were flown to the University of Iowa Hospitals and Clinics for emergency medical treatment. *Id.* ¶ 8. Kruse had to be extracted from the wreckage of her vehicle; she suffered horrific bodily injuries resulting from the collision and will require twenty-four-hour care for the rest of her life. *Id.* ¶¶ 7, 9; *see id.* ¶ 70. Weller witnessed the extensive damage to the vehicles, the incapacitation of Kruse and her passengers, and the lifesaving efforts by first responders in the wake of the accident. *Id.* ¶¶ 6–7. He knew he had run a stop sign while hauling a livestock trailer travelling more than fifty miles per hour, and when law enforcement responded to the scene, Weller admitted that he was at fault. *See id.* ¶¶ 3–5.

Due to his knowledge and experience as an insurance agent, Weller immediately realized he would face a large claim for the injuries sustained by Kruse and her passengers in the collision. *Id.* ¶ 10. He confided in his family members about his anticipation of a major lawsuit and fear of losing the family farm, along with other assets. *Id.* ¶¶ 11–12. Around this time, Weller's insurance defense counsel advised Weller that he would need to retain his own lawyer to represent him

beyond the extent of his insurance coverage because his liability exposure exceeded his $250,000 per person and $500,000 per accident policy limits. *Id.* ¶¶ 15, 95–96; *see id.* ¶¶ 54, 61–63.

B. Weller Reorganizes His Assets

1. Initial efforts

Weller proceeded to retain a local attorney, Randy Stravers, less than two months after the accident. *Id.* ¶¶ 16–17. After informing him of the car accident and need for personal legal counsel, Stravers advised Weller to transfer his farm and other real estate into a revocable trust and make cash "gifts" to family members, which he agreed to do. *See id.* ¶¶ 18, 103; *see also* [ECF No. 53-2 at 274]. With Stravers's professional assistance, Weller formed the Steven J. Weller Revocable Trust ("the Trust") on March 14, 2012, of which he was the sole trustor, trustee, and primary beneficiary until his death. [ECF No. 59-2 ¶¶ 18–19]. Weller transferred all of his real estate into the Trust by quitclaim deed on March 23, 2012. *Id.* ¶ 20; *see also* [ECF No. 59-3 at 287–88] (2012 Quitclaim Deed).

Throughout the months following the accident Weller also made eight $13,000 cash "gifts" to family members and friends, including to his son, daughter, brother, nephew, niece, girlfriend, and girlfriend's daughters. [ECF No. 59-2 ¶¶ 21–27]. To facilitate several of these transfers, Weller opened savings accounts at First State Bank of Lynnville, Iowa ("First State" or "the Bank") in the names of the recipients without the recipients being present. *See id.* ¶¶ 24, 26, 39. In addition, he made significant contributions totaling $50,000 to two college savings funds owned by his brother for the benefit of Weller's children. *Id.* ¶¶ 32, 38.

The recipients of these gifts knew they were made because of the January 2012 accident, and Weller later admitted that he had always intended the cash transfers to "try to preserve [his] asset[s]" in light of his liability for the collision. *Id.* ¶¶ 28–29; [ECF No. 59-3 at 161]. He also

understood they were fraudulent. *See* [ECF No. 59-2 ¶ 31]. Indeed, Weller's insurance defense counsel Bill Nicholson had told him that the gifts and transfers were inappropriate attempts to shield his assets from the passengers involved in the accident. *Id.* ¶ 30.

2. First State assesses Weller's financial condition

Weller owns agricultural and commercial real estate in Mahaska County, Iowa. *See* [ECF No. 51-1 ¶¶ 5–6]. First State holds security interests in Weller's real estate through mortgages executed in 2002 and 2007 that continue to encumber his farmland. *See id.*; *see also* [ECF No. 51-2 at 35–40 (2002 Mortgage), 41–50 (2007 Mortgage)]. The Bank also possesses a security interest in other tangible and intangible property owned by Weller through a commercial security agreement executed in 2007. *See* [ECF No. 51-2 at 51–52] (2007 Security Agreement).

Within one month of the January 28, 2012 accident, Weller met with Brad Van Vark, his then-primary loan officer at First State Bank.[2] [ECF No. 59-2 ¶ 13]. First State's CEO and President, Steven Russell, also attended the meeting. *See id.* ¶ 14. Weller told the men that he had been in a serious motor vehicle accident, was found at-fault, and anticipated being sued. [ECF Nos. 51-1 ¶ 15; 59-2 ¶ 14]. The passengers who were injured while riding in Kruse's vehicle on the date of the accident filed suit against Weller on September 7, 2012; Weller was formally served with notice of that action on September 15, 2012. [ECF No. 59-2 ¶ 33].

First State held Weller's annual borrower review on September 9, 2013. [ECF No. 59-2 ¶ 45; *see also id.* ¶ 44. The resulting financial statement of Weller's financial condition created at that meeting valued Weller's ownership of his two parcels of real estate, as it had in 2011, at their

[2] Defendants Zachary I. Guinn and Bradley J. Van Vark were, at the time, loan officers at First State, which is also a named defendant in this action (collectively, the "Bank Defendants"). Van Vark was Weller's primary loan officer from 2005 until 2015, when Guinn took over Weller's account. [ECF No. 59-2 ¶ 41]. Van Vark also served as a Vice President at First State Bank. *Id.* ¶ 42. Guinn was promoted to Assistant Vice President in February 2016. *Id.* ¶ 224.

original 2002 valuation of $393,000.[3] *Compare* [ECF No. 52-2 at 245] (September 9, 2013 Financial Statement) *and id.* at 247 (December 30, 2011 Financial Statement) *with* [ECF No. 59-2 at 289–90] (April 2002 Appraisal). This 2002 valuation was recorded on Weller's September 9, 2013 financial statement even though First State had conducted an appraisal addendum less than one year earlier that valued the combined land at $1,283,187. [ECF No. 59-2 ¶ 34]; [ECF No. 59-3 at 291–92] (October 2012 Appraisal Addendum); *see also* [ECF No. 59-3 at 115–16]. The 2013 financial statement also did not include a value for some items of Weller's assets, such as his insurance book of business. *See* [ECF No. 59-2 ¶ 52]. In sum, it stated Weller's net worth was $365,745. [ECF No. 51-2 at 245, 247].

Van Vark—and, vicariously, First State—understood by September 9, 2013, that Weller had been working with an attorney to transfer and devalue his assets in an effort to preserve them from the claims of those injured in the January 28, 2012 car accident. *See* [ECF Nos. 59-2 ¶¶ 51, 53; 51-1 ¶ 18]; *see also* [ECF No. 59-2 ¶¶ 45–50]. Van Vark made note of the "likely undervalue[ation]" of Weller's real estate, which "would add roughly $740,000 of additional land asset value." [ECF No. 51-2 at 66]. He also observed that Weller had experienced a significant

[3] The Bank Defendants contend Weller's financial statements exist purely as internal Bank documents and are not meant to be relied on by any other party. *See* [ECF No. 51-1 ¶ 35]. That factual assertion is supported only by Van Vark's own self-serving affidavit. *See* [ECF No. 51-2 at 6 ¶ 10]. Though the financial statement attests that Weller, as "the undersigned," has included in it a "statement of all assets and liabilities," the document provides it is "[f]or the purpose of obtaining credit from [First State]," and provides no notation, disclaimer, or other indication it was intended only for internal use by First State. *See* [ECF No. 59-2 ¶¶ 58–59]; *see also* [ECF No. 51-2 at 245]. In all cases, the Bank Defendants contend they did not prepare the financial statements or assist Weller in doing so, instead acting as a mere scrivener. *Cf.* [ECF No. 51-1 ¶ 36]; [ECF No. 51-2 at 23–24]. Weller, however, previously testified that he had prepared the financial affidavits with the assistance of his primary loan officer at FSB. *See* [ECF No. 53-2 at 268–70]. The Court observes that this also appears to be the opposite position taken by First State loan officers in the fraudulent transfer action, described below. *See* [ECF No. 59-5 at 85] (describing Guinn trial testimony).

regression in his net worth. *Id.* The explanation for this, he wrote, was due to the fact Weller was "transferring assets to relatives" and "aggressively lowering the value of some assets" as a result of the car accident, which "clouds what actually occurred":

> Steve was involved in a serious vehicle accident on 1/28/12 & was found at-fault. Steve had insurance at the time, but was only carrying a $500,000 liability coverage level per accident. Because of the $500,000 max coverage & also being found at fault, Steve anticipated that he would be sued by the other people involved in the accident for additional medical expenses & pain/suffering. Since the accident, Steve has transferred assets & reduced the values of some of his remaining personally owned assets in hopes of preserving some of his asset base & to make his financial condition appear weaker. Steve's attorney is currently working with the other injured people's attorneys to try and work out a financial settlement in the near future.

[ECF No. 51-2 at 66–67].[4] Van Vark acknowledged Weller's "[p]ast trend [was] poor, with only 1 legitimate positive year over the past 5 years" and also candidly observed Weller's "insurance business is doing ok" and his "livestock management & financial management skills are average." *Id.* at 66–67. He nevertheless awarded Weller a passing score on his financial risk rating worksheet. *See id.*

Several other financial statements were created out of the banking relationship between Weller and First State during this time period. After Plaintiffs had initiated their personal injury action, they received a financial statement from Weller dated July 29, 2014, in hopes of furthering settlement discussions. [ECF No. 59-2 ¶¶ 76–79]; *see also* [ECF No. 59-2 ¶¶ 80–81]. It stated Weller's net worth was $313,180. [ECF No. 59-4 at 132–33]. The financial statement generated

[4] The Bank Defendants assert they were not aware what assets Weller had transferred or how he was reducing their value and did not assist him in doing so. *See* [ECF No. 51-1 ¶¶ 19–20]. Plaintiffs point out that Van Vark, in his deposition related to the fraudulent transfer trial (described below), testified that he did not know about the gifts at all, which was not consistent with his statements in loan presentation documents on September 9, 2013, and September 19, 2014, that Weller was transferring assets to relatives. *See* [ECF No. 59-2 ¶¶ 241–43]; *see also id.* ¶¶ 244–47.

in Weller's September 19, 2014 annual review reflected a net worth of $335,889. [ECF No. 59-3 at 298, 300]. Like the September 9, 2013 financial statement (which Weller had also supplied to Plaintiffs shortly after its creation), the July 29, 2014 and September 19, 2014 financial statements reported Weller's farmland at the outdated and undervalued appraisal of $393,000. [ECF Nos. 59-3 at 298, 300; 59-4 at 132–33]. In addition to transcribing his earlier observations about Weller's financial status and efforts to weaken the appearance of his financial condition, Van Vark observed that Weller had paid $28,000 to settle one of the previous personal injury lawsuits and was at the time "in negotiations on the final lawsuit." [ECF No. 59-3 at 303].

Plaintiffs filed suit against Weller in January 2014 to recover for their personal injuries sustained in the January 28, 2012 accident. [ECF No. 59-2 ¶ 68]. Weller admitted he was entirely at fault and stipulated to the amount of Kruse's necessary medical expenses. *See id.* ¶¶ 74, 141–43. In the face of what he knew to be a million-dollar judgment that he would not be able to pay, Weller turned to the Attorney Defendants. *See id.* ¶¶ 71, 93–96, 98, 141.

3. Weller retains Repp and the Dickinson Law Firm: the creation of Weller Farms, LLC

Defendant David M. Repp is an attorney at the Des Moines law firm Dickinson, Mackaman, Tyler & Hagen, P.C. (the "Dickinson Law Firm") (collectively, the "Attorney Defendants"). Weller testified in his judgment debtor examination immediately following trial in the personal injury action that he sought out legal representation "because of [the personal injury] lawsuit" and not out of a desire to set up an LLC. *Id.* ¶¶ 96, 98, 100–101, 105; [ECF No. 53-2 at 273].[5] To this end, Weller testified he went to Repp specifically because Repp holds himself out as an "asset protection attorney." [ECF No. 59-2 ¶ 99]; *see also id.* ¶¶ 135–38.

[5] More recently, Weller has testified he also went to Repp out of a desire to establish Weller Farms to farm with his adult son, Cody. *See* [ECF No. 53-2 at 277–78]. The notion that Weller sought out Repp's services for pure "estate planning" purposes was thoroughly rejected by the

Weller first met with Repp on March 3, 2015—just two months before trial was set to begin on April 21, 2015. [ECF No. 53-1 ¶ 15]. Weller told Repp about the January 28, 2012 car accident, the lawsuit against him, and that he had been advised to seek out additional representation because his legal exposure exceeded his insurance policy limits. [ECF No. 59-2 ¶¶ 100–02]. He also told Repp that he had transferred his assets into a revocable trust and made numerous cash "gifts" to friends and family at the advice of prior counsel. *Id.* ¶ 103. Repp agreed with the assessment that Weller had received "bad advice" from Stravers and that the cash "gifts" were inappropriate transfers of wealth. *See id.* ¶ 104.

Weller Farms, LLC ("Weller Farms" or "the LLC") was conceived out of this initial meeting on Repp's advice. *See id.* ¶¶ 106–07, 109. That same day, Repp prepared a certificate of organization to establish the entity and transferred Weller's agricultural and commercial real estate into the LLC by quitclaim deed (exempting his homestead), which was thereafter recorded in Mahaska County. *Id.* ¶¶ 110, 113, 116–17; *see also* [ECF No. 53-2 at 192–214 (Weller Farms, LLC Certificate of Organization), 215–16 (2015 Quitclaim Deed)]. At the time of its inception, the operating agreement named Steven Weller and his adult son, Cody Weller, as the only members of Weller Farms; the Wellers were also the company's sole managers who shared equal voting power. [ECF No. 59-2 ¶ 119(a)]; *see also* [ECF No. 53-2 at 193, 195 (Operating Agreement §§ 1.03, 1.04, 2.01(a)), 212 (Ex. A to Operating Agreement)]. In addition to facilitating a family farming operation, the stated objectives of Weller Farms were to "continue, in perpetuity, the ownership of family assets," "restrict the right of non-family to acquire interests in family assets," and "provide protection to family assets from the claims of future creditors against family

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state court presiding over the subsequent fraudulent transfer action brought against Weller. *Id.* at 100. That court also found that, contrary to Steven Weller's testimony, Cody played no role in the entity's formation. [ECF No. 18-2 at 95].

members." [ECF No. 59-2 ¶ 118]; *see also* [ECF No. 53-2 at 193–94] (Operating Agreement § 1.05(e)–(f)). Indeed, the Weller Farms operating agreement contains a number of provisions that, while largely consistent with the Iowa Revised Uniform Limited Liability Company Act, nonetheless present barriers to creditors like Kruse. *See generally* [ECF No. 59-2 ¶ 119]; [ECF No. 53-2 ¶ 25].[6]

Even though Repp understood that Kruse had an unliquidated tort claim against Weller's assets, and trial was scheduled to begin in less than two months, the deed and trustee's affidavit, signed by Weller and prepared by Repp, stated the Trust was conveying the land to Weller Farms free and clear of any known adverse claim. [ECF No. 59-2 ¶¶ 114–15]; *cf. id.* ¶¶ 132–34; Uniform Fraudulent Transfer Act ("UFTA") § 1, cmt. (4) ("[T]he holder of an unliquidated tort claim or a contingent claim may be a creditor protected by [the UFTA].").

[6] Plaintiffs claim the "creditor-thwarting" features of the LLC include: allowing Steven Weller to retain voting rights in the entity even if there was an execution upon or assignment of his membership interest (§ 6.01(a)); providing that an unauthorized assignee, through a levy of execution on Steven Weller's membership interest or financial distributions, would be null and void and trigger a separate buy-out provision to first allow Weller Farms and then Cody Weller to acquire Steven's interest at an amount negotiated between Steven and Cody (§§ 6.01(d), 6.04(a)(i), (b), (d)); permitting distributions to authorized assignees only to the extent Steven (as a member) would be, which requires approval by the only other manager, Cody (§§ 5.06(a), 6.01(c)); and allowing Cody to expel Steven as a member upon any voluntary or involuntary assignment or transfer of his membership interest (§ 6.02(b)). All decisions, including the approval of distributions, were required to be made by a majority vote of the two managers, Steven and Cody Weller. (§ 2.01(b)). Although the operating agreement provided for the inclusion of other members and a change of managers, a new member could be admitted to Weller Farms only upon (a) the unanimous vote of all current members, (b) payment of an agreed-upon capital contribution by the prospective member, and (c) agreeing to be bound by the terms of the operating agreement (§ 6.03); Steve and Cody could be removed as managers only upon "their individual deaths, resignation[,] or removal by the unanimous vote" of all members (§§ 2.01(a), 3.02), and new managers are elected by a vote of the members in proportion to their capital contributions only to replace a resigning manager (§§ 3.01, 7.01(a)). *See* [ECF No. 53-2 at 196–206].

C. The Personal Injury Lawsuit

After a three-day bench trial in April 2015, the Iowa District Court for Davis County found in favor of Kruse and awarded $2,557,100 in damages; a corrected judgment was entered on May 5, 2015. [ECF No. 59-2 ¶¶ 142, 144–45]; *see also* [ECF No. 51-2 at 53–57, 93–94] (Ruling and Judgment; Corrected Judgment Nunc Pro Tunc). Kruse filed her judgment in the office of the Clerk of the Iowa District Court for Mahaska County on May 8, 2015, which should have become a lien against Weller's personal real estate on that date. [ECF No. 59-2 ¶ 146]; *see also* Iowa Code § 624.24 (providing lien attaches to real estate located outside the county where judgment was entered when "filed in the office of the clerk of the district court of the county in which the real estate lies").

On May 11, 2015—ten days after judgment was entered, six days after it was corrected, and three days after it was recorded—Repp assisted Weller in preparing another financial statement that was ultimately provided to Kruse's counsel following the conclusion of the personal injury action. *See* [ECF No. 59-2 ¶¶ 147, 149–51]; *see also* [ECF No. 59-5 at 3–4] (May 11, 2015 Financial Statement).[7] Repp knew of the $2.5 million judgment at the time the document was prepared, and understood that to be the reason behind updating Weller's financial statement. *See* [ECF No. 59-2 ¶ 148]; [ECF No. 53-2 at 368]. The May 11, 2015 financial statement stated Weller's 92.5% interest in Weller Farms was valued at $75,000, even though 100% of the entity's net equity was reported to be (-$16,506) and his stake in the LLC had been valued at $150,000

[7] The May 11, 2015 financial statement relied on information from prior First State records. [ECF No. 59-2 ¶ 151]. The Attorney Defendants maintain Repp was a mere scrivener of information provided to him by Weller. [ECF No. 53-1 ¶ 50]. In his deposition, however, Weller testified that Repp was the one who "probably made the decisions with the numbers that I provided to him." [ECF No. 53-2 at 284]. Repp admitted he alone wrote the notes to the financial statement. [ECF No. 59-2 ¶ 162].

when it was formed only two months earlier. [ECF No. 59-2 ¶¶ 152–54, 160].[8] It also stated Weller's individual net equity was $132,542.94. *Id.* ¶ 157. Like Weller's earlier financial statements created with First State, the March 11, 2015 financial statement reported the total value of his farmland to be $393,000, but here it was listed as an asset of the LLC. *Id.* ¶¶ 158–59.

D. The January 4, 2016 Refinancing

On October 9, 2015, Weller met with Guinn for his 2015 annual review with First State. [ECF No. 59-2 ¶¶ 164–65]. The resulting financial statement, prepared in Guinn's office, listed Weller's farmland as his personal asset even though it had already been transferred to the LLC and despite the fact that an accompanying agricultural repayment projection, prepared on the same date, listed Weller's anticipated crop revenue as "LLC income." [ECF No. 59-2 ¶¶ 165–68]; *compare* [ECF No. 51-2 at 110] (October 9, 2015 Financial Statement) *with* [ECF No. 59-3 at 305] (2016 Projected Agricultural Repayment Plan).[9] The statement also continued to value the land

[8] In his deposition, Repp testified this anomaly resulted from double-counting Weller's liabilities. [ECF No. 59-2 ¶ 156]. This double-counting was not adjusted until Weller's August 9, 2016 financial statement, created after Plaintiffs filed suit to set aside Weller's transfers as fraudulent. *Id.* Repp claims that the discrepancy was due to relying on old information in his possession when creating Weller Farms and that the valuations changed in 2016 when he "got subsequent information." [ECF No. 53-2 at 371].

[9] The Bank Defendants claim they had no knowledge what assets, if any, were owned by Weller Farms in October 2015. Plaintiffs point out the Bank necessarily knew of the existence of Weller Farms when the entity was formed on March 9, 2015, because on that date Weller also opened a checking account at First State in the name of the LLC. [ECF No. 59-2 ¶ 128]. Guinn admitted it "appears" he must have known of the transfer of the farmland to Weller Farms at the time of the October 9, 2015 financial statement, though he later states Weller might have only told him of his plans to do so at that time. [ECF No. 59-3 at 205–206, 210, 223–24]. In addition to listing the anticipated crop revenue as "LLC income," the October 9, 2015 financial statement valued Weller's interest in the LLC at $49,782 and personally held no assets in machinery or equipment, while his September 19, 2014 financial statement valued Weller's personally-owned machinery and equipment at $49,665 with no interest in an LLC. *Compare* [ECF No. 59-3 at 298–99] (September 19, 2014 Financial Statement) *with* [ECF No. 51-2 at 110–11] (October 15, 2015 Financial Statement). In any event, Guinn agreed it was "unusual" to list property owned by one entity on the financial statement of another entity, even when viewing the

at its 2002 value of $393,000 and contained the same note that Weller has transferred and reduced asset values since his at-fault accident on January 28, 2012. [ECF No. 59-2 ¶¶ 172, 175]. Later that month, Guinn prepared a document titled "Financial Risk Rating Worksheet" for Weller Farms, even though there was no financial statement prepared for the LLC. *Id.* ¶¶ 176–77; [ECF No. 59-3 at 307] (October 28, 2015 Weller Farms Financial Risk Rating Worksheet). Despite acknowledging that Weller's "global" financial picture reflected a negative net cash flow of (-$17,230), and claiming to have no information on assets owned by the LLC at the time, Guinn assigned Weller Farms the highest "pass" score for current asset-debt ratio, debt-net worth ratio, loan-collateral ratio, and repayment capacity, along with the second-highest "pass" rating for the entity's overall credit risk assessment. [ECF No. 59-2 ¶¶ 174, 178–79].

These October 2015 financial documents were ultimately used by Guinn and First State to refinance the mortgages secured by Weller's farm real estate approximately three months later.[10] On January 4, 2016, First State issued to Weller two promissory notes for $296,648.87 and $40,357.70; the former purported to be secured by the 2002 Mortgage and 2007 Security Agreement, and the latter by the 2002 Mortgage, 2007 Mortgage, and 2007 Security Agreement. [ECF No. 51-1 ¶¶ 44–45, 47, 51, 55, 62]; *see also* [ECF No. 51-2 at 117, 122] (January 4, 2016 Notes). Both Notes were issued to Weller, personally, and further secured by a guaranty from

borrower "global[ly]," and that it is not standard practice to do so at First State. [ECF No. 59-2 ¶ 171].

[10] On December 15, 2015—four days after Plaintiffs garnished Weller's accounts at a different bank and the same day Weller was issued notice—First State loaned Weller Farms $23,000 for cattle secured by a November 15, 2015 security agreement and Weller's individual 2002 Mortgage, even though the Bank had neither a financial statement for the entity nor a personal guaranty from Weller, and the First State maintains it had no knowledge of the LLC's assets at that time. [ECF No. 59-2 ¶¶ 182–84]; *see* [ECF No. 59-3 at 308]. Guinn admits this is not First State's typical practice and cannot recall ever having completed another such loan. [ECF No. 59-2 ¶ 184].

Weller Farms covering all of Weller's past, present, and future personal debts. *See id.* Guinn admits, however, that he knew Weller had transferred his farmland and other assets to Weller Farms as part of his effort to preserve them from Kruse and make his financial condition appear weaker at least by the date of these January 2016 transactions, and that it is uncommon to secure loans with property that is not formally owned by the borrower. [ECF No. 59-2 ¶¶ 186, 190, 192].[11] In addition to the guaranty, Weller Farms granted First State a mortgage securing credit up to $500,000. [ECF No. 51-1 ¶ 55; *see also* [ECF No. 51-2 at 127–37 (2016 Mortgage), 144–45 (2016 Guaranty)]. The 2016 Mortgage is secured by the same farmland described in the 2002 Mortgage. *Cf.* [ECF No. 51-2 at 35, 137].

Following on the heels of the 2016 Refinancing, Weller and Repp prepared another financial statement on January 20, 2016. [ECF No. 59-2 ¶ 213]. Unlike the most recent October 9, 2015 financial statement prepared with Guinn, the January 20, 2016 financial statement reported the farmland as an asset owned by Weller Farms. *See* [ECF No. 59-5 at 247] (January 20, 2016 Financial Statement). It also continued to state Weller's 92.5% capital interest in the LLC was only valued at $75,000, while the value of the full interest in the LLC was (-19,312.95). [ECF No. 59-2 ¶¶ 217, 219].

E. The Fraudulent Transfer Action

On March 3, 2016, Plaintiffs filed a second lawsuit in the Iowa District Court for Mahaska County alleging Weller had engaged in fraudulent transfers intended to shield his assets from

[11] First State asserts it did not learn about Plaintiffs' $2.5 million personal injury judgment against Weller until February 2017, when it is undisputed to have first appeared on Weller's TransUnion credit report. *See* [ECF No. 51-1 ¶¶ 43, 69]; *see also* [ECF No. 59-3 at 229]. Weller, however, testified he had likely told Guinn about Kruse's judgment before executing the January 4, 2016 refinancing and had not hidden anything during his interactions with First State; at the same time, he later stated he had no reason to doubt Guinn's testimony that First State did not find out until March 2017. *See* [ECF No. 53-2 at 286, 288–89, 304].

Kruse's judgment lien or otherwise hinder their collection efforts. [ECF No. 51-2 ¶ 70]; *see also* [ECF No. 59-5 at 23–58] (Fraudulent Transfer Petition). Two relevant transactions occurred in the preceding months. At Plaintiffs' request, Weller and Repp prepared another financial statement for Weller on August 6, 2016. *See* [ECF No. 59-2 ¶ 226]. This statement, coming only seven months after the January 20, 2016 financial statement, reported that Weller Farms's net equity had increased from (-19,312.95) to $157,397; stated Weller's capital interest in Weller Farms had increased from $75,000 to $145,292.23; and that, as a result, his personal net equity had increased to $463,279.27. [ECF No. 59-2 ¶ 227].[12]

The first and only financial statement for Weller Farms, accompanied by a personal financial statement for Weller, was prepared by Weller and Guinn on March 23, 2017. *Id.* ¶¶ 230-231; *see also* [ECF No. 59-3 at 315–17] (March 23, 2017 Financial Statements). Even though Guinn had used the LLC's ownership of the land to prepare a new $500,000 mortgage in the name of Weller Farms during the January 4, 2016 refinancing, the March 2017 financial statements continued to list the real estate as personal asset of Weller. [ECF No. 59-2 ¶ 231]. Guinn admits the March 23, 2017 financial statements are not true or accurate. *Id.*; [ECF No. 59-3 at 223–24]. It is undisputed that Guinn and First State also knew of Kruse's $2.5 million judgment against Weller at the time these documents were prepared, but the lien is not disclosed as one of

[12] Repp testified in his deposition these changes in Weller's overall financial outlook resulted from two things: an adjustment of a previous "double counting of liabilities" that had reported the 2016 Notes as a liability of both Weller and Weller Farms, which he described as an "ambiguity just embedded in having to compile a financial statement"; and an "increase" in "the value of the land in this financial statement." *See* [ECF No. 53-2 at 397–99]. Repp does not explain how this "double counting of liabilities" also existed in the financial statement preceding the January 4, 2016 transactions involving Weller Farms. *Cf.* [ECF No. 59-5 at 2–3] (May 11, 2015 Financial Statement). Nor does he explain how the value of Weller's real estate changed in August 2016 when Weller's most recent financial documents with First State still listed the property at its 2002 valuation. *Cf.* [ECF No. 53-2 at 367].

Weller's liabilities. [ECF No. 59-2 ¶¶ 222, 232–34; *see also* [ECF No. 59-3 at 228–29]; [ECF No. 51-2 at 154–55].[13] Although the large judgment rendered Weller insolvent, First State did not foreclose on its interest in the real estate and continued to extend additional loans to Weller Farms. *See* [ECF No. 59-2 ¶¶ 235–38].

The fraudulent transfer action was tried before the Iowa District Court for Mahaska County on February 6–9, 2018. *Id.* ¶ 253. Steven Weller, Cody Weller, and Weller Farms were represented by the Attorney Defendants. *Id.* ¶ 254. After a bench trial, the Iowa court ruled in favor of Plaintiffs in a written order dated March 13, 2018.

By clear and convincing evidence, the trial court found Weller Farms was formed with the specific intent to shield Weller's assets and prevent Kruse from levying her judgment lien against his real estate. [ECF No. 53-2 at 103] (Fraudulent Transfer Trial Order & Verdict) ("[T]he formation of the LLC was intended to keep certain assets from his creditors. . . . The future creditors are the Plaintiffs in this case.").[14] Noting that although such business formation and asset organization practices are a common and often legitimate way to secure personal retirement and guarantee an inheritance for one's children, the facts established estate planning was not Weller's intent; to the contrary, the court observed that "Weller has attempted to go about his life and conduct business as though he did not owe Plaintiffs $2.6 million [sic]. Bluntly, he has not acted

[13] Guinn testified that, based on the prior documentation in First State's bank file of Weller's liability for the January 28, 2012 accident and everything Weller had told him about the collision, he was not surprised the judgment was for $2.5 million. [ECF No. 59-2 ¶ 234].

[14] The court did not specifically find that the Weller Farms Operating Agreement itself was fraudulent. *See* [ECF No. 53-2 at 102] (finding that although "much of the testimony of Plaintiff's expert witnesses [is] compelling regarding some of the critiques . . . of the Operating Agreement," "the specifics of the LLC are not a sham."). The court also ruled that Plaintiffs had not "proved by clear and convincing evidence that Steven Weller did not receive reasonable equivalent value for the assets he put into the LLC." *Id.* The "issue with the LLC," it concluded, was "not the insignificant value of assets Steven Weller may have lost" but "the reason for [its] formation." *Id.*

like a person who has any intent on satisfying the judgment against him." *Id.* at 103–04. The court concluded that "Weller's actions in creating the LLC and subsequent behavior indicate his goal was and still is to prevent creditors from obtaining the value of [his] land." *Id.* at 105. The eight $13,000 cash "gifts," the court held, were "clearly fraudulent." *Id.* at 104. But it mused: "For whatever reason, ultimately transferring the money to the LLC and away from creditors did not strike [Weller] or his counsel as just as eyebrow-raising." *Id.*

Based on these findings, the state court avoided and set aside as fraudulent the following transactions:

- Weller's eight 2012 cash gifts to family members given immediately following the accident;
- Later contributions to the college savings accounts for Weller's children made in 2013;
- The March 3, 2015 quit claim deed from Weller, acting as trustee of the Steven J. Weller Revocable Trust, to Weller Farms, along with "all other title documents associated with the avoided transfers . . . , transfers by Steven J. Weller in the [Weller Farms] Operating Agreement . . . , and acts and transactions, including transfers or obligations incurred by Weller Farms LLC, or anyone acting on behalf of Weller Farms LLC";
- All transfers made by Weller to Weller Farms and all obligations incurred by Weller on behalf of Weller Farms contemplated by the January 4, 2016 refinancing with First State Bank, including, without limitation: the $500,000 Real Estate Mortgage; the Guaranty from Weller Farms to First State covering all of Weller's past, present, and future debts to First State, and "all loans signed by Steven J. Weller in any capacity on January 4, 2016, and all other security interests, loans, or documents granted by either Defendant Steven Weller in any capacity related to Weller Farms LLC or individually."

[ECF No. 59-2 ¶ 261; *see also* [ECF No. 53-2 at 106–07]. Accordingly, the judge decreed "[a]ll assets of Weller Farms LLC are owned in substance by Steven J. Weller and remain available to

creditors . . . including Plaintiffs . . . free and clear of any claims by Cody Weller, Weller Farms LLC, or Steven J. Weller Revocable Trust." [ECF No. 59-2 ¶ 259].

F. Subsequent Litigation

The Weller Saga does not end there. In the wake of the judgment in the fraudulent transfer action, First State filed suit to foreclose on the real estate securing the notes executed during the January 4, 2016 refinancing. *See* [ECF No. 51-1 ¶¶ 73–75]. The principal amounts of $292,351.58 and $35,084.94 under each note, respectively, remain unpaid. *See id.* ¶¶ 76–77. The Bank did not move to foreclose on the 2016 Mortgage held by Weller Farms; it released that security interest on August 4, 2020. *Id.* ¶¶ 78–79. The mortgage foreclosure action, filed on November 21, 2018, is currently pending in the Iowa District Court for Mahaska County.

Armed with their judgment in the fraudulent transfer case, Plaintiffs filed this lawsuit, also in the Iowa District Court for Mahaska County, on February 28, 2019. *See generally* [ECF No. 1-1]. They bring suit against the Attorney Defendants and the Bank Defendants, alleging both knowingly participated in Weller's fraudulent attempts to shield his assets from Plaintiffs' judgment lien and unlawfully assisted Weller in avoiding his obligation to compensate Kruse for her personal injuries. Count I alleges transferee and obligee liability against First State under Iowa's Uniform Fraudulent Transfer Act ("IUFTA"), Iowa Code § 684.7 (2015). Count III alleges Defendants intentionally interfered with Plaintiffs' efforts to levy their judgment lien and collect their personal injury award or, in the alternative, aided and abetted such interference, asserting a claim for general tortious interference under the Iowa common law; Count V alleges they are liable as co-conspirators for Weller's tortious interference. Counts VI and VII assert civil causes of action under the Racketeering Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1964; though they advance several theories of recovery, Plaintiffs generally allege the Attorney

Defendants conducted or otherwise participated in the conduct of a racketeering enterprise with the purpose of defrauding Kruse, while all Defendants at least conspired to do so, *see* 18 U.S.C. § 1962(c), (d).

Defendants removed the case to federal court and moved to dismiss the Petition on the pleadings, which the Court granted in part and denied in part. [ECF No. 29].[15] Defendants now assert the undisputed facts entitle them to judgement as a matter of law. [ECF Nos. 51; 53].

II. STANDARD OF REVIEW

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Paulino v. Chartis Claims, Inc.*, 774 F.3d 1161, 1163 (8th Cir. 2014). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011) (citing *Anderson v. Liberty Lobby*, *Inc.*, 477 U.S. 242, 248, 252 (1986)).

To preclude the entry of summary judgment, Plaintiffs must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). The evidence is viewed "in the light most favorable to the nonmoving party" and all reasonable inferences that can be drawn from the record are construed in that party's favor. *Pedersen v. Bio-Med. Applications of Minn.*, 775 F.3d 1049, 1053 (8th Cir. 2015) (quoting *Johnson v. Wells Fargo Bank, N.A.*, 744 F.3d 539, 541 (8th Cir. 2014)). But

[15] *See also Kruse v. Repp*, --- F. Supp. 3d ---, 2020 WL 1317479 (S.D. Iowa Mar. 20, 2020) (Rose, J.). The Court dismissed Plaintiffs' claims in Counts II and IV for accessory liability under the IUFTA (aiding and abetting Weller's fraudulent transfers and conspiring to do the same) and Count VIII for intentional infliction of emotional distress.

"[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge." *Anderson*, 477 U.S. at 255. "Generally, the issue of whether a particular intent existed is a question of fact for the jury." *Yellen v. Hake*, 437 F. Supp. 2d 941, 952 (S.D. Iowa 2006) (quoting *In re K-tel Intern., Inc. Sec. Litig.,* 300 F.3d 881, 894 (8th Cir.2002)).

III. ANALYSIS

Since the January 28, 2012 accident, it is clear Weller has sought to avoid his obligation to compensate Kruse for the injuries caused by his negligence at every turn and received professional direction and assistance to do so. Viewed in a light most favorable to Plaintiffs, the record infers both the Bank Defendants and Attorney Defendants knew of this goal and could lead a reasonable factfinder to conclude that the purpose behind their services was to further Weller's fraud. Disputed issues of fact and credibility preclude the entry of summary judgment; Defendants are not entitled to judgment as a matter of law.

A. Iowa Uniform Fraudulent Transfer Act

The Court first turns to Plaintiffs' claim brought under the IUFTA, 1994 Iowa Acts ch. 1121, § 16 (codified at Iowa Code § 684.12 (1995)).[16] Plaintiffs seek equitable remedies against First State as a transferee to the creation of security interests in the January 4, 2016

[16] The Iowa Legislature amended Chapter 684 of the Iowa Code in 2016 by replacing the UFTA and enacting the Uniform Law Commission's restyled promulgation of the law, the Uniform Voidable Transfers Act ("UVTA"). *See* 2016 Iowa Acts ch. 1040, § 15. With the exception of a few specific substantive revisions not relevant here, the IUVTA mostly reflected grammatical and stylistic alterations and is substantially similar to its predecessor in almost every regard; the amendment was only meant to "address a small number of narrowly-defined issues, and was not a comprehensive revision." Prefatory Note to the UVTA, at 5 (Uniform L. Comm'n 2014); *see also id.* at 6 (noting "original comments were supplemented and otherwise refreshed"). Because all transactions at issue in this case occurred prior to the effective date of the amended statute, all citations to the relevant statutory law will be to the IUFTA as it was in effect in 2015 unless otherwise noted.

refinancing. First State contends Plaintiffs cannot prove the Bank knew of Weller's fraudulent intent or aided him in his scheme to shield his assets from Kruse's judgment lien to establish transferee liability. Even if they could, the Bank argues Plaintiffs have not been prejudiced by the January 4, 2016 refinancing and are entitled to no relief.

Under the IUFTA, "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation . . . [w]ith the actual intent to hinder, delay, or defraud any creditor of the debtor." Iowa Code § 684.4(1)(a) (2015). A transfer undertaken in such circumstances is voidable "to the extent necessary to satisfy the creditor's claim." *Id.*§ 684.7(1)(a); *see Schaefer v. Schaefer*, 795 N.W.2d 494, 498 (Iowa 2011) ("The rationale for the right to reclaim fraudulently conveyed property is, and always has been, to prevent a debtor from 'frustrat[ing] his creditor's rights and avoid[ing] his obligations by changing title to his assets.'" (quoting 37 Am. Jur. 2d *Fraudulent Conveyances and Transfers* § 1, at 520 (2001)). And the defrauded creditor "may recover judgment for the value of the asset transferred" against "[t]he first transferee of the asset" fraudulently conveyed. Iowa Code § 684.8(2)(a); *see also id.* § 684.7(2) (permitting a defrauded creditor to "levy execution on the asset transferred or its proceeds" where the creditor "has obtained a judgment on a claim against the debtor"). The transactions involved in the January 4, 2016 refinancing were set aside and adjudicated to be fraudulent transfers as to Weller. [ECF No. 53-2 at 106–07].[17] The question of First State's liability as a transferee remains.

[17] At oral argument, the Bank Defendants argued for the first time that the 2016 Mortgage did not constitute a "transfer" within the meaning of the IUFTA. Their novel position is at odds with the plain meaning of Iowa's fraudulent transfer statute, which broadly defines a "transfer" as "*every* mode, direct *or indirect*, . . . of . . . parting with an asset *or an interest in an asset*," including the "creation of a lien *or other encumbrance*." Iowa Code § 684.1(11) (emphasis added); *cf.* UVTA § 8, cmt. 8 ("Whether a transaction is captured by [the fraudulent transfer statute] ultimately depends upon whether the transaction unacceptably contravenes norms of creditors'

1. Good faith

In keeping with the common law, the IUFTA exempts from avoidance the interests of a bona fide transferee "who took in good faith and for a reasonable equivalent value." Iowa Code § 684.8(1). Indeed, it is entirely lawful for a debtor to prefer one creditor over another "even if the debtor's intentions toward the nonpreferred creditor are spiteful and will delay or prevent them from obtaining payment." *First State Bank, Belmond v. Kalkwarf*, 495 N.W.2d 708, 712 (Iowa 1993). So long as the preferred creditor "acts in good faith for [its] own protection," that creditor's knowledge of the debtor's fraudulent purpose does not defeat its claim. *Id.* However, a transferee "may not lawfully take a conveyance in order to further the plans of the debtor to hinder, delay, or defraud other creditors; the acceptance of a conveyance under such circumstances amounts to a participation in the debtor's fraud." *Prod. Credit Ass'n of Midlands v. Shirley*, 485 N.W.2d 469, 472 (Iowa 1992). When a preferred creditor knows of the debtor's fraudulent intent and accepts a transfer of security "wholly *or in part* to aid the fraud," that creditor lacks good faith because it "participated in the wrong." *First State Bank*, 495 N.W.2d at 712 (emphasis added); *see also Shirley*, 485 at 474 ("[G]ood faith means 'honesty in fact in the conduct or transaction concerned." (citation omitted)). Fraud is rarely committed openly, and as a result, "direct evidence of it is rarely obtainable; fraud may, and usually must be proved by circumstantial evidence." *Shirley*, 485 N.W.2d at 472. "Good faith" is an affirmative defense that First State bears the burden of proving. UFTA § 8, cmt. 1.

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rights . . . ."). The 2016 Mortgage "part[ed] with . . . an interest in an asset" when it conveyed a security interest in Weller's real estate for the advancement of future credit and encumbered the face of its record title. That the 2016 Mortgage did not secure funds at that time it was granted does not make it less of an "encumbrance." *See Encumbrance*, Black's Law Dictionary (11th ed. 2019) ("A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest.").

First State contends there is no evidence the Bank knew of Weller's fraudulent intent, precluding transferee liability as a matter of law, but that argument is belied by Van Vark's and Guinn's written acknowledgments of Weller's efforts to transfer and devalue his assets in light the January 28, 2012 accident. Shortly after the collision, Weller informed Van Vark and Russell about the serious motor vehicle accident in which he had been involved and found at-fault. And Van Vark documented his understanding that Weller's liability exceeded his $500,000 insurance coverage. In this context, Van Vark observed, Weller was "transferr[ing] assets" and "reduc[ing] the values of some of his remaining personally owned assets" to "preserv[e] some of his asset base" and "make his financial condition appear weaker." [ECF No. 51-2 at 66–67]. Viewed in a light most favorable to Plaintiffs, Weller's disclosures and the Bank's subsequent dealings with him reasonably infers First State's knowledge of Weller's intent to hinder, delay, or defraud Kruse.

Nor does the record, when viewed in a light most favorable to Plaintiffs, establish as a matter of law that First State undertook the 2016 refinancing solely out of a good faith desire to protect its security interest in Weller's real estate. Multiple indicia of fraud raise legitimate questions about the Bank's motivation behind the January 4, 2016 refinancing. First State knew at least by the time of the 2016 transactions that Weller did not personally own the real estate and had conveyed it to a corporate entity he almost entirely controlled. *See* Iowa Code § 684.4(2)(a), (b) (considering "[w]hether the transfer or obligation was to an insider" and "[w]hether the debtor retained possession or control of the property transferred after the transfer" in evaluating fraudulent intent); *see also* § 684.1(8)(b), (c) (defining an "insider" to include a director, officer, or "person in control" of a business debtor). Further, the value of the land was by far Weller's most significant asset—in many respects, it was his only significant asset—yet the Bank continued to rely on an outdated appraisal that reflected only a third of its actual value. *See id.* § 684.4(2)(e) (considering

"[w]hether the transfer was of substantially all the debtor's assets"). And the conveyance to Weller Farms occurred within weeks of a personal injury trial for which Weller had admitted complete fault. *See id.* § 684.4(2)(d) (considering "[w]hether, before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit"). Weller's liability for the January 28, 2012 car accident—which the Bank Defendants understood from the beginning to be a significant threat to his finances—ultimately resulted in a $2.5 million judgment that rendered Weller insolvent. *See id.* § 684.4(2)(i) (considering "[w]hether the debtor was insolvent or became insolvent shortly after the transfer was made"), (j) (considering "[w]hether the transfer occurred shortly before or shortly after a substantial debt was incurred"). Yet in its financial dealings with him First State allowed Weller to inconsistently classify his real estate as both a personal holding and as an asset of the LLC, even after learning of the conveyance. *Cf. id.* § 684.4(2)(g) (considering "[w]hether the debtor removed or concealed assets"). In this context, the Bank then further encumbered the real estate with an additional mortgage that greatly exceeded the face value of the decade-old appraisal upon which it formally relied.

The structuring of the 2016 refinancing and circumstances surrounding those transactions, coupled with evidence supporting the Bank's knowledge of Weller's unlawful intent, generate disputed issues of material fact from which a reasonable factfinder could infer First State was motivated, at least in part, to further Weller's illegal efforts. On one hand, the refinancing was not necessary to protect First State's existing loans after the land was transferred to Weller Farms because the Bank already had priority over the sums previously advanced under the 2002 and 2007 Mortgages. *See Central Bank and Real Estate Owned, LLC v. Hogan*, 891 N.W.2d 197, 209 (Iowa 2017) ("[P]urchasers of a quitclaim deed take the property subject to all outstanding equities."). First State's experts, in essence, tend to agree. *Cf.* [ECF No. 51-2 at 103 (Fopma Report)

(concluding First State "already had a priority lien position and did nothing to change that with the 1-4-2016 transaction"), 242 (Cunningham Report) ("Regardless of the legal title to the real estate in question, the Bank has a perfected first lien position upon the real estate identified in [the 2002 Mortgage]."))]. And despite its insistence that the 2016 Notes were part of a routine lending transaction meant to refinance and consolidate pre-existing debt, *see* [ECF No. 51-1 ¶¶ 52–53], the Bank advances no evidence of a rehabilitative purpose behind the notes or the new $500,000 mortgage, *cf.* UFTA § 8, cmt. 6 (noting "the likelihood of success for the rehabilitative effort" as one of several "relevant considerations in determining whether the transfer was in good faith"). According to Plaintiffs' banking expert, "standard banking practice" would have called for First State to fortify its position by "not lending additional funds" and ensuring the amounts advanced under those financial instruments did not exceed the respective maximum amounts for which they had priority. [ECF No. 59-5 at 198] (Manning Report); *see also Blue Grass Savings Bank v. Cmty. Bank & Tr. Co.*, 941 N.W.2d 20 (Iowa 2020) (limiting priority of future advances under Iowa Code § 654.12A to the maximum noticed in the operative financial instrument).

On the other hand, the arrangement benefitted Weller greatly. The 2016 Notes were made in Weller's name and secured by the 2002 and 2007 Mortgages (even though Weller did not personally own the real estate), as well as an additional mortgage and guaranty from Weller Farms (even though the LLC did not have any recorded assets); the transaction enabled the fraudulent scheme by allowing Weller to at once legally disassociate himself personally from his valuable property while at the same time continuing to enjoy the use and benefit of those same assets for the operation of his business and daily life. The $500,000 additional mortgage granted by Weller Farms, specifically, "allowed Weller the capacity to continue to borrow money and continue to finance the operation of the activities found by the [Mahaska County court] to involve fraudulent

transfers . . . secured by the fraudulently transferred real estate and other assets." [ECF No. 59-5 at 198]; *see also id.* at 214 (opining that "[t]he primary effect of the First State loans were to encumber Weller's and Weller Farms' property so as to render those properties unattractive, and ultimately unavailable, to Kruse to satisfy her judgment."). In effect, it erected a second barrier to Kruse's recovery by appearing to separate the refinancing from his fraudulent transactions with Weller Farms, even though the LLC in truth owned the property at the time and thus its guaranty of the loan would have been crucial to actually securing the transaction. As succinctly put by Plaintiffs' fraud expert: Weller as the "primary borrower" had no *actual* ability to repay the 2016 Notes, Weller Farms as the "guarantor" had no *documented* ability to cover the 2016 Notes, and "the refi[nancing] thus acted as little more (if at all) as an equity stripping facility for the benefit of Weller." [ECF No. 59-5 at 214] (Adkisson Report).

In response, First State points to its own expert testimony that the Bank "operated in a prudent and typical manner to continue to protect its lien position . . . when a customer transfers assets from his/her personal name into a limited liability company controlled by the customer" because it is a "common and protective practice of a bank to continue to tie to and look to the principal party that formed the entity as ongoing support for the entity." [ECF No. 51-2 at 98, 102] (Fopma Report). But even if that is so, it does not account for the inconsistent treatment of Weller's real estate and lack of accounting for the financial picture of Weller Farms itself. Nor does it explain the Bank's continued reporting of the land as Weller's personal asset after learning of the transfer. If the Bank's sole motive was self-preservation and good-faith protection of its senior security interests, the discrepancies and irregularities present in the transaction—permitting Weller to obtain personal loans secured by real estate formally owned by Weller Farms, with a guaranty and additional mortgage from the LLC despite the entity recording no assets and lacking

any statement of its financial condition—reflect a disregard of corporate formalities that fail to provide a satisfying explanation for the transaction. *See* [ECF No. 59-5 at 199–201].

Being unnecessary under normal circumstances to grant the loans, the circumstances surrounding the 2016 refinancing and abnormalities inherent in those transactions provide a reasonable inference that the Bank made a deliberate decision to structure the deal in a way beneficial to Weller to, at least in part, assist him in his effort to hide his assets from Kruse. First State's protestations to the contrary—that it was in fact motivated solely to protect its secured position—generate disputed questions of material fact that preclude summary judgment on the Bank's status as a good faith transferee.

2. Prejudice

A defrauded creditor, however, "must show prejudice, even if the transferor's fraudulent intent is evident." *Schaefer*, 795 N.W.2d at 498. First State points to Iowa Code § 654.12A, under which "loans and advances made under a prior recorded mortgage will have priority over subsequently recorded or filed liens . . . even where the holder of the prior recorded mortgage has actual notice of indebtedness to other creditors under subsequently recorded or filed liens." *First State Bank*, 495 N.W.2d at 713. To show prejudice, or injury, "creditors must be able to show they would have received something which has become lost to them by reason of the conveyance." *C. Mac Chambers Co. v. Iowa Tae Kwon Do Acad., Inc.*, 412 N.W.2d 593, 596 (Iowa 1987). Because the 2016 sums were issued under the future advance clauses of the 2002 and 2007 Mortgages, and those mortgages are senior to Plaintiffs' 2015 judgment lien, the Bank claims Plaintiffs cannot show they were prejudiced by any of Weller's fraudulent transfers. *See Textron Fin. Corp. v. Kruger*, 545 N.W.2d 880, 885 (Iowa Ct. App. 1996) ("A fraudulent conveyance will not be set aside unless complaining creditor can show they were prejudiced.").

First State's position is based on the "false premise" that a judgment creditor "must show prejudice by reason of" priority in interest. *See id.* at 885; *see also* UVTA § 4, cmt. 8 ("Diminution of the assets available to the debtor's creditors is not necessarily required to 'hinder, delay, or defraud' creditors."). In *Shirley*, a lender and bank were both judgment creditors for sums owed by the debtor's company. 485 N.W.2d at 471. The debtor arranged a sale of securities to his nephew, with whom he had extensive business dealings, for less than half of their actual value and used the proceeds of the sale to pay down the bank's competing judgment with the intent to defeat and defraud the lender's claim. *Id.* The lender was prejudiced by the fraudulent conveyance, the court held, because "[t]his lower consideration [paid for the securities] . . . effectively prevented [the lender] from bidding at a sheriff's judicial sale of [the debtor's] farm land and other property in which [the bank] had a prior security interest." *Id.* at 474. In purchasing the land, the bank credit bit just enough to liquidate its outstanding judgment. *Id.* But the evidence showed that had the bank received the fair market value of the fraudulently conveyed securities, it would have been, "in all likelihood, . . . oversecured," and "would have in turn credit bid between $90,000 to $100,000 less at the judicial sale." *Id.* "[I]t then would have been more feasible economically for [the lender] to have outbid [the bank] to protect its much larger judgment." *Id.* at 474–75. The fraudulent transfer, it concluded, "cost [the lender] at least the full value of [the debtor's assets]," prejudicing the collection of its judgment lien. *Id.* at 475.

The record, viewed in a light most favorable to Plaintiffs, could lead a reasonable factfinder to conclude Plaintiffs "would have received something which has become lost to them by reason of the [January 4, 2016 refinancing]." *C. Mac Chambers*, 412 N.W.2d at 596. Plaintiffs' real estate expert testified to the harm inherent to the 2016 refinancing, laying out Kruse's dilemma:

> Kruse gets a judgment for $2.5 million. She's faced with security. She's faced with property that's in the name of somebody else that

> on the record . . . has a max credit limit of $800,000 against it. Is it worth going through . . . a lawsuit to invalidate that transfer to try to realize equity in that property that appears to be encumbered by $800,000?

[ECF No. 59-5 at 160–61]. Likely not, he opines, because "[a] reasonably prudent party purchasing the real estate at an execution sale would know that the Weller Real Estate was subject to the Weller Mortgages in the face amount of $800,000"—the maximum amount secured by the prior 2002 and 2007 Mortgages, along with the newer 2016 Mortgage. [ECF No. 59-5 at 140] (Grothe Report). Because "advances could be made after the execution sale and up through the date of expiration of the right of redemption and be superior to the interest of any purchase," the real estate was allowed "to effectively be encumbered by the full amount set forth in the mortgage even if no advancements had been made on the mortgage." *Id.* 141. And unless the value of the land was well in excess of the outstanding encumbrances, "there would be no incentive for any party to purchase the Weller Real Estate at execution sale." *Id.* at 140–41; *see also* UVTA § 4, cmt. 8 ("A transaction that does not place an asset entirely beyond the reach of creditors may nevertheless 'hinder, delay, or defraud' creditors if it makes the asset more difficult for creditors to reach. . . . Overcollateralization of a debt that is made with intent to hinder the debtor's creditors, by rendering the debtor's equity in the collateral more difficult for creditors to reach, is similarly voidable."). In this way, Plaintiff's fraud expert opines, the 2016 refinancing was "used as a tool by Weller to attempt to artificially depress the appearance of the value [of] his assets subject to collection and thereby extract a settlement at a much lower value than would be justified by the actual value of the assets." [ECF No. 59-5 at 214] (Adkisson Report). Foreclosing on the property would have done Plaintiffs little good.

Prejudice may be shown where a debtor such as Weller encumbers property to strip equity from the asset and create the appearance of over-securitization to discourage or otherwise attempt

to lower the value produced at a judicial sale. As in *Shirley*, the evidence marshalled by Plaintiffs shows a reasonable inference that the additional encumbrances attached to Weller's real estate "cost [Kruse] at least the full value of [Weller]'s assets." 485 N.W.2d at 475. And "[w]ithout the [January 4, 2016 refinancing], the land would have been available for [Kruse] to enforce [her] judgment." *Textron Fin. Corp.*, 545 N.W.2d at 885; *see also Olson v. Elsbernd*, No. 10-0236, 2010 WL 5023241, at *4 (Iowa Ct. App. Dec. 8, 2010) (finding prejudice element to be satisfied where levy and execution would have been available, but by reason of the fraudulent conveyance, the creditor "would have to commence some kind of judicial proceeding to enforce that lien," and "[t]he prospect of going forward with enforcement of a lien against the new owner under that provision would be more arduous, costly, and less certain" for the creditor).[18]

Vital questions surrounding the effect of the 2016 refinancing on Kruse's collection of her judgment lien preclude entry of summary judgment on Plaintiffs' claim under the IUFTA. First State has not carried its burden to show the record, viewed in a light most favorable to Plaintiffs, entitles the Bank to judgment as a matter of law.

B. RICO

The Racketeering Influenced and Corrupt Organizations Act renders it unlawful "for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of

[18] First State makes much of the fact that Plaintiffs had not begun foreclosure proceedings on their judgment lien prior to the 2016 refinancing. But this position begs the question: why not? The answer is obvious—because it took years to discover, understand, litigate, and ultimately unwind Weller's fraudulent scheme to shield his assets through a series of transfers, corporate entities, and encumbrances. And because of Weller's conveyance before the personal injury trial, he no longer owned the land for Kruse's judgment lien to attach. It is curious that the priority theory First State poses as its solution actually presents its conundrum: since the sums previously advanced under the 2002 and 2007 Mortgages were already protected by those senior security interests in Weller's real estate, why did it issue new sums in 2016 in the manner it did?

such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). The remedial purpose of the statute is broad, *see United States v. Turkette*, 452 U.S. 576, 589 (1981), and provides civil recourse to "[a]ny person injured in [her] business or property by reason of" the enterprise's racketeering activities, 18 U.S.C. § 1964(c). Those who conspire to violate RICO also fall within the statute's purview. 18 U.S.C. § 1962(d). Defendants contend Plaintiffs can prove neither a substantive RICO offense nor a conspiracy to commit the same.

1. "Conducting" the affairs of an "enterprise" through a "pattern of racketeering activity"

To establish RICO liability under § 1962(c), Plaintiffs must demonstrate "(1) the conduct (2) of an enterprise (3) through a pattern of racketeering activity." *Salinas v. United States*, 522 U.S. 52, 62 (1997) (citing *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 496 (1985)). Defendants challenge the factual support for each.

a. Enterprise

A RICO "enterprise" is the vehicle through which a defendant conducts an unlawful pattern of racketeering activity, *Nat'l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 259 (1994), and is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961(4); *see also Turkette*, 452 U.S. at 581–82 (describing two categories of enterprises: "legal entities" and associations). The "enterprise" concept is distinct from the underlying "pattern of racketeering activity":

> The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise.

Turkette, 452 U.S. at 583. Though "proof of one does not necessarily establish the other," *id.*, "evidence used to prove the pattern of racketeering activity and the evidence establishing an enterprise 'may in particular cases coalesce.'" *Boyle v. United States*, 556 U.S. 938, 947 (2009) (citation omitted). The ultimate inquiry is "whether the enterprise encompasses more than what is necessary to commit the predicate RICO offense." *Diamonds Plus, Inc. v. Kolber,* 960 F.2d 765, 770 (8th Cir. 1992).

Plaintiffs advance three alternative enterprise theories: the "Weller Enterprise," consisting of Weller the individual, operated and managed by the Attorney Defendants; the "Weller Farms Enterprise," consisting of the LLC as a legal entity, operated and managed by Weller and the Attorney Defendants; and the "Weller Law Enterprise," consisting of Weller, the Attorney Defendants, and Cody Weller as an "association-in-fact," also operated and managed by Weller and the Attorney Defendants. [ECF No. 18-2 ¶¶ 225–27]. Defendants do not genuinely challenge Plaintiffs' alternatively theories under the "Weller" or "Weller Farms" enterprises, and both certainly qualify as enumerated RICO enterprises. *Kruse*, 2020 WL 1317479, at *17 (citing 18 U.S.C. § 1961(4)); *see Bennett v. Berg*, 685 F.2d 1053, 1060 (8th Cir. 1982)).

At issue here is the Weller Law Enterprise as an association-in-fact. An association-in-fact enterprise is a "broad" category with an "expansive" reach, consisting of "a group of persons associated together for a common purpose of engaging in a course of conduct," and is "proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit." *Boyle*, 556 U.S. at 944–45 (quoting *Turkette*, 452 U.S. at 580, 583). At its core, "an association-in-fact enterprise is simply a continuing unit that functions with a common purpose." *Id.* at 948.

The Attorney Defendants contend the Weller Law Enterprise lacks a common purpose among Weller and Repp to constitute an actionable association-in-fact enterprise. *See Boyle*, 556 U.S. at 946 (outlining three structural characteristics of an association-in-fact enterprise: "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose"). The Attorney Defendants argue the common purpose of an association-in-fact must be fraudulent, illicit, or unlawful. Plaintiffs submit any purpose shared amongst its participants will establish a RICO enterprise, legal or otherwise. The United States Court of Appeals for the Eighth Circuit has not taken a position. *See Craig Outdoor Advert., Inc. v. Viacom Outdoor, Inc.*, 528 F.3d 1001, 1026–27 (8th Cir. 2008).[19]

The Court is doubtful that a RICO association-in-fact enterprise requires a common purpose that is fraudulent, illicit, or unlawful. *See Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993) ("RICO's major purpose was to attack the 'infiltration of organized crime and racketeering into legitimate organizations.'" (citation omitted)). The "common purpose" element is merely a judicially-articulated quality of an association-in-fact for purposes of identifying and defining the enterprise; there is no statutory requirement that the enumerated "individual" or "legal entity" enterprises similarly exist solely for the common purpose of committing illegal predicate acts or pursuing a larger illicit scheme. *Reynolds v. Condon*, 908 F. Supp. 1494, 1510 (N.D. Iowa 1995); *see also Ouwinga v. Benistar 419 Plan Servs., Inc.*, 694 F.3d 783, 794 (6th Cir. 2012) ("RICO applies both to legitimate enterprises conducted through racketeering operations as well as illegitimate enterprises." (citation omitted); *United States v. Warner*, 498 F.3d 666, 696–97

[19] *Compare First Capital Asset Mgmt., Inc. v. Satinwood, Inc.,* 385 F.3d 159, 174 (2d Cir. 2004) (noting that an association-in-fact enterprise "must share a common purpose to engage in a particular fraudulent course of conduct") *with United States v. Cianci,* 378 F.3d 71, 83, 88 n.9 (1st Cir. 2004) (reasoning that the common purpose among members of an association-in-fact enterprise under RICO need not be fraudulent).

(7th Cir. 2007) (affirming district court "when it accurately informed the jury that the State of Illinois is a legal entity" RICO enterprise); *Aetna Cas. Sur. Co. v. P&B Autobody*, 43 F.3d 1546, 1558 (1st Cir. 1994) ("'Enterprise,' as used in this act, includes legitimate corporations."). Indeed, the "common purpose" element evolved out of the requirement that an association-in-fact enterprise contain certain organizational characteristics and be sufficiently distinct from the defendant and underlying pattern of criminal racketeering activity, not out of a requirement that the enterprise be inherently criminal in nature. *See Turkette*, 452 U.S. at 587 ("On its face, the definition [of an enterprise] appears to include both legitimate and illegitimate enterprises within its scope; it no more excludes criminal enterprises than it does legitimate ones."). Individual- and legal entity-enterprises, by contrast, "are garden-variety 'enterprises' which generally pose no problem of separateness from the predicate acts." *Bennett*, 685 F.2d at 1060. Because an "enterprise" is merely the vehicle through which illegal activity is pursued, not the bad actor itself, even victims can constitute an "enterprise." *See Nat'l Org. for Women*, 510 U.S. at 259 & n.5; *Reves*, 507 U.S. at 176–77. Construing the RICO statute "liberally . . . to effectuate its remedial purposes" reveals that Congress intended RICO liability to extend to those who play some role in directing the group to further its shared goals, unlawful or not, so long as they are carried out through a pattern of criminal behavior. *Young v. Wells Fargo & Co.*, 671 F. Supp. 2d 1006, 1028 (S.D Iowa 2009) (citation omitted).

Even assuming the correctness of the Attorney Defendants' position, however, there is sufficient evidence in the record to infer Weller and Repp shared the unlawful purpose of shielding Weller's assets from Kruse's impending judgment. It is unlawful to undertake a transaction "[w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." Iowa Code § 684.4(1)(a). Repp admitted he knew Kruse was a protected creditor at the time he assisted Weller

in forming Weller Farms and transferring his real estate to the entity less than two months before the personal injury trial. [ECF No. 59-2 ¶¶ 132–34]; *see* Iowa Code § 684.1(3)–(4); UFTA § 1, cmt. 4. From this a reasonable factfinder could conclude Repp's legal services were intended to accomplish the aims of his client, and that those aims were Weller's fraudulent purpose to hide his assets from Kruse. Disputed material facts surrounding Repp's intent in rendering his professional services preclude summary judgment. Repp's position that he shared no unlawful purpose and only assisted Weller with "general asset protection" is a question for the jury.

b. Pattern of racketeering activity

A "'pattern of racketeering activity' requires at least two acts of racketeering activity," with the last occurring within ten years of another prior act. 18 U.S.C. § 1961(5). Plaintiffs allege the Attorney Defendants advanced the goals of Weller's endeavor through a pattern of mail fraud (18 U.S.C. § 1341) and wire fraud (18 U.S.C. § 1343), which, when alleged as predicate acts, require a showing of "(1) a plan or scheme to defraud, (2) intent to defraud, (3) reasonable foreseeability that the mail or wires will be used, and (4) actual use of the mail or wires to further the scheme." *H & Q Props., Inc. v. Doll*, 793 F.3d 852, 856 (8th Cir. 2015) (citation omitted). Even "'innocent' mailings [or wires]—ones that contain no false information—may supply the mailing [or wiring] element." *Schmuck v. United States*, 489 U.S. 705, 715 (1989). "It is sufficient for the mailing to be 'incident to an essential part of the scheme' or 'a step in [the] plot.'" *Id.* at 710–11 (alteration in original) (quoting first *Pereira v. United States*, 347 U.S. 1, 8 (1954), then *Badders v. United States,* 240 U.S. 391, 394 (1916)); *see also United States v. Kaminski*, 692 F.2d 505, 511 (8th Cir. 1982). The Attorney Defendants contend any alleged racketeering scheme involving Repp would have concluded after the formation of Weller Farms and argue Plaintiffs fail to show evidence of sufficient mailings or wires that were "a step in [the] plot" in advancing

Weller's fraud. *See United States v. Maze*, 414 U.S. 395, 402 (1974) (holding mailings and wires are not a step in the plot if the fraudulent scheme had already "reached fruition" and "the success of [the] scheme" did not depend on the fraud).

The Court disagrees. Even omitting the mails and wires commissioned by Weller Farms and First State that Plaintiffs argue were reasonably foreseeable consequences of the fraudulent scheme,[20] the evidence supports a sufficient number of predicate acts. To establish a pattern of racketeering activity a plaintiff must "show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) (emphasis deleted). "Continuity" can be either close-ended or open-ended, the former "referring either to a closed period of repeated conduct" and the latter demonstrated by "past conduct that by its nature projects into the future with a threat of repetition." *Id.* at 241. Contrary to the Attorney Defendants' position, the fraudulent scheme—as prosecuted by Plaintiffs—did not end with the formation of Weller Farms. Plaintiffs have advanced evidence of mailings and wires spanning from March 2015—when Repp filed the Weller Farms certificate

[20] "One 'causes' the mails [and wires] to be used where he [or she] 'does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended.'" *United States v. Nguyen*, 829 F.3d 907, 921 (8th Cir. 2016) (quoting *Pereira*, 347 U.S. at 8–9). Some courts hold that communications transmitted by a third-party—even the victim—may violate the mail and wire fraud statutes if they were a foreseeable part of the fraudulent scheme. *See United States v. Hubbard*, 96 F.3d 1223, 1229 (9th Cir. 1996). Indeed, in *Pereira*, the United States Supreme Court upheld a conviction under the mail fraud statute when it was foreseeable a bank would attempt to collect on a fraudulently procured check by mailing it to another bank. 347 U.S. at 8–9 ("Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he 'causes' the mails to be used."). Here, the mailings and wires reasonably representing business activity of Weller and the LLC assisted him in his continuing, open-ended scheme "to go about his life and conduct business as though he did not owe Plaintiffs $2.6 [sic] million" and "not act[] like a person who has any intent on satisfying the judgment against him." [ECF No. 53-2 at 100–01]; *see* [ECF No. 59-3 at 52–58].

of organization, caused Weller to apply for an employer identification number with the IRS, and transferred the real estate to the LLC via quitclaim deed to shield Weller's real estate—to the electronic transmission of the May 11, 2015, January 20, 2016, and August 9, 2016 financial statements to conceal the scheme, and the Attorney Defendants' filings with the state district court throughout 2017 and 2018 to further defend the transactions and perpetuate the goal of insulating the land from Kruse's collection efforts.

In this circuit, Plaintiffs need only show a pattern of related predicate acts spanning one year to establish close-ended continuity. *Stonebridge Collection, Inc. v. Carmichael*, 791 F.3d 811, 823 (8th Cir. 2015); *United States v. Hively*, 437 F.3d 752, 761 (8th Cir. 2006). That requirement is met in this case. The mails and wires completed between March 2015 and May 2018 obviously occurred over a longer span of time than the three-day period asserted by the Attorney Defendants. And the continued insistence by Weller and the Attorney Defendants of the propriety of the financial transactions throughout the fraudulent transfer action "supports a reasonable inference of a threat of long-term, ongoing efforts" to sustain the fraud. *Kruse*, 2020 WL 1317479, at 23.

c. Conduct of the enterprise's affairs

A pattern of racketeering activity, however, extends civil liability for a substantive RICO violation only to parties that "conduct or participate, directly or indirectly, in the conduct of the enterprise's affairs." 18 U.S.C. § 1962(c). "'Conduct' requires an element of direction," *Reves*, 507 U.S. at 178, so to "conduct" or "participate, directly or indirectly, in the conduct" of the enterprise's affairs, a RICO defendant "must have *some part* in directing those affairs," *id.* at 179 (emphasis added).

The evidence, viewed in the light most favorable to Plaintiffs, supports the inference Repp played "some part" in directing the affairs of the Weller, Weller Farms, and Weller Law Enterprises. Weller first attempted to conceal his assets from Kruse by conveying his real estate to a revocable trust and gifted cash to friends and family pursuant to the advice of his first attorney. When he learned the gifts were likely fraudulent, he was undeterred and sought out the Attorney Defendants for alternative means to accomplish this aim. To that end, the evidence viewed in the light most favorable to Plaintiffs infers Repp changed the course of the effort to defraud Kruse and "joined in a collaborative undertaking with the objective of releasing [Weller] from the financial encumbrance visited upon him by [Kruse]'s judgment." *See Handeen v. Lemaire*, 112 F.3d 1339, 1350 (8th Cir. 1997). Reversing the mechanisms put in place by Weller's prior attorney, Repp organized Weller Farms, filed a trustee's affidavit that ignored Kruse's unliquidated tort claim, directed Weller to execute a quit claim deed conveying his real estate to the entity, and assisted Weller in preparing financial statements that embedded multiple "ambiguities" that devalued Weller's financial picture during settlement negotiations. The Attorney Defendants then defended the transactions in the fraudulent transfer action, devising a legal strategy in an attempt to persuade the state court to validate the transactions. In essence, Repp agreed Weller's previous efforts were inappropriate. All of his advice that followed was consistent with the expertise in asset protection that Repp, not Weller, possessed. *See generally* David M. Repp, *Asset Protection (For the Rich and Not) In Iowa*, 56 Drake L. Rev. 105, 106–08, 106 n.5 (2007) (discussing "basic asset protection techniques in Iowa utilizing trust, disclaimer, limited liability companies, and limited partnerships" in the context of taxes and "a growing threat to [individuals'] wealth from creditors" due to a rise in tort litigation). But "[f]or whatever reason, ultimately transferring the [assets] to

the LLC and away from creditors did not strike [Weller] or his counsel as just as eyebrow-raising." [ECF No. 53-2 at 104].

Standard asset protection procedure, by contrast, would typically involve setting aside assets of a value sufficient to satisfy known creditors—least of all because doing so would bolster the appearance of the transfer's validity. [ECF No. 59-5 at 212–13] (Adkisson Report). At the time he assisted Weller in forming Weller Farms, the record supports the reasonable inference Repp knew (1) Weller had caused a car accident and trial was less than two months away, (2) Weller had admitted complete fault for the resulting catastrophic injuries, (3) the injuries were sufficiently severe such that Weller needed his own attorney because his legal exposure exceeded the insurance policy limit of $500,000, and (4) Weller had made previous efforts to shield his assets from Kruse that Repp agreed were inappropriate. But here, nothing was set aside. The "only conceivable purpose," Plaintiffs' fraud expert opines, was to "hinder, delay and ultimately defraud Kruse in her pursuit of her legitimate judgment enforcement against Weller's assets"; it was taken with the "primary purpose of defeating Kruse's collection rights, and would have made little sense for any other reason." [ECF No. 59-5 at 213].

The crux of Attorney Defendants' argument in opposition is that Repp provided nothing more than ordinary, run-of-the-mill legal services and advice to Weller. *Cf. Nolte v. Pearson*, 994 F.2d 1311, 1317 (8th Cir. 1993) (affirming directed verdict in favor of RICO defendants where the four documents prepared by the attorneys failed to show they made knowingly fraudulent misrepresentations to investors). They claim he was a mere scrivener of information provided by Weller and intended only to assist Weller in setting up a farming entity by which to bring his son into the family business. That characterization, in light of the circumstances surrounding his relationship with Weller, present genuine factual issues and credibility determinations on whether

Repp played "some part" in directing the affairs of Weller's fraudulent scheme and require a jury to resolve.

2. RICO conspiracy

Section 1962(d) makes it unlawful for any person to conspire to violate RICO's substantive provisions. To prove a RICO conspiracy, Plaintiffs must advance sufficient evidence showing (a) "an enterprise existed"; (b) "the enterprise affected interstate or foreign commerce"; (c) "the defendant associated with the enterprise"; and (d) "the defendant 'objectively manifested an agreement to participate . . . in the affairs of [the] enterprise.'" *Aguilar v. PNC Bank, N.A.*, 853 F.3d 390, 402 (8th Cir. 2017) (alterations in original) (quoting *United States v. Darden*, 70 F.3d 1507, 1518 (8th Cir. 1995)).

Contrary to the Bank Defendants' position, just as there is no requirement that a conspirator agree to commit predicate acts of racketeering activity, there is no requirement that any one conspirator itself agree to conduct the affairs of the enterprise. Rather, "so long as they share a common purpose, conspirators are liable for the acts of their co-conspirators." *See Salinas*, 522 U.S. at 64.[21] Thus, a RICO conspirator must simply "intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor." *Id.* at 65 ("It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the

[21] *Dahlgren v. First Nat'l Bank of Holdrege*, 533 F.3d 681 (8th Cir. 2008), relied on by the Bank Defendants, is inapposite to this point. It is true that courts "must carefully distinguish between the bank conducting its own affairs as creditor, and the bank taking additional steps as an outsider to direct the operation or management of its customer, the RICO enterprise." *Id.* at 690. But at issue in *Dahlgren* was substantive RICO liability, not conspiracy liability as a RICO co-conspirator. That the court determined irregular banking activity was "not evidence that the bank controlled the customer's operations and management" to support a substantive RICO violation does not *ipso facto* disprove the Bank Defendants' liability for participating in a RICO conspiracy. *Id.*

conspiracy is a distinct evil, dangerous to the public, and so punishable in itself."). Consistent with general conspiracy principles,

> [a] conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense. The partners in the criminal plan must agree to pursue the same criminal objective and may divide up the work, yet each is responsible for the acts of each other. If conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.

Id. at 63–64 (citing *Pinkerton v. United States*, 328 U.S. 640, 646 (1946)). A civil RICO plaintiff "need only establish a tacit understanding between the parties, and this may be shown wholly through the circumstantial evidence of [each defendant's] actions"; proof of an express agreement is not required. *Aguilar*, 853 F.3d at 402 (alteration in original) (citation omitted).[22]

On this front, Defendants claim they cannot be liable for RICO conspiracy because they did not know of the full scope of Weller's fraudulent scheme and were mere scriveners of information provided by Weller—even if they were deliberately ignorant of or willfully blind to his intent. Because they lacked knowledge of Weller's fraudulent purpose, Defendants argue, they could not have affirmatively and objectively manifested the intent to join any fraudulent scheme

[22] *Accord United States v. Zemlyansky*, 908 F.3d 1, 11 (2d Cir. 2018) ("RICO conspiracy requires proof: (a) of an agreement to join a racketeering scheme, (b) of the defendant's knowing engagement in the scheme with the intent that its overall goals be effectuated, and (c) that the scheme involved, or by agreement between any members of the conspiracy was intended to involve, two or more predicate acts of racketeering. . . . So long as the defendant knowingly agreed to facilitate 'the general criminal objective of a jointly undertaken [racketeering] scheme,' the government need not prove that he or she knowingly agreed to facilitate any specific predicate act." (citation omitted)); *RSM Prod. Corp. v. Freshfields Bruckhaus Deringer U.S. LLP*, 682 F.3d 1043, 1048 (D.C. Cir. 2012) ("To state a § 1962(d) conspiracy, the complaint must allege that (1) two or more people agreed to commit a subsection (c) offense, and (2) a defendant agreed to further that endeavor. A defendant need not agree to be the one to commit the predicate acts. Nor must a defendant 'participate in the operation or management of [the] enterprise in order to be liable for conspiracy.' '[I]t suffices that [the defendant] adopt the goal of furthering or facilitating the criminal endeavor.'" (alterations in original) (citations omitted) (footnote omitted)).

or conspiracy. The Court disagrees. The decision to actively agree to further the endeavors of a racketeering enterprise only requires knowledge of the conspiracy's general objective and the intent to join the conspiracy. *See Aguilar*, 853 F.3d at 403. While *knowledge* can be shown by actual knowledge or willful blindness, *intent* to agree to join the conspiracy can be inferred from Defendants' subsequent conduct in light of evidence evincing their actual or constructive knowledge. *See United States v. Atkins*, 881 F.3d 621, 627 (8th Cir. 2018); *United States v. Hurley*, 63 F.3d 1, 9–10 (1st Cir. 1995).

Here, there is a genuine issue of material fact as to whether the Bank Defendants and Attorney Defendants knew of or were willfully blind to the general scope of the RICO enterprise and agreed to further its purposes based on what they knew, when they knew it, and the attendant circumstances surrounding their professional services to Weller.[23] The record, viewed in a light most favorable to Plaintiffs, shows the Bank Defendants knew early on that Weller was responsible for significant personal injuries, that his liability well exceeded his insurance coverage, and that he was significantly devaluing and transferring assets forming the bulk of his wealth in an effort to minimize his obligations. But they nevertheless structured a refinancing of Weller's debt in a way that did not follow First State's standard banking practices, provided no conceivable protection to the Bank, but enabled the financial execution of Weller's efforts to defraud Kruse and further encumbered his land. And it shows the Attorney Defendants knew from the inception of their attorney-client relationship not only that Weller was weeks away from incurring a

[23] Just as they do not challenge the existence of the Weller or Weller Farms enterprises, Defendants do not challenge Plaintiffs' alternative theory that Weller committed a substantive RICO violation under § 1962(c) by conducting the affairs of the Weller Farms enterprise. Indeed, "[t]o direct a business's normal activities is to participate in the conduct of an enterprise within the meaning of RICO." *Abels v. Farmers Commodities Corp.*, 259 F.3d 910, 918 (8th Cir. 2001) (citing *Reves*, 507 U.S. at 185; *Handeen*, 112 F.3d at 1349 n.12).

significant liability for personal injuries he had admitted to causing, but also that Weller had previously made (improper) efforts to hide his assets from collection. They nevertheless prepared legal documents transferring his property to a corporate form that posed significant barriers to any recovery by Kruse, assisted Weller in the creation of financial statements that painted an inaccurate picture of Weller's finances, and defended the legality of the conveyances in court. In both cases, the facts are sufficient for a reasonable jury to find Defendants tacitly agreed to participate in Weller's scheme to defraud Kruse and conspired to further the purpose of a RICO enterprise.

C. Tortious Interference

The Court turns finally to Plaintiffs' claims for tortious interference. Defendants renew their challenge to the "prima facie tort" doctrine as a theory of recovery and further argue Plaintiffs cannot prevail on the merits. Finally, Defendants contend the record proves as a matter of law that they did not aid and abet Weller's interference or conspire to do so.

1. The "prima facie tort"

In its previous order, the Court surveyed the development of tort doctrine in Iowa jurisprudence and predicted the Iowa Supreme Court would recognize a cause of action under a theory of general tortious interference based on the conclusion that extending tort liability in the circumstances alleged here comports with Iowa law and no other alternative remedy exists to adequately redress Plaintiffs' harm. *Kruse*, 2020 WL 1317479, at *28–32. Defendants invite the Court to reconsider that decision. The Court declines. None of the new authority advanced by Defendants warrants reversing course.

In this action, Plaintiffs rely on § 871 of the Second Restatement of Torts, which provides that "[o]ne who intentionally deprives another of his [or her] legally protected property interest or causes injury to the interest is subject to liability to the other if his conduct is generally culpable

and not justifiable under the circumstances." *See also* Restatement (Second) of Torts § 870 (Am. Law Inst. 1979) ("One who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances. This liability may be imposed although the actor's conduct does not come within a traditional category of tort liability."). According to official comments to the Second Restatement, the rule "applies when the defendant has done a culpable and unjustifiable act that causes injury to any one or more of another's legally protected interests in property or deprives the other of them" and protects those interests even "when there has been harm to or the deprivation of a nonpossessory interest, such as the wrongful destruction or diminution of a claim or the deprivation of a future interest in land." *Id.* § 871 cmt. *a*. Relevant to the allegations in this case, it counsels in favor of a cause of action to redress a party whose property interest is harmed through the tortfeasor's manipulation of the law:

> One who intentionally destroys or diminishes a property interest of another by the wrongful exercise of a legal power, is subject to liability to the other. This is true when one has a power but not a privilege to transfer a title or other interest, legal or equitable, in land, chattels or choses in action in which another has an interest and of which he is deprived by an unlawful exercise of the power.

Id. cmt. *g*. Concerning fraudulent conduct, "[t]he tort lies in causing loss" and "applies to one who assists another to commit a fraud." *Id.* cmt. *e*.

The Iowa Supreme Court has not considered whether a civil action may be brought for tortious interference in the context of a defrauded judgment creditor. But in reviewing Iowa case law supporting other claims for tortious interference, the Court made three observations supporting recognition of the tort in this case: first, the action's consistency with the Iowa common law and recognition by the Second Restatement of Torts are important factors in crafting the scope of tort law in Iowa; second, other states' recognition of similar tort principles and treatment of

like-minded claims are persuasive in deciding whether to recognize a particular theory of recovery; and third, tort liability should be available to make whole a party injured by intentionally wrongful conduct where alternatives might not otherwise suffice to address the specific injury actually sustained, balancing the respective interests at stake. *Kruse*, 2020 WL 1317479, at *29. Consistent with several states recognizing prima facie tort principles in the context of fraudulent financial practices, the Court predicted such a cause of action would be cognizable under Iowa law. *See Kruse*, 2020 WL 1317479, at *31 (discussing *Yoneji v. Yoneji*, 354 P.3d 1160, 1169 (Haw. Ct. App. 2015); *Schmitz v. Smentowski*, 785 P.2d 726, 733–36 (N.M. 1990); *Porter v. Crawford & Co.*, 611 S.W.2d 265, 272 (Mo. Ct. App. 1980)).

This time around, Defendants cite *French v. Foods, Inc.*, 495 N.W.2d 768 (Iowa 1993), for the proposition that Iowa law does not support a cause of action under the prima facie tort doctrine because the Iowa Supreme Court has already considered and rejected such a theory of recovery. The plaintiff in that case alleged he had been coerced into making a false statement and sued under the doctrine for a violation of the Iowa extortion statute. The court had recognized in an earlier case, *Hall v. Montgomery Ward & Co.*, 252 N.W.2d 421 (Iowa 1977), such a cause of action. But intervening legislative changes to the statute had since required the targeted conduct to be "aimed at obtaining something of value" and "no longer prohibit[ed] compelling a person to perform an act against their will." 495 N.W.2d at 772. Affirming the grant of summary judgment, the Iowa Supreme Court held *Hall* no longer supported extending tort liability "under the facts of this case." *Id.* Far from repudiating the prima facie tort as a theory of recovery, the court merely observed that a cause of action based on the amended statutory language did not extend liability to the circumstances presented by the plaintiff.

Defendants also advance two unpublished opinions by the Iowa Court of Appeals in advocating for the dismissal of Plaintiffs' intentional interference claim, but neither are availing.[24] The first involved a claim for tortious interference with a bequest and prospective economic benefit related to an annuity of the plaintiff's mother, with which he claimed his father had intentionally and improperly interfered by causing a change of beneficiary. *Hosier v. Hosier ex rel. Estate of Hosier*, No. 00-1225, 2001 WL 1451137, at *2, *8 (Iowa Ct. App. Nov. 16, 2001) (per curiam). There, the court of appeals "assume[d], without deciding, that [the plaintiff] . . . stated a claim for tortious interference with prospective economic benefit" outside the commercial context but held he had "failed to establish [the defendant's] conduct was independently tortious in character." *Id.* at *7–8 (citing Restatement (Second) of Torts § 774B cmt. *c*). In the second case, two homeowners alleged a residential association tortiously interfered with "the use of their property" when the association sued plaintiffs to enforce restrictive covenants and "improperly influenced" the county development department to find that plaintiffs' property was in violation of local zoning ordinances. *Goplerud v. Dallas Cnty.*, No. 18-0784, 2019 WL 2524083, at *1, *5 (Iowa Ct. App. June 19, 2019). Observing there were "no Iowa cases supporting the plaintiffs' claim for tortious interference with property rights," it found "no error" in the district court's dismissal of that claim and affirmed on the basis that "plaintiffs did not argue for an extension of existing law." *Id.* at *6.

At bottom, none of the additional authority advanced by Defendants calls into question the general principle recognized by the Iowa Supreme Court that "[t]here is no essential reason for refusing to protect such non-commercial expectancies, at least where there is a strong probability that they would have been realized." *Frohwein v. Haesemeyer*, 264 N.W.2d 792, 795 (Iowa 1978)

[24] Unpublished decisions by the Iowa Court of Appeals, while holding persuasive value, are not precedential and do "not constitute controlling legal authority." Iowa R. App. P. 6.904(2)(c).

(quoting William L. Prosser, *The Law of Torts* § 130, at 951 (4th ed. 1971)). And neither supplies a rationale to reject the tort in the circumstances here—especially one so neatly based on a "particularized application" of principles articulated by the Restatement. *See* Restatement (Second) of Torts § 871 cmt. *a*.[25]

2. Improper interference

Next, Defendants contend the undisputed facts conclusively demonstrate that Plaintiffs cannot fulfill the elements of the tort to prove either are liable for interfering with the collection of Kruse's judgment lien.

"[N]ot every intentionally-caused harm . . . deserves a remedy in tort," and the doctrine only contemplates liability in instances where "the actor's conduct [is] both culpable (in general) and unjustifiable (under the circumstances)." *Id.* § 870 cmt. *e*. The tortious character of Defendants' conduct hinges on a judicial balancing of "the nature and seriousness of the harm to the injured party", "the nature and significance of the interests promoted by the actor's conduct," "the character of the means used by the actor," and "the actor's motive." *Id.*; *see Porter*,

[25] At oral argument, the Attorney Defendants proposed for the first time an action for civil fraud as an alternative remedy precluding the prima facie tort. In Iowa, common law fraud requires, among other things, that "[the] defendant made a representation to the plaintiff" and "the plaintiff acted in [justifiable] reliance of the truth of the representation." *Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 735 (Iowa 2009) (alterations in original). The Court observes Plaintiffs brought this suit precisely because they did not rely on the fraudulent transactions allegedly perpetrated by Weller and the Defendants, having instead "pursued their legal remedies vigorously." *See Giuliani v. Chuck*, 620 P.2d 733, 738 (Haw. Ct. App. 1980) (recognizing prima facie tort against attorney for "intentional harm to a property interest" and dismissing fraud claim because "[t]he party asserting such a claim must have relied on the claimed misrepresentation" while "the facts . . . establish[ed] quite the contrary"). Moreover, Plaintiffs' tort claim encompasses much broader conduct than fraudulent misrepresentations of fact. A cause of action for common law fraud does not address the entire scope of conduct interfering with the collection of Kruse's judgment lien and, limiting damages to loss flowing from reasonable reliance on a misrepresentation, fails to remedy the specific harm inflicted on the Plaintiffs here. *See Spreitzer*, 779 N.W.2d at 742. In short, civil fraud is not an adequate alternative remedy under the facts of this case.

611 S.W.2d at 270; Restatement (Second) of Torts § 870 cmt. *k*. In balancing these competing societal interests, jurisdictions applying the prima facie tort require a plaintiff to show "(1) an intentional and lawful act; (2) an intent to injure the plaintiff; (3) injury to the plaintiff as a result of the intentional act; (4) and the absence of sufficient justification for the injurious act.'" *Beaudry v. Farmers Ins. Exch.*, 412 P.3d 1100, 1104 (N.M. 2018) (citation omitted); *accord Billingsley v. Farmers All. Mut. Ins. Co.*, 555 S.W.3d 1, 6–7 (Mo. Ct. App. 2018); *ATI, Inc. v. Ruder & Finn, Inc.*, 368 N.E.2d 1230, 1232 (N.Y. 1977). Elucidated below, the Court finds these factors weigh in favor of extending tort liability here.

a. Knowledge and specific intent

The Attorney Defendants first argue Plaintiffs fail to offer evidence showing Repp's predominant intent in forming Weller Farms and transferring Weller's assets to the LLC was to injure Kruse's property interest and interfere with the collection of her judgment lien. In Iowa, the torts of wrongful interference with an *existing* and *prospective* economic expectancy both require that a plaintiff show the defendant "intentionally and improperly interfered with the relationship at issue," but while the latter requires the plaintiff prove the defendant "acted with the sole or predominant purpose to injure or financially destroy the plaintiff," the former does not. *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 151 (Iowa 2013); *see also Farmers Co-op. Elevator, Inc., Duncombe v. The State Bank*, 236 N.W.2d 674, 679 (Iowa 1975) ("The role of the actor's purpose is considerably different in cases involving loss of existing [expectancies] than in cases involving loss of prospective advantage."). Consistent with the Second Restatement, the majority rule governing the prima facie tort does not require that the defendant be motivated solely or predominantly by a desire to injure the plaintiff. *See Schmitz*, 785 P.2d at 737 (rejecting "the requirement that the action be solely motivated by the intent to harm, as accepted by New York,

in favor of the Restatement's balancing approach, whereby motives such as economic self-interest are weighed as an issue of justification"); *Porter*, 611 S.W.2d at 270 (noting the Second Restatement "has resolved" New York's sole motivation requirement of malice "on the basis of a balancing of interest": "The plaintiff must allege and prove bad motive on the part of the defendant. The defendant may plead and prove any justification. The court first must weigh and consider the balance of social values to determine if the defendant's acts are tortious"). Like a valid contract, the intangible property rights represented by a court-issued judgment are more concrete than the loose expectancy of a business advantage not yet reduced to writing and interference therefore requires a less stringent level of intent.

However, "[a]n intent to injure is the test, not an intent to act which results in some injury." *Kiphart v. Cmty. Fed. Sav. & Loan Ass'n*, 729 S.W.2d 510, 517 (Mo. Ct. App. 1987); *accord Lexington Ins. Co. v. Rummel*, 945 P.2d 992, 995 (N.M. 1997) ("Intent to injure is distinct from intent to commit the act which results in injury."). "Proof that defendant intentionally did the lawful act in question (the first element), even if accompanied by proof that plaintiff was injured (the third element) and that there was an absence of justification or an insufficient justification for defendant's act (the fourth element), does not make a submissible case." *Lundberg v. Prudential Ins. Co. of Am.*, 661 S.W.2d 667, 670 (Mo. App. 1983). On this front, the Attorney Defendants contend the facts advanced by Plaintiffs fail to show Repp had the specific intent to injure or deprive Kruse of a legally protected property interest in collecting on her judgment lien.[26]

[26] Kruse's personal injury judgment lien is a legally-protected property interest under Iowa law. *See* Iowa Code §§ 684.1(9) (2015) ("'Property' means anything that may be the subject of ownership" for purposes of avoiding fraudulent conveyances), 684.1(8) (2015) ("'Lien' means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes . . . a judicial lien obtained by legal or equitable process or proceedings . . . ."); *see also Property*, Black's Law Dictionary (11th ed. 2019) (defining "property" as "the rights in a valued resource such as land, chattel, or an intangible," including the

An actor "intends to produce the harm when he desires to bring about that consequence by performing the act" or "if he knows or believes that the consequence is certain, or substantially certain, to result from his act." Restatement (Second) of Torts § 870 cmt. *b*; *accord id.* § 8A. As discussed above, Weller stated in prior testimony that he sought out Repp "because of [the personal injury] lawsuit" and because Repp holds himself out as an "asset protection attorney." [ECF No. 59-2 ¶ 99]. Weller told Repp about the January 28, 2012 car accident, the lawsuit against him, and that he had been advised to seek out additional representation because his legal exposure exceeded his insurance policy limits. And he divulged to Repp his previous attempts to hide his money from Kruse. Among the stated objectives of Weller Farms was the purpose to "continue, in perpetuity, the ownership of family assets," "restrict the right of non-family to acquire interests in family assets," and "provide protection to family assets from the claims of future creditors against family members." *Id.* ¶ 118. The entity's design, though generally consistent with Iowa law, succeeded in erecting barriers to Weller's creditors like Kruse. *See* [ECF No. 53-2 ¶ 25]; [ECF No. 59-5 at 141–43] (describing effect of LLC features on creditors). These facts, viewed together and in a light most favorable to Plaintiffs, generate a reasonable inference that Repp knew or was "substantially certain" the transfer of Weller's assets to Weller Farms would interfere with Kruse's collection effort on her anticipated judgment.

The Bank Defendants make a similar argument. They contend the record shows they did not know of Plaintiffs' judgment prior to the January 4, 2016 refinancing because it was not listed on his credit report until March 2017 and thus they could not have intended to improperly interfere

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right to collect a debt); *Property Interest*, Black's Law Dictionary (11th ed. 2019) ("A legitimate claim of entitlement to some legal or contractual benefit that cannot be taken away without due process."); *cf. Gray v. Oliver*, 943 N.W.2d 617, 630 (Iowa 2020) ("As a general rule, a chose in action is a species of property protected by both the federal and state constitutions.").

with Kruse's collection efforts as a matter of law. But evidence supports the inference that the Bank Defendants knew early on of Weller's liability for a serious personal injuries, his efforts to minimize his obligation to pay for them, his significant devaluation of his real estate forming the bulk of his wealth, and his transfer of the land to a separate legal entity. The numerous indicia of fraud available to the Bank Defendants throughout the time period in question support a reasonable inference that the Bank knew of Weller's wrongful purpose. And the abnormal practices condoned by the Bank in Weller's financial statements, compounded by irregularities in the January 4, 2016 refinancing, generate an inference that could lead a reasonable jury to conclude that the Bank Defendants intended to hamper Kruse's collection efforts for Weller's benefit or were substantially certain that the effect of the refinancing would be to do so.

b. Interference and injury

Next, the Attorney Defendants contend Repp's conduct in representing Weller and creating Weller Farms was entirely proper, routine, and lawful—not "improper." Iowa law employs a balancing test looking to the totality of the circumstances surrounding the interference, including:

> (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests sought to be advanced by the actor, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference and (g) the relations between the parties.

Hunter v. Bd. of Trs. of Broadlawns Med. Ctr., 481 N.W.2d 510, 518 (Iowa 1992) (quoting Restatement (Second) of Torts § 767 (Am. Law Inst. 1981)); *cf.* Restatement (Second) of Torts § 870 cmt. *e* (balancing societal factors to establish basis for liability). "Especially relevant" concerning the rendition of professional services at issue here is "any violation of 'recognized ethical codes . . . or of established customs or practices regarding disapproved actions or methods."

Hunter, 481 N.W.2d at 518 (citation omitted). The same factual disputes concerning Repp's knowledge and intent in rendering his professional services preclude summary judgment on whether the Attorney Defendants' legal representation of Weller was improper

The Attorney Defendants point to expert testimony opining that Repp's services met the standard of care for an Iowa lawyer because an LLC is the only legal entity that would have been appropriate for purposes of business succession and estate planning for a client like Weller. *See* [ECF No. 53-2 at 451–52] (Streit Report). But the tortiousness of Repp's conduct is not judged by whether an LLC was a good fit for Weller in a vacuum; at issue here is whether such transfer — in light of what Repp knew when forming the LLC and transferring Weller's only significant assets out of his hands — were appropriate *at all* under the circumstances. *Cf. Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ouderkirk*, 845 N.W.2d 31, 43 (Iowa 2014) (citing Iowa Code § 684.4(1)(a); *Shirley,* 485 N.W.2d at 472). Although there is undoubtedly a public interest in enabling Iowa attorneys to provide sound legal advice to members of their community, this maxim does not hold true if the attorney's representation knowingly furthers his client's fraud. Iowa R. Prof'l Conduct 32:1.2(d) ("A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent . . . ."); *see also Iowa Supreme Ct. Att'y Disciplinary Bd. v. Bieber*, 824 N.W.2d 514, 519–20 (Iowa 2012).

Repp admitted in his deposition that he understood Kruse to be a creditor protected under Iowa law at the time he filed the paperwork establishing Weller Farms and transferring the real estate to the entity. [ECF No. 59-2 ¶¶ 132–34]. Indeed, Weller had previously testified he told Repp about the January 28, 2012 accident, the lawsuit against him, and that he had been advised to seek out additional representation because his legal exposure exceeded his insurance policy limits. And he went to Repp specifically because Repp holds himself out as an asset protection

attorney. On these facts, a reasonable jury could conclude the legal services rendered by Repp to Weller were improper. *See Iowa Supreme Ct. Att'y Disciplinary Bd. v. Nelsen*, 807 N.W.2d 259, 261 (Iowa 2011). To the extent Repp contends his advice that Weller's previous efforts to shield his assets were inappropriate and instruction to retrieve the cash gifts negates any inference of improper motive, the same disputed issues of material fact concerning Repp's intent in recommending Weller instead transfer his assets to an LLC preclude the entry of summary judgment. If Plaintiffs are successful in proving to a jury that Repp was more than a mere scrivener, tort liability is appropriate.

The Attorney Defendants also argue Plaintiffs cannot prove Repp's conduct in forming the LLC injured Kruse or interfered with her ability to collect and execute her judgment because she was free to seek collection of the judgment against the LLC through levying on Weller's interest in the entity and receiving a charging order. *See generally* Iowa Code § 489.503. Taking a similar tack, the Bank Defendants contend that Plaintiffs were not injured by the Bank's actions and that the 2016 refinancing did not actually interfere with Kruse's collection efforts, reiterating their argument that First State holds priority in its senior mortgages secured by Weller's real estate. *See* Iowa Code § 654.12A. The prima facie tort—in the context of intentional harm to a property interest—imposes liability on "[o]ne who intentionally deprives another of his legally protected property interest or causes injury to the interest." Restatement (Second) of Torts § 871. "Harm denotes 'the existence of loss or detriment in fact of any kind'; injury denotes 'the invasion of any legally protected interests of another.'" Restatement (Second) of Torts § 870 cmt. *e*; *accord id.* § 7.

When viewed in a light most favorable to Plaintiffs, ample evidence in the record reflects that the Attorney Defendants' conduct has hindered and obstructed Kruse's efforts to collect on

her personal injury judgment and be meaningfully compensated for her loss by reason of the transfer of Weller's real estate to Weller Farms. Before it was set aside, the conveyance effectively shielded the real estate because it been transferred to the LLC prior to entry of Kruse's personal injury judgment. [ECF No. 59-5 at 140] (Grothe Report) ("[A]n examining attorney would conclude that the Weller Real Estate is currently owned by Weller Farms, LLC, is subject to the Weller Mortgages, and is not subject to the Judgment."). Obtaining a charging order against Weller's interest in the LLC would entitle her to distributions—but only if, and to the amount that, any should be approved by Steven and Cody Weller; and foreclosing on that interest would trigger a buy-out of Steven Weller's interest, enabling the LLC or Cody Weller to acquire it first at a pre-negotiated price. *See generally* [ECF No. 53-2 at 196–206]. Although Iowa law protects the reasonable expectations of minority-interest shareholders from the oppressive and fraudulent acts of the majority, *Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 674 (Iowa 2013), such a remedy would require further vigilance and action to enforce, *see* [ECF No. 59-5 at 142 (Grothe Report), 213 (Adkisson Report)]. Indeed, Kruse was already required to bring a second lawsuit—the fraudulent transfer action—to set aside and unwind the features of the transaction found to have been intentionally designed to hinder, delay, or defraud her collection efforts.

Plaintiffs likewise present sufficient evidence to generate a genuine dispute of material fact as to the extent to which the January 4, 2016 refinancing had the effect of hindering and delaying Plaintiffs' recovery by posing further barriers and encumbrances to the enforcement of her judgment lien. Described above, a purchasing party at an execution sale would understand from the title of record that Weller's real estate was held by LLC and, on its face, encumbered with $800,000 of debt through the future advance clauses in the 2002, 2007, and 2016 Mortgages. [ECF No. 59-5 at 140–41] (Grothe Report). If executed on Weller's real estate, the additional $500,000

mortgage would have had the effect of reducing the appearance of the real estate's value — dissuading a prospective purchaser from liquidating the land at a fair price and depressing Weller's overall financial condition to negotiate a much lower settlement of Kruse's claims. *See id.*; [ECF No. 59-5 at 214] (Adkisson Report).

Ultimately, disputed facts surrounding the wrongfulness of Defendants' conduct—what they knew and their motivations for assisting Weller—persist. If Plaintiffs can prove the intentional wrongfulness of Defendants' role in Weller's scheme, the facts would allow a reasonable jury to conclude the result was to deprive Kruse of a meaningful ability to collect on her personal injury judgment lien and damaged her interest in doing so.

c. Justification

Finally, the Attorney Defendants contend Repp's conduct was justified. They argue that regardless of the upcoming personal injury trial, Weller had the privilege and right to dispose of his assets as he saw fit so long as he did not destroy or diminish the assets. *See* Restatement (Second) of Torts § 871 cmt. *b*. ("[T]he protection of one's own interests or those of third persons frequently creates a privilege intentionally to harm the otherwise legally protected interests of others."). Repp's rendition of ordinary legal services and his role in Weller's scheme as a mere scrivener, they argue, is a conclusive defense and precludes liability.

But here, too, factual disputes exist as to whether Repp was a mere scrivener and provided only ordinary legal services to his client or knowingly provided services to advance his client's goal of interfering with Kruse's judgment lien. *Cf. Ouderkirk*, 845 N.W.2d at 44 ("If a lawyer knows a transfer is fraudulent and assists a client in completing the transfer nonetheless, it is no defense that the lawyer is acting merely as a scrivener."). The fraudulent transfer court held by clear and convincing evidence that "estate planning" was not at the front of Weller's mind in

creating Weller Farms—fraud was his purpose. [ECF No. 53-2 at 103–04]. Described above, the record, viewed in a light most favorable to Plaintiffs, permits the inference that Repp knew Weller's wrongful purpose in avoiding paying the impending judgment for Kruse's personal injuries and nevertheless assisted him in shielding his assets by transferring them to a newly-created corporate form to hinder and obstruct her collection efforts against his farmland. "Ultimately, the jury must balance the bad motivation of the defendant against the claimed justification for the act." *Porter*, 611 S.W.2d at 270. As for Weller's "right" to dispose of his assets "as he saw fit," the Mahaska County district court summed it up best: "avoiding paying Christina Kruse and her family the necessary money for Ms. Kruse to live is not an honorable venture. In fact, it is fraud and it is not allowed by Iowa law." [ECF No. 53-2 at 98].

3. Aiding and abetting tortious interference and civil conspiracy

The disputed facts and inferences granted in favor of Plaintiffs—precluding summary judgment on Plaintiffs' substantive prima facie tort—also preclude summary judgment on their claims for aiding and abetting and civil conspiracy.

Under Iowa law:

> [A] person becomes subject to liability for harm caused by the tortious conduct of another when that person: (a) does a tortious act in concert with the other or pursuant to a common design with the other (traditional conspiracy); or (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other in such conduct (aiding and abetting).

Ezzone v. Ricciardi, 525 N.W.2d 388, 398 (Iowa 1994) (citing Restatement (Second) of Torts § 876 (Am. Law Inst. 1979)). "The principal element of conspiracy is an agreement or understanding between two or more persons to effect a wrong against or injury upon another." *Basic Chems., Inc. v. Benson*, 251 N.W.2d 220, 233 (Iowa 1977). A conspiracy may be implied by the conduct itself, Restatement (Second) of Torts § 876 cmt. *a*; *Wright v. Brooke Grp. Ltd.*,

652 N.W.2d 159, 172 (Iowa 2002), but "[m]ere knowledge, acquiescence[,] or approval of the act," without more, "is not enough." *Am. Sec. Benevolent Ass'n, Inc. v. Dist. Ct. of Black Hawk Cnty.*, 147 N.W.2d 55, 63 (Iowa 1966). "As to aiding and abetting, there must be a wrong to the primary party, knowledge of the wrong on the part of the aider, and substantial assistance by the aider in the achievement of the primary violation." *Ezzone*, 525 N.W.2d at 398.

To begin, the Bank Defendants contend that accessory liability cannot stem from Plaintiffs' allegation that Defendants aided and abetted or conspired with Weller to tortiously interfere with Kruse's collection efforts because Weller cannot interfere with his own creditor-debtor relationship with or obligations to another party as a matter of law. *See Nesler v. Fisher & Co., Inc.*, 452 N.W.2d 191, 194–95, 198–99 (Iowa 1990) (discussing intentional interference with existing and potential contracts with a "third person"). But the prima facie tort for interference with a property interest applies more broadly. Under the principles espoused by the Second Restatement, "[t]he tort lies in causing loss" and "applies to one who assists another to commit a fraud." Restatement (Second) of Torts § 871 cmt. *e*. It is not concerned with the wrongful interference with a relationship per se, as other torts may be, but with "[o]ne who intentionally destroys or diminishes a property interest of another by the wrongful exercise of a legal power." *Id.* § 870 cmt. *g*. Here, Weller committed a fraud on Kruse. He wrongfully interfered with Kruse's collection of her judgment lien. [ECF No. 53-2 at 99–105]. Plaintiffs can prove an underlying tort.

Defendants' remaining arguments in favor of summary judgment are precluded for the same disputed facts surrounding their knowledge and intent. The Bank Defendants reiterate their position that they were not aware of Plaintiffs' judgment until 2017, in essence arguing that this precludes any agreement to join a conspiracy until well after the January 2016 refinancing had

been consummated. But the evidence, viewed in a light most favorable to Plaintiffs, supports a showing that the Bank Defendants knew of and agreed to facilitate Weller's fraudulent scheme based on the abnormalities present in the financial statements and structure of the January 4, 2016 refinancing that departed from First State's standard banking practices and are not otherwise explainable. And Weller's recitation of what he told Repp during their first meeting, combined with Repp's knowledge of the prior unlawful transfers and experience as a transactional lawyer providing asset protection services, likewise infers Repp's knowledge of and agreement to further Weller's wrongful scheme. From this, a reasonable jury could conclude the Bank Defendants and Attorney Defendants aided and abetted or conspired to further Weller's scheme to interfere with Kruse's collection of her personal injury judgment through their rendition of professional services that would have been otherwise outside a layperson's area of expertise.

IV. CONCLUSION

For the reasons discussed above, factual disputes and credibility determinations concerning Defendants' knowledge of Weller's fraudulent purpose and intent in rendering their professional services pervade the record, which are not appropriately resolved as a matter of law. Defendants' Motions for Summary Judgment are therefore DENIED.

IT IS SO ORDERED.

Dated this 15th day of June, 2021.

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT