IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 30666

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
BRULE COUNTY, SOUTH DAKOTA

THE HONORABLE PATRICK SMITH
Circuit Court Judge

AMENDED BRIEF OF APPELLANT BRET HEALY

Notice of Appeal filed March 25, 2024

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September 18, 2024

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No. 30666

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PRELIMINARY STATEMENT

In Judge Smith's Sanctions Order, he contends that Bret Healy, a non-party to this action at the time the order was issued, filed a Motion to Dismiss for an improper purpose in violation of SDCL § 15-6-11(1).[1] As support therefore, Judge Smith argues:

1. Citing the Honorable Roberto Lange in *Healy v. Sup. Ct. of S.D.*, 2023 U.S. Dist. LEXIS 224685, 2023 WL 8653851 (D.S.D. 2023), Bret is barred by the doctrine of res judicata on the issue of ownership of Healy Ranch, Inc. SR at pp. 833-834; App. 30-31.

2. Citing Judge Lange again, the South Dakota Supreme Court is maintaining the status quo as to the ownership of Healy Ranch, Inc. *Id.*

3. Bret falsely contends that Healy Ranch Partnership has participated in meaningful business activities. SR at p. 834; App. 31.

4. Bret falsely contends that Healy Ranch Partnership is the rightful owner of Healy Ranch and has a greater interest in Healy Ranch, Inc. SR at p. 834; App. 31.

5. In a complaint filed with the Circuit Court in or about 2013, Bret recognized Healy Ranch, Inc. as owning Healy Ranch property. SR at pp. 834-835; App. 31-32.

6. Bret's persistent claims on the issue of consideration are naught, and he is barred from bringing this claim. SR at p. 835; App. 32.

[1]Improper purpose is defined as filing to "harass, cause unnecessary delay, or needlessly increase the cost of litigation." SDCL § 15-6-11(b)(1). App. 43. The Court has presented no evidence of any such improper purpose.

Bret Healy respectfully requests that Judge Smith's decision be overturned as he misconstrues his proper role, ignores and misunderstands relevant evidence, and bases his decision upon considerations having little or no factual support.

For the convenience of the Court, Bret Healy is referred to as "Bret" or "Bret Healy". Healy Ranch, Inc. is referred to as "HRI" and Healy Ranch Partnership will be referred to as "HRP," or "the partnership." HRP's former attorney of record, Tucker Volesky, is referred to as "Volesky." The settled record will be referred to as "SR" followed by the appropriate page number(s). Appellant's Appendix will be referred to as "App" followed by the appropriate page number(s). The Court's Order to Show Cause issued on December 29, 2023, and which is found at SR at pp. 197-199 and App. 79-81, is referred to as the "Show Cause Order." The Circuit Court's Findings of Fact, Conclusions of Law, and Order filed on March 18, 2024, and which is found at SR at pp. 841-956 and App. 1-41, is referred to as the "Sanctions Order." The land at issue will be referred to as "Healy Ranch".

JURISDICTIONAL STATEMENT

On March 18, 2024, the Circuit Court filed its Memorandum Decision imposing sanctions against Bret in the amount of $240,000 for alleged violations of SDCL § 15-6-11(b)(1). SR at pp. 841-956; App. 38-39. Findings of Fact and Conclusions of Law and Notice of Entry accompanied by an Order were also filed on March 19, 2024. *Id.*; App. 40-41. The Order was entered by the Honorable Patrick T. Smith, Circuit Court Judge, First Judicial Circuit, in Brule County. *Id.* Volesky, on behalf of Bret Healy, filed a timely Notice of Appeal on March 25, 2024. SR at pp. 913-914. The South Dakota Supreme Court has jurisdiction over this matter pursuant to SDCL § 15-26A-3(2) and (7).

REQUEST FOR ORAL ARGUMENT

Bret Healy requests the privilege of appearing before this Court for oral argument.

STATEMENT OF LEGAL ISSUE AND AUTHORITIES

WHETHER THE CIRCUIT COURT ERRED IN GRANTING RULE 11 SANCTIONS AGAINST A NON-PARTY?

The Circuit Court did not address this issue.

SDCL 15-6-11(b)

WHETHER JUDGE SMITH ERRONEOUSLY CONCLUDED THAT THE MOTION TO DISMISS FILED, SUBMITTED, PRESENTED, AND SERVED BY VOLESKY WAS BASED ON FALSEHOODS?

The Circuit Court held the Motion to Dismiss was primarily based upon falsehoods.

Healy Ranch, Inc, v. Healy, 2022 S.D. 43, 48, 978 N.W.2d 786, 800.
Healy Ranch P'ship v. Mines, 2022 S.D. 44, ¶ 39, 978 N.W.2d 768, 779.
Healy v. Sup. Court of S.D., No. 4:23-CV-04118-RAL, 2023 U.S. Dist. LEXIS 224685, at *3 n.1 (D.S.D. Dec. 14, 2023)

WHETHER JUDGE SMITH ERRONEOUSLY CONCLUDED THAT HRP's MOTION TO DISMISS WAS FILED FOR AN IMPROPER PURPOSE?

The Circuit Court concluded the Motion to Dismiss was filed for an improper purpose.

WHETHER BRET SATISFIED THE "REASONABLE INQUIRY" REQUIREMENTS UNDER SDCL § 15-6-11(a)?

The Circuit Court did not address this issue.

WHETHER THE CIRCUIT COURT ERRED IN FAILING TO EXAMINE FACTUAL QUESTIONS RELATED TO VOLESKY'S REPRESENTATIONS TO THE COURT?

The Circuit Court noted its obligations but did not undertake an examination of the facts.

SDCL §15-6-11(b) and (c)
Smizer v. Drey (In re Estate of Smizer), 2016 S.D. 3, ¶ 12, 873 N.W.2d 697, 702.
Pioneer Bank & Tr., 2009 S.D. 3, ¶ 9, 760 N.W.2d at 142
5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1337.3 (3d ed. 2008).

WHETHER THE CIRCUIT COURT ERRED IN NOT TAKING INTO CONSIDERATION BRET'S RELIANCE ON LEGAL ADVICE?

The Circuit Court did not take Bret's reliance on attorneys into consideration.

STATEMENT OF THE CASE

On November 17, 2023, a Petition for Court Supervised Dissolution in accordance with SDCL 47-1A-1430(4) was filed by Barry Healy and Bryce Healy purportedly on behalf of HRI. SR at pp. 1-7; App. 60-66. On December 19, 2023, Attorney Volesky filed a Notice of Limited Appearance on behalf of HRP to address the Court's jurisdiction. SR at p. 14; App. 78. Also on December 19, 2023, Volesky filed a Motion to Dismiss and Memorandum of Law in support thereof. SR at pp. 15-196; App. 67-77. On December 28, 2024, the Court *sua sponte* entered an Order to Show Cause requiring Bret and Volesky to establish they did not violate SDCL 15-6-11(b). SR at pp. 197-199. On January 16, 2024, Volesky filed a Response to the Show Cause Order. SR at pp. 242-319; App. 79-81. On March 18, 2024, Judge Smith issued a Memorandum Decision imposing Rule 11 Sanctions on Bret and Volesky with Findings of Fact and Conclusions of Law noticed the following day. SR at pp. 841-953; App. 1-41.

STATEMENT OF FACTS

Viewed in the light most favorable to Bret and granting him the benefit of all reasonable inferences, the relevant facts are as follows:

Portions of the Healy Ranch have been owned and/or occupied by the Healy family since 1887. *Healy v. Osborne*, 2019 S.D. 56, ¶ 21, 934 N.W.2d 557, 560. In 1961, Emmett and Robert, Bret's grandfather and father respectively, organized HRP. *Id.* HRP owned no real estate until Emmett and his wife DeLonde deeded approximately 1209 acres to HRP on November 21, 1968. *Id.* Soon thereafter, Emmett died leaving his 50% interest to DeLonde. *Id.* Robert died in a tractor accident in 1985, leaving his 50% interest in HRP to his wife, Mary Ann (Healy) Osborne. *Id.*

Following Robert's death, Bret, DeLonde, and Osborne executed a partnership agreement on January 25, 1986, wherein DeLonde's 50% ownership interest in HRP was transferred to Bret. *Id.*

On or about January 1, 1992, an agreement was reached between Osborne and Bret, where Bret and his brothers would equally purchase Osborne's ownership interest in HRP for a deferred payment of $100,000. Despite this agreement, Osborne established a corporate entity named Healy Ranch, Inc. and claims to have transferred all stock and ownership interest in HRI to her sons via a warranty deed executed by Osborne and DeLonde. *Id.* Against this backdrop, the following cases were commenced in state and federal court:

- *In the Matter of the Dissolution of Healy Ranch, Inc*, 07CIV23-000058. HRP was represented by Volesky from December 19, 2023, until the Court granted Volesky's Motion to Withdraw on March 26, 2024.
- *Bret James Healy v. Barry Healy, Bryce Healy, Healy Ranch, Inc*, 07CIV23-000037. Bret is represented by Chris Mcclure.
- *Bret James Healy v. Healy Ranch, Inc., Bryce Jay Healy, Barry Joseph Healy*, 07CIV23-000027. Bret is represented by Chris Mcclure.
- *Bret James Healy v. Healy Ranch, Inc.*, 07CIV23-000021. Bret is represented by Tucker Volesky until a conflict arose. He was replaced by Chris Mcclure.
- *Bret James Healy v. Barry Healy*, 07TPO22-000006. Bret is represented by Chris Mcclure.
- *Bret Healy v. Healy Ranch, Inc.*, 07CIV22-000012. Bret is represented by Volesky and Chris Mcclure.
- *Bret James Healy v. Brandy A. Healy, Delacey Grace Owens, Barry Joseph Healy*, 07CIV20-000010. Bret is represented by Chris Mcclure.
- *Healy Ranch, Inc. v. Bret James Healy*, 07CIV19-000071. Bret is represented by Angie Schneiderman.
- *Bret James Healy, Healy Ranch Partnership v. Brule County Abstract Company Inc., David Larson, Maryalice Larson, Larson Law, PC.*, 07CIV18-000040. Bret is represented by Cynthia Srstka.

- *Bret James Healy v. Healy Ranch, Inc, Healy Ranch Partnership, Mary Ann Osborne, Barry Joseph Healy, Bryce Jay Healy, Albert Fox*, 07CIV17-000023. Bret is represented by Steven Sandven and Cynthia Srstka.

Bret was represented by a licensed attorney at all times until the Court approved Volesky's Motion to Withdraw in the instant case.

Despite the fact that no Court has conclusively determined ownership of Healy Ranch, HRI allegedly held a shareholder meeting on November 15, 2023, and purported to vote in favor of dissolving HRI. SR at pp. 1-7; App. 60-66. Without any evidence supporting their contentions regarding the ownership of HRI, Barry and Bryce Healy, two of the three shareholders, conduct HRI business under the mistaken assumption that the three shareholders – Bryce, Barry and Bret – own equal shares. *Id.* at p. 1; App. 60. In the alternative, Bret contends that Barry and Bryce Healy own at the most 1/6 of HRI's paid-up capital stock. SR at pp. 665-666.

On November 17, 2023, Lee Schoenbeck filed a petition - purportedly on behalf of HRI - seeking commencement of a judicially supervised liquidation of HRI. SR at p. 2; App. 61. On December 19, 2024, Volesky filed a Motion to Dismiss contending a majority of the shares in HRI entitled to vote did not approve the proposal for voluntary dissolution as required by SDCL § 47-1A-1402.3. SR at pp. 15-195; App. 67-77. As support for his assertions, Volesky argued: (i) HRP has been conducting business since 1961; SR at p.15; App. 67. (ii) A partner cannot transfer partnership property but can only transfer their partnership interest; SR at p. 16; App. 68. (iii) A partner in HRP transferred record title to HRP's real property to HRI, resulting in all the corporation's capital stock being issued to HRP; SR at p.18; App. 70. (iv) All capital allegedly possessed by HRI was contributed by the partnership; SR at pp. 19-20; App. 71-72. and (v) The Petition fails to allege any facts that establish the appropriate percentage of ownership of the paid up capital stock in HRI actually voted for the dissolution. SR at p. 21; App. At 73.

Instead of issuing a show cause order, the Court's initial analysis should have focused on whether it could exercise jurisdiction. To undertake his responsibilities, the Court would have to determine whether the dissolution was approved in accordance with HRI's Bylaws which require fifty percent of the paid up capital stock to establish a quorum at a meeting of the shareholders. SR at p. 15; App. 67. If Bret is correct in his calculation of ownership, the dissolution did not pass by the requisite paid up capital stock, and the Court could not exercise jurisdiction over the dissolution. If Barry and Bryce are correct, the motion passed, and the Court could order dissolution. In light of these flagrant disparities, Judge Smith conducted no jurisdictional analysis.

On December 28, 2023, Judge Patrick Smith issued an Order to Show Cause on his own initiative and directed Volesky, as counsel for Bret Healy, and Bret, purportedly as an effected HRI shareholder and acting on behalf of the partnership,[2] to show cause as to why they have not violated SDCL 15-16-11(b) by filing a frivolous motion to dismiss based on "falsehoods, with no chance of a favorable ruling and no hope for a change of past decisions, and for the purpose of harassment and delay." SR at p. 199; App. 81. In an attempt to satisfy SDCL 15-6-11(c), Judge Smith described the specific conduct warranting sanctions as follows:

1. Volesky filed a Motion to Dismiss, claiming that the sole reason the Court lacks jurisdiction is that a majority of the shareholders did not approve the proposal for voluntary dissolution. *Id.* Judge Smith claims that Volesky knew his client and HRP collectively own no more than one-third interest in HRI and therefore 2/3 of paid shares voted to authorize dissolution. SR at p.197; App. 79.

2. Volesky filed a sworn "yet allegedly false" statement, the Certificate of Healy Ranch Partnership, while aware the statement is false. SR at p. 198; App. 80.

[2] Judge Smith is incorrect. Volesky submitted a Notice of Appearance on behalf of Healy Ranch Partnership – not Bret. SR 14; App. 78. Bret was not a party to this action in his individual capacity at the time the Order to Show Cause was issued nor when Judge Smith issued the Sanctions Order.

3. Bret falsely swore in the Certificate and this known falsehood was filed with knowledge by Volesky. *Id.*

4. In support of the alleged knowingly false claims, extensive, irrelevant and unnecessary filings were made in the form of exhibits put forth with the sole intent to relitigate past lawsuits and cause unnecessary delay or needless increase in the cost of litigation. *Id.*

Judge Smith claims the alleged conduct violates SDCL 15-6-11(b)(1), (2), (3) and (4). SR at p. 199; App. 81.

On January 16, 2024, Volesky filed a Response to the Order to Show Cause effectively arguing that no Court had yet determined the ownership of HRI, and based thereon, the Court would not be able to ascertain whether sufficient votes had been cast to approve the Petition for Court supervised dissolution. SR at p. 281-319; App. 82-89. On March 18, 2024, Judge Smith issued the Sanctions Order in which he misread prior court decisions and imposed sanctions upon Bret, a non-party in this litigation.

STANDARD OF REVIEW

SDCL 15-6-11(b) allows the trial court to impose "an appropriate sanction" and other courts have held that a trial court's determination of an appropriate Rule 11 sanction should not be overturned absent an abuse of discretion. An abuse of discretion is a discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence." *Pioneer Bank & Tr. v. Reynick*, 2009 S.D. 3, 13, 760 N.W.2d 139, 143 (2009). An abuse of discretion also occurs when the court bases "its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmark*, 496 U.S. 384, 405, 110 S. Ct. 2447, 2461 (1990).

ARGUMENT

THE CIRCUIT COURT ERRED IN ORDERING SANCTIONS AGAINST BRET HEALY.

Judge Smith held that Bret was liable for a violation of SDCL 15-6-11(b)(1) which provides:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The South Dakota Supreme Court has held that the purpose of sanctions under SDCL 15-6-11 is to deter abuse by parties and counsel. *Anderson v. Prod. Credit Ass'n*, 482 N.W.2d 642, 645 (S.D. 1992) (*quoting Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 205 (7th Cir. 1985)).

A. Bret Healy is not a Sanctionable Party.

SDCL § 15-6-11(b)(1) restricts its reach to an "attorney" or "unrepresented party" who presents to the court, whether by "signing, filing, submitting, or later advocating" a pleading, written motion, or other paper." Bret Healy is not an attorney nor was he an unrepresented party at the time the Show Cause Order was issued. In fact, he was not initially even a party to the action. At the time Volesky filed the Motion to Dismiss, Bret was a ***non-party*** who had not filed any documents in his personal capacity and was not even a signatory on the motion to dismiss which Judge Smith claims violates Rule 11. In fact, HRI did not even include Bret as a named party in this action. SR at p. 2. *See* SDCL § 47-1A-1431.1. ("It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.")

As further evidence that Bret was not a party to this action, Volesky filed a Notice of Appearance on behalf of the Partnership – not Bret. SR at p. 14; App. 78. Volesky executed the motion, filed, served, and advocated for the pleading on behalf of HRP. The only document executed by Bret Healy was the Certificate he signed in his capacity as a partner of HRP thereby

confirming that the document attached to the Motion to Dismiss as Exhibit 4 was a substitute motion that had been proposed and supported by a majority of the outstanding shares of HRI's common, paid up capital stock. SR at p. 196. Bret in his individual capacity took no action until HRP's attorney withdrew – which did not occur until after the Court issued the Sanctions Order.

Judge Smith noted there is no South Dakota precedent justifying his sanction on Bret Healy. SR 829; App. 26. Indeed, the undersigned was unable to locate precedent in any jurisdiction that allowed a Court to impose Rule 11 sanctions on a non-party/non-attorney.

B. Judge Smith Erroneously Concluded that Volesky's Motion to Dismiss was Based upon Falsehoods.

The principal premise of Judge Smith's decision to impose sanctions on Bret Healy is his complete misunderstanding of legal precedent which had discussed - but not determined - the ownership of HRI. Judge Smith erroneously claims the history of litigation proves that Bret's continued claims of ownership are false. The truth is that ownership of Healy Ranch has never been substantively resolved. *See Healy Ranch, Inc, v. Healy*, 2022 S.D. 43, 48, 978 N.W.2d 786, 800 (the notion "that *Healy v. Osborne* resolved the question of ownership would rewrite portions of our opinion").

In the first case, *Healy I*, Bret Healy brought tort and contract claims for money damages in connection with the transfer of record title to Healy Ranch. The South Dakota Supreme Court held Bret's claims were barred by the six-year statute of limitations. The decision in *Healy I* did not determine ownership of anything. Indeed, the Court explicitly stated:

> We decline to address Bret's claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence. Each of these causes of action are subject to the six-year statute of limitations under SDCL 15-2-13. Therefore, even if Bret retained an ownership interest in Healy Ranch through the 1986 partnership, he must nonetheless timely commence suit within

the applicable statute of limitations.

In *Healy II*, the South Dakota Supreme Court also held it did not decide ownership:

> Here, we agree with Bret's assertion that our decision in *Healy Osborne* cannot be used to invoke issue preclusion in this case. The question decided in *Healy v. Osborne* was whether Bret's claims against his family and former attorney were time-barred. As indicated above, we did not determine the question at issue in this quiet title action, which relates to ownership of the Ranch. *See Healy*, 2019 S.D. 56, ¶ 21, 934 N.W.2d at 563 ("We decline to address Bret's claim of ownership[.]").
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> ***
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> Nor did we effectively decide the ownership question in our analysis of the attorney fees issue when we stated that "Bret filed the lawsuit for the purpose of preventing the sale of the property, not because he believed his partnership interest remained enforceable." *Id.* ¶ 37, 934 N.W.2d at 567. This passage was simply, as it states, a comment on the unlikely nature of Bret's untimely effort to assert his *partnership interest* which, in any event, implicated personal property rights-not real property rights. (Emphasis added)

Id. at pp. 46-47.

In *Healy Ranch P'ship v. Mines*, 2022 S.D. 44, ¶ 39, 978 N.W.2d 768, 779, the South Dakota Supreme Court held that the Circuit Court incorrectly read *Healy I* by utilizing certain factual findings regarding ownership of the Ranch:

> The circuit court's decision to dismiss HRP's complaint was erroneous in several respects. First, relying upon the doctrine of res judicata, the court exceeded the scope of the pleadings and, perhaps more critically, incorrectly read *Healy v. Osborne* to affirm certain factual findings regarding ownership of the Ranch, stating: [The *Healy v. Osborne* circuit court] made a specific finding that the 1986 Healy Ranch Partnership never had any title to any land of the Healy Ranch, only the 1972 Partnership did. That ownership interest was transferred to Healy Ranch, Inc. in 1995. It is undisputed that the South Dakota Supreme Court affirmed the [circuit court's] findings, which found that the 1986 Partnership never had any land interest in Healy Ranch and Bret Healy only had an interest in the 1986 Partnership, not the 1972 Partnership.

Id.

The Court in *Healy v. Sup. Court of S.D.*, No. 4:23-CV-04118-RAL, 2023 U.S. Dist. LEXIS 224685, at *3 n.1 (D.S.D. Dec. 14, 2023), Judge Lange noted:

> The court in *Healy I* specifically "decline[d] to address Bret's claim of ownership" and instead "center[ed] on the timeliness of Bret's claims." *Healy I*, 934 N.W.2d at 563. The court found Bret's contract and torts claims untimely and barred by the statutes of limitations; in so deciding, the *Healy I* court effectively prevented Bret Healy from challenging that each of Bret, Barry, and Bryce owned one-third of HRI, indirectly confirming the ownership status quo.

Judge Lange does not cite any paragraph of any prior decision, or any parts of the record from previous cases, for this declaration which begs the question as to what and when such status quo came into effect. Judge Lange's declaration, and Judge Smith's reliance thereon, constitutes impermissible, vague fact finding.

Despite Judge Smith's attempt to indirectly determine the ownership of HRI and its paid up capital stock, his decision is based upon a clearly erroneous assessment of the evidence and an erroneous view of the law. Based thereon, his decision to sanction Bret must be overturned.

C. Judge Smith Erroneously Concluded that HRP's Motion to Dismiss was Filed for an Improper Purpose.

To prove Volesky's Motion to Dismiss was presented for an improper purpose, the Court must show it was presented to harass, cause unnecessary delay, or needlessly increase the cost of litigation. This case was not initiated by Bret or HRP but by the other shareholders of HRI who are asserting they each own 1/3 of HRI and wish to dissolve the corporation. Without HRP's intervention in this case, Judge Smith would likely have ordered the dissolution of HRI in contravention of legal precedent that has expressly disavowed a determination of ownership. HRP only filed the Motion to protect its interests and to ensure the Court did not proceed without acknowledging the issues associated with its jurisdiction.

In the end, Schoenbeck should be sanctioned for filing the Petition since it was clearly intended to harass Bret as Bryce Healy, Barry Healy and Mr. Schoenbeck are well aware that no

Court has determined that Barry and Bryce own 1/3 of HRI, and no one has presented evidence to support such a finding.

D. Bret Conducted a Reasonable Inquiry Into the Facts Incorporated into the Motion to Dismiss.

It is an attorney's duty under SDCL §15-6-11(a) to conduct a "reasonable inquiry" into the facts and law prior to commencing any action. SDCL § 15-6-11(a) clearly states that the attorney's signature represents that the signer has undertaken such an inquiry and believes the action is well grounded in law and fact. *Anderson*, 482 N.W.2d 642, 645. Although Bret did not sign, submit, file or serve the motion to dismiss which is the subject of Judge Smith's Sanctions Order, he conducted a very thorough investigation to determine whether HRP's claims were viable. Specifically, in addition to the multitude of attorneys Bret retained, he also contracted with Nina Braun, a certified forensic accountant from Ketel Thorstenson LLP, to serve as an expert in 2020 who prepared four reports from 2020 to 2022 which guided Bret. SR at pp. 25-49. The reports concluded:

- HRI stock certificate no. 1 (299,348 shares) was issued to Osborne on August 1, 1994, and nothing was exchanged for those shares. SR at p. 44.
- HRI's beginning balance sheet at January 1, 1995, on HRI's 1995 Form 1120S, shows a beginning balance of $0 assets and liabilities. *Id.*
- Braun provides analysis based on information from the corporate records litigation, detailing liability for tax on the step up in basis for the real estate transferred by way of the 1995 warranty deed. SR at p. 45.
- Braun's analysis includes calculations of HRI's capital stock. SR at p. 54.
- Based on the 1995 warranty deed, Braun concluded that Healy Ranch Partnership owns a majority of the capital stock of HRI.
- Braun concludes that HRI is ineligible to be treated as an S Corporation despite the election by HRI filed January 1, 1995, for treatment as an S Corporation. SR at p. 45.

- HRP paid for all the capital stock of HRI. SR at p. 48.
- HRP owned all real property when HRI was formed on August 1, 1994. SR at p. 42.
- HRP was formed in 1961 and has not been dissolved. SR at p. 32 and 43.

Id. Unlike Judge Smith who acted upon his faulty interpretation of past legal precedent, Ms. Braun based her conclusions on her experience and 60+ years of evidence. Bret paid Ms. Braun $15,000 for her services. SR at p. 2894; App. 103.

Additionally, Bret retained the services of: (i) Brule County Title and Insurance Company to prepare title chain records for RH-2; (ii) Davison County Title Company, Inc. – Aurora County Title Company to prepare title chain records for RH-1 for $9,000; (iii) SPN & Associates to map the questioned parcels of land for $2,000; and (iv) Meierhenry Sargent LLP for ownership and procedural issues in exchange for $1,300. SR at p. 2894; App. 103.

Clearly, HRP and Volesky undertook a "reasonable inquiry" into the facts and law prior to making a determination on how to respond to the Petition for Voluntary Dissolution. Indeed, a minimum of seven attorneys, one law firm, a forensic accountant, and two title companies supplied opinions that supported that the motion was well grounded in law and fact.

E. The Circuit Court Erred in Failing to Examine Factual Questions Related to Volesky's Representations to the Court.

The decision to impose Rule 11 sanctions under SDCL § 15-6-11(b) involves multiple factual and legal considerations. The circuit court must examine factual questions related to the attorney or unrepresented party's representations to the court. SDCL § 15-6-11(b). *Smizer v. Drey (In re Estate of Smizer)*, 2016 S.D. 3, ¶ 12, 873 N.W.2d 697, 702. When imposing sanctions, SDCL § 15-6-11(c)(3) requires that the court "describe the conduct determined to constitute a

violation of this rule and explain the basis for the sanction imposed." This language is essentially analogous to Federal Rule of Civil Procedure 11(c)(6) which has been analyzed as follows:

> If sanctions are deemed appropriate, the 1993 amendment requires that the district court "describe the conduct determined to constitute a violation" of Rule 11 and "explain the basis for the sanction imposed." Thus, as the illustrative cases cited in the note below make clear, *the district judge should indicate fairly precisely what conduct has been found to be improper and under which provision of law the sanctions are being awarded by the court. In addition, and particularly when a substantial amount of money is involved, the district judge should state with some specificity the manner by which the sanction has been computed.* These requirements are designed to promote the rational exercise of trial court discretion in the utilization of Rule 11 and to facilitate effective appellate review. Some federal courts, however, have been less specific when the sanction has been based on the general conduct of the litigation by the lawyer who is being sanctioned.

5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1337.3 (2008)(emphasis added).

In violation of the foregoing, Judge Smith provided no justification as to how Bret violated SDCL § 15-6-11(b)(1). He provided no reasons as to why he allowed Barry Healy and Bryce Healy to maintain an action that focused on the ownership of HRI while at the same time forbidding HRP from contesting the Petition along those same lines. Most importantly, the Court provided no justification for sanctioning Bret, a non-party, in the amount of $240,000 and HRP's attorney, who has represented Bret or HRP in multiple cases, a mere $10,000.

F. Bret Relied Upon the Advice of Licensed Attorneys.

Bret asserts without contradiction that he paid over $300,000 in legal fees and expenses in seeking protection for his ownership interests. SR at p. 2594; App. 103. This has some tendency to show that he did indeed think he had a case worth pursuing.

When a party acts in "good faith and upon the advice of counsel" other courts have held that such conduct is objectively reasonable. *See Scanning Electron Microscopy v. Inst. for Sci. Info.*, No. 81 C 01781, 1990 U.S. Dist. LEXIS 2333, at *5 (N.D. Ill. Mar. 2, 1990)(There is

nothing to rebut this evidence that plaintiff relied in good faith on the advice of its attorney that there was a viable antitrust case to be made against defendant); *Taylor v. Collins*, 128 N.C. App. 46, 53, 493 S.E.2d 475, 480 (1997)(Court found that Taylor in good faith relied on Hubbard regarding the legal sufficiency of his claims and thus met his duty of making a "reasonable inquiry." As such, the trial court's imposition of sanctions against Taylor was improper.); *Just New Homes, Inc. v. Sun Mgmt.*, No. A-2764-05T5, 2008 N.J. Super. Unpub. LEXIS 706, at *11 (Super. Ct. App. Div. Feb. 5, 2008)(A client will not be sanctioned for frivolous litigation where the client relied in good faith on his attorney's faulty advice).

The imposition of Rule 11 sanctions is improper because Bret as partner in HRP relied in good faith on at least a half dozen attorneys and other experts regarding the legal sufficiency of HRP's claims. Bret is neither an attorney nor an expert in corporate matters, and so for decades, he has relied upon the advice of his attorney (Fox) and other experts, including his family members, to manage the farming operations commenced by his ancestors. He trusted these individuals who were all bound by fiduciary duties to act in his best interest. On April 3, 2017, Bret, while visiting with an attorney on his legal affairs, discovered the 1995 Warranty Deed. Upon the advice of this attorney, Bret retained the services of a second and third attorney who commenced *Healy I*. Upon the advice of a fourth attorney, Bret appealed *Healy I* to the South Dakota Supreme Court. Upon the advice of an attorney from Washington DC and a sixth and seventh attorney, Bret initiated additional lawsuits with the objective of convincing one court to hear his case on the merits. These seven attorneys did not counsel Bret to cease seeking restitution but zealously represented his interests as they are required to do. As such, he should not be sanctioned $230,000 more than his licensed legal advocate.

G. Judge Smith Erroneously Devotes Much of his Analysis on Whether Volesky's Claims were Frivolous.

SDCL § 15-6-11(b)(2) centers around whether or not a claim is frivolous – "The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." The alleged frivolity of the claims cannot be used as justification to impose sanctions on Bret. *See* SDCL § 15-66-11(c)(2)(A)("Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2)").

CONCLUSION

Judge Smith's contentions are simply untrue, and the Sanctions Order should be overturned for the following reasons:

- Judge Smith contends that Bret is barred by the doctrine of res judicata on the issue of ownership of Healy Ranch, Inc. SR at p. 834; App. 31. If this statement is true, HRI would also be barred by the doctrine of res judicata from filing the Petition for Dissolution since the Court must initially determine if the appropriate paid up capital approved the dissolution.

- Judge Smith claims the South Dakota Supreme Court is maintaining the status quo as to the ownership of Healy Ranch, Inc. SR at p. 835; App. 32. This statement is untrue. In *Healy v. Sup. Court of S.D.*, No. 4:23-CV-04118-RAL, 2023 U.S. Dist. LEXIS 224685, at *3 n.1 (D.S.D. Dec. 14, 2023), the South Dakota District Court stated in a footnote that the South Dakota Supreme Court found Bret's contract and torts claims in *Healy I* untimely and barred by the statutes of limitations "in so deciding, the *Healy I* court effectively prevented Bret Healy from challenging that each of Bret, Barry, and Bryce owned one-third of HRI, indirectly confirming the ownership status quo." There was no direct holding by any Court that the status quo would be maintained.

- Judge Smith claims that Bret falsely contends that Healy Ranch Partnership has participated in meaningful business activities. SR at p. 835; App. 32. HRP is a shareholder of HRI. As such, it would rarely conduct business on its own behalf.

- Judge Smith states that Bret falsely contends that Healy Ranch Partnership is the rightful owner of Healy Ranch and has a greater interest in Healy Ranch, Inc. SR at p. 834; App. 31. Bret's statement has not been proven false by any court.

- Judge Smith notes that "[i]n a complaint filed with the Circuit Court in or about 2013, Bret recognized Healy Ranch, Inc. as owning Healy Ranch property." SR at

- Judge Smith notes that "[i]n a complaint filed with the Circuit Court in or about 2013, Bret recognized Healy Ranch, Inc. as owning Healy Ranch property." SR at p. 835; App. 32. This statement is untrue. On October 18, 2013, Bret Healy and Healy Ranch, Inc. filed a complaint in the First Judicial Circuit against Larry Mines. CIV 13-66. Contrary to Judge Smith's assertions the complaint alleges that Bret Healy and HRI own the land in question.

Based upon the foregoing, Bret Healy respectfully requests that the Supreme Court overturn Judge Smith's Sanctions Order.

Dated this 18th day of September, 2024.

/s/ Bret J. Healy
Pro se individually
Managing Partner
Healy Ranch Partnership [HRP]
HRP currently without legal representation

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Amended Appellant's Brief was submitted to the Clerk of the South Dakota Supreme Court for filing via electronic email to SCClerkBriefs@ujs.state.sd.us and was served by electronic email on the following:

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL § 15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word 2019, and contains 4,914 words from the Statement of the Case through the Conclusion. I have relied on the word count of a word-processing program to prepare this certificate.

Bret Healy

Bret Healy, Pro Se

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 30666

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
BRULE COUNTY, SOUTH DAKOTA

THE HONORABLE PATRICK SMITH
Circuit Court Judge

APPENDIX

Notice of Appeal filed March 25, 2024

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September 18, 2024

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IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	MEMORANDUM DECISION ON RULE 11 SANCTIONS WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

This Brule County Matter came before the Court on January 23, 2024, in the Davison County Courthouse in Mitchell, Davison County, South Dakota on Healy Ranch Partnership's Motion to Dismiss, and the Court's Order to Show Cause for Rule 11 Sanctions against Tucker Volesky, as counsel for Bret Healy, and Bret Healy, effected shareholder of Healy Ranch, Inc., and acting on behalf of Healy Ranch Partnership, purported effected shareholder of Healy Ranch, Inc. Bret Healy was represented by his counsel Tucker Volesky. Healy Ranch, Inc. was represented by counsel Lee Schoenbeck. Bryce Healy and Barry Healy, effected shareholders of Healy Ranch, Inc., were personally present.

The Court ruled on the Motion to Dismiss orally from the bench on January 23, 2024. The Court held that it has jurisdiction to make a determination as to whether a corporation should be dissolved under the statutes of the State of South Dakota. Further, the Court found that there is no threshold determination to be made before it has personal and subject matter jurisdiction over the dissolution.[1]

[1] The Court further expounded on its jurisdictional ruling via email with the parties on January 25, 2024, which is part of the record herein. The Court recognized Bret Healy's objection in his Motion to Dismiss on the grounds that there was not the required number of votes allowed to dissolve the corporation and therefore, grant jurisdiction to circuit court. However, this Court held that it was uncontested that a meeting was held, and alleged and so found that

The Court brought the Order to Show Cause due to Bret Healy's continued claims that he has greater ownership of Healy Ranch, Inc. and his challenge to the dissolution based upon that, despite prior rulings by many courts that have heard these issues. This was the sole basis for his Motion to Dismiss and his attempt to challenge the jurisdiction of this Court. After hearing the arguments and reading the briefs of both parties, the Court now issues this memorandum decision, findings of fact, and conclusions of law.

FACTS FOUND BY THE COURT

On October 6, 2023, a Plan of Liquidation and Dissolution was adopted by the Board of Directors of Healy Ranch, Inc (HRI) and was adopted on October 20, 2023. Petitioner's Exhibit A. On November 15, 2023, a majority of the common stock shareholders voted for dissolution of the Corporation at a meeting of the shareholders.[2] According to the Petition and well-established precedent, the shareholders include Bryce Healy, Barry Healy, and Bret Healy, each owning 99,782.66 shares or having a 1/3 interest in the corporation. On November 17, 2023, HRI petitioned this Court for a supervised dissolution of the Corporation under SDCL 47-1A-1430(4).

On December 19, 2023, despite Bret Healy having indicated no opposition to the dissolution, Healy Ranch Partnership (HRP) filed a Motion to Dismiss. HRP referred to a Warranty Deed from HRP to HRI claiming that HRP owns at least a majority of the capital stock in HRI. Respondent's Exhibit 2. HRP opposed the Plan of Liquidation and Dissolution which they contend

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a majority of shareholders voted in favor of dissolution of Healy Ranch, Inc., thereby granting jurisdiction to the circuit court in compliance with *In re F.E. Schundler Feldspar Co.*, 19 N.W.2d 337 (S.D. 1945).

[2] Providing further evidence that this motion was brought for an improper purpose, a claim that all shareholders, including Bret Healy, favored dissolution was levied and unchallenged in *Brett Healy v Healy Ranch, Inc., Bryce Healy & Barry Healy*, 07CIV23-27 in the Response to Plaintiff's Motion for Court Ordered Forensic Accounting filed wherein it is stated without challenge that Defendant is appreciative that Brett Healy will not be resisting the winding up of the corporation. *Defendant's Response to Plaintiff's Motion for Court Ordered Forensic Accounting* (Sept. 20, 2023). This is further supported by the transcript of the motions hearing in that matter wherein all parties openly discussed the contemplated dissolution and while the nature of such proceeding undoubtedly would be at issue, no mention of challenging the mere commencement of the same was made. *Motions Hearing Transcript*, 40:23-25; 41:1-25 (Sept. 27, 2023).

has not been approved because a majority of shares of HRI did not approve the proposal. Respondent's Exhibit 4. HRP argued that the Circuit Court lacked jurisdiction under SDCL 47-1A-1430(4).

On December 29, 2023, this Court entered an Order to Show Cause, and directed Tucker Volesky, attorney for HRP and Bret Healy, and Bret Healy, purported effected shareholder of HRP, to show cause to establish that they have not violated SDCL 15-16-11(b) by filing a frivolous motion to dismiss based upon falsehoods, with no chance at a favorable ruling and no hope for a change of past decisions, and for purpose of harassment and delay.

In order to best analyze the question of sanctions, this Court, for purpose of substantiating the Order to Show Cause and establishing the true purpose of the current filing, will next provide an overview of the litany of lawsuits filed by or against Bret Healy, either solely or on behalf of HRP and in many cases by his attorney, Tucker Volesky, demonstrating that their continued claims of ownership are knowingly false. The history of the litigation between the parties, and the actions taken by Mr. Volesky in many, is instructive on the questions raised, and review required of a court considering sanctions under SDCL15-16-11.

Bret Healy v. Mary Osborne, Bryce Healy, Barry Healy, Healy Ranch Partnership, Healy Ranch, Inc., and Albert Steven Fox (07CIV17-23)

On May 11, 2017, Bret Healy filed a complaint in Circuit Court alleging conversion, breach of contract and implied duty of good faith, fraud and conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence. HRI, Bryce, and Barry, with Albert Fox joining, moved for summary judgment based on the statute of limitations. Mary Ann and HRP moved for summary judgment contending that his claims were time-barred, and that he did not sufficiently prove damages.

The Circuit Court found that Bret's claims were barred by the statute of limitations for all his claims. The Court concluded that Bret had constructive notice, if not actual notice, that HRI claimed an interest in Healy Ranch, and he should have been put on notice as president of HRI. After this ruling, the Defendants moved the Circuit Court to grant attorney's fees and costs. The Circuit Court concluded that the lawsuit was frivolous and malicious and held that Bret filed this lawsuit with an improper purpose, thereby attempting to prevent HRI from selling Healy Ranch. Further, the Circuit Court granted attorney's fees, sales tax, and costs to Mary Ann Osborne in the amount of $32,606.524, HRI, Barry Healy, and Bryce Healy in the amount of $38,283.88, and Albert Fox in the amount of $14,405. Bret appealed the Circuit Court's ruling to the Supreme Court of South Dakota, which is discussed below, along with a continuing overview of the entirety of the litigation between the parties.

Healy v. Osborne ("Healy I")

A recitation of facts in the Supreme Court's opinion will detail the history of the family, the partnerships, and the corporations relevant to the multitude of lawsuits. The Healy family has retained ownership of the Healy Ranch since 1887. *Healy v. Osborne*, 2019 S.D. 56, ¶ 3, 934 N.W.2d 557, 560. In 1969, Emmett Healy, Bret's grandfather, and Robert Healy, Bret's father, created a partnership, and after Emmett died his ownership interest was transferred to his wife DeLonde Healy. *Id.* Three years later, Robert and DeLonde created a second partnership (1972 partnership), and Robert agreed to share his 1/2 interest with his wife Mary Ann while DeLonde owned the other 1/2. *Id.* ¶ 4. The parties did not sign a partnership agreement, but they executed and recorded a warranty deed for the transfer of Healy Ranch into the 1972 partnership. *Id.* Robert died in November of 1995, and his 1/2 interest in the 1972 partnership was transferred entirely to his wife Mary Ann. *Id.*

After Robert's death, the Healy family decided to transfer some responsibility in the Healy Ranch to Bret by executing an agreement on November 25, 1986, forming a third partnership (the 1986 partnership). *Id.* ¶ 5. Bret held a 25% interest in the 1986 partnership, and Mary Ann held a 75% interest in the 1986 partnership. *Id.* DeLonde signed a general warranty deed relinquishing her rights in the ranch and transferring an interest in the 1972 partnership to Bret. *Id.* However, he was only granted a 25% interest overall in the 1972 partnership with Mary Ann receiving a 75% interest, and the instrument was never recorded. *Id.*

On March 12, 1995, DeLonde and Mary Ann executed a warranty deed transferring Healy Ranch from the terminated 1972 partnership to HRI which was owned solely by Mary Ann. *Id.* ¶ 6. The deed was recorded with the Brule County Register of Deeds on March 13, 1995. *Id.*

In 2000, Bret, Barry, and Bryce each purchased a 1/3 interest in HRI from Mary Ann via contract for deed. *Id.* ¶ 7. Beginning in 1999, Bret was president of HRI. *Id.* Bret and his brother managed the corporation together, with Bret signing mortgages on behalf of HRI, and the mortgages representing that HRI was the sole owner of Healy Ranch. *Id.* at 561. Without indicating any ownership of the ranch by HRP, Bret purchased land from HRI to build a home. *Id.* Further, Bret initiated a lawsuit on behalf of HRI alleging that certain land and fences belong to HRI and did not name HRP as a party to the lawsuit. *Id.* ¶ 8.

In 2016, discussions between Bret, Barry, and Bryce began in relation to selling the ranch. *Id.* ¶ 9. Barry and Bryce supported the sale, and Bret opposed. *Id.* Bret affirmed HRI's ownership of the ranch when he signed an agreement for reimbursements from the Corporation for improvements made by him. *Id.* In April of 2017, Bret met with an attorney to discuss the sale and alleged that he learned, for the first time, that Healy Ranch was transferred by Mary Ann to HRI. *Id.* ¶ 10. He further alleged that the family attorney, Albert Fox, Mary Ann, and Bryce "created

false corporate resolutions, false title information, and sixteen forgeries of [his] signature on corporate minutes." *Id.* These alleged discoveries resulted in him filing an action on May 11, 2017. *Id.* ¶ 11.

During the time of filing the lawsuit, Bret took out ads in farm-related journals claiming that HRI lacked clear title to Healy Ranch. *Id.* ¶ 12. Two weeks before this lawsuit was commenced, Bret sent letters to Wells Fargo, First National Bank, Brule County Register of Deeds, and Brule County Abstract alleging that HRI did not have good title to Healy Ranch. *Id.* Further, Bret filed a notice of lis pendens to cloud the title of Healy Ranch. *Id.*

The Supreme Court "decline[d] to address Bret's claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence." *Id.* ¶ 21 at 563. The Supreme Court held that Bret was aware that he and his brothers purchased a 1/3 share interest in HRI reasoning that Bret was the president of HRI for numerous years signing documents on behalf of the corporation. *Id.* ¶ 28 at 564.

Bret's argument that he retained an interest in HRP failed in part because he did not record the partnership agreement or the deed in 1989. *Id.* ¶ 29. Further, partnership returns and tax returns were not filed for HRP after 1995, with Bret's financial statement in 2001 reflecting that his only asset were his shares in HRI. *Id.* Bret sent an email to Barry in June of 2016 stating: "I owned 25% of the place – mom insisted on 1/3 to everyone – so yes I put all my chips back in for 8%..."[3] *Id.*

The Supreme Court affirmed the Circuit Court's ruling that the statute of limitations ran on Bret's claim against Fox for legal malpractice due to a lack of continuing representation. *Id.* ¶ 32 at 566. Further, the Court concluded that the Circuit Court utilized the proper procedure by relying

[3] Confirming his understanding that Mary Ann gave disproportionate percentages of her share to her sons, to create in each of them a 1/3 ownership interest.

upon the proper statute of limitations in making its determination on summary judgment. *Id.* ¶ 33. The Supreme Court upheld the Circuit Court's decision awarding attorney's fees because there was no evidence in the record suggesting that Bret was reasonable in bringing these claims. *Id.* ¶ 37 at 567. The Court noted that the email sent in 2016 to Barry solidified Bret's knowledge that HRI owned Healy Ranch. *Id.* Upon disagreement with his brothers, Bret brought a frivolous lawsuit to stop the sale of Healy Ranch and not on the basis that "his partnership interest remained enforceable." *Id.* The Court awarded additional appellate attorney's fees to Mary Ann in the amount of $7,500, to Barry, Bryce, and HRI in the amount of $7,500, and to Albert Fox in the amount of $3,450. *Id.* ¶ 38.

The total amount of attorney's fees award by the Circuit Court and the Supreme Court in this matter is $101,745.42.

Bret James Healy, HRP v. Brule County Abstract, David Larson, Mary Alice Larson, Larson Law PC (07CIV18-40)

This is the first lawsuit that Bret brought on behalf of HRP. The Complaint alleges that the Defendants wronged Bret by aiding and abetting theft by deception, conspiracy to commit fraud, breach of fiduciary duty by David Larson and Larson Law PC, aiding and abetting breach of fiduciary duty, and negligence. Approximately one month later, Bret dismissed this lawsuit without prejudice.

Healy Ranch, Inc. v. Bret James Healy and d/b/a Healy Ranch Partnership (07CIV19-71)

In this matter, HRI claims that they have a valid warranty deed conveying title of Healy Ranch to HRI. Plaintiff's Exhibit A. Defendants filed a Notice of Claim of Interest which was recorded on January 25, 2018, claiming that the deed conveying the property to HRI was not valid because of a prior conveyance in 1986. Plaintiff's Exhibit B. HRI claims that the Notice of Claim

of Interest was used to slander title because it is false and derogatory to HRI's title to Healy Ranch. HRI asked for the Circuit Court to recognize their marketable title to Healy Ranch and afford them attorney's fees from Defendants.

Defendants' claim relies on the alleged 1986 agreement that he argues invalidates the 1995 deed which Plaintiff uses to claim ownership of Healy Ranch. HRI filed for summary judgment alleging that the claim was time-barred under SDCL 43-30-3 which states that the statute of limitations is 22 years. Defendants reads the statute to grant him 23 years to file a Notice of Claim of Interest. The Circuit Court held that the limitation begins running when the deed is recorded. The Court granted HRI's motion for summary judgement, voiding Defendants' Notice of Claim of Interest.

After the Court's ruling on summary judgment, HRI requested attorney's fees under SDCL 43-30-9. The Circuit Court concluded that the evidence presented by HRI is not sufficient to support a ruling in their favor for attorney's fees because it must be supported by a showing that Defendants were motivated solely by intent to slander title. In *Healy v. Osborne* (*Healy I*), the Court specifically did not rule on the merit of Bret's claim under the 1986 partnership which is the basis for filing the Notice of Claim of Interest.

HRI appealed the Circuit Court's ruling on attorney's fees. Bret appealed the Circuit Court's determination that HRI possesses marketable record title to Healy Ranch, all discussed below.

Healy Ranch, Inc. v. Bret Healy ("Healy II")

This Court will recite only the additional facts found within the opinion as not to repeat the facts utilized by the Supreme Court in *Healy I*. In 1995, Mary Ann filed articles of incorporation forming HRI as the sole owner. *Healy Ranch, Inc. v. Bret Healy*, 2022 S.D. 43, ¶ 4, 978 N.W.2d

786, 791. The Supreme Court reiterated that even though Bret's prior submissions to the Court detailed his contention about which entity own Healy Ranch, the Court found "that Bret did not bring a quiet title action challenging ownership to Healy Ranch and, therefore, we were not called to decide upon the question of ownership." *Id.* ¶ 9 (quoting *Osborne*, 2019 S.D. 56, ¶ 20, 934 N.W.2d at 563).

Bret filed his notice of claim in January of 2018 during the pendency of the appeal in *Healy I* noting adverse claims to Healy Ranch under the South Dakota Marketable Title Act (SDMTA) citing SDCL 43-30-5. *Id.* ¶ 10 at 792. After the Court's decision in *Healy I*, HRI filed a quiet title action to establish marketable title under the SDMTA to void Bret's notice of claim. *Id.* ¶ 12. The issue both parties raised relates to the statute of limitations, HRI claims that the 22-year statute of limitations applies, and Bret claims that the 23-year statute of limitation applies. *Id.* ¶¶ 12-13. In his counterclaim, Bret requested to quiet title to Healy Ranch in HRP to assert the partnership's ownership under two deeds—one recorded in 1986 and one recorded in 1990. *Id.* ¶ 13. HRI contends that they are entitled to summary judgment under res judicata. *Id.*

The Supreme Court reasoned "any apparent incongruity or confusion related to the twenty-two and twenty-three-year periods can be resolved by focusing less on the different lengths of time and more on the discrete purpose of each". *Id.* ¶ 34 at 796. The Court held that Bret timely recorded his notice of claim. *Id.* ¶ 35 at 797. The Court declined to use the 22-year statute of limitations which would have extended back in time to November 26, 1997. *Id.* The Court concluded that, while there is no dispute that HRI held title to Healy Ranch on that date, marketable title is subject to "claims...and defects of title...not extinguished or barred by...this chapter[,]" including the claim stripping provision in SDCL 43-30-3. *Id.*

The Court analyzed the deed from March 13, 1995, and applied the 23-year statute of which is March 13, 2018, holding that Bret's notice of claim from January 5, 2018, was not time-barred. *Id.* ¶ 36. However, the Court could not rule on the merits of HRP's ownership until they looked at the claims Bret made in *Healy I* and decided whether he could and should have brought these claims in the prior case. *Id.* ¶ 37 at 798.

The Court then addressed HRI's contention that res judicata bars Bret from pursuing his counterclaim seeking to quiet title in HRP because of the Court's decision in *Healy I*. *Id.* ¶ 39. The Court analyzed the elements of res judicata under claim preclusion and issue preclusion theories. *Id.* ¶¶ 42-45 at 799. The Court concluded that issue preclusion could not be utilized in this case as the question decided in *Healy I* did not relate to the question in the quiet title action but rather it related to ownership of Healy Ranch. *Id.* ¶ 46 at 800. The Court further reiterated that it did not decide ownership, it simply made a "comment on the unlikely nature of Bret's untimely effort to assert his partnership interest." *Id.* ¶ 47. Nonetheless, the Court found that the doctrine of res judicata applies because Bret's counterclaim is a clear effort to litigate the same cause of action as he did in *Healy I*. *Id.* ¶ 49. The Court concluded that "[t]he underlying facts are the same, as is Bret's principal argument that HRI does not truly own Healy Ranch." *Id.*

Further, the Court reasoned that Bret knew of the 1995 deed in 2017 when *Healy I* was filed and knew that HRI was claiming ownership of the Healy Ranch because of the 1995 deed. *Id.* ¶ 50. Bret described his theory of HRP's ownership of the Healy Ranch. *Id.* The Supreme Court notes in Footnote 11 of their opinion, "[t]he fact that Bret did not bring an alternate claim to quiet title in *Healy I* is not an impediment to claim preclusion because it would have been appropriate for him to do so then, rather than later through piece-meal litigation." *Id.* (citing SDCL 15-6-8(a), (e)).

The Court addresses its quote in *Healy I* that "Bret did not bring a quiet title action challenging ownership to Healy Ranch." *Id.* ¶ 57 at 802 (quoting *Osborne*, 2019 S.D. 56, ¶ 20, 934 N.W.2d at 563). The Court noted that he had the opportunity do so, and he asserted in his *Healy I* appeal that he "asserted a sort of implicit quiet title claim, but to no avail." *Id.* Further, the Court explained that Bret had the opportunity to bring a quiet title claim in 2017, but he pursued other claims which were not successful. *Id.* The Court explains that this should have communicated to him that it was the end of the dispute, and he cannot bring these claims against his family in an attempt to bring an action based upon "the same wrong premised upon the same facts." *Id.* The notice of claim was timely filed; however, the Supreme Court conclude that the claim was barred under res judicata. *Id.* The Court further affirmed the circuit court's denial of attorney fees to HRI because the stringent standard requiring an exclusive intent to slander title in bringing the action was not met. *Id.* ¶ 64 at 803.

HRP v. Sheila Mines, Larry Mines, Mary Ann Osborne, Estate of Robert Emmett Healy, Estate of Evelyn Sharping, Estate of Randolph Sharping, Estate of Raymond Sharping, Brule County

(07CIV21-11)

HRP brought this lawsuit asking for the Circuit Court to issue a judgment that HRP has marketable legal and marketable title of property that was sold to the Sharpings. HRP claims that Mary Ann was not allowed to convey the land to the Sharpings because HRP had title under the 1986 partnership agreement, and she did not received authorization from Bret Healy, as a partner, to convey the land. The Defendants answered, requesting that HRP's Complaint be dismissed with prejudice, attorney's fees, and costs. Attorney Jack Hieb, on behalf of Mary Ann brought a Motion for Rule 11 sanctions because of the decision by the Supreme Court of South Dakota that the claims were time-barred.

The Circuit Court found that the Supreme Court ruled in *Healy I* that "claims with respect to Mary Ann's sale of RH-2 [the land in question] to Raymond and Evelyn Sharping have also expired." The Circuit Court further reasoned that "even viewed in the light most favorable to Bret, there is no evidence in the record to suggest that Bret had any reasonable basis to believe his claims were valid" and that "he had actual knowledge that HRI held title to Healy Ranch." The Circuit Court relied on the affirmance by the Supreme Court of South Dakota which reasoned that the 1986 partnership did not have interest in Healy Ranch. Rather, the 1972 partnership had an interest in the Healy Ranch which consisted of partners, DeLonde and Mary Ann and concluded that Mary Ann's interest in the 1972 partnership agreement terminated when Mary Ann transferred Healy Ranch to HRI. The Circuit Court concluded that Bret cannot maintain a quiet title action because it has been decided that he did not have an interest in the 1972 partnership, and the 1986 partnership did not have an interest in Healy Ranch. Therefore, the Circuit Court concluded that Bret cannot bring this quiet title action because he lacks any claim of title in fee to the property.

The Circuit Court relied on the Supreme Court's opinion that once HRI was created, HRP ceased to continue its business and was completely disregarded by Bret up until the beginning of these lawsuits. The Circuit Court concluded that Bret did not have majority approval to bring suit on behalf of HRP. The Defendants' motion for summary judgment was granted because the Court reasoned that Bret's allegations that the Sharpings were only given permission to be on RH-2 cannot overcome the warranty deed that was issued by Mary Ann, and the Sharpings and the Mines had paid all applicable taxes to the land since 1992. HRP's motion for summary judgment was denied. The Court denied the motion for sanctions against the Plaintiff because the Court did not find that the quiet title action brought by Bret, on behalf of HRP was frivolous or malicious. HRP appealed this decision.

HRP v. Mines

The land at issue, RH-2, was transferred to HRP, which consisted of DeLonde, Robert, and Mary Ann, in 1972 via contract for deed with Sheldon and Elsie Munger. *Healy Ranch Partnership v. Mines*, 2022 S.D. 44, ¶ 4, 978 N.W.2d 768, 773. Sheldon transferred his interest in RH-2 to Phyllis Kott, Phyllis and her husband transferred their interest in RH-2 to HRP in April 1990 via contract for deed which was recorded later in the month. *Id.* ¶ 5.

Between 1972 and 1990, Robert passed way, leaving his interest in HRP to Mary Ann causing HRP to be an equal partnership between DeLonde and Mary Ann. *Id.* In 1986, Bret returned to assist in managing the ranch. *Id.* ¶ 6. During this time, a new partnership agreement was executed between Mary Ann, Bret, and DeLonde, which included granting DeLonde's 25% interest in the 1972 HRP to Bret. *Id.* ¶ 7. Bret assisted Healy Ranch in navigating through the bankruptcy proceedings after execution of the agreement in 1986. *Id.* ¶ 8. From 1989-2006, Bret moved out of South Dakota, however, he stayed involved with Healy Ranch and HRI. *Id.* ¶ 9.

The main issue in this case, was Phyllis Kott's transfer of the 46-acre RH-2 tract to HRP pursuant to the contract for deed in 1990. *Id.* ¶ 10. The Supreme Court determined that there are three facts that are undisputed:

> 1) Raymond Sharping began possessing and farming the 46-acre tract and paying property taxes associated with it; 2) no member of the Healy family, either individually or on behalf of the Ranch, has possessed, farmed, or paid real estate taxes associated with RH-2 since 1990; and 3) Mary Ann executed a warranty deed on August 1, 1992, conveying RH-2 to Raymond and Evelyn Sharping.

Id. After Evelyn Sharping's death in 1993, Raymond terminated Evelyn's life estate in RH-2 which was later recorded with the Brule County Register of Deeds. *Id.* ¶ 11 at 774. Raymond continued to farm RH-2 and pay the costs associated with the land until his death in 1998. *Id.* ¶ 12. After his death, Randolph Sharping, Raymond's son, continued to farm RH-2 and pay the costs associated

with it. *Id.* ¶ 14. On June 21, 2012, Randolph executed and recorded a warranty deed for RH-2 in favor of Larry and Sheila Mines. *Id.* On behalf of HRI, Bryce Healy, executed and recorded a quit claim deed to RH-2 in favor of Randolph, and Randolph's estate issued a personal representative's deed for RH-2 to Larry and Sheila Mines, who have farmed the land and paid costs associated with it since. *Id.*

Mary Ann signed a deed in 1992 conveying RH-2 to the Sharpings in her personal capacity and as executor of her husband's estate. *Id.* ¶ 15. The deed was not recorded, and it is unknown whether the deed was delivered. *Id.* Bret claims that he did not discover the deed until 2017. *Id.* However, a few days after Mary Ann's signing of the 1992 deed, "the Brule County Planning Commission approved her dedication and plat, which designated the 46-acre tract as Lot RH-2 of the 'Sharping Subdivision.'" *Id.*

In 1994, Mary Ann created HRI as the sole shareholder. *Id.* ¶ 16. In 1996, Mary Ann and DeLonde executed a warranty deed transferring Healy Ranch from HRP to HRI, not including RH-2. *Id.* Over the next few years, Bret, Bryce, and Barry purchased shares in HRI from Mary Ann until each of them had a 1/3 interest in HRI. *Id.* In Bret's view, HRP is the owner of the Healy Ranch because of Mary Ann's lack of authority to transfer the land from HRI to HRP before receiving his consent. *Id.* ¶ 17 at 775. Bret contends that Mary Ann converted her 75% interest in HRP to HRI when she transferred the land to HRI, leaving Bret with an additional 25% interest in HRI. *Id.* Bret reasons that HRI became a partner with Bret, in HRP. *Id.* Therefore, Bret theorizes that he and his brother purchased Mary Ann's 75% interest in HRI and left him with an additional 25% in HRI under the 1986 partnership agreement. *Id.* However, the Supreme Court stated that Healy Ranch's lenders deal with HRI, mostly due to the actions of Bret as acting president of HRI, not HRP. *Id.*

In *Healy I*, Bret claimed that the transfer of RH-2 "caused the loss of land" because he will not be able to recover the land because Raymond Sharping and Larry Mines were innocent buyers. *Id.* ¶ 19. However, Bret also makes the claim that RH-2 was never transferred because Mary Ann did not have the authority to transfer the land from HRP to HRI, arguing that HRP owns the land in question because the transfer is "null and void." *Id.* ¶ 20. Bret claims that he did not lose the land because the Sharpings and Mines were farming the land and paying taxes on the land through the permission of HRP. *Id.* Next, the Court discussed their holding in *Healy I*, in which they held that Bret's claims were time-barred due to his actual or constructive notice of the claims he could have brought years prior to his filing in 2017. *Id.* ¶ 23 at 776. (quoting *Osborne*, 2019 S.D. 56, ¶¶ 20-21, 934 N.W.2d at 565).

After the Supreme Court issued its opinion in *Healy I*, Bret brought a lawsuit on behalf of HRP to quiet title to RH-2. *Id.* ¶ 24. In Mary Ann's motion to dismiss, she asserts that Bret does not have the authority to bring this action on behalf of HRP as a minority partner, and that they have no legal interest in RH-2. *Id.* ¶ 25. Larry and Sheila Mines, along with the Estates of Evelyn, Raymond, and Randolph, denied HRP's claim of ownership of RH-2 and filed a counterclaim that they acquired title through adverse possession. *Id.* ¶ 26. Larry and Sheila Mines, along with the Sharpings' estates filed a joint motion to dismiss the complaint for failure to state a claim and, similar to Mary Ann's brief, argued that the Court in *Healy I* decided ownership issues. *Id.* ¶ 27. Further, Larry and Sheila Mines filed a motion for summary judgment on their counterclaim for adverse possession. *Id.* ¶ 28. After the Circuit Court's ruling, HRP appealed, raising two issues: "(1) Whether the circuit court erred when it granted the Mineses' motion to dismiss; and (2) Whether the circuit erred when it granted the Mineses' motion for summary judgment on their counterclaim alleging adverse possession." *Id.* ¶ 31 at 777.

The Supreme Court held that the Circuit Court's ruling on the motion to dismiss was erroneous. *Id.* ¶ 39 at 779. The Court held that the Circuit Court incorrectly read *Healy I* by utilizing certain factual findings regarding ownership of the Ranch. *Id.* The Court noted that Bret did not "bring a quiet title action challenging ownership to Healy Ranch." *Id.* ¶ 40 (*Osborne*, 2019 S.D. 56, ¶ 20, 934 N.W.2d at 563). Lastly, the Court concluded that the Circuit Court improperly relied on partnership law in determining that Bret could bring the quiet title claim on behalf of HRP. *Id.* ¶ 43 at 780.

The Court next looked to determine whether Bret, on behalf of HRP, may claim that the use of RH-2 by the Sharpings was permissive, given his entirely different position on the tract of land in *Healy I*. *Id.* ¶ 50 at 782. In his deposition in *Healy I*, Bret claimed that the transfer of RH-2 caused him a loss of land. *Id.* ¶ 51. In the current action, Bret, on behalf of HRP, claims that Mary Ann did not have the authority to transfer RH-2 without consulting with him as a mutual partner of HRP. *Id.* ¶ 52. The Court held that the use of judicial estoppel is appropriate because "Bret may not, in the name of HRP, re-fashion his claim regarding RH-2 into a quiet title action that contemplates that land was never transferred and, instead, has been permissively used for the past thirty years by others who have farmed it and paid taxes." *Id.* ¶ 60 at 784.

In relation to the Mineses' adverse possession claim, the Court held that "[they] are able to tack at least two years of possession by Randolph Sharping from the time proceeding the execution of the warranty deed in 2012 so long as Randolph Sharping's possession of RH-2 was similarly adverse." *Id.* ¶ 69 at 786. The Court affirmed the Circuit Court's decision granting the Mineses' motion for summary judgment on the theory of adverse possession holding that the title to RH-2 is quieted for the Mineses, and HRP's quiet title claim is foreclosed. *Id.* ¶ 70.

Bret Healy v. Healy Ranch, Inc. (07CIV22-12)

In this action, Bret brought an application for inspection of records pursuant to SDCL 47-1A-1604 to 1604.2 and asked for attorney's fees and costs. HRI brought affirmative defenses of accord and satisfaction, estoppel, fraud, laches, res judicata, issue preclusion, and waiver. Further, HRI brought counterclaims for attorney's fees for frivolous and malicious filing, injunction, and asked the complaint to be dismissed. HRI filed a motion for a protection order, and Bret brought a motion for an order to permit inspection and copying of records.

The Circuit Court, on its own motion for judgment on the pleadings, reasoned that Bret was entitled to the records that he sought, and that there was no evidence to prove that he had not received those records. The Circuit Court conclude that HRI granted Bret access to all the records he requested. The Circuit Court did not find the necessary proof required for the extreme penalty of barring Bret from redressing the court system and denied HRI's counterclaim for injunction. Further, the Circuit Court concluded that Bret was not seeking corporate records for a proper purpose and requested unnecessary discovery. Lastly, the Circuit Court granted HRI attorney's fees in the amount of $13,655.

Bret appealed the Circuit Court's decision, and the Supreme Court summarily affirmed, awarding $5,009.60 in appellate attorney's fees to paid be paid by Bret to HRI. The total amount of attorney's fees award in this file was $18,644.

State of South Dakota v. Bret James Healy (07CRI17-69)

This action is included by this Court to detail the nature of the relationship between the family members in this action. The Court will take judicial notice of this file. Bret was arrested on April 25, 2017, and later charged with 2 counts of Simple Assault and 1 count of Trespassing. On the evening in question, Bret pushed his way into Barry's residence and allegedly committed an

assault on Barry's wife, Brandy Healy. On September 25, 2018, Bret was acquitted by a jury on all charges.

Bret Healy v. Brandy Healy, Delacey Grayce Owens, Barry Healy (07CIV20-10)

Bret brought an action alleging that Brandy wrote false police reports in her police interview in 07CRI17-69. Bret alleged that the Defendants continued to pursue false allegations until trial in September of 2018. The Defendants filed a motion for summary judgment which was granted as Bret could not meet his burden of proof as to the element of causation for malicious prosecution.

Brandy Healy v. Bret James Healy (07TPO18-11)

Bret James Healy v. Barry Healy (07TPO22-06)

The above actions are listed to demonstrate the contentious nature of the familial relationship with members of the Healy family and the Court takes judicial notice of these files. The two protections orders were brought by the parties stemming from issues within the family, and in relation to the litigation that began in 2017. Both petitions were denied.

Healy v. Fox

This action was filed in the Federal District Court, and Bret filed an amended complaint, after the Defendants filed a motion to dismiss, bringing a claim under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Bret's complaint from August 8, 2017, alleges that he received HRI tax documents during discovery in a state lawsuit showing that HRI's shares from 1994 to Mary Ann are void because Mary Ann did not provide proper consideration. *Healy v. Fox*, 572 F.Supp.3d 730, 734 (D.S.D. 2021). On August 1, 1994, Mary Ann, with assistance from Attorney Fox, signed Articles of Incorporation for HRI authorizing the corporation to issue 1,000,000 shares of common stock. *Id.* On the same day, Fox, on behalf of Mary Ann, caused HRI

to issue 299,348 shares of common stock which made up all of the issued and outstanding shares of the corporation. *Id.*

Bret contends that Mary Ann did not provide proper consideration for the shares in HRI which causes them to be void. *Id.* at 734-735. However, the Federal Court reasoned that Mary Ann transferred Healy Ranch to HRI from a previous partnership in 1995 which conveyed to HRI record title to the Healy Ranch. *Id.* at 735. Bret alleges that Mary Ann never owned the land because it was owned by the partnership. *Id.* Therefore, he alleges the partnership property belongs to the partnership and not to Mary Ann as an individual. *Id.* This caused the conveyance to HRI in exchange for consideration for the shares to be void because the transfer was invalid. *Id.*

Bret further argues that the HRI became a RICO "enterprise" defined by 18 U.S.C.§ 1961(4) which was used by "the Defendants to defraud him out of over $2 million over the course of the next seventeen years. *Id.* Moreover, Bret contends that the Defendants violated 18 U.S.C. §§ 1341 ("mail fraud") and 1344 ("bank fraud") which are considered "racketeering activity" under 18 U.S.C. § 1961 (1) which entitled him to relief under 18 U.S.C.§ 1962 (c) and (d). *Id.*

Bret claims that the mail fraud occurred when Mary Ann sold her interest in HRI to Bret, Bryce and Barry in 2000. *Id.* In furtherance of his claim, Bret contends that Bryce sent him K-1 tax documents listing his 1/3 share in HRI which prompted him to invest over $2 million of his personal funds for the improvement and operation of Healy Ranch. *Id.* at 735-736. Bret asserts that he would not have invested his money into HRI if he had knowledge that his shares were not valid. *Id.* at 736.

Bret alleges that the bank fraud occurred when the Defendants entered into an agreement to fraudulently utilize Bret's investment in the HRI for bank loans. *Id.* Further, Bret argues that

Fox removed old corporate minutes and drafted new minutes for 2000 through 2004 and 2006 through 2008 and forged Bret's signature on one of the loan applications. *Id.*

The Federal Court rejected all of this and reasoned that an important consideration of Bret's RICO conspiracy is that it stems from the same fraudulent transfer of Healy Ranch from the partnership to HRI that he alleged in his state court action. *Id.* at 743 (citing *Osborne*, 934 N.W.2d at 564-65.). The Court concluded that Bret's RICO claim is based on the "underlying facts" from his state court cause of action which meets the first element of res judicata. *Id.* Bret's state court claim was barred by the six-year statute of limitations for intentional tort and contract claims. *Id.* (citing *Osborne*, 934 N.W.2d at 563). Bret's RICO claim in Federal Court is afforded a four-year statute of limitation. *Id.* (citing *Ass'n of Commonwealth Claimants v. Moylan*, 71 F.3d 1398, 1402 (8th Circ. 1995)). Bret's second claim does not allow him a longer statute of limitation, and therefore, the state court's granting of summary judgment qualifies as a "final judgment on the merits" which satisfies the second element of res judicata. *Id.* Bret did not contest that the third element for res judicata is met because the parties are the same in the federal action as they were in the state court action. *Id.* The Federal Court concluded that Bret had the necessary information to make his claims in his Amended Complaint six weeks before the state circuit court made their determination. *Id.* This granted Bret "a full and fair opportunity to litigate...that claim" because "newly-discovered evidence does not provide an exception to res judicata." *Id.* (quoting *Est. of Johnson by & through Johnson v. Weber*, 892 N.W.2d 718, 733 (S.D. 2017). The Federal Court concluded that Bret's RICO claim was barred by res judicata. *Id.*

In relation to the Defendant's statute of limitations argument for their motion to dismiss, the Court stated that it:

> [did] not foresee any "odd consequence" to granting Defendant's motion to dismiss given that Bret could have discovered the corporate defects at the center of his

> Amended Complaint using reasonable diligence when he purchased one-third of the shares in HRI in 2000 and throughout his seventeen years as president of HRI.

Id. at 749. The Court concluded that if Bret had used "reasonable diligence," he would have discovered his alleged injury before the RICO statute of limitations had passed. *Id.* at 750. Bret appealed this decision to the 8th Circuit Court of Appeals.

Healy v. Fox

The Court of Appeals, like the prior courts, laid out quite thoroughly the relevant facts relevant to Bret's claim. The Court of Appeals, like all courts before it, reasoned that all the partnership's interest in Healy Ranch was conveyed to HRI, including Mary Ann's share and Bret's share. *Healy v. Fox*, 46 F.4th 739, 742 (8th Cir. 2022). Mary Ann conveyed her shares to Bret, Barry, and Bryce creating a 1/3 ownership share in each of them. *Id.* Bryce sent Bret K-1 tax forms showing Bret's 1/3 interest in HRI. *Id.* In 1999, Bret became president and director of HRI. Id.

Next, the Court detailed Bret's lawsuit from 2017 in which he sued Mary Ann, Bryce, Barry, Fox, HRP, and HRI alleging that the 1995 transfer of Healy Ranch from the partnership to HRI was done without Bret's knowledge or consent. *Id.* Further, Bret alleged that Mary Ann, "falsely and fraudulently failed to disclose to [Bret] that he she had conveyed all the partnership assets to a corporate entity," and Mary Ann and the other defendants "concealed the true facts for the purpose of defrauding [Bret]." *Id.*

The Court of Appeals concluded, like the Supreme Court of South Dakota in *Healy II* with Bret's quiet title claim, that Bret's RICO action is the same cause of action as his claim in *Healy I*. *Id.* at 744. Similar to *Healy II*, "Bret is again addressing the same wrong he identified in [Healy I]—the alleged wrongful conduct by members of his family to vest HRI with ownership of the Ranch." *Id.* (quoting *Healy II*, 978 N.W.2d at 800).

The current action and the action in *Healy I* evolved from Mary Ann's formation of HRI in 1994 and the transfer of Healy Ranch from the partnership to HRI in 1995. *Id.* In this action, "Bret alleged that the defendants fraudulently represented to him that he owned shares in HRI, which is premised on the claim that the stock is void because the transfer of the partnership's interest in the ranch to HRI was not valid consideration for the issuance of HRI stock." *Id.* The Court of Appeals concluded that the wrong Bret is seeking to redress in both actions is the Defendants' depriving him of ownership. *Id.* at 745. Further, the Court of Appeals held that Bret had a full and fair opportunity to litigate his claim for validity of stock issuance. *Id.* The Court concluded that Bret's federal suit is the same cause of action as his state court suit, and res judicata applied. *Id.*

Healy v. Supreme Court of South Dakota

Bret's federal claim against the Supreme Court of South Dakota and its sitting members, and others, consisted of four causes of action: 1) Violation of Due Process against the Supreme Court of South Dakota relating to an appellate decision it rendered allegedly depriving the Plaintiffs of their property and liberty interests; 2) Fraud, Misrepresentation, and Other Misconduct against various defendants; 3) Fraud Upon the Court against various defendants; and 4) Injunctive and Declarative Relief under 28 U.S.C. § 2201. *Healy v. Supreme Court*, F.4th 1, 1 (D.S.D. 2023). The claims from Bret relate to the multitude of lawsuits regarding ownership of the Healy Ranch, HRI, and litigation from state and federal courts resolving the ownership dispute. *Id.* at 2. The current federal matter, like prior state and federal matters, brought "various claims which, though based on alternative legal theories and seeking distinct forms of relief, ultimately attempted to assert that HRP and Plaintiff Bret Healy had greater ownership in HRI and its assets." *Id.* Bret and

HRP, once again, seek to relitigate ownership of Healy Ranch by bringing claims alleging constitutional issues and fraud in prior litigation. *Id.*

The Federal District Court notes in Footnote 1:

> The court in *Healy I* specially "decline[d] to address Bret's claim of ownership" and instead "center[ed] on the timeliness of Bret's claims." *Healy I*, 934 N.W.2d at 563. The court found Bret's contract and torts claims untimely and barred by the statute of limitations; in so deciding the *Healy I* court effectively prevented Bret Healy from challenging that each Bret, Barry, and Bryce owned one-third of HRI, indirectly confirming the ownership status quo. In *Healy II*, a quiet title action, Plaintiffs attempted to argue HRP owned the Healy Ranch, but the Supreme Court of South Dakota determined the claim was barred under res judicata. In *Mines*, HRP, controlled by Bret, argued that it, and not HRI, owned certain land and filed an action to quiet title to property, but the court decided against HRP and determined the Mineses retained title. Lastly, in *Fox*, this Court determined Plaintiff Bret Healy's action under 18 U.S.C. § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act was barred by res judicata and ruled for the defendants, which the Eight Circuit affirmed on the same grounds.

Id. Bret brought his claim to the Federal Court asking it to vacate, void, or set aside prior final judgments in state and federal court, thereby declaring Bret to own 2/3 of HRI, despite what was adjudicated in state court. *Id.* at 3. Further, Bret asks this Court reduce Barry and Bryce's shares in HRI to 1/6, despite what was previously adjudicated in state court. *Id.*

According to Bret's Complaint in Federal Court, he asked the Court to reverse *Healy I*, *Healy II*, and *Fox* and rule that Bret prevailed, despite the prior rulings from the Supreme Court of South Dakota and federal courts barring his claims under res judicata. *Id.* at 3. The Amended Complaint adds requests to the original Complaint a request to "[d]eclar[e] Plaintiff's future rights and remedies unaffected" by the past decisions of courts, while requesting punitive damages, attorney's fees, and costs. *Id.* at 4.

The Court held that the Rooker-Feldman doctrine, which when applicable prevents federal district courts from hearing direct appeals of state court decisions, applies to Claims 1 and 5 of Plaintiff's Amended Complaint. *Id.* at 10. Bret lost in *Healy I* and *Healy II* because the Supreme

Court of South Dakota ruled that Bret did not prevail on his claims which thwarted his claim of ownership that he owns more than 1/3 of HRI along with its assets. *Id.* (citing *Healy I*, 934 N.W.2d at 565) (citing *Healy II*, 978 N.W.2d at 800-03).

Bret alleges that the judgments rendered by the state courts affecting ownership of HRI and the ranch caused the injury that Bret brings in this federal action. *Id.* In Claim 1 of Bret's Complaint, he alleges that the South Dakota Supreme Court "deprived" Bret of "significant property and liberty interests" without a meaningful hearing and due process when they decided that Bret owned a one-third interest in HRI. *Id.* In Claim 5 of Bret's Complaint, he argues that the Supreme Court of South Dakota decided the prior cases "in the complete absence of all jurisdiction" and deprived him of civil rights, due process, and a violation of 42 U.S.D. § 1983 because the ruling limited Bret's ownership to a one-third interest in HRI. *Id.* The Court concluded that Rooker-Feldman doctrine applies, and the Court lacks subject-matter jurisdiction over the action. *Id.* at 14.

Additionally, the Court held that if the Rooker-Feldman doctrine does not apply, the Court lacks subject matter jurisdiction over the Supreme Court of South Dakota, the justices, and Circuit Judge Sogn (sitting on the Supreme Court by assignment) under the Eleventh Amendment of the Constitution. *Id.* Further, the Court concluded that judicial immunity disallows Bret from suing Judge Sogn and the justices individually. *Id.* at 16. For the Court to have jurisdiction of Claims 2, 3, and 4, the Court must have jurisdiction over Claims 1 and 5. *Id.* at 17. The Court may not exercise supplemental jurisdiction due to Bret's lack of viable federal claims. *Id.*

Res judicata bars the claims from Bret "because the state-law claims—Claims 2, 3, and 4—arise out of the same nucleus of facts where 'the wrong sought to be redressed is the same' as the prior state court case[s]." *Id.* at 20. Further, the Court states "[i]n *Healy I*, *Healy II*, and the

prior federal litigation, like in this case, 'the wrong sought to be redressed' is Plaintiff Bret Healy's assertion of greater ownership in HRI and its assets, or in the cases of *Mines*, HRP's claims to HRI's assets." *Id.* The Court concluded that the first element of res judicata is met because the fraud, misconduct, and misrepresentation claims arise out of the same nucleus of facts. *Id.* at 21. The second element of res judicata is met because the prior litigation in state and federal court resulted in final judgments on the merits that affected Bret's ownership in HRI. *Id.* The third element of res judicata, dealing with same parties, is met for the Healys, Mineses, HRI, Osborne, and Fox. *Id.* The fourth element of res judicata is met because Bret had the opportunity to present Claims 2, 3, and 4 of the alleged fraud after the decision in *Healy I*. *Id.* at 23. The elements for res judicata are met, which bars Bret's relief including the seeking to reverse or vacate the 8th Circuit's final decision and the final decisions from the South Dakota Supreme Court. *Id.*

Lastly, the Federal Court held that "[a]lthough Bret Healy's counsel at the hearing [Mr. Volesky] provided zealous representation, the arguments made about why the Rooker-Feldman doctrine or judicial immunity did not apply or how res judicata does not bar the state law claims were not warranted by existing law or a good faith, nonfrivolous argument for some modification or extension of existing law. The history of litigation combined with the absence of merit of the claims justify an award of attorneys fees to the non-state defendants [the parties who sought them] as sanctions under Fed.R.Civ.P. 11(b)(1) and (2)." *Id.* at 25. As of this writing it is unknown what amount of attorney fees were awarded.

ANALYSIS AND CONCLUSIONS OF LAW

This Court brought an Order to Show Cause for Rule 11 sanctions on its own initiative under SDCL 15-6-11(c)(1)(B). The statute provides that: "[o]n its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an

attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto." SDCL 15-6-11(c)(1)(B). The Court directed Bret Healy and Mr. Volesky, as counsel to Bret Healy, to show cause as to why they did not violation SDCL 15-6-11(b).

SDCL 15-6-11(b) states:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
> (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for extension, modification, or reversal of existing law or the establishment of new law;
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further litigation or discovery; and
> (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on lack of information or belief.

SDCL 15-6-11(b) places a duty on attorneys "to conduct a 'reasonable inquiry' into the facts and law prior to commencing any action." *Smizer v. Drey*, 2016 S.D. 3, ¶ 17, 873 N.W.2d 697, 703 (quoting *Anderson v. Prod. Credit Ass'n*, 482 N.W.2d 642, 645 (S.D.1992)). The Supreme Court has previously stated that the intent for "sanctions under SDCL 15-6-11 is to deter abuse by parties and counsel." *Id.* ¶ 18 (citing *Anderson*, 482 N.W.2d at 645) (quoting *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 205 (7th Cir.1985)). The objective is "to reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions." *Id.* (citing *Anderson*, 482 N.W.2d at 645) (quoting *Rodgers*, 771 F.2d at 205). Here, Mr. Volesky abrogated his duty. Not only did he fail to find support for his position, he did so despite each and every time a judge told him his claim had no merit, effectly doubling down on his poor decisions and ignoring his duty to act as

the gatekeeper to the court, assisting in the prevention of just such cases he was in fact bringing, culminating in this latest attempt to relitigate perceived past wrongs.[4]

The Supreme Court of South Dakota has specifically stated:

> A frivolous action exists when the proponent can present no rational argument based on the evidence or law in support of the claim. To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling. Frivolousness connotes an improper motive or legal position so wholly without merits as to be ridiculous.

Johnson v. Miller, 2012 S.D. 61, ¶12, 818 N.W.2d 804, 807-808 (quoting *Ridley v. Lawrence Cnty. Commn.*, 2000 S.D. 143, ¶ 14, 619 N.W.2d 254, 259). In order to determine whether a claim or defense is frivolous, it must be examined using an objective standard. *Id.* Additionally, the Court has stated "we do not apply the test for frivolity to 'meritorious actions that prove unsuccessful, legitimate attempts to establish a new theory of law, or good-faith efforts to extend, modify, or reverse existing law.'" *Id.* ¶ 17 at 809 (citing *Hartman v. Wood*, 436 N.W.2d 854, 857 (S.D.1989)) (quoting *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)). In this case, it cannot be said that Bret Healy was merely putting forth an unsuccessful theory or making a good faith effort to modify existing law. Here the very issue he is litigating has been determined contrary to his position, and frequently. Objectively and on its face this action is frivolous defined. No rational argument exists to support it, no basis to argue for change has any chance of success, and no reasonable person should expect a favorable ruling. It is clear and the finding of this Court that Mr. Healy is motivated to bring this action not by any belief in a supported legal claim, as those

[4] Although this in fact does not appear to be the latest attempt. Recently filed and currently pending in this matter is HRI's Motion to Dismiss an Answer and Counterclaim filed by Bret Healy via Tucker Volesky, wherein it appears the entirely of the prior litigation is, once again, being restated in an attempt to relitigate previously determined issues. That matter is pending and will be addressed separately.

have all been turned away at the courthouse steps, but rather a clear and continuing effort to harass or cause unnecessary delay or needlessly increase the cost of litigation.[5]

In general, SDCL 15-6-11(c) states: "[i]f, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated §15-6-11(b) or are responsible for the violation." The nature of the sanctions is detailed in the statute as:

> A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all reasonable attorneys' fees and other expenses incurred as a direct result of the violation.
> (A) Monetary sanctions may not be awarded against a represented party for violation of subdivision 15-6-11(b)(2).

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[5] While this court finds that the basis of this challenge to dissolution is frivolous, and intended only to delay and harass, it should be noted that the Supreme Court held in *Healy II* that:

> [E]ven if a court could conclude from these prior admissions that Bret's motivation for filing the notice of claim at issue here was no different than his reason for commencing the action in *Healy v. Osborne*, SDCL 43-30-9 contains a particularly demanding standard. The statute conditions an award of attorney fees upon a finding that the party who filed a notice of claim did so "for the purpose only of slandering title[.]" SDCL 43-30-9 (emphasis added). That issue has not been previously litigated and the circuit court correctly concluded that the record was insufficient to meet the standard under SDCL 43-30-9. From our review of the record, the circuit court's denial of HRI's request for attorney fees was not erroneous.

Healy II at ¶ 64. It was this Court's denial of sanctions in that matter that was affirmed. A challenging yet colorable claim was put forth, and the high standard that slander of title be the only basis for attorney fees was spelled out. No such limiting language such as "only" is contained in SDCL 15-6-11(b)(1). That said, This Court has been where Justice Gilbertson was, writing for the majority, as well as now where Justice Zinter sat in dissent, in *Johnson v. Miller*, 2012 S.D. 61, 818 N.W.2d 804. While that case dealt with sanctions in the context of SDCL 15-17-51, the discussion of frivolity it quite instructive and an excellent guide for the circuit courts. The Supreme Court ultimately upheld the lower court determination that the standard of frivolity was not met, while the dissent pointed out that deference to the trial court is laudable, but not without limits where, in the opinion of the dissent, a clear abuse of discretion occurred and more than a hindsight review points out a clearly frivolous cause of action. This Court previously denied claims for sanctions for conduct similar to that found in this case by the same actor, but upon reviewing yet another effort to address the same issues previously determined, said claim being pursued after being so advised by numerous courts of its lack of merit, ultimately in this case the motion for dismissal, for all the reasons contained herein, meets the standard for sanctions under SDCL 15-6-11. This is equally true for sanctions on counsel, whom has had his actions previously described as "zealous representation," *Healy v Supreme Court* at 25, but has crossed into the role of co-conspirator.

> (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

SDCL 15-6-11(c)(2). The Court must describe the conduct in violation of SDCL 15-6-11(b) as necessitated by SDCL 15-6-11(c) which reads, "[w]hen imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanctions imposed." SDCL 15-6-11(c)(3).

The Supreme Court of South Dakota has not addressed the issue of a state circuit court imposing sanctions on a party and attorney on its own motion. However, the issue of a District Court sanctioning an attorney on its own motion has been before the Eighth Circuit Court of Appeals. In *Willhite v. Collins*, a party brought unsuccessful state actions and after being unsuccessful, brought an action with similar claims in federal court. *Willhite v. Collins*, 459 F.3d 866, 868 (8th Cir.2006). The attorney was sanctioned by the District Court, which held that the attorney was "remiss in either neglecting to consider or entirely disregarding, the doctrines of res judicata and collateral estoppel" and "no competent lawyer could reasonably believe there was a colorable or legally-supportable claim." *Id.* at 870. The Court of Appeals upheld the District Court's finding and found it appropriate. *Id.* at 867.

The Court of Appeals, in a later decision, found that the sanctions in that case were appropriate because *Willhite* illustrated an "obvious and egregious disregard of res judicata, where an attorney 'and his clients had subjected the defendants to repeated litigation over matters that had[d] been finally adjudicated'—commencing a fifth lawsuit on the same subject matter." *C.H. Robinson Worldwide, Inc v. Lobrano*, 659 F.3d 758, 767 (quoting *Willhite*, F.3d at 868).

In *Willhite*, the District Court imposed a sanction of $66,698.30 in attorney's fees which the Court of Appeals concluded was "substantial, but not unwarranted." *Willhite*, F.3d at 869.

Further, the Court found that when awarding sanctions, they should be "no greater than sufficient to deter future misconduct by the party," however a large award was imperative to deter the attorney's misconduct. *Id.* (quoting *In re Kujawa*, 270 F.3d 578, 583 (8th Cir.2003)). The attorney, much like Bret Healy, had been sanctioned multiple times in lower courts in the underlying litigation which was unsuccessful in deterring his misconduct. *Id.* Moreover, the Court found that the attorney's sanctions were appropriate because he "failed to act as the gatekeeper to prevent such abuses." *Id.* at 870. Here to, this Court finds that a large award is imperative as a deterrence.

The District Court utilized two types of authority to support its imposition of sanctions: Rule 11 and the court's inherent powers. *Id.* However, the District Court did not clarify the authority for the sanctions it imposed and was encouraged to state the authority for each sanction imposed. *Id. See Fuqua Homes, Inc., v. Beattie*, 388 F.3d 618, 628 (8th Cir.2004) (remanding for failure to identify the source of authority for the sanctions imposed).

This Court will be utilizing SDCL 15-6-11 in its imposition of sanctions on Bret Healy and Tucker Volesky. Bret Healy has subjected the current parties, other family members, and past attorneys to numerous amounts of litigation with numerous arguments that erroneously claim ownership of certain land, and corporate stock. The Court has detailed the multitude of lawsuits Bret brought on the basis that he owns more than 1/3 ownership of HRI. The most telling decision comes from the Federal District Court, authored by Chief Justice Roberto Lange, in which he repeatedly explains that Bret's claims are barred by res judicata on the issue of ownership. Not only does Bret continue to argue these issues, but Mr. Volesky continues to file pleadings aligning with Bret and signing the pleadings on behalf of his client. While the Supreme Court of South Dakota has stated in multiple opinions that they have not and are not deciding on the issue ownership, a quote frequently used by Mr. Volesky in briefs and pleadings, the Federal District

Court reasoned that the Supreme Court is maintaining the "status quo" of ownership of HRI. And ultimately this dictum is of no consequence, as the prior rulings barred Bret Healy's claims regardless.

In the motion dismiss in the current case, Bret details the alleged business activity that HRP has participated in throughout the years, despite the Supreme Court reasoning that HRP has ceased to exist since the formation of HRI. Since litigation began in 2017, Bret has attempted to argue on numerous occasions and in numerous state and federal actions that HRP has participated in meaningful business activities. Further, Bret has contended in these actions that HRP is the rightful owner of Healy Ranch and has a greater interest in HRI. The Court concludes this is a false contention that has not been supported by any state court or upheld by the Supreme Court of South Dakota or the Federal Courts.

The Court would be remiss if it did not address the claims that are put forth in Bret's memorandum of law in support of the motion to dismiss the action for the Dissolution of HRI as it is this motion that is the basis for the Court taking action.

Bret claims that HRP settled a case in Brule County in case file 07CIV13-66. However, this is false, and a blatant misstatement of the parties and pleadings in that lawsuit. Bret commenced a lawsuit on behalf of HRI against Larry Mines. Further, in the Complaint in 2013, HRI is recognized by Bret as being a corporation organized under South Dakota law and owning the land of Healy Ranch that has been at issue in the multitude of cases brought by and against Bret. There is no indication that this lawsuit was brought on behalf of HRP in the pleadings or case caption. Bret's attempt to allege that HRP's business has continued through a lawsuit that had no relation to HRP is an attempt to assert that HRP's ownership in HRI and the land, and is based

upon a falsehood. The undisputed facts are that the first lawsuit brought on behalf of HRP by Bret was commenced in 2018, after the commencement of this litigious family dispute.

Further, Bret argues that the Articles of Incorporation of HRI do not indicate any contributions or exchanges for issuance of any shares at the inception of HRI. However, the Supreme Court of South Dakota and the Federal Court stated in multiple opinions that Mary and DeLonde later transferred Healy Ranch from the partnership to HRI. This is the consideration for HRI which, at the time, was solely owned by Mary Ann. Bret's persistent claims on the issue of consideration are naught because it has been decided and analyzed by multiple courts in multiple opinions that he is barred from bringing this claim.

In another attempt to prove partnership business, Bret asserts that HRP filed a tax return in 1985 indicating that HRP began operating in 1961. Nevertheless, this is contrary to information utilized by the parties in *Healy I* which stated, according to arguments presented, that there were multiple partnerships formed throughout the years with the Healy family with only the last formation of a partnership giving Bret an interest. The Supreme Court of South Dakota, with the Federal Court affirming, has held that the Bret did not participate in meaningful partnership business after the formation of HRI. In reality, HRP ceased to carry out business until the litigation began in 2017. Bret has attempted to use HRP as a vehicle to bring claims against HRI and his family, these claims have all been rendered unsuccessful. Despite the rulings against him, Bret continues to inappropriately "act on behalf of HRP" to bring similar claims of ownership after being denied relief for the same claims he now brings.

Bret has been put on notice through the numerous lawsuits listed above that his claims are without merit. Despite the rulings from prior courts, Bret continues to pursue litigation against his family, attorneys, rightful landowners, justices, Judge Sogn, and the Supreme Court of South

Dakota. Included in the lawsuit detailed above, is a criminal matter, two petitions for temporary protection orders, and a civil lawsuit brought by Bret for wrongful prosecution. These show the level contention and multitude of the issues within this family and evince the true motive for Bret's actions.

Instead of relying upon multiple Supreme Court, Federal District Court, and Eighth Circuit Court of Appeals decisions, Bret and Mr. Volesky have continued to belabor issues that have been litigated and barred by res judicata or dismissed on other grounds. In reliance on their personal thoughts and views of their potential claims, Bret and Mr. Volesky have attempted to relitigate issues with different claims that arise from the same facts of prior lawsuits. Moreover, when Bret is barred from litigating one issue or a higher court rules in a manner that they disagree with, Bret finds a new issue based upon the same facts that could have and should have been address within prior litigation. And he has been told this, time and time again. For example, Bret is claiming in the current dissolution that the email utilized by the Supreme Court in *Healy I* was forged by Barry to appear to be sent form his personal email account. Therefore, the Supreme Court's reliance that Bret admitted to the ownership of HRI is null and void due to Barry's fraud. Once again, the Courts have held in multiple decisions that Bret is not allowed to bring claims based upon newly discovered evidence that could have been brought in the prior lawsuit. The alleged forgery of the email is another attempt to relitigate past issues.

Bret was ordered to pay attorney fees by the Circuit Court and the Supreme Court, totaling $120,390.02. Further, Bret was ordered to pay sanctions by the Federal Court, and the amounts are still being considered. This has not deterred him. Mr. Volesky is duty bound to scrutinize every claim he files, and to review the appropriateness of each. This has not been done. Rule 11 provides that an action for sanctions is proper if it is shown that the litigation is brought for an improper

purpose such as harassment, for claims brought that have no basis in law, for claims that have no basis to assert that a modification or reversal of existing law will ultimately support such claims, and that such lack of support for any claim is excusable due to a lack of information. Here, they are, they do not, they do not, and they are inexcusable.

Past sanctions have had no effect on Bret Healy, despite totaling over $120,000.00. Mr. Volesky has not been deterred or counseled his client on the wisdom of pursing frivolous actions. It is the intent of this Court to impress upon Mr. Healy that his actions have consequences and should not continue, and the finding of this Court that the doubling of his past sanctions will do so. It is the ORDER of the Court that Bret Healy be sanctioned in the amount of $240,000.00 for violating SDCL 15-6-11(b)(1). This is a substantial amount, but not unwarranted. Regarding Mr. Volesky, he is aware that the South Dakota Circuit Courts, the South Dakota Supreme Court, the Federal District Court, and the Federal Circuit Court have all clearly ruled that continued attempts to relitigate the issue of stock and land ownership in whatever form is barred, and yet the filings continue, and rather than acknowledge this, at each stage he has been involved he has effectively doubled down on his error, with the most recent[6] being the basis for his motion to dismiss this dissolution, a dissolution that is questionable his client even resists[7]. But they used an opportunity to challenge it to attempt re-litigation once again. To deter such action and to hold accountable his disregard of his responsibilities Mr. Volesky is sanctioned $10,000.00 for violating SDCL 15-6-11(b)(1), (2) & (3). In arriving at this figure, this Court has considered the substantial amount of attorney fees sought by opposing counsel, and has reviewed when attorney fees have been sought by Mr. Volesky, and safely and conservatively estimates that Mr. Volesky has billed in excess of $100,000.00. The disgorging of no less than 10% of that figure is an appropriate amount to deter

[6] But see footnote 4.
[7] See footnote 2.

future sanctionable conduct. Mr. Volesky is further required to comply with any directive of the South Dakota Disciplinary Board of the State Bar, to whom this Court is duty bound to report.

All sanctions are payable into the Brule County Clerk of Courts.

Any finding of fact better designated a conclusion of law, and vice versa, should be considered as such. Any reference to any prior court record is judicially noticed where appropriate. Additionally, attorney fees are awarded against Bret Healy in favor of Petitioners regarding the Motion to Dismiss and subsequent proceedings, upon proper submission of a claim for the same and subject to hearing on what constitutes reasonable and appropriate fees.

Attest:
Miller, Charlene
Clerk/Deputy

BY THE COURT:
3/18/2024 11:39:29 AM

Hon. Patrick T. Smith
First Circuit Court Judge

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

	)	07CIV. 23-58
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF RULE 11 SANCTIONS AGAINST BRET HEALY AND TUCKER VOLESKY

The Court having filed an Order to Show Cause and Notice of Hearing on December 28, 2023, directing Bret Healy and Tucker Volesky to appear and show cause at a hearing on January 23, 2024, as to whether sanctions should be imposed against counsel and party, pursuant to SDCL 15-6-11(c), because of the alleged violations of SDCL 15-6-11(b)(1)-(4). Bret Healy and Tucker Volesky having appeared in person before the Court at the Davison County Courthouse in Mitchell, South Dakota, on January 23, 2024, and attorney Lee Schoenbeck having appeared telephonically on behalf of Healy Ranch, Inc., and Bryce Healy and Barry Healy having appeared in person, as officers and directors of Healy Ranch, Inc., and the Court having reviewed the filings and listened to arguments of counsel, does now hereby enter the following

Findings of Fact:

1. The Court's *Memorandum Decision on Rule 11 Sanctions with Findings of Fact and Conclusions of Law* issued on March 15, 2024, is hereby incorporated by this reference.

2. Tucker Volesky and Bret Healy have made appearances in this proceeding and filed a Motion to Dismiss, which is the subject-matter of this proceeding.

Based upon the above Findings of Fact, the Court hereby enters the following

Conclusions of Law:

1. The Court's *Memorandum Decision on Rule 11 Sanctions with Findings of Fact and Conclusions of Law* is hereby incorporated by this reference.

2. The Court has personal and subject-matter jurisdiction over Tucker Volesky and Bret Healy.

3. Bret Healy violated SDCL 15-6-11(b)(1).

4. Tucker Volesky violated SDCL 15-6-11(b)(1)-(3).

Based upon the above Findings of Fact and Conclusions of Law, judgment shall enter accordingly.

BY THE COURT:

3/18/2024 6:09:52 PM

Attest:
Beckmann, Grace
Clerk/Deputy

Hon. Patrick T. Smith
Circuit Court Judge

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	07CIV. 23-58 RULE 11 SANCTIONS AGAINST TUCKER VOLESKY AND BRET HEALY

The Order to Show Cause concerning sanctions against Tucker Volesky and Bret Healy having come on for hearing before the Court on January 23, 2024, and they having appeared personally, and the corporation having appeared telephonically through attorney Lee Schoenbeck, and the shareholders and directors, Barry Healy and Bryce Healy, having appeared in person, and the Court having entered Findings of Fact and Conclusions of Law, which Findings and Conclusions incorporate the *Memorandum Decision on Rule 11 Sanctions with Findings of Fact and Conclusions of Law* issued by the Court via email on March 15, 2024, it is now hereby

ORDERED, ADJUDGED, AND DECREED that judgment be entered against Bret Healy in the amount of $240,000, payable to the Brule County Clerk of Courts; it is further

ORDERED, ADJUDGED, AND DECREED that judgment be entered against Tucker Volesky in the amount of $10,000 payable to the Brule County Clerk of Courts; it is further

ORDERED, ADJUDGED, AND DECREED that based upon the Court's Memorandum Decision, the Court is duty bound to report Tucker Volesky's conduct to the South Dakota Disciplinary Board of the State Bar, and Tucker Volesky is ordered to

comply with any directives of the South Dakota Disciplinary Board of the State Bar; it is further

ORDERED, ADJUDGED, AND DECREED that attorney's fees shall be awarded against Bret Healy in favor of Healy Ranch, Inc. for attorney's fees incurred with respect to the Motion to Dismiss and subsequent proceedings, upon proper submission of a claim for the same and subject to hearing on the reasonableness and appropriateness of the fees.

BY THE COURT:

3/18/2024 6:10:13 PM

Attest:
Beckmann, Grace
Clerk/Deputy

Hon. Patrick J. Smith
Circuit Court Judge

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	07CIV. 23-58 NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND RULE 11 SANCTIONS AGAINST TUCKER VOLESKY AND BRET HEALY

NOTICE IS HEREBY GIVEN that the *Memorandum Decision*, the *Findings of Fact and Conclusions of Law in Support of Rule 11 Sanctions Against Bret Healy and Tucker Volesky* and the *Rule 11 Sanctions Against Tucker Volesky and Bret Healy* have been entered in the above-entitled action, the originals of which were filed in the office of the Clerk of the Circuit Court of Brule County, at Chamberlain, South Dakota, on the 18th day of March, 2024.

Dated this 19th day of March, 2024.

SCHOENBECK & ERICKSON, PC

By: /s/ Lee Schoenbeck
Lee Schoenbeck
Joe Erickson
Attorneys for Healy Ranch, Inc.
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
(605) 886-0010

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing *Notice of Entry*, the *Memorandum Decision*, the *Findings of Fact and Conclusions of Law in Support of Rule 11 Sanctions Against Bret Healy and Tucker Volesky*, and the *Rule 11 Sanctions Against Tucker Volesky and Bret Healy* on the following:

Tucker Volesky
Attorney at Law
356 Dakota Ave. S
Huron, SD 57350
Attorney for Bret Healy

and

Chris McClure
McClure & Hardy Prof. LLC
102 N. Krohn PL. STE. 201
Sioux Falls, SD 57103
Attorney for Bret Healy

via electronic service this 19th day of March, 2024.

/s/ Lee Schoenbeck
LEE SCHOENBECK

15-6-11(a). Signature.

Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Source: SDC 1939 & Supp 1960, § 33.0909; SD RCP, Rule 11, as adopted by Sup. Ct. Order March 29, 1966, effective July 1, 1966; SL 1986, ch 160, § 1; SL 2001, ch 296 (Supreme Court Rule 01-04); SL 2006, ch 279 (Supreme Court Rule 06-05), eff. July 1, 2006.

15-6-11(b). Representations to court.

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Source: SDC 1939 & Supp 1960, § 33.0909; SD RCP, Rule 11, as adopted by Sup. Ct. Order March 29, 1966, effective July 1, 1966; SL 1986, ch 160, § 1; SL 2001 ch 297 (Supreme Court Rule 01-05); SL 2006, ch 280 (Supreme Court Rule 06-06), eff. July 1, 2006.

5-6-11(c). Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within twenty-one days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Source: SDC 1939 & Supp 1960, § 33.0909; SD RCP, Rule 11, as adopted by Sup. Ct. Order March 29, 1966, effective July 1, 1966; SL 1986, ch 160, § 1; SL 2006, ch 281 (Supreme Court Rule 06-07), eff. July 1, 2006.

No. 29706
Supreme Court of South Dakota

Healy Ranch P'ship v. Mines

2022 S.D. 44
Decided Aug 3, 2022

29706 29716

08-03-2022

HEALY RANCH PARTNERSHIP, a South Dakota General Partnership, Plaintiff and Appellant, v. LARRY MINES, SHEILA MINES, Defendants and Appellees, and MARY ANN OSBORNE f/k/a MARY ANN HEALY, individually and as the Executrix of the Estate of Robert Emmett Healy, and the ESTATE OF ROBERT EMMETT HEALY, the ESTATE OF RANDOLPH SHARPING, the ESTATE OF EVELYN SHARPING, BRULE COUNTY, and ALL UNKNOWN ASSIGNEES, GRANTEES AND BENEFICIARIES OF THE HERETO-NAMED DEFENDANTS, and ALL OTHER UNKNOWN PARTIES WHO HAVE OR CLAIM TO HAVE ANY INTEREST OR ESTATE IN OR LIEN OR ENCUMBERANCE UPON THE FOLLOWING REAL ESTATE LOCATED IN BRULE COUNTY, SOUTH DAKOTA, LOT RH-2, SHARPING SUBDIVISION, IN PORTIONS OF THE NORTHWEST QUARTER (NW 1/4) AND MEANDER LOTS TWO (2), THREE (3), AND FIVE (5) IN THE SOUTHWEST QUARTER (SW 1/4) OF SECTION TWENTY-THREE (23), TOWNSHIP ONE HUNDRED FOUR (104) NORTH, RANGE SEVENTY (70) WEST OF THE 5THP.M., BRULE COUNTY, SOUTH DAKOTA, Defendants.

CHRIS MCCLURE of McClure & Hardy, Prof. LLC Sioux Falls, South Dakota, ANGIE SCHNEIDERMAN of Moore, Corbett, Heffernan, Moeller & Meis, LLP Sioux City, Iowa Attorneys for plaintiff and appellant. LEE SCHOENBECK JOE ERICKSON of Schoenbeck & Erickson, P.C. Watertown, South Dakota Attorneys for defendants and appellees.

SALTER, JUSTICE

1 CONSIDERED ON BRIEFS FEBRUARY 14, 2022 *1

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT BRULE COUNTY, SOUTH DAKOTA THE HONORABLE PATRICK T. SMITH Judge

CHRIS MCCLURE of McClure & Hardy, Prof. LLC Sioux Falls, South Dakota, ANGIE SCHNEIDERMAN of Moore, Corbett, Heffernan, Moeller & Meis, LLP Sioux City, Iowa Attorneys for plaintiff and appellant.

LEE SCHOENBECK JOE ERICKSON of Schoenbeck & Erickson, P.C. Watertown, South Dakota Attorneys
2 for defendants and appellees. *2

SALTER, JUSTICE

[¶1.] Healy Ranch Partnership (HRP) commenced this action to quiet title to a parcel of land located in Brule County. The complaint named multiple defendants, including the current possessors of the land, the previous possessors, and another member of HRP. The individuals currently in possession of the land filed a counterclaim, alleging they had acquired title through adverse possession. The circuit court decided motions to dismiss and for summary judgment adversely to HRP, determining that the current possessors of the land acquired title by adverse possession. HRP appeals. We reverse the court's decision to grant the motion to dismiss but affirm its summary judgment decision quieting title in favor of the current possessors.

Facts and Procedural History

The Healy Ranch and Lot RH-2

[¶2.] The Healy Ranch (the Ranch) is comprised of approximately 1,700 acres of farm and ranch land located in Brule County. Disputes over ownership of the Ranch and acrimony among members of the Healy family have led to a series of litigated cases since 2017, including our decision in *Healy v. Osborne*, 2019 S.D. 56, 934 N.W.2d 557, which we describe further below.

[¶3.] Originally owned by Emmet and DeLonde Healy, certain tracts of real property that make up the Ranch have, it appears, been conveyed, leased, mortgaged, refinanced, possessed by third parties, included in
3 bankruptcy proceedings, sharecropped, and passed through the probates of various estates since *3 at least the 1960s. At issue in this appeal is a single, 46-acre tract of property, commonly known as Lot RH-2, or simply RH-2.[1]

[1] RH-2 is legally described as: "Lot RH-2, Sharping Subdivision, in portions of the Northwest Quarter (NW 1/4) and Meander Lots Two (2), Three (3), and Five (5) in the Southwest Quarter (SW 1/4) of Section Twenty-three (23), Township One Hundred Four (104) North, Range Seventy (70) West of the 5th P.M., Brule County, South Dakota."

[¶4.] For purposes of our discussion here, RH-2 was originally owned by Sheldon and Elsie Munger as part of a larger tract of land. In 1973, HRP-at that time consisting of DeLonde Healy, her son Robert Healy, and Robert's wife, Mary Ann Healy[2]-entered into a contract for deed with the Mungers to purchase the entire tract of land, which contained the lot eventually designated as RH-2.

[2] Emmet Healy had, by this time, passed away.

[¶5.] In 1986, Sheldon Munger transferred his interest in RH-2 to Phyllis Kott who, with her husband, conveyed the parcel to HRP in April 1990 upon satisfaction of the contract for deed. The deed for RH-2 was recorded later the same month.

[¶6.] Between the initiation of the contract for deed with the Mungers and the eventual recordation of the warranty deed in April 1990, several events transpired. Robert Healy passed away, leaving his interest in HRP to his wife, Mary Ann, and resulting in what the record suggests was an equal partnership between Mary Ann and DeLonde.

[¶7.] In addition, one of Robert and Mary Ann's three sons, Bret, returned from South Dakota State University in 1986 to take on a larger role in the management of the Ranch. In an effort to facilitate Bret's transition, Mary
4 Ann, *4 DeLonde, and Bret executed a new partnership agreement, under which DeLonde would relinquish what was described as "her 25% interest in Healy Ranch Partnership" to Bret in exchange for various lifetime benefits and being relieved of all responsibility for the Ranch's debts. The resulting iteration of HRP is sometimes referred to as the 1986 Partnership.[3]

3 In his submissions to the circuit court, Bret stated only that the current action is brought in the name of HRP.

[¶8.] As Bret began his new role with the Ranch in 1986, it was in the midst of bankruptcy proceedings. Bret claims he helped guide the Ranch through its bankruptcy plan in a way that preserved the family's ownership interest in the real estate and allowed the Ranch to continue operating as a going concern. At various times during the course of his management, Bret leased the entirety of the Ranch's cropland to local farmers and also operated his own separate feedlot business.

[¶9.] In 1989, Bret moved out of state and did not return to the Ranch until 2006. In the interim, it appears as though Bret remained involved in its business. The sequence of events that are at the center of this case begin in 1990, around the time Phyllis Kott transferred the 46-acre RH-2 tract at issue here to HRP pursuant to the contract for deed.

[¶10.] At some later point in 1990, HRP entered into negotiations to sell RH-2 to Raymond Sharping. What ultimately became of their negotiations is unclear, but three facts are undisputed: 1) Raymond began possessing and farming the 46-acre tract and paying the property taxes associated with it; 2) no member of the Healy
5 family, either individually or on behalf of the Ranch, has possessed, farmed, or paid *5 real estate taxes associated with RH-2 since 1990; and 3) Mary Ann executed a warranty deed on August 1, 1992, conveying RH-2 to Raymond and Evelyn Sharping.[4]

4 Raymond and Evelyn were husband and wife.

Post-1990 possession of RH-2

[¶11.] In 1993, Evelyn Sharping passed away. A circuit court order from October of that year indicates that Raymond successfully terminated Evelyn's life estate in RH-2, as well as other tracts of real estate. The termination of Evelyn's life estate in RH-2 was later recorded with the Brule County Register of Deeds.

[¶12.] It appears Raymond Sharping continued to farm RH-2 and pay the real estate taxes until his death in 1998. Raymond's will, dated January 24, 1996, devised to his son, Randolph Sharping, "all real estate which I *may* own" in the area approximating the legal description of RH-2, though it did not specifically list the parcel by that designation. (Emphasis added). The will also severed the mineral rights, which Raymond divided equally among his children.

[¶13.] Upon Raymond's death, his daughter, Crystal Ashley, was appointed to serve as the personal representative of his estate. Acting in this capacity, Crystal issued three personal representative's deeds, which divided the mineral rights to RH-2 among Raymond's three children-Crystal Ashley, Alice Sharping, and Randolph Sharping. Crystal also executed a fourth personal representative's deed conveying Raymond's remaining interest in RH-2 to Randolph Sharping. Each of the deeds were recorded with the Brule County
6 Register of Deeds in June 2000. *6

[¶14.] It seems undisputed that Randolph, like his father, farmed and paid the taxes on RH-2 until his death in 2012. Between June and July 2012, Randolph's siblings executed and recorded quitclaim deeds conveying the mineral rights of RH-2 back to Randolph. Prior to his death, Randolph executed and recorded a warranty deed for RH-2 on June 21, 2012, in favor of Larry and Shelia Mines. On June 26-five days after the deed from Randolph to the Mineses was executed-Bryce Healy,[5] acting on behalf of the Healy Ranch corporate entity, Healy Ranch, Inc. (HRI), executed and recorded a quitclaim deed to RH-2 in favor of Randolph. Randolph's estate, in turn, then issued a personal representative's deed for RH-2 to the Mineses, who have subsequently possessed the land, farmed it, and paid the taxes.

5 As explained below, Bryce Healy is one of Bret's brothers and a shareholder in HRI.

The Healys' post-1990 treatment of RH-2

[¶15.] Mary Ann signed the 1992 warranty deed conveying RH-2 to the Sharpings in her personal capacity and as the executor of her late husband Robert's estate. The deed was never recorded, and the record does not reveal whether it was ever delivered. Bret claims to have first discovered the deed in April 2017 in a file at the law office of the family's former attorney. A few days after Mary Ann signed the 1992 Sharping deed, the Brule County Planning Commission approved her dedication and plat, which designated the 46-acre tract as Lot RH-
7 2 of "Sharping Subdivision." *7

[¶16.] Sometime in 1994, Mary Ann[6] created the corporate entity known as Healy Ranch, Inc., which we refer to here as HRI, listing herself as the sole shareholder. In 1995, Mary Ann and DeLonde executed a warranty deed purporting to transfer the Ranch real estate from HRP to HRI, with the exception of RH-2. Over the next several years, Bret and his two brothers, Bryce and Barry, purchased shares in HRI from Mary Ann until they each owned an undivided 1/3 interest.

6 Mary Ann had remarried by this time and became known as Mary Ann Osborne.

[¶17.] Though not central to the issues before us in this appeal, Bret's view of the relationship between HRI and HRP permeates his ongoing disputes with his mother and brothers. According to Bret, HRP remains the true owner of the Ranch's 1,700 acres of agricultural land because Mary Ann was not authorized to transfer HRP's real estate to HRI without his consent. Bret reasons that Mary Ann essentially converted her own 75% interest in HRP into HRI, which then became a partner, with Bret, in HRP. Under this theory, Bret and his brothers purchased only their mother's 75% interest and left intact Bret's 25% interest under the 1986 partnership agreement. However, after its creation, it appears the Ranch's lenders dealt only with HRI and, most often, with Bret who is listed on loan documents as HRI's president.

[¶18.] In any event, during the years following the Sharpings' possession of RH-2, Bret executed several documents that excluded RH-2 from the Ranch's real estate holdings, including a 1992 lease and agency
8 agreement and a 1999 mortgage. *8 Bret states he was aware that the Sharpings began farming RH-2 in 1990, but his view of the circumstances under which they did so appears to have varied over the course of litigation involving the Ranch.

[¶19.] In *Healy v. Osborne*, commenced in May 2017, Bret claimed that Mary Ann and the family's attorney had acted fraudulently to *transfer* RH-2 without authority. *See* 2019 S.D. 56, ¶ 6 n.1, 934 N.W.2d at 560 n.1. Bret's discovery requests to Mary Ann taken from the *Healy v. Osborne* litigation and included in the record for this appeal indicate that Bret also believed Mary Ann had damaged him by not using the RH-2 sale proceeds to pay down HRP debt. In his deposition taken during the *Healy v. Osborne* litigation, Bret claimed that the transfer of RH-2 "has caused the loss of land" because, he explained:

> [I]t was transferred to Raymond Sharping. It made it through two probates . . . and then was sold to Larry Mines, and then Bryce Healy signed a quitclaim deed for it. So, yes, it has caused me to lose land that I won't get back because there were innocent buyers on RH-2 . . . .

[¶20.] In this action, however, Bret now claims that RH-2 was not transferred at all. Under this more recent view, he contends that Mary Ann's lack of authority to transfer RH-2 means that any act to convey the property was "null and void" and, as a consequence, HRP still retains ownership. In an effort to amend his earlier deposition testimony, Bret now claims that HRP did not, in fact, "lose land" and that neither the Mineses nor

the Sharpings were innocent purchasers. He asserts that all of them have, since 1990, possessed, farmed, and paid the taxes for RH-2 with the continuing permission of HRP, though apparently without rent or
9 remuneration. *9

[¶21.] Bret cites as support for this theory a 1990 letter from the family's attorney regarding efforts to sell RH-2 to Raymond Sharping and acknowledging "the buyers already have possession of this property." In another letter to Raymond Sharping in 1991, the Healys' lawyer responded to Raymond's "concern[ ] about any money you spend on the property you are buying from Healy's [sic] prior to closing" by advising Raymond that the Healys would "reimburse you for those expenses[ ]" in the event the purchase of RH-2 was not completed.

Healy v. Osborne

[¶22.] In April 2017, as the parties contemplated a potential sale of the Ranch, a dispute arose among Mary Ann, Bret, and his two brothers about who owned the Ranch property-HRP, under Bret's theory set out above, or HRI. In the initial litigation that ensued, however, Bret did not directly seek to resolve the question of ownership. Instead, Bret commenced an action against Mary Ann, his brothers, and the family's attorney, alleging a variety of tort and contract claims, principally focused on the theory that Mary Ann had wrongfully conveyed Ranch property to HRI in 1995. Though RH-2 was not included among the 1,700 acres of real property HRI proposed to sell, Bret also litigated a separate claim against his mother, claiming Mary Ann had committed fraud by conveying RH-2 to the Sharpings, as indicated above. The circuit court granted the defendants' motions for summary judgment, concluding that the statutes of limitation had run on Bret's claims, and he appealed.

[¶23.] We affirmed and held that all of Bret's claims were time-barred because he had actual or constructive
10 notice of the potential claims long before he *10 commenced the action. In so doing, we took care to confine our decision to the narrow issue of the timeliness of the claims. *See Healy*, 2019 S.D. 56, ¶¶ 20-21, 934 N.W.2d at 565. We observed that it was unnecessary to consider Bret's subsidiary arguments regarding ownership of the Ranch, further noting that "Bret did not bring a quiet title action challenging ownership to Healy Ranch." *Id.* ¶ 21 n.2, 934 N.W.2d at 565 n.2. We also affirmed an award of attorney fees in favor of the defendants after concluding that the circuit court had acted within its discretion when it found that Bret lacked a reasonable basis to believe that HRP-instead of HRI-owned the Ranch. *Id.* ¶ 37, 934 N.W.2d at 567.

The current action

[¶24.] After our decision in *Healy v. Osborne*, Bret filed this action in the name of HRP, seeking to quiet title to RH-2. HRP named as principal defendants Mary Ann, the Estate of Robert Healy, the Estates of Evelyn, Raymond, and Randolph Sharping, and Larry and Shelia Mines. The complaint alleged that HRP "holds title to an undivided fee simple interest in RH-2" by virtue of the 1990 warranty deed from Phyllis Kott.

[¶25.] Mary Ann filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted, asserting she had no legal interest to RH-2. Mary Ann also asserted that Bret, as a minority partner in HRP, was not authorized to bring the quiet title action on behalf of HRP without her approval.

[¶26.] The Mineses and the estates of Evelyn, Raymond, and Randolph Sharping filed a joint answer and
11 counterclaim. Their answer denied HRP's claim *11 of ownership over RH-2, and the counterclaim alleged that the Sharpings and Mineses had acquired title to RH-2 through adverse possession.

[¶27.] The Sharping estates and the Mineses later filed a joint motion to dismiss the complaint for failure to state a claim upon which relief could be granted, referencing the earlier motion to dismiss filed by Mary Ann. Their brief in support of the motion to dismiss was similar to the brief filed by Mary Ann and cited our previous decision in *Healy v. Osborne*, suggesting that the opinion resolved certain factual questions relating to ownership of the Ranch that precluded the relief sought by HRP in the quiet title action.

[¶28.] The Mineses also filed a motion for summary judgment on their counterclaim for adverse possession, prompting HRP to seek what it described as partial summary judgment "regarding Plaintiff's chain of record title to [RH-2.]" In addition, HRP moved for a continuance under SDCL 15-6-56(f), seeking additional time to conduct discovery in order to oppose the Mineses' motion for summary judgment.[7]

[7] HRP stipulated to the dismissal of Mary Ann and the Sharping estates while the pretrial motions were pending.

[¶29.] The circuit court conducted a hearing on the various motions and later issued a memorandum decision, granting the Mineses' motion to dismiss and motion for summary judgment and denying HRP's motion for partial summary judgment. The court determined the motion to dismiss, in part, by applying the doctrine of res judicata and concluding that our holding in *Healy v. Osborne* constituted an implicit affirmance of the *Healy v.*
12 *Osborne* circuit court's finding *12 that HRP had no interest in any of the Ranch property. The court also determined that Bret lacked authority to bring an action in the name of HRP as an additional basis for granting the motion to dismiss. Again drawing from our holding in *Healy v. Osborne*, the court concluded that HRP "never had title to RH-2" and, therefore, had no basis to assert ownership in a quiet title action.

[¶30.] The circuit court's determination of the motions for summary judgment seems to have been an alternative disposition of the case in which the court concluded, among other things, that the Mineses had established the elements for adverse possession under SDCL 15-3-15 because the Mineses and Sharpings were acting under color of title, paid all taxes, and possessed RH-2 over the course of almost thirty years. The court reasoned that the warranty deed issued by Mary Ann to the Sharpings in 1992 and Bret's subsequent acknowledgments that RH-2 was not part of the Ranch's real estate holdings "clearly shows that the Sharpings had more than simple permission from any of the Healy partnerships claiming an interest in this land[.]"

[¶31.] HRP appeals, raising two issues, which we have restated as follows:

1. Whether the circuit court erred when it granted the Mineses' motion to dismiss.

2. Whether the circuit court erred when it granted the Mineses' motion for summary judgment on their counterclaim alleging adverse possession.

13 *13

Analysis and Decision Dismissal based upon Healy v. Osborne [8]

[8] In addition to the claims addressed below, HRP also argues that the circuit court erred by not denying as untimely the Mineses' motion to dismiss because it was made after they had served their answer and counterclaim. The question was presented to the court, but it did not address the issue directly in its memorandum decision. However, we believe HRP's timeliness argument is unconvincing. Though we have never confronted this issue, federal courts have generally held that a motion to dismiss that follows an answer should be treated as a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). *See, e.g., St. Paul Ramsey Cnty. Med. Center v. Pennington Cnty., S.D.*, 857 F.2d 1185, 1187 (8th Cir. 1988) ("Because the [defendant's] motion to dismiss was filed after the pleadings had closed, we view it as a motion for judgment on the pleadings . . . and we employ the same standard that we would have employed

had the motion been brought under Rule 12(b)(6)."). The provisions of SDCL 15-6-12(c), like its federal counterpart, contain an identical provision that limits a court's examination of the sufficiency of the pleadings to the pleadings themselves, which is the standard we use for our analysis here. *See* Fed. R. Civ. P. 12(d).

[¶32.] Our rules of civil procedure are modeled after the Federal Rules of Civil Procedure which, for the most part, "eliminated the cumbersome requirement that a claimant 'set out in detail the facts upon which he bases his claim[.]'" *Sisney v. Best Inc.*, 2008 S.D. 70, ¶ 7, 754 N.W.2d 804, 808 (emphasis omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 n.3, 127 S.Ct. 1955, 1965 n.3, 167 L.Ed.2d 929 (2007)). Nevertheless, the rules for pleading a claim "still require[ ] a 'showing,' rather than a blanket assertion, of entitlement to relief." *Id.*

[¶33.] Guided by these principles, we adopted the United States Supreme Court's pleading standards in our *Sisney v. Best* decision and moved away from an earlier test for judging the sufficiency of pleadings, which required denial of a motion to dismiss "for failure to state a claim unless it appear[ed] beyond doubt that the
14 plaintiff can prove no set of facts in support of his claim which would entitle him *14 to relief." *Sisney*, 2008 S.D. 70, ¶ 7, 754 N.W.2d at 808 (quoting *Schlosser v. Norwest Bank S.D.*, 506 N.W.2d 416, 418 (S.D. 1993) (applying the former test set out in *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80, 84 (1957))). In *Twombly*, the Supreme Court described the contemporary, prevailing standard for the Federal Rules of Civil Procedure in the following terms:

> While a complaint attacked [for failing to state a claim] . . . does not need detailed factual allegations, a plaintiff's obligation to provide the "grounds" of his "entitle[ment] to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do (on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Factual allegations must be enough to raise a right to relief above the speculative level[.] [T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action on the assumption that all the allegations in the complaint are true (even if doubtful in fact)[.]

Sisney, 2008 S.D. 70, ¶ 7, 754 N.W.2d at 808 (quoting *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1964-65).

[¶34.] Of course, "[w]e continue to accept the material allegations as true and construe them in a light most favorable to the pleader to determine whether the allegations allow relief." *Id.* ¶ 8, 754 N.W.2d at 809 (citing *Fenske Media Corp. v. Banta Corp.*, 2004 S.D. 23, ¶ 7, 676 N.W.2d 390, 392-93). And we also continue to review a circuit court's determination of a pleading's sufficiency as a question of law using our de novo standard. *Id.* (citing *Elkjer v. City of Rapid City*, 2005 S.D. 45, ¶ 6, 695 N.W.2d 235, 238).

[¶35.] The scope of the information a court may consider when it determines a motion to dismiss for failure to state a claim under SDCL 15-6-12(b)(5) is, by the express provisions of the rule, narrow. "A court may not
15 consider documents *15 'outside' the pleadings when ruling on a motion to dismiss for failure to state a claim." *Nooney v. StubHub, Inc*, 2015 S.D. 102, ¶ 7, 873 N.W.2d 497, 499 (citing SDCL 15-6-12(b)(5)). The rule further provides that *if* "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment" under SDCL 15-6-56. *Id.*; *see also* SDCL 15-6-12(c).

[¶36.] Converting a motion to dismiss to one for summary judgment in this way is accompanied by the requirement that "all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by § 15-6-56." SDCL 15-6-12(c). Failing to convert a motion to dismiss to a summary judgment motion despite a court's consideration of matters beyond the pleadings "can constitute reversible error." *Jenner*

v. Dooley, 1999 S.D. 20, ¶ 14, 590 N.W.2d 463, 469 (citing *Eide v. E.I. Du Pont De Nemours & Co.*, 1996 S.D. 11, ¶ 5, 542 N.W.2d 769, 770). But noncompliance may not require reversal "if the dismissal can be justified under § 12(b)(5) standards without reference to matters outside of the pleadings" or if "nothing else could have been raised to alter the entry of summary judgment." *Id.* ¶ 14, 590 N.W.2d at 469-470 (citations omitted).

[¶37.] As it relates to the claim at issue here, the contents of a quiet title complaint must include the following allegations:

> In an action brought pursuant to 21-41-1 it shall be necessary for the plaintiff to state in his complaint in general terms only that he has or claims title in fee to the property . . . which property must be described with sufficient certainty to enable an officer on execution to identify it; that the defendants are proper parties under the provisions of this chapter, and that the action is brought for the purpose of determining all adverse claims to such property and of quieting title thereto in the plaintiff . . . .

16 *16 SDCL 21-41-11.

[¶38.] HRP's complaint alleging a quiet title claim satisfies the technical requirements of SDCL 21-41-11 and the *Twombly* standard. It alleges HRP's claim that it owns RH-2 and includes its legal description. The complaint does not merely assert a bare allegation of ownership, but lists the basis of its claim, including allegations relating to the chain of title and the Kott deed. Finally, the complaint also names as defendants those parties who may claim an adverse interest in RH-2. *See* SDCL 21-41-1 (describing parties who may be named as defendants in a quiet title action).

[¶39.] The circuit court's decision to dismiss HRP's complaint was erroneous in several respects. First, relying upon the doctrine of res judicata, the court exceeded the scope of the pleadings[9] and, perhaps more critically, incorrectly read *Healy v. Osborne* to affirm certain factual findings regarding ownership of the Ranch, stating:

> [The *Healy v. Osborne* circuit court] made a specific finding that the 1986 Healy Ranch Partnership never had any title to any land of the Healy Ranch, only the 1972 Partnership did. That ownership interest was transferred to Healy Ranch, Inc. in 1995. It is undisputed that the South Dakota Supreme Court affirmed the [circuit court's] findings, which found that the 1986 Partnership never had any land interest in Healy Ranch and

17 *17

> Bret Healy only had an interest in the 1986 Partnership, not the 1972 Partnership.

[9] *See Andrews v. Daw*, 201 F.3d 521, 524 n.1 (4th Cir. 2000) (stating that a res judicata defense generally involves an inquiry beyond the pleadings unless the facts are pled in the complaint and subject to judicial notice of the court's own records); *see also Coleman v. Martin*, 363 F.Supp.2d 894, 903 (E.D. Mich. 2005) (citing *Andrews* and other relevant cases). In an order denying a motion to reconsider filed by HRP after the circuit court's decision, the court expressly denied relying upon judicially noticed facts.

[¶40.] To be clear, we did not decide questions of ownership relating to the Ranch in *Healy v. Osborne*. Rather, we specifically "*decline*[*d*] to address Bret's claim of ownership because the threshold issue . . . center[ed] on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence." *Healy*, 2019 S.D. 56, ¶ 21, 934 N.W.2d at 563 (emphasis added). We further noted that Bret had not "br[ought] a quiet title action challenging ownership to Healy Ranch." *Id.* ¶ 20 n.2, 934 N.W.2d at 563 n.2.

[¶41.] We did not depart from our unwillingness to consider the question of ownership for the Ranch in our additional decision to affirm the circuit court's attorney fees award. Instead, we simply held that Bret lacked a "reasonable basis to believe his claims were valid when he filed the lawsuit or that they could survive the statute of limitations defenses." *Id.* ¶ 37, 934 N.W.2d at 567. Our accompanying statement that "Bret filed the lawsuit for the purpose of preventing the sale of the property, not because he believed his partnership interest remained enforceable" was not a definitive determination of the Ranch's ownership in direct contravention of our expressly-stated intention *not* to do so. *Id.* Rather, this passage should be viewed as a comment upon Bret's motive for bringing the action, which included claims he knew or should have known to be stale.

[¶42.] Regardless, reliance upon *Healy v. Osborne* for any purpose connected to the ownership of RH-2 is problematic for the additional reason that sale of the Ranch real estate referenced in the opinion included the
18 1,700 acres actually used *18 by the Healy family as a ranch, but not RH-2, which the family had not possessed since 1990. As indicated, Bret and the other members of the family regarded RH-2 as being previously transferred. In fact, we held that Bret's claim that Mary Ann had fraudulently transferred RH-2 was also time-barred because he had signed a mortgage in 1999 as the president of HRI "which listed . . . RH-2 as [an] exception[ ] to the property owned by Healy Ranch, Inc." *Id.* ¶ 30 n.7, 934 N.W.2d at 565 n.7.

[¶43.] Finally, the circuit court erroneously granted the motion to dismiss when it concluded that Bret was not authorized to prosecute HRP's quiet title action. In its analysis, the court applied principles of partnership law to facts gleaned from Bret's deposition testimony in the previous litigation and referenced the HRP partnership agreement, both of which are beyond the pleadings.[10]

[10] A court may consider documents or attachments "incorporated by reference in the pleadings" when deciding a motion to dismiss under SDCL 15-6-12(b). *See Standard Fire Ins. Co. v. Cont'l Res., Inc.*, 2017 S.D. 41, ¶ 10, 898 N.W.2d 734, 737. However, neither the 1986 partnership agreement nor Bret's deposition testimony were attached to or referenced in the complaint.

[¶44.] Under the circumstances, there is no justification to support the circuit court's decision to dismiss the complaint pursuant to the authority of SDCL 15-6-12(b)(5) or SDCL 15-6-12(c). As indicated above, the complaint, on its face, states a quiet title claim, and even viewed as an "unconverted" summary judgment proceeding, the circuit court's ruling is not "justified under § 12(b)(5) standards without reference to matters outside of the pleadings." *See Jenner*, 1999 S.D. 20, ¶ 14, 590 N.W.2d at 470. However, HRP's ability to ultimately prevail on appeal depends upon our determination of the circuit court's summary judgment ruling on
19 the Mineses' adverse possession claim. *19

Adverse Possession and an Inconsistent Theory for RH-2

[¶45.] "We review a circuit court's entry of summary judgment under the de novo standard of review." *Lammers v. State ex rel. Dep't of Game, Fish and Parks*, 2019 S.D. 44, ¶ 9, 932 N.W.2d 129, 132 (citation omitted). "When reviewing a circuit court's grant of summary judgment, this Court only decides whether genuine issues of material fact exist and whether the law was correctly applied." *Id.* (citation omitted). "We view the evidence most favorably to the nonmoving party and resolve reasonable doubts against the moving party." *Id.* (citation omitted). "If there exists any basis which supports the ruling of the trial court, affirmance of a summary judgment is proper." *De Smet Farm Mut. Ins. Co. of S.D. v. Busskohl*, 2013 S.D. 52, ¶ 11, 834 N.W.2d 826, 831 (citations omitted).

[¶46.] As we consider the circuit court's summary judgment ruling, we note that "[p]roof of the individual elements of adverse possession present questions of fact for the [trier of fact], while the ultimate conclusion of whether they are sufficient to constitute adverse possession is a question of law." *Gangle v. Spiry*, 2018 S.D. 55, ¶ 11, 916 N.W.2d 119, 123 (citing *Underhill v. Mattson*, 2016 S.D. 69, ¶ 9, 886 N.W.2d 348, 352).

[¶47.] The Legislature has allowed for several types of adverse possession. *See, e.g.*, SDCL 15-3-10 to -13, -15 to -16. Here, the Mineses primarily assert that they have acquired title to RH-2 by adversely possessing the land under the terms of SDCL 15-3-15, the text of which provides:

> Every person in the actual possession of lands or tenements under claim and color of title made in good faith, and who shall have continued for ten successive years in such possession, and shall also during said time have paid all taxes legally assessed
>
> 20 *20
>
> on such lands or tenements, shall be held and adjudged to be the legal owner of said lands or tenements to the extent and according to the purport of his paper title. All persons holding under such possession by purchase, devise, or descent before said ten years shall have expired, and who shall have continued such possession and payment of taxes as aforesaid so as to complete said term of ten years of such possession and payment of taxes, shall be entitled to the benefit of this section.

[¶48.] We have condensed this statute into three textual elements: "(1) claim and color of title made in good faith, (2) ten successive years in possession, and (3) payment of all taxes legally assessed." *Ashby v. Oolman*, 2008 S.D. 26, ¶ 12, 748 N.W.2d 132, 135 (quoting *Andree v. Andree*, 291 N.W.2d 788, 790 (S.D. 1980)). In some of our prior decisions, we have seemed to suggest that these elements represent the exclusive means by which title is determined under SDCL 15-3-15. *See, e.g.*, *Judd v. Meoska*, 76 S.D. 537, 541, 82 N.W.2d 283, 285 (1957) ("The statute speaks to those who *pay taxes*. It offers those who possess property under color of title a method of perfecting their titles through the payment of the taxes legally assessed against that property."); *Andree*, 291 N.W.2d at 790 ("The requirements of this statute include (1) claim and color of title made in good faith, (2) ten successive years in possession, and (3) payment of all taxes legally assessed."); *Hedger v. Aberdeen, B. & N.W. Ry. Co.*, 26 S.D. 491, 128 N.W. 602, 603 (1910) (holding that payment of taxes and possession for at least ten years "in good faith under claim of title and ownership" established title).

[¶49.] But in other decisions we have indicated that an additional element of hostility applies to efforts to obtain title under SDCL 15-3-15, as is the case with more traditional concepts of adverse possession. In *Sioux*
21 *City Boat Club v. Mulhall*, for instance, we held: *21

> The ten-year limitation prescribed by [SDCL 15-3-15] does not define the specific character of the possession required to make effective the bar. The decisions hold uniformly that although possession is held under color of title, it will not ripen into a complete title unless it is adverse. The possession must be of such *hostile*, visible and continuous nature as to give the true owner notice of actual possession and to put him on inquiry as to the invasion of his rights and that if he acquiesces in the occupancy for the statutory period he will be barred from maintaining an action thereafter and the title of the adverse occupant will be complete.

79 S.D. 668, 676-77, 117 N.W.2d 92, 96 (1962) (emphasis added) (citation omitted); *see also Barrett v. McCarty*, 20 S.D. 75, 104 N.W. 907, 909 (1905) (holding that payment of taxes by one who possessed land as a cotenant was not adverse and, therefore, insufficient to establish title under a predecessor to SDCL 15-3-15).

[¶50.] Before addressing the merits of the Mineses' adverse possession claim, however, we must first determine whether Bret, in the name of HRP, may claim the Sharpings' use of RH-2 was permissive, given his position regarding RH-2 in *Healy v. Osborne*. As indicated above, Bret's arguments regarding RH-2 in *Healy v. Osborne* and his assertions regarding the same tract of land made in this action are perceptibly different.

[¶51.] In *Healy v. Osborne*, Bret alleged that Mary Ann and the family's attorney had actually *transferred* RH-2, though fraudulently and without authority. 2019 S.D. 56, ¶ 6 n.1, 934 N.W.2d at 560 n.1. In fact, Bret claimed during his deposition in the *Healy v. Osborne* litigation that the transfer of RH-2 "has caused the loss of land" because "it was transferred to Raymond Sharping."

[¶52.] Bret's theory in this quiet title action brought in the name of HRP is different, however. He now claims
22 that RH-2 was *not* transferred. Instead, Bret *22 asserts that Mary Ann's lack of authority to transfer RH-2 rendered any act to convey the property "null and void," leaving HRP as the owner. With this predicate, Bret develops his factual theory that Raymond Sharping and his successors have, from 1990 to the present, all occupied RH-2 with HRP's permission.

[¶53.] Taking inconsistent positions in this way implicates the doctrine of judicial estoppel and our particular interest in "protect[ing] the essential integrity of the judicial process." *Allen v. Zurich Ins. Co.*, 667 F.2d 1162, 1166 (4th Cir. 1982). Generally, a party may not successfully maintain a position in litigation only to later change to a contrary position, "especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S.Ct. 1808, 1814, 149 L.Ed.2d 968 (2001) (citation omitted). Judicial estoppel is an equitable doctrine, founded upon fairness and an institutional concern with using judicial proceedings for improper purposes:

> [J]udicial estoppel is unique in that because judicial estoppel is intended to protect the integrity of the fact-finding process by administrative agencies and courts, the issue may properly be raised by courts, even at the appellate stage, on their own motion . . . . The gravamen of judicial estoppel is not privity, reliance, or prejudice. Rather it is the intentional assertion of an inconsistent position that perverts the judicial machinery.

Hayes v. Rosenbaum Signs & Outdoor Advert., Inc., 2014 S.D. 64, ¶¶ 13-14, 853 N.W.2d 878, 882 (cleaned up).

[¶54.] The Wright and Miller Federal Practice and Procedure treatise uses similar pragmatism to describe the justification for judicial estoppel:

> Courts do not relish the prospect that an adept litigant may succeed in proving a proposition in one action, and then succeed in proving the opposite in a second. At worst, successful assertion of inconsistent positions may impose multiple liability
>
> 23 *23
>
> on an adversary or defeat a legitimate right of recovery. At best, the judicial system is left exposed to an explicit demonstration of the frailties that remain in adversary litigation and adjudication. The theories of judicial estoppel that reduce these risks do not draw directly from the fact of adjudication. Instead, they focus on the fact of inconsistency itself.

§ 4477 Preclusion of Inconsistent Positions-Judicial Estoppel, 18B Fed. Prac. & Proc. Juris. § 4477 (3d ed.)

[¶55.] "[T]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle[.]" *Wyman v. Bruckner*, 2018 S.D. 17, ¶ 12, 908 N.W.2d 170, 175 (quoting *New Hampshire*, 532 U.S. at 750, 121 S.Ct. at 1815). Nevertheless, "for judicial estoppel to apply:"

> The later position must be clearly inconsistent with the earlier one; the earlier position was judicially accepted, creating the risk of inconsistent legal determinations; and the party taking the inconsistent position would derive an unfair advantage or impose an unfair detriment to the opponent if not estopped.

Id. (quoting *Wilcox v. Vermeulen*, 2010 S.D. 29, ¶ 10, 781 N.W.2d 464, 468).

[¶56.] Though the Mineses have not expressly invoked the doctrine of judicial estoppel, they have argued that Bret has taken a different position regarding RH-2 in this case than he did in *Healy v. Osborne*, particularly as it relates to his loss-of-land theory that he outlined in his 2017 deposition testimony. Because of our interest in preventing "parties from deliberately changing positions according the exigencies of the moment[,]" *New Hampshire*, 532 U.S. at 750, 121 S.Ct. at 1814 (citation omitted), we will examine the applicability of judicial estoppel here.

[¶57.] As we have related, Bret's position premised upon a transfer of RH-2 in *Healy v. Osborne* is "clearly
24 inconsistent" with his position here that there was no *24 transfer. But it is made even more so by the accompanying factual claim that the Sharpings' possession and that of their successor has always been permissive. *See State v. Hatchett*, 2014 S.D. 13, ¶ 33, 844 N.W.2d 610, 618 (explaining that the "inconsistency must be about a matter of fact, not law").

[¶58.] Further, breathing life back into the time-barred fraudulent transfer claim by rebranding it into a claim seeking to quiet title, if not to recover damages, provides Bret, and HRP in this case, with an unfair advantage. This type of transformation, if permitted, effectively vacates a portion of our opinion in *Healy v. Osborne*. Our holding that Bret was on notice of the RH-2 transfer by 1999 becomes inaccurate if there was no transfer. *See Healy*, 2019 S.D. 56, ¶ 30 n.7, 934 N.W.2d at 565 n.7 (holding Bret's fraud claim against Mary Ann for transferring RH-2 was untimely because "Bret . . . had at least constructive notice of Mary [Ann's] warranty deed[ ] transferring . . . RH-2 in 1999 when he signed the mortgage with Marquette Bank.").

[¶59.] Indeed, this very holding establishes our acceptance of Bret's "transfer" theory. Without accepting the factual premise that RH-2 had been transferred, we could not have determined the timeliness of his fraud claim against Mary Ann. The fact that the claim itself was time-barred does not change or alter the fact that we accepted the factual assertion that there was a transfer to the Sharpings-not permissive use-an essential constituent predicate. As the United States Court of Appeals for the Sixth Circuit has stated:

> Judicial estoppel is not limited to situations in which the party has prevailed on the merits by pressing the prior position; rather, it requires only "judicial acceptance" of the prior position,
>
> 25 *25
>
> meaning that the court "adopted the position urged by the party, either as a preliminary matter or as part of a final disposition."

Branch Banking & Tr. Co. v. Pac. Life Ins. Co., 645 Fed.Appx. 387, 391 (6th Cir. 2016) (quoting *Reynolds v. C.I.R.*, 861 F.2d 469, 473 (6th Cir. 1988)).

[¶60.] Under the circumstance presented here, the application of judicial estoppel is appropriate. Bret may not, in the name of HRP, re-fashion his claim regarding RH-2 into a quiet title action that contemplates the land was never transferred and, instead, has been permissively used for the past thirty years by others who have farmed it and paid the taxes. In light of this determination, we will now review the merits of the Mineses' adverse possession claim.

[¶61.] As noted above, SDCL 15-3-15 requires "(1) claim and color of title made in good faith, (2) ten successive years in possession, and (3) payment of all taxes legally assessed." *Ashby*, 2008 S.D. 26, ¶ 12, 748 N.W.2d at 135 (citation omitted).

[¶62.] We have previously defined color of title "as that which is title in appearance, but not in reality." *Mulhall*, 79 S.D. 668, 675, 117 N.W.2d at 96; *see also Wood v. Conrad*, 2 S.D. 334, 50 N.W. 95, 96 (1891) ("'Color of title' is defined to be an apparent title founded upon a written instrument, such as a deed, levy of execution, decree of court, or the like."). "A deed, to constitute color of title, must apparently transfer title to [its] holder; not that the title should purport, when traced back to its source, to be an apparently legal title, but the instrument relied upon must profess to convey a title to the grantee." *Wood*, 50 N.W. at 97.

[¶63.] The notion of good faith is defined as an "honest belief[.]" *Parker v. Vinson*, 11 S.D. 381, 77 N.W. 1023,
26 1024 (1899); *see also Garret v. BankWest, Inc.*, *26 459 N.W.2d 833, 841 (S.D. 1990) (acknowledging that SDCL 57A-1-201 defines good faith as "honesty in fact"). "What constitutes good faith is a question for the trier of fact." *Andree*, 291 N.W.2d at 791. However, "[b]ad faith is never presumed; one who challenges the good faith of the occupant in this type of case must overcome the presumption of good faith." *Id.*; *see also* 2 C.J.S. Adverse Possession § 297 ("The presumption of good faith obtains until rebutted by proof to the contrary.").

[¶64.] Here, some of these necessary elements are readily established by the undisputed facts presented in the record. First, the warranty deed executed by Randolph Sharping to the Mineses on June 21, 2012, gives the Mineses color of title. The warranty deed "apparently transfer[red] title" to Larry and Shelia Mines. *Wood*, 50 N.W. at 97. And the undisputed facts indicate that the Mineses have "claimed" RH-2 as their own through their occupation and farming.

[¶65.] Less is known about whether the Mineses honestly believed that the warranty deed executed by Randolph effectively transferred title to RH-2. However, the Mineses benefit from the operation of a presumption that they acted in good faith. *See Lammers*, 2019 S.D. 44, ¶ 9, 932 N.W.2d at 132-33 (citation omitted) ("The party resisting summary judgment must present sufficient probative evidence that would permit a finding in her favor on more than mere speculation, conjecture, or fantasy." (cleaned up)). In the absence of facts contained in the record supporting a reasonable inference of bad faith on behalf of the Mineses, the
27 presumption that they acted in good faith remains intact.[11] *27

[11] HRP also appealed the circuit court's decision to deny its motion for a continuance pursuant to SDCL 15-6-56(f), which authorizes a court to allow a party resisting summary judgment additional time to conduct discovery. The rule requires the party seeking relief to submit an affidavit, which we have held must "show[ ] how further discovery will defeat the motion for summary judgment." *Stern Oil Co. v. Border States Paving, Inc.*, 2014 S.D. 28, ¶ 26, 848 N.W.2d at 281 (citation omitted). The Rule 56(f) affidavit Bret submitted sought discovery relating to whether the Sharping family or the Mineses believed in good faith that they were the owners of RH-2. However, HRP has not identified a basis to overcome the presumption of good faith *other than* Bret's claim that the possession of the RH-2 by the Sharpings and Mineses was merely permissive-an argument foreclosed by judicial estoppel. But even if this argument was not foreclosed and Bret's ability to discover evidence might have had an impact on the analysis of the Sharpings' or

> Mineses' good faith, we would still affirm the court's summary judgment in their favor. As noted by the circuit court, the undisputed evidence reveals that the Sharpings and Mineses have openly occupied this property under color of title since 1992, thereby establishing adverse possession under the timeframe required by other applicable statutes noted by the court, none of which require a possessor to have a good faith belief of ownership. *See* SDCL 15-3-10 to 13.

[¶66.] And even if SDCL 15-3-15 contains a separate element of hostility as *Mulhall* suggests, the Mineses have established no material facts are in dispute as to whether their occupation of RH-2 was hostile to the record owners. We have defined hostility as "the 'physical exclusion of all others under a claim of right.'" *Helleberg v. Estes*, 2020 S.D. 27, ¶ 21, 943 N.W.2d 837, 843 (quoting *Rotenberger v. Burghduff*, 2007 S.D. 19, ¶ 8, 729 N.W.2d 175, 178). The facts are undisputed that the Mineses have paid the property taxes on RH-2 and possessed and farmed RH-2 to the exclusion of all others, acts which are not consistent with permissive use. Even if these undisputed facts could nevertheless allow for an inference of permissive use, our application of judicial estoppel precludes this new claim of Bret's that the Sharpings and the Mineses have occupied RH-2
28 permissively for thirty years. Therefore, HRP cannot sustain its claim that the Mineses or the *28 Sharpings did not possess RH-2 in a manner that was hostile to "all others under a claim of right." *Helleberg*, 2020 S.D. 27, ¶ 21, 943 N.W.2d at 843.

[¶67.] Finally, the Mineses acknowledge that they have been in actual possession of RH-2 for approximately eight years from the date of the filing of HRP's complaint-two years short of the ten year-statutory period-but argue they are able to "tack" the additional time of possession of RH-2 by the Sharpings in order to satisfy SDCL 15-3-15's ten-year obligation. "[T]he principle of 'tacking' allows [the current possessor] to add its own claims to that of previous adverse possessors under whom it claims a right of possession." *Estate of Billings v. Deadwood Congregation of Jehovah Witnesses*, 506 N.W.2d 138, 141 (S.D. 1993) (citing *Walker v. Sorenson*, 64 S.D. 143, 148, 265 N.W. 589, 591 (1936)).

[¶68.] The Mineses assert, and we agree, that the text of SDCL 15-3-15 expressly allows tacking to satisfy the ten-year period of possession:

> All persons holding under such possession by purchase, devise, or descent before said ten years shall have expired, *and who shall have continued such possession* and payment of taxes as aforesaid *so as to complete said term of ten years* of such possession and payment of taxes, shall be entitled to the benefit of this section.

(Emphasis added.)

[¶69.] Therefore, the Mineses are able to tack at least two years of possession by Randolph Sharping from the time preceding the execution of the warranty deed in 2012 so long as Randolph Sharping's possession of RH-2 was similarly adverse. And we conclude that the undisputed facts show that it was. HRP does not dispute that Randolph Sharping possessed and farmed the land. Nor does it dispute that he paid the property taxes on RH-2
29 during his possession. The personal *29 representative's deed recorded in June 2000 conveying the property to Randolph Sharping from his father's estate gave Randolph color of title. And there is nothing in the record to suggest Randolph's claim to RH-2 was clouded by bad faith or a lack of hostility. Therefore, the circuit court properly concluded that the Mineses have established title to RH-2 by adversely possessing the property under the terms of SDCL 15-3-15.

Conclusion

[¶70.] Under the circumstances presented by this case, the circuit court erred when it applied our decision in *Healy v. Osborne* to assess the sufficiency of HRP's complaint. However, for the reasons expressed above, we affirm the court's decision to grant the Mineses' motion for summary judgment on their adverse possession counterclaim based upon the application of SDCL 15-3-15. Consequently, title to RH-2 is quieted with the Mineses, and HRP's own quiet title claim is, by necessity, foreclosed.

30 [¶71.] JENSEN, Chief Justice, and KERN, DEVANEY, and MYREN, Justices, concur. *30

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	:ss	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	07CIV. 23-__ PETITION FOR COURT SUPERVISED DISSOLUTION

COMES NOW Healy Ranch, Inc., through its attorney of record, Lee Schoenbeck, and petitions the Court for supervision of its voluntary dissolution, as authorized by SDCL 47-1A-1430(4):

1. Bryce Healy is the duly elected President of Healy Ranch, Inc., and has directed this Petition to be filed on behalf of the Corporation.

2. The Board of Directors of Healy Ranch, Inc. adopted a Plan of Liquidation and Dissolution on October 6, 2023, and it adopted a Resolution to dissolve on October 20, 2023. The Plan of Liquidation and Dissolution and the Resolution are attached hereto as Exhibit A.

3. A meeting of the shareholders was held on November 15, 2023, and a majority of the outstanding shares of the common stock voted in favor of dissolution and adoption of a plan.

4. Healy Ranch, Inc. principal place of business is at 24839 348th Avenue, Pukwana, Brule County, South Dakota.

5. The shareholders of Healy Ranch, Inc. and their representative shares are as follows:

Shareholders	**Shares**	**%**
Bryce Healy	99,782.66	(1/3)
Barry Healy	99,782.66	(1/3)

Bret Healy	99,782.66	(1/3)
Total Shares Issued:	299,348	100%

6. Pursuant to SDCL 47-1A-1431.1, the shareholders are not named as parties, but the Corporation is serving the Petition upon each of the shareholders.

7. The Corporation is only in the business of renting its real property, and defending itself in lawsuits commenced by shareholder, Bret Healy. Therefore, there is no need for injunctive relief or to appoint a receiver or custodian.

8. The Corporation requests a hearing for the Court to enter a Decree dissolving the Corporation and specifying the effective date of the dissolution, and to enter any other Orders required pursuant to SDCL 47-1A-1433.

9. The Corporation requests that the Court require the publication of Notice of Dissolution, to seek any claims, as provided in SDCL 47-1A-1407.

WHEREFORE, the Corporation respectfully requests the Court set a date as soon as possible to commence a judicially supervised liquidation of Healy Ranch, Inc., and specifically, the Corporation requests that the initial hearing take place on either Friday, January 5, 2024, or Friday, January 26, 2024.

Dated this 17th day of November, 2023.

SCHOENBECK & ERICKSON, PC

By: __/s/ Lee Schoenbeck_____
LEE SCHOENBECK
JOE ERICKSON
Attorneys for Healy Ranch, Inc.
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
(605) 886-0010

EXHIBIT A

RESOLUTION OF DIRECTORS (DISSOLUTION)
HEALY RANCH, INC.

THE UNDERSIGNED, being the President and Secretary of Healy Ranch, Inc., a South Dakota corporation (the "Corporation"), pursuant to the South Dakota Business Corporation Act and the Bylaws of the Corporation, hereby confirm that the following resolutions have been approved by the Board of Directors at a special meeting called for such purpose on October 20, 2023. These resolutions are ordered filed with the minutes of the meetings of the Board of Directors.

WHEREAS, the Board has considered the advisability of recommending the dissolution of the Corporation; and

WHEREAS, the Board considered and approved a Plan of Liquidation and Dissolution at a Special Meeting of Directors called for such purpose on October 6, 2023; and

WHEREAS, the Board wishes to submit the proposed dissolution and Plan for approval by the shareholders, subject to the terms and conditions set forth in the Plan of Liquidation and Dissolution.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby deems the dissolution of the Corporation to be in the best interests of the Corporation and the Shareholders; and

BE IT FURTHER RESOLVED, that the Board approves the Plan of Liquidation and Dissolution, a copy of which is attached to this Resolution, and incorporated as if fully set forth herein; and

BE IT FURTHER RESOLVED, that the President shall cause a special meeting of the Shareholders to be called in accordance with SDCL § 47-1A-1402.2 and the procedures of the Corporation for such purpose, such meeting to be scheduled as soon as all preconditions for the calling of such meetings can be fulfilled; and

BE IT FURTHER RESOLVED, that the Board recommends to the shareholders of Healy Ranch, Inc. that the Corporation be dissolved and that the Plan of Liquidation and Dissolution be adopted; and

BE IT FURTHER RESOLVED, that the Board and the officers of the Corporation be and hereby are empowered to take such actions as are necessary to effectuate these resolutions in compliance with all applicable laws, rules, regulations, and the bylaws of the Corporation.

Dated this 20th day of October, 2023.

Bryce Healy, President

Barry Healy, Secretary

PLAN OF LIQUIDATION AND DISSOLUTION
HEALY RANCH, INC.

This Plan of Liquidation and Dissolution (the "Plan") is for the purpose of accomplishing the voluntary liquidation and dissolution of Healy Ranch, Inc., a South Dakota for-profit corporation (the "Corporation"), in accordance with and pursuant to the provisions of the South Dakota Business Corporation Act, in substantially the following manner:

1. **RESOLUTION TO DISSOLVE**. The Board of Directors of the Corporation (the "Board") has adopted resolutions deeming it advisable and in the best interests of the shareholders of the Corporation to dissolve and liquidate the Corporation, adopt the Plan, and call a special meeting of the shareholders for the purpose of considering dissolution and adopting the Plan in accordance with SDCL § 47-1A-1402.2.

2. **ADOPTION BY SHAREHOLDERS**. If the Shareholders holding a majority of the outstanding shares of Common Stock vote in favor of dissolution and adoption of the Plan, then the Plan shall be deemed adopted as of (i) the date of the Special meeting, or (ii) such later date on which the Shareholders may approve the Plan if the Special Meeting is adjourned to a later date (the "Adoption").

3. **COURT SUPERVISION.** After the Adoption, the Special Committee created by resolutions of the Board dated May 19, 2017, shall file a petition with the Circuit Court, First Judicial Circuit, Brule County, South Dakota, seeking Court supervision of the dissolution of the Corporation pursuant to SDCL § 47-1A-1430(4).

4. **EFFECTIVE DATE**. The Corporation shall continue normal business activities until (i) Articles of Dissolution of the Corporation are filed with the South Dakota Secretary of State, or (ii) the Court enters an order requiring immediate cessation of business activities (the "Effective Date").

5. **CESSATION OF BUSINESS**. As of the Effective Date, the Corporation will cease engaging in any business activities and, after the Effective Date, the Corporation will not engage in any business activities except for the purpose of immediately winding up its affairs by (i) collecting corporate assets; (ii) liquidating or disposing of corporate assets that will not be distributed in kind to the Shareholders; (iii) discharging or making provision for discharging corporate liabilities; (iv) distributing any remaining property of the Corporation to the Shareholders in accordance with their respective interests; and (v) doing every other act necessary to wind up and liquidate the Corporation's business and affairs.

6. **CORPORATE LIABILITIES**. The Corporation will endeavor to ascertain in good faith all claims and obligations of the Corporation, whether secured, unsecured or contingent. The Corporation shall seek to satisfy creditors in accordance with Part 14 of the South Dakota Business Corporations Act.

7. **DISTRIBUTION OF CORPORATION ASSETS.** The Corporation will then proceed to collect its remaining assets, if any there may be, and after paying or adequately providing for the payment of all of its obligations, it will distribute remaining assets, if any, either in cash or in kind, in one distribution to the holders of its common stock, in complete cancellation of all the outstanding shares of said common stock.

8. **TAX REPORTING.** The Corporation will report the liquidation and dissolution of the Corporation consistent with applicable law.

9. **DISSOLUTION.** The Corporation will execute and file, at such time as it deems necessary or proper, all other forms, returns, documents, instruments and information required to be filed by reason of the dissolution and complete liquidation of the Corporation, including without limitation Articles of Dissolution as required by SDCL 47-1A-1403.

10. **AUTHORIZATION FOR NECESSARY ACTS.** The Board shall be authorized and empowered to take all steps necessary or appropriate to complete the liquidation of the Corporation as provided herein, including, without limitation, the power and authority to make arrangements upon such terms and conditions as the Board shall deem appropriate. The Board may delegate such authority to any officer or officers of the Corporation, who shall thereafter have the power to execute all documents, and file all papers, and shall otherwise be authorized and directed to take all other action necessary or desirable for the purpose of carrying out the dissolution of the Corporation.

11. **AMENDMENT; REVOCATION.** Notwithstanding Shareholder approval of the Plan and the transactions contemplated hereby, and subject to the authority of the Court, if for any reason the Board determines that such action would be in the best interest of the Corporation, the Board may, at any time prior to final distribution, in its sole discretion and without requiring further Shareholder approval, revoke the Plan and all action contemplated thereunder pursuant to SDCL § 47-1A-1404.

ADOPTION

The above Plan of Liquidation and Dissolution was duly proposed by the Board of Directors of Healy Ranch, Inc. on October 6, 2023, and adopted by the Shareholders holding a majority of the outstanding shares of Common Stock at a special meeting of Shareholders called for such purpose on November 15th, 2023.

Bryce Healy, President

Barry Healy, Secretary

CERTIFICATION

I, Bryce Healy, President of Healy Ranch, Inc. (the "Corporation"), hereby certify that the above Plan of Liquidation and Dissolution of the Corporation (the "Plan") is a true and correct copy of the Plan which was duly proposed by the Board of Directors and adopted by the Shareholders holding a majority of the outstanding shares of Common Stock at a special meeting of Shareholders called for such purpose on November 15th, 2023.

Bryce Healy, President

STATE OF SOUTH DAKOTA : SS COUNTY OF BRULE	))	IN CIRCUIT COURT FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	))))))	07CIV23-000058 MOTION TO DISMISS

COMES NOW Healy Ranch Partnership, by and through the undersigned, who respectfully moves the Court to dismiss the Petition for Court Supervised Dissolution, based on a lack of jurisdiction and states as follows:

1. The Petition filed in this matter claims that the judicial dissolution of Healy Ranch, Inc. is authorized by SDCL 47-1A-1430(4), which allows a circuit court to dissolve a corporation "[i]n a proceeding by the corporation to have its voluntary dissolution continued under court supervision."

2. The Petition attaches as Exhibit A, "The Plan of Liquidation and Dissolution and the Resolution."

3. The Petition, at paragraph 3, states that a meeting of the shareholders of Healy Ranch, Inc. was held on November 15, 2023, and that "a majority of the outstanding shares of common stock voted in favor of dissolution and adoption of a plan."

4. Attached hereto as **Exhibit 1** are the Bylaws of Healy Ranch, Inc., which require fifty percent of the paid-up capital stock to establish a quorum at a meeting of the shareholders.

5. Attached hereto as **Exhibit 2** is the Warranty Deed from Healy Ranch Partnership to Healy Ranch, Inc., which was filed for the record with the Brule County Register of Deeds on March 13, 1995, and which states on its face that Healy Ranch Partnership owns, at least, a majority of the capital stock in Healy Ranch, Inc.. See SDCL 43-4-22(11) (exempting transfer fee "where the grantor or grantors and the owner of a majority of the capital stock of the corporation are the same person") (cited on Warranty Deed).

6. Attached hereto as **Exhibit 3** are the expert reports of forensic accountant Nina Braun, which affirm the reality that the capital stock of Healy Ranch, Inc. originates solely from the land transferred to it by Healy Ranch Partnership as is shown by the capital structure on Healy Ranch, Inc.'s tax returns.

7. As shown by **Exhibit 4**, Healy Ranch Partnership opposed the Plan described in the Petition.

8. Thus, a majority of the shares in Healy Ranch, Inc. entitled to vote did not approve the proposal for voluntary dissolution as provided by SDCL 47-1A-1402.3. See SDCL 47-1A-1402(2).

9. Therefore, this Court lacks jurisdiction to proceed under SDCL 47-1A-1430(4).

10. A Memorandum of Law is being filed herewith and is incorporated herein by this reference.

WHEREFORE, Healy Ranch Partnership respectfully asks this Court to enter an Order dismissing the Petition.

Dated this 19th day of December 2023.

/s/ Tucker Volesky

Tucker Volesky
Attorney at Law
356 Dakota Ave. S.
Huron, SD 57350
(605) 352-2126
tucker.volesky@tuckervoleskylaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was submitted for filing and served by electronic means on the following:

Lee Schoenbeck
Joe Erickson
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
Attorneys for Petitioner

on this 19th day of December 2023.

/s/ Tucker Volesky

Tucker Volesky
Attorney at Law

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
	)	07CIV23-000058
	)	
IN THE MATTER OF THE	)	MEMORANDUM OF LAW
DISSOLUTION OF HEALY	)	IN SUPPORT OF MOTION TO DISMISS
RANCH, INC.	)	
	)	

COMES NOW Healy Ranch Partnership, by and through the undersigned, who submits this Memorandum of Law in support of the Motion to Dismiss as follows:

1. Healy Ranch Partnership[1]

Healy Ranch Partnership filed a partnership return for the year ended December 31, 1985. (Ex. 3, p. 7, no. 1). The Partnership's 1985 tax return indicated the Healy Ranch Partnership[2] started in 1961. (Ex. 3, p. 7, no. 5).[3] And the Partnership's business activities have continued. (Ex. 3, p. 7, no. 6). For example, in June of 1995, the Partnership granted to AB Rural Water an easement (Exhibit 5 hereto); in January 2008, the Partnership and tenants of its real property entered into a settlement agreement including an agricultural lease termination and house lease extension (Exhibit 6 hereto); and in Brule County case file 07CIV.13-66, settled in 2014 – two of the partners in the Partnership sought damages in connection with a fire that damaged property belonging to the Partnership.

Healy Ranch, Inc. was incorporated on August 1, 1994. (Ex. 3, p. 8, no. 12). The articles of incorporation do not indicate any contributions or exchanges for the issuance of any shares at the Corporation's inception. (Ex. 3, p. 8, no. 13). Indeed, the Corporation's tax return for 1995

[1] See SDCL 48-7A (Uniform Partnership Act).

[2] The 1985 tax return verifies that the name of the partnership is simply "Healy Ranch."

[3] See Healy v. Fox, 46 F.4th 739, 742 (8th Cir. 2022), describing Healy Ranch Partnership:

> "In 1961, Bret Healy's father and grandfather formed the Healy Ranch Partnership ("HRP") for the purpose of ranching and farming in which each had equal ownership interests. The partnership owned land that was used as the family ranch. After Bret's father and grandfather died, Bret's mother, Mary Ann Osborne, and his grandmother each received a 50 percent interest in the partnership.
>
> "In 1986, Bret's grandmother transferred her partnership interest to Bret in exchange for him assuming the partnership's debt and making certain payments to her. ..."

reports that it had $0 assets on January 1, 1995. (Ex. 3, p. 8, no. 14). The Corporation's long-time counsel, from its inception in 1994 through October 2019, was Attorney Albert Steven Fox.[4]

On March 13, 1995, record title to the real property owned by Healy Ranch Partnership was transferred to Healy Ranch, Inc. by Warranty Deed filed for the record with the Register of Deeds in Brule County. (Ex. 2). The stated value of the real property was listed on Healy Ranch, Inc.'s 1995 tax return as $299,348. (Ex. 3, p. 8, no. 18). The Warranty Deed transferring the property cited SDCL 43-4-22(11)[5], stating for the record that Healy Ranch Partnership was owner of at least a majority (in fact all) of the capital stock of Healy Ranch, Inc.. (See Ex. 2).[6] In fact, Healy Ranch, Inc.'s capital stock originates solely from the real property transferred via Warranty Deed and valued at $299,348 on the Corporation's 1995 tax return. (Ex. 3, p. 18, no. 16).

2. Partnership property and Osborne's transferable interest

"Property acquired by a partnership is property of the partnership and not of the partners individually." SDCL 48-7A-203; cf. Peters v. Great Western Bank, Inc., 2015 S.D. 4, ¶¶ 14-15, 859 N.W.2d 618, 625 (liability for money judgment against corporation, which was general partner in a limited partnership, could not extend to affect title status of partnership property). "A partner may use or possess partnership property only on behalf of the partnership." SDCL 48-7A-401. "A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily." SDCL 48-7A-501; See Jade Inc. v. Bendenwald, 468 N.W.2d 138, 143 (S.D. 1991) ("UPA deprives a partner of all

[4] Attached hereto as Exhibit 7 is the Brief that Fox submitted to the Eighth Circuit Court of Appeals in Healy v. Fox. Tellingly, Fox describes "that in the spring of 1994, Osborne told Bret she was transferring her partnership interest in the Healy Ranch Partnership into a new corporation, Healy Ranch, Inc. … In March 1995, and consistent with Osborne's statements to Bret in the Spring of 1994 [], Osborne transferred the Healy Ranch Partnership's real property interest to [Healy Ranch, Inc.]." See Brief, pp. 4-5 (file pp. 14-15). While Osborne was permitted to transfer her partnership interest to the Corporation, she was without authority to personally transfer any of the Partnership's real or personal property because she had no individual interest in such property. See SDCL 48-7A-203 (partnership property); SDCL 48-7A-204 (When property is partnership property); SDCL 48-7A-302 (Transfer of partnership property); SDCL 48-7A-401 (partner may use or possess partnership property only on behalf of partnership); SDCL 48-7A-501 (partner not co-owner of partnership property); SDCL 48-7A-502 (partner's transferable interest in partnership).

[5] "The fee imposed by § 43-4-21 does not apply to any transfer of title: … Between an individual grantor, or grantors, and a corporation, where the grantor or grantors and the owner of the majority of the capital stock of the corporation are the same person."

[6] In addition to the warranty deed clearly indicating that the Partnership owned the capital stock, the stated exemption also includes SDCL 43-4-22(18) which indicates that there was no consideration given by the Corporation for the land.

power of separate disposition of specific property of the partnership"); see also Betts v. Letcher, 1 S.D. 182, 46 N.W.2d 193. 198-99 (1980) (partner's conveyance of the partnership-owned building to his mother void, emphasizing the fiduciary duties of partners as trustees). "The only transferrable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property." SDCL 48-7A-502. Further, SDCL 48-7A-503 provides for the transfer of a partner's transferable interest in a partnership:

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(1) Is permissible;

(2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) To seek under subsection 48-7A-801(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Here, the real property transferred via the 1995 Warranty Deed is the property of the Healy Ranch Partnership. Mary Anne Osborne, a partner in Healy Ranch Partnership and the incorporator of Healy Ranch, Inc., caused the record title to the Partnership's real property to be transferred to the Corporation. Osborne had represented that Healy Ranch, Inc. was created to hold her transferable interest in the Partnership which, as a matter of law, was the only interest Osborne personally could transfer. See supra, note 4. Osborne certainly had no authority to transfer Bret's 50% partnership interest to the Corporation, nor to transfer the Partnership's property without Bret's consent. SDCL 48-7A-301(2); cf. Fillaus v. Greenfield, 39 S.D. 226, 164 N.W. 63 (1917) (each partner in a partnership is an agent for all the others in partnership business); see also State v. Burns, 25 S.D. 364, 126 N.W.2d 572 (partner in a partnership is not an agent of each partner individually, and cannot bind partners severally or any number less than the whole as a partnership). Nevertheless, because Osborne transferred record title to the Healy Ranch Partnership's real property to Healy Ranch, Inc., the result was that all of the Corporation's capital stock issued to the Partnership.[7]

3. Capital Stock

"It is universally recognized that the 'capital stock' of a corporation is the amount paid in by stockholders in money, property, or by services, and that a share of stock is an undivided portion of such total capital stock." Lake Superior Dist. Pow. Co. v. Public Service Com'n, 250 Wis. 39, 26 N.W.2d 278, 281-82 (1947); See SDCL 47-1A-621 ("No corporation may issue stocks or bonds except for money, labor done, or money or property, tangible or intangible, actually received. ... When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefore are fully paid and nonassessable."); see also SD Const. Art. 17, § 8 ("No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.").[8]

> 'Properly speaking, however, the term 'capital stock' signifies the amount fixed, usually by the corporate charter, to be subscribed and paid in or secured to be paid in by the shareholders of a corporation, either in money or in property, labor or services, at the organization of a corporation or afterwards, and upon which it is to conduct its operations. (sec. 5079, p. 12) 'In its primary sense a share of stock is simply one of the

[7] There has never been a dissolution or winding up of Healy Ranch Partnership. Until such time that there is, Osborne remains bound to her duties as a partner, which include fiduciary duties. See, supra, SDCL 48-7A-503(d) (upon the transfer of a partner's transferable interest, "the transferor retains the rights and duties of a partner other than the interest in distributions transferred.").

[8] South Dakota law places no limits on the classes or series of capital stock that can be issued by a corporation. SDCL 47-1A-601.2; SDCL 47-1A-721 ("...each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.").

proportionate integers or units, the sum of which constitutes the capital stock of the corporation. (sec. 5083, p. 28).'

Lake Superior Dist. Pow. Co., 26 N.W.2d at 282 (quoting Fletcher, Cyclopedia of the Law of Private Corporations (Perm.Ed.1932), Vol. 11).

Additionally, "the issuance of a stock certificate is not an essential transaction to create a stockholder." Id. 26 N.W.2d at 283. "Once corporate stock is paid for, it is issue regardless of whether a stock certificate is executed and delivered." Golden v. Oahe Enterprises, Inc., 90 S.D. 263, 273, 240 N.W.2d 102, 108 (1976) (citing Fed. Deposit Ins. Corp. v. Gunderson, 106 F.2d 633, 635 (8th Cir. 1939)); see also Kitzer v. Phalen Park State Bank of St. Paul, 379 F.2d 650 (8th Cir. 1967) (corporation maintains " 'custody or possession' of shares of stock as distinguished from the certificate…[which]…has no intrinsic value itself separate from the share of stock it represents."); Pacific Nat. Bank v. Eaton, 141 U.S. 227, 233-34 (1891) (payment on subscription for stock doubling the paid in capital of national bank and entry of subscriber's name on books as shareholder, constitutes the subscriber a shareholder without taking out a certificate); cf. Aspinwall v. Butler, 133 U.S. 595 (1890) (increase in capital of a national bank valid where the increase in capital stock does not exceed the amount actually paid for by the shareholders); Delano v. Butler, 118 U.S. 634 (1886) (same).

Further, upon receipt by the corporation of the money or property for which the capital stock is issue, it is the source of such money or property transferred that is then entitled to shareholder status. See In re Nickeson, No. ADV 14-1004, 2014 WL 6686524, (Bankr. D.S.D. Nov. 25, 2014) (regarding capital stock and interplay between real property, Chapter 11 and 7 Bankruptcy, and a lack of corporate formalities); id., WL 6686524, at *9, note 13 ("…it does not appear Camille Nickeson *herself* paid the required compensation entitling her to shareholder status, since she passed along funds that in large part belonged to others." (citing Golden, 240 N.W.2d at 108-109) (emphasis original))); see also Fortugno v. Hudson Manure Co., 144 A.2d 207, 51 N.J. Super. 482 (App.Div.1958) (partner in family-owned partnership incorporated five corporations using partnership assets; held: that all the corporations belonged to the partnership, including four which had been fraudulently formed, because "they were all incorporated or purchased with partnership money, their assets either came directly from the partnership or were purchased with partnership funds …").

Here, all the capital contributed to Healy Ranch, Inc. was contributed by Healy Ranch Partnership.[9] Indeed, Healy Ranch Partnership paid for the capital stock of Healy Ranch, Inc., when record title to the Partnership's real property was transferred via Warranty Deed filed for the record with the Register of Deeds in Brule County on March 13, 1995 (Ex. 2). See supra, e.g., Golden, ("…Golden paid for stock in Oahe Enterprises, Inc., […] when he executed a bill of sale and transferred equipment to the corporation. The records reflect entry of this equipment as corporate assets on January 4, 1967."); see also Ipswich Printing Co. v. Engler, 63 S.D. 396, 259

[9] Healy Ranch, Inc. – or its capital stock – is presumed to be the property of Healy Ranch Partnership because the Corporation was funded entirely by Partnership assets. SDCL 48-7A-204(c).

N.W.2d 497, 498 (1935) ("In the absence of express prohibition, a corporation may receive or contract to receive property in payment for its stock, providing the acquisition is not ultra vires and the transaction is in good faith and free from fraud."). The 1995 Warranty Deed states on its face that Healy Ranch Partnership owns at least a majority – and in fact all – of the capital stock in Healy Ranch, Inc. upon the transfer of the real property. (Ex. 2 (citing SDCL 43-4-22(11) (transfer fee exempted because "the grantor or grantors and the owner of a majority of the capital stock of the corporation are the same person")). The reality that Healy Ranch Partnership was issued all the capital stock of Healy Ranch, Inc. is affirmed by the expert reports of forensic accountant Nina Braun showing that the capital structure of Healy Ranch, Inc. originates wholly from the real property transferred from Healy Ranch Partnership. (See Ex. 3).

4. This Court's Jurisdiction Over Voluntary Dissolution

"[T]he procedure for the voluntary dissolution of a corporation is purely statutory and the requirements thereof must be complied with in order to give the court jurisdiction." Farmers Union Co-op. Brokerage v. Palisade Farmers Union Local No. 714, 69 S.D. 126, 128, 7 N.W.2d 293, 294 (1942) (citing authorities); In re Schundler Feldspar Co., Inc., 19 N.W.2d 337, 515 (1945) (same); In re Packer City Tire & Rubber Co., 39 S.D. 48, 162 N.W. 897 (1917) (same); see also Dysaet v. Dragpipe Saloon, LLC, 2019 S.D. 52, 933 N.W.2d 483 (judicial dissolution is permitted only in those instances where expressly authorized under the statutes); Farmers Union Co-op. Brokerage, 7 N.W.2d 293, 69 S.D. 126 (in proceeding for voluntary dissolution of a corporation, corporation had burden of establishing that the resolution for dissolution was adopted in the manner prescribed by law).

The Petition in this case cites SDCL 47-1A-1430(4) which allows the court to dissolve a corporation "[i]n a proceeding by the corporation to have its voluntary dissolution continued under court supervision." The 'voluntary dissolution' of a corporation requires that the board of directors submit a proposal to dissolve to the shareholders. SDCL 47-1A-1402. For a proposal to be adopted, the board of directors recommends dissolution to the shareholders, and "[t]he shareholders entitled to vote must approve the proposal to dissolve as provided in § 47-1A-1402.3." Id. "...adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists." SDCL 47-1A-1402.3.

As explained above, Healy Ranch Partnership was issued all the capital stock in Healy Ranch, Inc. when the Partnership's real property was transferred to the Corporation via warranty deed. [10] This is because it was the Partnership's capital that was contributed to the Corporation,

[10] In Healy v. Fox, 46 F.4th 739, 742 (8th Cir. 2022), the Eighth Circuit disallowed claims challenging the stock issuance as *void ab initio*; but the result in that case, among other cases, is being challenged in a pending federal court action in the South Division of the Federal District Court of South Dakota as case file 4:23-CV-04118-RAL, in which an appeal to the Eighth Circuit is anticipated. See, e.g., Harley v. Zoesch, 413 F.3d 866 (8th Cir. 2005); Rosebud Sioux Tribe v. a P Steel, Inc., 733 F.2d 509 (8th Cir. 1984); see also Dobles v. Black Hills Corp., 5:22-CV-05078-RAL (D.S.D. Sept. 29, 2023); Markovic v. Milos HY, Inc., 22-cv-1412 (LJL) (S.D.N.Y. July 26, 2023); Davenport Limited Partnership v. Singer, 8:11CV210 (D. Neb. Nov. 9,

and upon which the Corporation conducted its operations. Further, with respect to shareholders entitled to vote on a proposal for dissolution, the Bylaws of Healy Ranch, Inc. require fifty percent (50%) of the 'paid up capital' stock to constitute a quorum for a meeting at which to vote on dissolution. (Ex. 1). Thus, shares of 'paid up capital' stock are the only votes entitled to be cast. The Petition filed by Healy Ranch, Inc. fails to allege any facts establishing ownership of the paid up capital stock in the Corporation. At paragraph 3, the Petition merely alleges that a majority of the outstanding shares of 'common' stock voted for dissolution.[11] In fact, however,

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2011); Janis v. Nelson, CR. 09-5019-KES (D.S.D. Oct. 2, 2009); Florida Power Light Co. v. U.S., 198 F.3d 1358 (Fed. Cir. 1999); Maharaj, infra note 12; see also generally, note 11 & 12, infra; Daly v. Corr. Officer Comrie, 5:22-CV-05051-RAL (D.S.D. July 10, 2023); Gomez v. Minnehaha Cnty. States Attorneys Office, 4:20-CV-04151-RAL (D.S.D. April 12, 2021); Rindahl v. Noem, 4:20-CV-04044-RAL (D.S.D. Feb. 23, 2021); Fox v. South Dakota, 3:17-CV-03008-RAL (D.S.D. Aug. 31, 2018); Rindahl v. Kaemingk, 4:17-CV-04088-RAL (D.S.D. Nov. 21, 2017). If the Corporation has valid stock, then it was issued to Healy Ranch Partnership and it is partnership property. (e.g., Exs. 2-4); Supra, note 9.

[11] It is noted that Petitioner Healy Ranch, Inc. alleges at paragraph 5 of its Petition that the total number of 'shares' issued is 299,348, an absolutely irreconcilable number compared with the representation of the total number of shares issued that has been made to each and every state and federal court in the previous litigation Petitioner has engaged in. See, e.g., Healy v. Osborne, 2019 S.D. 56, ¶ 25, 934 N.W.2d 557, 564, note 6 (noting 162,000 shares conveyed pursuant to a 2000 Contract); Table Steaks v. First Premier Bank, 2002 S.D. 105, ¶¶ 32-33, 650 N.W.2d 829, 837-38 (judicial estoppel applies to bind party to previous judicial declarations where two positions are "absolutely irreconcilable") (citing Gesinger v. Gesinger, 531 N.W.2d 17 (S.D. 1995)).

The record that has been conjured up across all the previous cases implicating questions concerning the ownership of Healy Ranch, appears impossible as a matter of law – i.e., that a partnership could have been lawfully dispossessed of its property without a dissolution and winding up. But see id., 2019 S.D. at ¶¶ 20-21 (declining to decide ownership of Healy Ranch real property). While ownership issues over Healy Ranch real property have never been in fact substantively resolved, see Healy Ranch, Inc. v. Healy, 2022 S.D. 43, ¶ 48, 978 N.W.2d 786, 800 (the notion "that Healy v. Osborne resolved the question of ownership would rewrite portions of our opinion"), the record might best be explained as passion overtaking reason in the belief that this is somehow just a bitter family feud rather than a legal dispute involving questions of contract, partnership, and corporate law. See, e.g., Maharaj v. Bankamerica Corp., 128 F.3d 94, 95 (2d Cir. 1997) ("The consequences of defendants' strong reaction to what they perceive to be plaintiff's personal misconduct reinforces the *notion that passion conquers reason.*").

As to capital stock ownership, moreover, it has never been substantively considered or adjudicated. In "Healy I," the Court declined to address ownership of the Healy Ranch Partnership's real property (at ¶¶ 20-21) and, further, declined to consider issues timely raised on appeal with respect to the 2000 Contract, including evident fraud. See Healy v. Osborne, 2019 S.D. 56, ¶ 24, 934 N.W.2d 557, 564, note 4; Appellant's Opening Brief, Argument F (Exhibit 8 hereto) and Reply Brief, Argument F (Exhibit 9 hereto). In "Healy II," the Court merely

Healy Ranch Partnership – the owner of the paid up capital stock in the Corporation – voted against the proposal for voluntary dissolution. (Ex. 4). Therefore, it was not approved by a majority of the shares entitled to vote as required by statute for the Court to entertain the Petition.[12]

5. Conclusion

Because Healy Ranch Partnership voted against the proposal for voluntary dissolution, it was not approved and the Court, therefore, lacks jurisdiction to proceed under SDCL 47-1A-1430(4).

Dated this 19th day of December 2023.

/s/ Tucker Volesky

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mentioned that "[after March 13, 1995,] [o]ver the next several years, Bret and his two brothers purchased shares in HRI[.]" Healy Ranch, Inc. v. Healy, 2022 S.D. 43, ¶¶ 4-5, 978 N.W.2d 786, 791. The decision in "HRP v. Mines" referred to the purchase of Osborne's "interest" (at ¶ 16), but it does not describe anything affecting a substantive stock ownership decision, or the lack thereof in the other cases. See generally Healy Ranch Partnership v. Mines, 2022 S.D. 44, 978 N.W.2d 768. Finally, neither did Healy v. Fox determine the issue of stock ownership, only that the theory supporting the RICO claims in that case was claim precluded. See supra, note 10. Thus, stock ownership must necessarily be resolved by this Court in deciding the instant Motion.

[12] Because dissolution has not yet occurred, the potential claim for conversion of capital stock shares owned by Healy Ranch Partnership has not yet accrued. See Maharaj v. Bankamerica Corp., 128 F.3d 94, 97-98 (2d Cir. 1997) (claim for conversion of shares of stock not barred by res judicata because cause of action became viable only upon the dissolution of corporation); see also Nelson v. All Am. Life Fin. Corp., 889 F.2d 141, 147-48 (unlawful change in corporate structure resulting in cancellation of shares may support claim for conversion); cf. Baker Group v. Burlington Northern, 228 F.3d 883 (8th Cir. 2000) (failure to supplement already-commenced lawsuit did not raise res judicata bar that precluded second suit based upon conduct occurring after first suit was filed); Cup O'Dirt, LLC v. Badlands Airtime, LLC, 4:19-CV-04031-KES (D.S.D. Jan. 29, 2020) (same).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Memorandum of Law in Support of Motion to Dismiss was submitted for filing and served by electronic means on the following:

Lee Schoenbeck
Joe Erickson
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
Attorneys for Petitioner

on this 19th day of December, 2023.

/s/ Tucker Volesky
Tucker Volesky
Attorney at Law

STATE OF SOUTH DAKOTA : SS COUNTY OF BRULE	)	IN CIRCUIT COURT FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	07CIV23-000058 NOTICE OF LIMITED APPEARANCE

The undersigned lawyer hereby notices his limited appearance in the above captioned matter, on behalf Healy Ranch Partnership, to address the Court's jurisdiction.

Dated this 19th day of December 2023.

/s/ Tucker Volesky

Tucker Volesky
Attorney at Law
356 Dakota Ave. S.
Huron, SD 57350
(605) 352-2126
tucker.volesky@tuckervoleskylaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Limited Appearance was submitted for filing and served by electronic means on the following:

Lee Schoenbeck
Joe Erickson
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
Attorneys for Petitioner

on this 19th day of December, 2023.

/s/ Tucker Volesky

Tucker Volesky
Attorney at Law

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	FIRST JUDICIAL CIRCUIT
COUNTY OF BRULE	)	
	)	07CIV23-58
	)	
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	ORDER TO SHOW CAUSE AND NOTICE OF HEARING

This matter having been assigned to me, Patrick T. Smith, Judge of the First Judicial Circuit, and after consideration having determined actions of Tucker Volesky as counsel for Bret Healy, and actions of Bret Healy, effected shareholder of Healy Ranch, Inc, and acting on behalf of Healy Ranch Partnership, purported effected shareholder of Healy Ranch Inc., necessitate action on the Court's Initiative under SDCL 15-6-11(c)(1)(B). Therefore, this Court enters this Order to Show Cause, and directs the above named to show cause, if any they have, as to why they have not violated SDCL 15-6-11(b) and why they should not face sanctions for said alleged violations.

SDCL 15-6-11(c) requires that the Court describe the specific conduct that appears to violate SDCL 15-6-11(b). It is alleged as follows:

1. That after a shareholder-initiated dissolution of Healy Ranch, Inc., the matter at hand, was filed, Tucker Volesky, on December 19, 2023, filed a Motion to Dismiss, claiming as the sole reason that this Court lacks jurisdiction the fact that a majority of the shares in Healy Ranch, Inc, did not approve the proposal for voluntary dissolution. It is alleged that said motion is wholly unsupported by law, unsupported and indeed contradicted by well-established facts and numerous litigation (*see* footnote 1), litigation that Tucker Volesky, as counsel for Bret Healy and Healy Ranch Partnership, is clearly aware of the fact that his clients Bret Healy and Healy Ranch Partnership collectively own no more than a one third interest in Healy Ranch, Inc., and that in fact Bret Healy, Bryce Healy and Barry Healy each own 1/3 of all outstanding shares of Healy Ranch, Inc, and that therefore 2/3 of said shares, those owned by Bryce and Barry Healy, voted to authorize dissolution. Said Motion,

and all exhibits attached thereto, are on file herein, filed on December 19, 2023, and are hereby incorporated by reference.

2. That Tucker Volesky on December 19, 2023, filed the sworn yet allegedly false statement contained in the Certificate of Healy Ranch Partnership that less than 50% of the outstanding shares supported dissolution, allegedly aware that said statement was false. Said Certificate, and all Exhibits attached thereto, are on file herein, filed on December 19, 2023, and are hereby incorporated by reference.
3. It is further alleged that Bret Healy swore falsely in said Certification of Healy Ranch Partnership, and this known falsehood was filed with knowledge of its falsity by Tucker Volesky.
4. That in support of the alleged knowingly false claims, extensive, irrelevant and unnecessary filings were made in the form of exhibits that included past pleadings and exhibits from unrelated lawsuits, briefs filed before federal and state courts in unrelated matters, and other matters purportedly related to the issue at hand but allegedly in actuality put forth with the sole intent to relitigate past lawsuits[1] and to harass and cause unnecessary delay or needless increase in the cost of litigation.

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[1] A recitation of the multitude of lawsuits and declarations by competent courts regarding the ownership of Healy Ranch, Inc., wherein the issue of the ownership of Healy Ranch, Inc. was determined contrary to Bret Healy's position, is best capsulized in the recent decision of Chief Judge Roberto Lange in *BRET HEALY, HEALY RANCH PARTNERSHIP, vs. SUPREME COURT OF SOUTH DAKOTA, JANINE KERN, MARK SALTER, JON SOGN, PATRICIA DEVANEY, SCOTT MYREN, STEVEN JENSEN, OFFICIALLY AND INDIVIDUALLY, HEALY RANCH INC., MARY ANN OSBORNE, BARRY HEALY, ALBERT STEVEN FOX, LARRY MINES, SHEILA MINES, BRYCE HEALY,* Case 4:23-cv-04118-RAL Document 67 Filed 12/14/23, United States District Court, District of South Dakota, Southern Division, describing this very issue and cases surrounding the same, that being ownership of Healy Ranch, Inc.:

> Plaintiffs' claims relate to a longstanding and oft-litigated dispute regarding ownership of the Healy family farm-ranch business, Healy Ranch, Inc. ("HRI"), and the litigation and judgments from state and federal courts against Plaintiff Bret Healy resolving the ownership dispute. Like the current matter, the prior proceedings—including *Healy v. Osborne*, 934 N.W.2d 557 (S.D. 2019) ("Healy"); *Healy Ranch, Inc. v. Healy*, 978 N.W.2d 786 (S.D. 2022) ("Healy II"); *Healy Ranch P'ship v. Mines*, 978 N.W.2d 768 (S.D. 2022) ("Mines"); and *Healy v. Fox*, 572 F. Supp.3d 730 (D.S.D. 2021) ("Fox"), affd, *Healy v. Fox*, 46 F.4th 739 (8th Cir. 2022)*—resolved various claims which, though based on alternative legal theories and seeking distinct forms of relief, ultimately attempted to assert that HRP and Plaintiff Bret Healy had greater ownership interests in HRI and its assets. Having lost in each prior case, Plaintiffs Bret Healy and HRP again seek to relitigate ownership of Healy Ranch assets by alleging constitutional errors and fraud in the prior litigation.
> *The court in Healy I specifically "decline[d] to address Bret's claim of ownership" and instead "center[ed] on the timeliness of Bret's claims." *Healy I*, 934 N.W.2d at 563. The court found Bret's contract and torts claims untimely and barred by the statutes of limitations; in so deciding, the *Healy I* court effectively prevented Bret Healy from

These actions constitute alleged violations of SDCL 15-6-11(b)(1), (2), (3) and (4) and if true would warrant sanctions against counsel and party under SDCL 15-6-11(c).

Dated December 28, 2023.

Attest:
Miller, Charlene
Clerk/Deputy

BY THE COURT:
12/28/2023 10:37:40 AM

Patrick T. Smith
Circuit Court Judge

NOTICE OF HEARING AND CERTIFICATE OF SERVICE

Please take notice that a hearing on the Order To Show Cause served herewith shall take place on January 23, 2024 at 8:30 am at the Davison County Courthouse, 3rd floor Courtroom, 200 East Fourth Ave., Mitchell South Dakota 57301, said Order to Show Cause and Notice of Hearing was served by the Brule County Clerk of Courts on the following on this 28th day of December, 2023 by electronic service via the South Dakota State Odyssey filing system.

Tucker Volesky
Attorney for Bret Healy
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12/28/2023 10:37:42 AM

Patrick T. Smith
Circuit Court Judge

challenging that each of Bret, Barry, and Bryce owned one-third of HRI, indirectly confirming the ownership status quo. In *Healy II*, a quiet title action, Plaintiffs attempted to argue HRP owned the Healy ranch, but the Supreme Court of South Dakota determined the claim was barred under res judicata. In *Mines*, HRP, controlled by Bret, argued that it, and not HRI, owned certain land and filed an action to quiet title to property, but the court decided against HRP and determined the Mineses retained title. Lastly, in *Fox*, this Court determined Plaintiff Bret Healy's action under 18 U.S.C. § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act was barred by res judicata and ruled for the defendants, which the Eighth Circuit affirmed on the same grounds. Case 4:23-cv-04118-RAL Document 67 Filed 12/14/23, Page 2.

It is important to note that this decision declaring Bret Healy's assertion of a majority ownership of Healy Ranch, Inc. was untenable and deserving of sanctions, was entered 5 days prior to the Motion to Dismiss giving rise to this Order To Show Cause, and that counsel of record was Tucker Volesky.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
	)	07CIV23-000058
	)	
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	RESPONSE TO ORDER TO SHOW CAUSE

COMES NOW the undersigned counsel for Healy Ranch Partnership, who responds to the Court's Order to Show Cause as follows:

1. The Motion to Dismiss filed in this case alleges as the reason that this Court lacks jurisdiction is the fact that a majority of the shares of capital stock in Healy Ranch, Inc. did not approve the proposal for voluntary dissolution.
2. The Motion is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The Motion is addressed to this Court's jurisdiction, a necessary, required inquiry in considering the Petition.
3. The claims and other legal contentions in the said Motion are warranted by existing law or by a nonfrivolous argument of the extension, modification, or reversal of existing law or the establishment of new law, as set forth in the Memorandum of Law in Support of Motion to Dismiss.
4. The allegations and other factual contentions have evidentiary support including the exhibits attached to the Motion to Dismiss; namely,

a. The Bylaws of Healy Ranch, Inc., which require fifty percent of the "paid up capital stock" to constitute a quorum at a meeting of the shareholders of such stock. Exhibit 1 attached to Motion to Dismiss.

b. The Warranty Deed from Healy Ranch Partnership to Healy Ranch, Inc., which was filed for the record with the Register of Deeds in Brule County on March 13, 1995. Exhibit 2 attached to Motion to Dismiss.

c. The expert reports of forensic accountant Nina Braun showing that the capital stock of Healy Ranch, Inc. originates solely from the land transferred to it by Healy Ranch Partnership. Exhibit 3 to Motion to Dismiss.

d. Statement from Healy Ranch Partnership, which was entered into Healy Ranch, Inc.'s corporate record, stating that Healy Ranch Partnership, the owner of at least a majority of the shares of 'paid up capital stock' in the Corporation, opposed the plan for dissolution described in the Petition for Court Supervised Dissolution. Exhibit 4 to Motion to Dismiss.

5. The Certification filed December 19, 2023, was to authenticate Exhibit 4 to the Motion to Dismiss.

6. Exhibit 1 through Exhibit 9 in support of the Motion to Dismiss and the supporting Memorandum of Law, are relevant, material, and probative to the legal conclusion this Court is being asked to make on the Motion to Dismiss.

7. The Motion does not seek to relitigate past lawsuits.[1] The Motion is filed through a limited appearance to address the Court's jurisdiction. And the potential claim for

[1] The sole legal authority cited in the Order to Show Cause is the decision of Federal District Court Judge Roberto Lange, issued in case 4:23-cv-04118-RAL, Doc. 67 Filed 12/14/23. That decision is not final, and a Motion for Reconsideration has been filed. See Id., Docs. 74 & 75

conversion of shares of capital stock does not accrue until dissolution of the corporation. See Maharaj v. Bankamerica Corp., 128 F.3d 94, 97-98 (2d Cir. 1997)

8. The Order to Show Cause fails to allege sufficient, competent facts constituting violations of SDCL 15-6-11(b)(1), (2), (3) and (4) or to warrant sanctions under SDCL 15-6-11(c).

9. This Response is supported by the Memorandum of Law which is being simultaneously filed herewith and is incorporated herein by this reference.

WHEREFORE, the Court should dismiss the Order to Show Cause, otherwise finding good cause shown.

Dated this 16th day of January 2024.

/s/ Tucker Volesky

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Filed 1/3/24. The said Motion for Reconsideration and supporting Brief are being attached and annexed hereto for the Court's convenience.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Response to Order to Show Cause was submitted for filing and served by electronic means on the following:

Patrick T. Smith
Circuit Court Judge
Davison County Courthouse
Mitchell, South Dakota 57301

Chris McClure
101 S. Ried St. STE 307
Sioux Falls, SD 57103
Attorney for Bret Healy

Lee Schoenbeck
Joe Erickson
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
Attorneys for Petitioner

on this 16th day of January 2024.

/s/ Tucker Volesky
Tucker Volesky
Attorney at Law

STATE OF SOUTH DAKOTA :ss COUNTY OF BRULE	)	IN CIRCUIT COURT FIRST JUDICIAL CIRCUIT
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	07CIV. 23-58 RESPONSE TO MOTION TO DISMISS

In this Petition for Dissolution of Healy Ranch, Inc. proceeding, Bret Healy, through his attorney of record, Tucker Volesky, filed a Motion to Dismiss on December 19, 2023. The Court has indicated that it will take this matter up telephonically at 8:30 a.m. on January 23, 2024. The Motion to Dismiss should be dismissed because of res judicata, the statute of limitations, the reality that the Court has jurisdiction, and that the Motion violates SDCL 15-6-12(b).

ANALYSIS

A. Res Judicata

Bret Healy sued the Justices of the Supreme Court of South Dakota, Circuit Judge Jon Sogn, Healy Ranch, Inc., Mary Ann Osborne, Barry Healy, Bryce Healy, Albert Steven Fox, Larry Mines, and Sheila Mines in Federal District Court, Case No. 4:23-cv-4118, on August 2, 2023. The lawsuit in Federal Court was a continuation of the claims that Bret Healy has made over time, that he owns more than one-third of Healy Ranch, Inc.

Based on res judicata, Judge Lange dismissed Bret's federal lawsuit on December 14, 2023. Five days later, Tucker Volesky filed the Motion to Dismiss that is before the Court, raising the same issues.

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Judge Lange's Decision is attached hereto and incorporated herein by this reference (see Exhibit A). In pages 20 through 23, Judge Lange lays out how res judicata plainly bars Bret Healy's attempts to re-litigate the ownership of Healy Ranch, Inc.

In footnote 1 on page 2 of the Decision, Judge Lange walks through the prior Healy Decisions and points out how they explicitly or implicitly decided the ownership structure as one-third to each of the three brothers: Bret, Barry, and Bryce.

In the first *Healy* Decision, the South Dakota Supreme Court said:

> In 2000, Bret, Bryce, and Barry each purchased a one-third interest in Healy Ranch, Inc. from Mary pursuant to a contract for deed.

Healy v. Osborne, 934 N.W.2d 557, 560.

In *Healy Ranch, Inc. v. Bret Healy*, a case heard before this Court, our Supreme Court concluded that Bret's efforts to reconfigure the ownership of the land bar Bret's ability to now try and change the nature of his claims in litigation. Judge Lange referenced that the Court is implicitly dismissing the claim that Bret seeks to assert. 978 N.W.2d 786, 800-803.

In *Healy Ranch Partnership v. Larry Mines and Sheila Mines, et al.*, another case that was before this Circuit Court, the Supreme Court quoted in paragraph 16 that, with respect to the corporation, "they each owned an undivided 1/3 interest." 978 N.W.2d 768, 776. The gravamen of Bret's Motion before this Court is that he never actually transferred his ownership interest into the corporation, so he retained a larger share. The Supreme Court dismissed that argument in the *Mines* Decision. *Mines*, at 775-776.

Attached as Exhibit B is the Eighth Circuit Court of Appeals Decision, which has already addressed the issue Bret seeks to litigate today. First, the Eighth Circuit notes that the shares are owned by the three brothers, one-third each. *Healy v. Fox*, 46 F.4th 739, 742.

Maybe even more importantly, the very issue that Bret seeks to argue in his Motion to Dismiss concerning the transfer of the partnership interest and whether or not it was consideration for stock issuance is addressed by the Eighth Circuit, affirming the dismissal based upon res judicata.

The Eighth Circuit's conclusion is telling:

> Therefore, we hold that Bret had a full and fair opportunity to litigate the validity of the stock issuance in state court.

Id. at 746.

B. Statute of Limitations

Bret, Bryce, and Barry each purchased a one-third interest in the corporation in 2000, any statute of limitations for any claims that Bret would want to assert about the illegality of that contract would be six years. SDCL 15-2-13 and *Healy v. Osborne*, at 563.

Any claims that Bret Healy wants to assert concerning the 2000 purchase of shares of the corporation are long barred by the statute of limitations, as several courts have told him.

C. Subject-Matter Jurisdiction

The motion Bret filed argues that this Court "lacks jurisdiction to proceed." South Dakota circuit courts are courts of general jurisdiction, and our State Constitution confers broad authority upon the circuit courts to hear all types of civil actions.

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Bingham Farms Trust v. City of Bell Fourche, 932 N.W.2d 916, 920 (S.D. 2019). Bret's argument about the merits of the dissolution petition cannot go to the jurisdiction of the Circuit Court to decide the issue.

D. Rule 12(b) Motion Pleading Practice

In the very body of the Motion to Dismiss, Bret Healy includes four exhibits and incorporates them into his Motion to Dismiss. While he doesn't delineate the nature of his Motion to Dismiss, it appears to be that a claim can't be stated because he believes a majority of the shareholders didn't agree with the Petition for Dissolution. In that setting, documents outside the pleadings cannot be considered. *Nooney v. StubHub, Inc.*, 873 N.W.2d 497, 499 (S.D. 2015).

Dated this 16th day of January, 2024.

SCHOENBECK & ERICKSON, PC

By: /s/ Lee Schoenbeck
LEE SCHOENBECK
JOE ERICKSON
Attorneys for Healy Ranch, Inc.
1200 Mickelson Dr., STE. 310
Watertown, SD 57201
(605) 886-0010

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing *Response to Motion to Dismiss* on the following by electronic service this 16th day of January, 2024:

Tucker Volesky
Attorney at Law
356 Dakota Ave. S
Huron, SD 57350
Attorney for Bret Healy

/s/ Lee Schoenbeck
LEE SCHOENBECK

STATE OF SOUTH DAKOTA — IN CIRCUIT COURT

COUNTY OF BRULE — FIRST JUDICIAL CIRCUIT

In the Matter of the Dissolution of HEALY RANCH, INC.,	No. 07CIV23-58 MOTIONS HEARING (Corrected)

BEFORE: THE HONORABLE PATRICK SMITH
Circuit Court Judge

For the Plaintiff: TUCKER J. VOLESKY
VOLESKY LAW FIRM
305 North Kimball Street
Mitchell, SD 57301

For the Defendant
(By telephone): LEE SCHOENBECK
SCHOENBECK LAW
P.O. Box 1325
Watertown, SD 57201

PROCEEDINGS: The above-entitled proceeding commenced at approximately 8:30 a.m. on Tuesday, the 23rd day of January 2024 in the courtroom of the Davison County Courthouse, Mitchell, South Dakota.

Bryce Healy acquire their alleged shares? How much did the shares cost? How did Barry and Bryce pay for the said shares? What was exchanged for the said shares? Were they gifted? If so, when and from whom were they gifted from and on what date did the gifting of shares take place? Did they receive stock certificates when such shares were purchased and/or gifted?

The petitioner corporation carries the burden of proving the necessary facts to show that the resolution for dissolution was passed in a manner according to law to give this Court jurisdiction. HRI has failed to meet that burden with the submissions.

Healy Ranch Partnership has offered genuine evidence of its stock ownerships including the 1995 Warranty Deed which was attached as Exhibit 2 to the Motion to Dismiss. The deed states on its face for the record that the partnership owns at least a majority of the stock in the corporation, and HRI's first tax return verifies that 100 percent of HRI's capital stock was derived from the 1995 Warranty Deed.

THE COURT: All right, thank you.

Mr. Schoenbeck, I'd like - hang on. Before I do that, Mr. Volesky, I believe that the Order to Show Cause initiated by the Court - well, I know because I initiated it - was based upon the proprietary of the Motion to Dismiss. Your agreement and presentation today is focusing entirely on the

proprietary of the Motion to Dismiss and asking that it be granted. I'm assuming, then, that you're relying on that also as a defense to the Order to Show Cause, as if I grant your Motion to Dismiss, then there would be no need to proceed on the Order to Show Cause, but if's there's anything you want heard on the Order to Show Cause, any argument in addition to what you've set forth, I would hear it. I want to give you that opportunity.

MR. VOLESKY: Thank you, Your Honor. At Point 1 of the Order to Show Cause, it alleges that Tucker Volesky is clearly aware of the fact that Bret Healy and Healy Ranch Partnership collectively owned no more than one-third interest in Healy Ranch, Inc. and, in fact, Bret Healy, Bryce Healy, and Barry Healy each own one-third of all outstanding shares of Healy Ranch, Inc. and that, therefore, two-thirds of said shares, those owned by Bryce and Barry Healy, voted to authorize dissolution.

The Order to Show Cause does not allege any number of outstanding issue shares held by Bryce and Barry nor does it identify or cite to any authority as to the number of total outstanding at issue shares in the corporation. That leaves very important questions that I just went over with respect to stock ownership and how it was acquired and that the burden is on the petitioner corporation to show that.

The Order to Show Cause goes on at Point 4 to reference

the movant's filings as including briefs filed before Federal and State courts in unrelated matters. At Footnote 3 of the memorandum of law, there's a reference to the Eighth Circuit decision. At Footnote 4, there's an attachment of Mr. Fox's brief in the Eighth Circuit RICO case and in Footnote 11 of the memorandum, Bret Healy's appeals briefs from the first case were filed.

Now, those were relevant to the portions for which they were cited in the memorandum, but I note that the Order to Show Cause relies on Judge Lange's order who relies on those cases; therefore, they would not necessarily be unrelated to these matters if the Court relied on the Order on those cases.

THE COURT: All right.

MR. VOLESKY: And the Court also references at Footnote 1 of the Order to Show Cause the importance of the motion that was made 5 days after the Federal decision was made in which Judge Lange found that it warranted sanctions and it's untenable according to the Order to Show Cause.

It has been noted that Healy Ranch, Inc. has not requested sanctions in the instant matter. The Supreme Court made no argument occur in Federal matter in respect to stock ownership. It should also be noted that neither the Supreme Court nor the individual Justices asked for sanctions in the pending Federal matter.

THE COURT: I just want to make sure we're clear on a point. Attorney's fees fall under the category of sanctions, and Judge Lange indicated that he was taking that portion of the matter under advisement. In fact, I don't know if it's happened yet, because I believe you filed a Motion for Reconsideration, so I don't know what stage the Federal case is at, but those sanctions are yet to be determined; is that correct? Or have they been since the - since the opinion, have they been determined?

MR. VOLESKY: He has not made a determination since the opinion.

THE COURT: All right, but when you say "no sanctions," I want to be clear we're talking - attorney's fees are included under that canopy.

MR. VOLESKY: That's correct. And the Supreme Court and neither the Justices didn't ask for sanctions or attorney's fees, only the other parties.

THE COURT: Correct.

MR. VOLESKY: And with respect to Judge Lange going the extra step and doing claim reclusion or res judicata analysis in his opinion, he did it improperly. He was supposed to accept the factual allegations in the Complaint as true. In fact, he only cited legal conclusions and ignored the factual allegations involved in the Complaint.

Finally Paragraphs 28 through 29 of the Healy 1 decision

isn't, and - so you keep arguing that it's blue. But that's not relevant because if there's a proper finding that it's green, then for purposes of the case, that's what color it is. And I realize that's a very simplistic comparison to a very complicated issue here, but the reality is these issues have been determined and a steadfast refusal to acknowledge them, the determination because you don't agree with them is not going to carry the day.

I agree with, in effect, on the Motion to Dismiss the arguments of Mr. Schoenbeck as set forth in his reply brief. I adopt those as the findings of this Court, and I just - and I deny your Motion to Dismiss.

And I direct you, Mr. Schoenbeck, to prepare findings to support my motion - my ruling based on your submission as I'm adopting them in their entirety as I agree with the filing in its entirety.

On the question of sanctions, I am taking that under advisement. I am going to issue an opinion as to what I believe is appropriate sanctions for bringing the Motion to Dismiss in spite of the clear prior rulings by the many courts that have heard these issues. I will get out an opinion to the parties as soon as I am able.

That concludes the hearing today. Thank you, all, for your attendance. Court is adjourned. Mister - we lost Mr. Schoenbeck.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	):SS	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
BRET JAMES HEALY, Plaintiff,	)	
	)	07CIV23-21
vs.	)	MOTIONS HEARING
	)	
HEALY RANCH, INC., Defendant.	)	
	)	
In the Matter of the Dissolution of HEALY RANCH, INC.	)	07CIV23-58 Motions Hearing

BEFORE THE HONORABLE TAMI BERN,

CIRCUIT COURT JUDGE,

in Vermillion, South Dakota, on June 21, 2024 by **FTR**.

APPEARANCES:

For Healy Ranch, Inc.

Lee Schoenbeck

Attorney at Law

Watertown, SD 57201

Clerk of Court

Barb McKean

Davison County

Mitchell, SD 57301

here today. And, more importantly, the claims that they attempt to assert as an answer and counterclaim, are the identical ones that Judge Smith ordered on January 25, 2024, that they couldn't do when he entered his order denying motion to dismiss. They've been denied. So the partnership isn't a party, they're not here, they haven't filed a resistance, and the counterclaim is exactly what they were sanctioned for doing with the motion to dismiss.

THE COURT: Thank you. And Mr. Healy -- and I think you agree that you have no authority to represent the Healy Ranch Partnership, but as an interested shareholder, in regard to *23-58*, I'll allow you to respond to the motion to dismiss, that answer and counterclaim.

MR. HEALY: So --

THE COURT: -- If you wish to. You don't have to.

MR. HEALY: Just to be -- just to be clear. I'm not going to be held in contempt if I respond?

THE COURT: I'm allowing you specifically as an interested shareholder to respond. So if you have an oral response you wish to make, you may do so at this time.

MR. HEALY: Yes, I do. The opposing counsel, and parties, and my brothers, etc., keep saying that ownership has been decided, but reading right from Judge

Smith's sanctions order, I'll be almost wholly reliant upon judicially noticed facts that are subject to reasonable dispute with confident evidence.

Judge Smith says on page 30, "While the Supreme Court of South Dakota stated in multiple opinions that they have not and are not deciding on the issue of ownership."

It's pretty clear. And in the federal case involved, the supreme court who had a chance to say something or not on count 4 of that matter, which right-to-stock ownership, the Court simply hasn't decided ownership of real property, hasn't decided ownership of personal property, which would be stock, and the other brothers of mine have not put forth any competent evidence that they own the amount of shares that they do.

Further, they keep changing the number in the denominator. At first, for a number of these cases, it's been 162,000 shares. Now, with the 2020 tax return, and with excursions made in 2023, that number has inflated now to 299,000 and change. In some instances, 299,348. At that same hearing back in January, my testimony was uncontested as to where the capitalization of the corporation came from and that remains an open question.

And, in fact, I've got an exhibit here that I'd

THE COURT: I understand.

MR. HEALY: He cannot notice -- he cannot use judicial notice for the truth of the matter from other filings, and that's exactly what he did.

THE COURT: I understand your position. So, and I'm referencing the order denying motion to dismiss in *23-58*, which was signed by Judge Smith. Mr. Healy clearly disagrees with that order. However, it is the law of the file in this matter. It may very well be wrong. The remedy to that is an appeal from a final judgment in this matter. Not just completely disregarding the Court's order and pretending they don't exist or pretending the order doesn't exist, which is the course of action that Mr. Healy unfortunately has chosen to take.

The motion to dismiss is granted. Healy Ranch Partnership is not a party in this matter. Those claims that are set forth are those that have already been addressed by Judge Smith in his order denying the motion to dismiss. Mr. Schoenbeck, you may prepare an order to that effect.

MR. SCHOENBECK: Thank you, Your Honor.

THE COURT: The next motion I have is in regard to the motion to prohibit Mr. Healy from appearing as pro se attorney. Mr. Schoenbeck, you may proceed.

last motion pending today that I have, is Mr. Healy's. It's entitled motion to enlarge time to respond in the *23-58* file. Mr. Healy, you may proceed.

MR. HEALY: This is quite simple in regard -- I did not file a motion to dismiss and then Judge Smith, without pointing to authority, I guess, tagged me with sanctions based on a partnership filing. And we just went through the fact a partnership is a separate legal entity, and I can't represent it pro se, nor am I trying to. That said, Judge Smith's order says that I'm being sanctioned for, as he said, for violation of 15-6-11(b). And in that, it states, "By presenting to the Court, whether by signing, filing, submitting or later advocating a pleading, written motion or other paper, and attorney or unrepresented party."

At the time of Judge Smith's order and through the *23-58* matter, up until, I guess, today, I was neither an attorney, I still am not, nor was I an unrepresented party. I certainly -- opposing counsel hasn't put any authority on the record of how that would affect an individual. Additionally, I was sanctioned, if you will, for a filing I did not make. It was by another party, and I was following the advice of counsel, and my role as managing partner in the partnership, as that filing went forward.

Clarity to the Court, I guess, where that was at. And then, to that end, I've got many exhibits I've been told I needed to bring to a hearing to get into the record. I've got those with me here today. Even if that were true, that I was an unrepresented party that had made those filings, and that I had actually made the filing of motion to dismiss, it goes on to say, "Formed after an inquiry reasonable under the circumstances," and it is that inquiry reasonable under the circumstances that I wanted to address today with Exhibits 1 through 16, as well as the title abstracts that I put in play. When the Healy 1 decision came down, the Court very clearly, as Judge Smith recognized even in his March order, didn't decide ownership. They very specifically said they weren't. In Healy 2, they said they didn't decide personal property ownership. That Healy 1 decision --

THE COURT: Hold on, Mr. Healy. Are we looking at the same motions? Because the motion I have is the motion to enlarge time to respond, which was dated April 5th, where you requested 90 days to identify counsel.

MR. HEALY: Yes, it's related to that. Again, the inquiry reasonably underscores the reason to have more time. And in those 90 days, I wasn't asking for enough time. I didn't realize how difficult it was going to be,

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vs.	)	MOTIONS HEARING
	)	
HEALY RANCH, INC., Defendant.	)	
	)	
In the Matter of the Dissolution of HEALY RANCH, INC.	)	07CIV23-58 Motions Hearing

BEFORE THE HONORABLE TAMI BERN,

CIRCUIT COURT JUDGE,

in Mitchell, South Dakota, on July 12th, 2024 by **FTR**.

APPEARANCES:

For Petitioner

Bret Healy

Pro se.

For Healy Ranch, Inc.

Lee Schoenbeck

Attorney at Law

Watertown, SD 57201

So you may proceed with argument on your first motion.

MR. HEALY: Your Honor, then going to motion to set aside Judge Smith's orders and judgments in *23-58*. I was not unrepresented in this case where I was sanctioned $240,000. Here are examples of my reasonable inquiry. First, I paid attorneys Volesky, and Moore, Corbett approximately $300,000 to research Healy Ranch ownership issues. Second, I paid the reputable certified public accounting firm, Ketel Thorstenson approximately $15,000 for review of ownership and tax issues.

Third, I paid Davison County Title Company and Aurora County Land Title Company nearly $9,000 for change of title and abstracts of title on all the realty in question. Fourth, I paid Brule County title and insurance company over $500 for change of title for lots RH1 and RH2. Fifth, I paid SPN & Associates, a civil engineering and land surveying firm, approximately $2,200 to map the parcels of land from the legal descriptions and the change of title. Sixth, I paid law firm Meierhenry Sargent LLP, approximately $1,300 for ownership and procedural issues.

In all, I paid these experts over $330,000, not including an additional $200,000 to other law firms for work regarding Healy Ranch ownership issues. This shows

I made a reasonable inquiry under any standard, even though I was not an unrepresented party, and I had an attorney, and Healy Ranch Partnership had an attorney, at the time of the entry of the order.

I would then turn to the document, rather, let me get to the money side of this thing first. If I could mark, and perhaps get into evidence, the Tucker Volesky bill -- or trust deposit record. It is at bate stamp -- bear with me for one minute, please. Quite a number of documents to get through.

It is at bate stamp 03246 through B03248, shows trust deposits from January of '23 through March 19th, 2024. I'd mark that exhibit as -- Mark that exhibit. I am familiar with that exhibit. Turning to those bate stamps familiar with document B03246, it is an e-mail from Tucker Volesky to me at my e-mail address, brethealysd@gmail.com. On Monday, May the 6th, 2024, with the attachment of a two pay trust -- or deposit listing, and on page B03247 is the first page of the deposit showing deposits I made into Mr. Volesky -- or Volesky Law Firm trust account dated from the 5th of January, '23 through the 18th of March, 2024. Total of all payments $139,000 into the trust account. I would offer that as Exhibit BH1.

THE COURT: Mr. Schoenbeck, what's your position in

time, I'm not receiving it for those reasons I've stated.

So you may resume your argument.

MR. HEALY: Your Honor, when would I argue the relevance on that document?

THE COURT: Well, you could have argued it earlier, but you haven't done so. The motion that you made was the motion to set aside any judgments and/or order issued by Judge Smith, because of perception of bias. What appears to me that you're arguing now is the motion to reconsider sanctions order, but it's kind of hard to follow your argument so far. But you may proceed with your argument.

MR. HEALY: Your Honor, then, if I may clarify the argument I'm making. I am making the argument that the motion -- or in regard to my motion to set aside all of his orders and judgments because of the appearance of bias. And that document is important in terms of the actual statute that he was sanctioning me for. It talks about making a reasonable inquiry and whether that happened. This, along with the other experts I paid, as I outlined in the paragraph that I read into the record to start with, goes to that very issue of whether I made reasonable inquires.

THE COURT: I understand your argument.

MR. HEALY: Okay.

THE COURT: The exhibits will not be received. Proceed with your argument.

MR. HEALY: Your Honor, so you are instructing me not to attempt to enter any other exhibits into the record?

THE COURT: I'm just telling you I'm not receiving these for this purpose. You may proceed with your argument.

MR. HEALY: Then, Your Honor, I would go to, in the record, B00008 through B00069. These are accounting records from Ketel Thorstenson starting at B0009, a ledger of payments and invoices that I paid over $15,000 Ketel Thorstenson for work on ownership and tax issues. And I would mark that exhibit as that. I am familiar with those documents.

I requested before the hearing that managing partner Braun's assistant e-mail me such records. And going to page B00009 [sic], it shows accounts receivable ledger from the 31st of May, 2020 through the 31st of August, 2023. In the credit column, it's showing payments that I made to the firm. Then at B0001 - 1 -- three zeros, two ones, is a start of billing statements that run through B00050 and invoices that run from B00052 through B00069. I would offer these documents. I would mark these documents as BH1. And I spoke about the familiarity I have with these documents

And what you're saying is that factually your motion was reasonable. The facts aren't the issue.

MR. HEALY: Your Honor, then if I could clarify. I did not file the motion to dismiss with Judge Smith the issue to show cause order and ultimately the sanctions order.

THE COURT: Right. And that could be --

MR. HEALY: -- That was the Healy Ranch Partnership.

THE COURT: Okay.

MR. HEALY: And Attorney Volesky had made an appearance for only Healy Ranch Partnership in civil file 0723-58. I would further point out that Judge Smith, in support of his order, entered findings of facts and conclusions of law.

THE COURT: I understand your position. You can continue with your argument.

MR. HEALY: Okay. Your Honor, another expert that I paid to evaluate ownership issues, specifically change of title in 1944 to then present day of 2018 -- or '20 rather, Abstractor Kristen Rake, the owner of Davison County Title and Aurora County Title and Land, the land title company, and paid her firm $8,815.08 for three sets of work product.

The first was the change of title from 1944 going forward. I had asked her to evaluate breaks in the

chain of title from surface rights, and also breaks of chain of title for severance rights for oil and mineral rights -- subsurface rights. Chain of title and copies of those selected documents, the first work product was completed by the 13th of January, 2020 and --

MR. SCHOENBECK: Your Honor?

THE COURT: Yes, sir.

MR. SCHOENBECK: I'm going to object to this -- I think he's going to offer again evidence, but he's not arguing the law that applies to his motion.

THE COURT: And I understand your objection, and I agree with you, Mr. Schoenbeck. I'll allow Mr. Healy to be heard on his argument. I mean, if he's going go on for an extended length of time, you can renew your objection, but at this time, although I agree with you that it's not relevant, and he's reciting the same factual basis that I already told him is not applicable, I will allow him to make an argument so long as it isn't extended. You may proceed, Mr. Healy.

MR. HEALY: Thank you, Your Honor. And given the Court's guidance, I won't go to the bate stamps in the record, I will simply read the rest of the experts, and how much I paid, and for what I paid them for, if that is not too extended of the time.

So going back to Abstractor Rake. The change of

title and selected documents from the register of deeds office, from the first set of work product for which I paid $1,065. Then, because of the discrepancies in the title record for RH-1 and RH-2, that where RH-2 being the centerpiece of the Healy Ranch Partnership the mines litigation. I had Abstractor Rake do abstracts of the title going back to the patent for (INAUDIBLE) lots RH-1 and RH-2. She completed this work by the 3rd of May, 2021. I paid Abstractor Rake's firm $1,333.28 for those abstracts of title. And in the record for B, is also the invoice and communications back and forth with her.

Third, piece of work product from Abstractor Rake, I then had her do abstracts of title for every parcel that was described in the 1995 warranty fee, excluding RH-1 and RH-2. And going back to the patent, I paid Abstractor Rake's firm $6,416.80 for those abstracts of title, and she had provided a discounted rate. The work product was actually worth $16,501.42 per statute that was allowed.

Third expert, I hired Brule County Title and Insurance in Chamberlain, South Dakota, Mike Coleman in 2018 to do change of title of RH-1 and RH-2. Again, parcels that were excluded from the 1995 warranty deed, and that communication back and forth between he and I from -- is B03249 to B03261.

Fourth, I hired, after the trial court in civ *17-23* decision by Trial Court Judge Giles. I hired Pat Glover, a lawyer with extensive property law experience from Meierhenry Sargent. Paid him $1,384.50 to research how I could protect my property interest in the land described in 1995 warranty deed. He recommended and prepared the Notice of Claim of Interest that I filed on January 25th, 2018. Although he became aware of Meierhenry Sargent LLP could not represent me in filing a Notice of Claim, because of Dakota Homestead Title Insurance Company owned in part by Attorney Mark Meierhenry, was the underwriter for the title insurance provided to the Foreign Credit Services of America for a 2008 mortgage and to Wells Fargo Bank for a 2014 mortgage.

Work was completed by January 19th, 2018, and is included in the record, the excerpts of my affidavit in Healy 2 -- or civil file 1971 dated -- or filed for the record on July 27th, 2020, is at bate stamp B03231 through B03245, with the invoice that bate stamp B03245.

Fifth, expert paid SPN & Associates, civil engineers and land surveyors. I paid SPN & Associates $2,202.01 to, number one, map what land was owned by Healy Ranch Partnership, including the interest in the 1973 contract for deed, held by Sheldon LC Munger, as of

January 25th, 1986. Secondly, to map the parcels that had been platted from the 1968 Healy deed, and the 1990 Kott deed, including RH-1, RH-2, what's known as the "Aronson Acreage" that was sold by Healy Ranch Partnership to Herb Aronson in 1993, and lot A, a platted 21 acres that I and my wife own.

Number three, to map and reconcile the southern border of out lot RH-2. Comparing and contrasting the meats and bounds description in the unrecorded and undelivered 1992 warranty deed purportedly for Maryanne Osborne in the Robert Healy estate to Raymond and Evelyn Sharping. Secondly, the plat of RH-2 approved by the Brule County Commission in 1992 with the purported owners, Maryanne Osborn, and the Robert Healy estate submitting the plat for approval. Third, the fence constructed by me in 1986 and 1987, near the southern boundary, north of American Creek. Work SPN did for this was conducted from 2018 to 2021 and completed by October, 2021.

The communications and invoices, between SPN & Associates and I, are bate stamped at B03672 to B03694. That's the e-mail communications. And the e-mail yesterday from SPN with the three invoices is at B03741 to B03744.

Sixth, Attorney Angie Schneiderman. I paid Ms.

Schneiderman's firm Moore Corbett, that is what it's named now. It was Moore, Heffernan, et al, prior. Paid $166,724.91 on Healy Ranch ownership and procedural issues. The invoices redacted from Ms. Schneiderman's firm are at B03601 through B0367 -- 36-- My apologies. B03601 through B03671.

And the second tranche of invoices, again, redacted B03695 to B0374. And there is a third set.

MR. SCHOENBECK: Your Honor?

THE COURT: Yes.

MR. SCHOENBECK: Can I redo my objection again?

THE COURT: You may.

MR. SCHOENBECK: (INAUDIBLE) all these documents, none of this has anything to do the motion before us today. It's in the record, and he's just repeating what he's got in the record and isn't even furthering the non-argument that's he's making.

THE COURT: Let's summarize, Mr. Healy. I'll give you five more minutes on this motion. If you turn it into something that's relevant, obviously, I'll give you as much time as you need, but as far as making this factual basis record, you need to start summarizing it.

MR. HEALY: Your Honor, just -- it's actually the last bate stamp I was going to refer to --

THE COURT: -- Okay. Go ahead. started

MR. HEALY: -- is the first set of Ms. Schneiderman's invoices and that is B03695 through B03740. And there are summary Excel worksheets that I've prepared that pulled all those invoices together.

Your Honor, moving off the experts that I paid, and to, I guess, repeat my argument as to why it's relevant. I was not unrepresented in the case. I was sanctioned $240,000. My reasonable inquiry is represented by these funds that I paid these experts on ownership and procedural issues for the lawyers, and ownership, and actual land transactions, actual abstracts of title. I would further point out that within that abstract of title record, there are certifications as for a South Dakota license abstractor and that is that.

I e-mailed to the Court, to the Brule Clerk of Courts, and to Attorney Schoenbeck this morning before I left Chamberlain, a 12-page document that I believe is absolutely relevant to the setting aside of Judge Smith's orders as provides. If I may provide you a copy of it, Your Honor?

THE COURT: What's the document, and what's its relevance?

MR. HEALY: The document is -- establishes a timeline as to when the appearance of bias effects or arises as

different party. That being said, I was arguing in the request to voluntarily recuse himself, that it was violative of my due process rights, I believe both substantively and procedurally for him to, in my words, engineer a removal of counsel and put me in a box where I would have to try and find counsel with a headline of a $240,000 sanction. And that, I would have to attempt to move forward on a pro se basis.

Further, as I point out in the e-mail, Judge Smith was attempting to do something that isn't pointed to in South Dakota Supreme Court decisional law. He admits this in his order. If I could just read that paragraph or that sentence from Judge Smith. "The Supreme Court of South Dakota has not addressed the issue of a State Circuit Court imposing sanctions on a party on its own motion."

He admits that in his order. Yet, assess me for a sanction for a filing that I did not make individually. $240,000, a 24 times larger financial sanction than that that he sanctioned Attorney Volesky for.

Further, on page B03745, I point out that the authority he cites from the 8th Circuit absolutely did not point to any authority that allowed anything beyond attorney's fees paid to the other side under

that -- under those cases that he cited. It appeared to me that Judge Smith was attempting to plow new ground in the law, and in an arbitrary way, sanction me for what term that $120,000 hadn't stop me, he'd just go ahead and double it.

Now, I just point out in the -mail that I believe that it was violating my constitutional rights under the 4th, the 5th, the 8th, and 14th amendments to the constitution. Not in the e-mail, but in the filing. It also violated my rights to open courts in South Dakota as protected by the 14th amendment.

Further, and further up in page B03751, I pointed out there was Supreme Court authority on point, *Timbs v. Indiana* of 2019 case. And in that case, the petitioner, the litigant had had his $40,000 Land Rover confiscated by the State in a matter in which he had plead guilty to drug dealing and using that said Land Rover, or very nice vehicle, to deliver drugs.

Now, he was only sanctionable for up around $10,000 under the criminal code, and the Supreme Court held that 4x of what he could have been sanctioned for constitutionally excessive. I had pointed that out to Judge Smith eight days after he had entered the order that was arguably four times larger than the largest 8th Circuit opinion that he pointed to, which was a $66,000

acquittal on a misdemeanor assault charge -- or two assault charges and a trespass charge, he had outlined that that provided my true intent and motive for filing cases.

More to the point, he issued the show cause order on the 28th of December, 2023, in response to the Healy Ranch Partnership through its attorney, Attorney Volesky, filing a motion to dismiss for lack of jurisdiction on December 19, 2023. I believe the petitioners had brought the petition for the judicial handled, if you will, or the monitored dissolution of the corporation. That was in late November. I believe it had been filed just prior to the hearing in Federal Court.

So that's the timeline of the issues to show cause order on the 28th of December. The timeline for responding to that is January 16th by Attorney Volesky, who did so on behalf of the partnership. And in that filing, which happens on the 16th, Judge Smith never notes that brief and filing at all in his sanctions order. He pretends it doesn't exist.

He also -- the next day, on the 17th of January, in three civil files, *23-21*, *23-27*, *23-37*, in his summary judgment memorandum, all be it unsigned and unentered on the 17th of January. They were entered

The one that was not overruled is that Judge Smith ruled that we could not refer to or argue the conclusions -- or attorney or rather, accountant and certified fraud examiner, Nina Braun, and her four expert reports. That that wasn't going to be, you know, wasn't going to be accepted into evidence. But there were exhibits that were accepted into evidence, and my understanding is, my testimony is evidence in a court proceeding, as I was under oath, and neither Attorney Schoenbeck -- or for that matter, since it was his show cause order, Judge Smith asked me a single question, and I outlined exactly the chain of ownership of partnership interest in Healy Ranch Partnership, as well as the chain of title of ownership of the realty.

I would also argue that that shows an appearance of bias, and that he pretended that I hadn't testified at all. In his order, he wholly avoids and mentions not at all my uncontested testimony, he mentions not at all the brief in response to his very own show cause order.

I would argue, Your Honor, that Judge Smith played three roles in the judicial system. He became the investigator. He decided which facts, and which cases, were going to be relevant to his eventual order. He played the prosecutor. He issued the show cause order. He sanctioned me under a South Dakota statute.

THE COURT: And can you --

MR. HEALY: -- Judge Smith says he's detailed the multitude of lawsuits that I brought on the basis that he owns more than 1/3 ownership of Healy Ranch, Inc. Most telling decision comes from the Federal District Court authored by Chief Justice Roberto Lange, which he repeatedly explains that, "Bret's claims are barred by res judicata in the issue of ownership."

Back to Mendenhall, Judge Smith is bringing in facts from another case, but most importantly, it's a case that's not final. It's on appeal to the 8th Circuit Court of Appeals. My opening appellant brief is due on August 7th. I was able to get a continuance from July 8th. So this matter that Judge Smith is relying upon to res judicata is out of the decision that is not final. And he goes on and states, "While the is Supreme Court of South Dakota has stated in multiple opinions that they have not, and are not, deciding on the issue ownership."

Your Honor, there is no issue preclusion that applies. It is not a fact that can be brought into his findings of fact and conclusions of law in his sanctions order. He conducts no claim preclusion analysis of -- and especially in this case where there was a holding of ownership of stock in any proceeding. And, in

fact, Judge Lange, in his document 67, states without pointing to the record, that stock ownership had been adjudicated in multiple State Court proceedings.

The Supreme Court has not said so. And, in fact, they have written in Healy 1 they did not determine -- they specifically were not determining ownership. In Healy 2, they stated they weren't determine -- or that my partnership interest was a personal property claim that wasn't at issue. And Judge Smith, in his order, admitted that the Supreme Court had never decided ownership.

Further, I have never brought a claim, until the federal claim that was filed in early August of 2023, as to the actual stock ownership of the corporation. There's case law out of the 1993 in South Dakota, I believe it's Parsons v. Dacy. It was about a winning lottery ticket in Gregory, South Dakota, that was litigated from 1991 to 1993. And the relevant holding in that court, Your Honor, was that you have to have your own claim to title to property. You cannot depend on a defect in another person's claim of title to get there.

Further, and Attorney Volesky argued this in briefing in this file, that the statute of limitations for stock conversion doesn't start to run until there's

a corporate dissolution. And cited appropriate authority from the 2nd Circuit, was cited by the 8th Circuit, and cited through some of the case law by Judge Schreier in table stack -- or rather in the cup-of-dirt, which was a recent federal case.

So there was no claim preclusion analysis that Judge Smith did. It's admitted, and in fact, even though he talks about the Healy 2 decision and the *Healy Ranch Partnership v. Mines* decision at length in his order. There was never a claim brought as to actually who owned the stock of the corporation. It has not been decided, and issue preclusion, that prone of res judicata was being argued by Attorney Schoenbeck in Healy 2 and the Supreme Court did not find that issue preclusion applied. And that was to ownership of real property, not ownership of personal property, which stock is.

And similar to the winning lotto ticket in Gregory, the employee that brought a claim that she should also share the proceeds because she should have been required to purchase the ticket. They said you don't have your own claim -- your own title claim to get there.

That is why I brought a motion for an evidentiary hearing, but establish the actually chain of

Ownership of any of the personal property of Healy Ranch Partnership has not been litigated. There's been no claim brought forth in that regard. There's been no litigation brought forth on what the stock ownership is. Attorney Schoenbeck argued in his response to the motion to dismiss by Attorney Volesky, that the *Healy Ranch Partnership v. Mines* was instructed because, as he put it, the gravamen of my complaint, all-be-it it was the partnership in *HRP v. Mines*, he argued that the gravamen of that complaint was stock ownership.

Which seemed puzzling given that the corporation was not a defendant in that matter, neither one of my brothers was a defendant in that matter. The partnership was the party, and the partnership was bringing a claim for quiet title based on the chain of title that was unrefuted, and the fact that a deed, that was never delivered, was from the wrong party in any event. It was not about stock.

So stock ownership has never been determined and Judge Smith relies almost entirely on the document 67 issued by Judge Lange on December 14th, 2023, for his determination that ownership had, in fact, been decided, and it simply has not. If one goes to the decision in Healy 2, the decision itself only vacates my notice of claim to inter -- voids my notice of claim of interest

without pointing to what statutory authority they had to do so. And part of the federal claim that is on appeal, is that they invaded the province of the legislature when they did so.

But in the order, itself, it merely voids the notice of claim of interest. The corporation was attempting to get marketable title and quiet title and they did not get that done. So ownership hasn't been decided by the State Courts of South Dakota in a final order in any matter.

And, to that end, Attorney Schoenbeck's clients have not filed an affidavit of possession that would put them on the path to getting marketable title. And it's because they can't, because there's a document in the record. The partnership settlement with the Swansons termination of a lease, settlement of issues, and an extension of a lease on a house that was dated in January of 2008. That Judge Smith has ignored time and again, as every Court has, as simply avoiding looking at the document.

So back to the legal argument at its core, and again, marking for the record that I am pro se. I don't understand how all these all get together. I do know this, nobody transferred the real property of Healy Ranch Partnership to anyone after 1986 with the

exception of the Aronson property 1993. And that was with full knowledge of myself, as well as my mother. And the purchase that I made in 2007, without the attorney telling me what had been going on, I was instructing him to arrange for the purchase of the partnership interest that I didn't already own.

So ownership has never been decided on real property. Ownership has never been decided on the personal property of the partnership, which includes remaining personal property; grain bins, hanging gates, etc., but also the cash of the partnership. None of that has been determined. Certainly, the stock ownership hasn't. And neither one of the purported shareholders has brought forth any evidence of when they became a stockholder, what they paid to purchase their stock, how it was paid for. None of that has happened. And issue preclusion doesn't apply anywhere in the record. And claim preclusion doesn't anywhere either, because the ownership of the stock has not been relevant -- who owns the stock has not been relevant to any proceeding.

And that is the argument I make legal, that res judicata is not a phrase that cannot -- that can be applied with actual analysis, which Judge Smith did not do, and cannot be done as a continuum from issue preclusion to claim preclusion that it's all just a

and they pointed to claim pre -- they did not even point to South Dakota authority or 8th circuit authority to apply claim preclusion sua sponte in Healy 2. They pointed to two cases US Supreme Court that were about Federal Indian law. They never defined special circumstances, Your Honor. And my attorney, at the time, brought a petition for rehearing, and the Court wouldn't hear it on due process grounds.

My first attorney on appeal, Cynthia Srstka, brought forth due process concerns also. And also brought fraud upon the Court. This has been a cascade of, first, misrepresentations by adverse parties in Healy 1 and Healy 2, and in *Healy Ranch Partnership v. Mines*, and then a mischaracterization of those cases in later cases.

Judge Smith relied upon facts in his order that simply weren't true, but he never conducted a res judicata analysis of any kind. He barely cited that other courts had in other cases. Mendenhall says you can't import facts from other cases, and you certainly can't import them from a proceeding that is not yet final. That is why ownership, the trace of ownership, of both the partnership interest and the existence of the partnership. Judge Smith said that the Supreme Court had reason that the partnership didn't exist.

But in Healy 2, Supreme Court said no reason to worry about a motion to join that Attorney Schreier had brought. The partnership is a party and if the partnership is a party, then it must exist or at least it must have existed when the decision was handed down in early August of 2022. So those are the factual issues that are in play.

Who owns the partnership interest, does the partnership exist, if there is valid stock, who owns it? The recorded deed states on its face that the partnership owns the capital stock of the corporation, and that there was no consideration paid for that capital of stock. That is in the record. That has been taken judicial notice in this file by Judge Smith at that evidentiary hearing on January 23rd.

He, of course, did not even mention that evidentiary hearing or the testimony that revolved around it at that point. Your Honor, these have fundamental tax consequences, as well, of the step up in gain, if you will, if there was, in fact, a valid conveyance. And if there was, then there was no analysis done in what the fair market value of the land that was allegedly transferred into the corporation in 1995. There was no fair market analysis done there. That is why, in fact, I had subpoenaed Mr. Rubish, who has done

State Court. Now Judge Smith didn't -- or Judge Lange didn't elaborate further, but that is not an argument about claim preclusion. That's an argument about issue preclusion. It's an argument or a plain understanding for a reasonable mind is, he said it had been adjudicated, which would indicate issue preclusion would be a proper thing to apply at that point.

However, the Supreme Court in Healy 2, even on property ownership said issue preclusion did not apply. An argument that Attorney Schoenbeck was, in fact, making. Issue preclusion, if it doesn't apply, facts do matter relative to that. The question then becomes did the stock ownership in a prior case have to -- and specifically, who owned the stock had to be, you know, taken care of, if you will, if it was a claim that should have been brought at that time, which was my understanding of claim preclusion. Attorney Volesky argues in the filings, that are in this file, that that simply wasn't the case.

Further, the federal case that Judge Smith relies almost entirely on is not a final decision. It's on appeal. And part of that on appeal is also to set aside the RICO decision that was first in front of Judge Lange in 2021. And then, went up on appeal to the 8th Circuit and to vacate that, not because still angry

complete record amongst these various cases. Due process, I believe, requires that you have it out in Court with everybody being under oath to tell the truth, and you've got to show how it is you came to own something. You're not allowed to just claim, "Well, I own it because I think so," as per that Gregory lotto ticket case. You've got to show you've got your own claim of title.

And that one should have a consistent claim of title that you can show that the documents reflect. I can do so. On behalf of the partnership, which I know I can't make arguments today, because it's a separate legal entity, but I would argue that that goes to the core of it, that it was a separate legal entity. And therefore, it is also a due process concern for me to be sanctioned for the actions of a separate legal entity.

If I can't represent the partnership pro se, I don't know how due process procedurally or substantively would allow the Court, or any Court, to then issue those sanctions to me.

THE COURT: Okay. You've got two minutes left Mr. Healy.

MR. HEALY: Further, I would -- and I know what the answer I think is going to be. Your Honor, I would ask either for more time today or that we schedule a hearing later to get into the motions that I have not had time,

IN THE SUPREME COURT
OF THE STATE OF SOUTH DAKOTA

No. 30666

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.

Appeal from the Circuit Court
First Judicial Circuit
Brule County, South Dakota

HONORABLE PATRICK SMITH
Presiding Judge

APPELLEE'S BRIEF

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Notice of Appeal was filed March 25, 2024

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STATUTES

PRELIMINARY STATEMENT

Appellant Bret Healy will be referred to as "Bret" or "Bret Healy"; Appellee Healy Ranch, Inc. as "HRI;" Barry Healy and Bryce Healy by their first names; Healy Ranch Partnership as "HRP;" the motion hearing on January 23, 2024, will be referred to as "HT" followed by the respective page number; and the Appendix for this brief as "App." followed by the appropriate page number.

For consistency's sake, this brief will follow Appellant's manner of referencing the land at issue as "Healy Ranch."

JURISDICTIONAL STATEMENT

There is no dispute that the South Dakota Supreme Court has jurisdiction over these proceedings.

STATEMENT OF LEGAL ISSUE

Did Circuit Judge Patrick Smith abuse his discretion in sanctioning Bret Healy, pursuant to SDCL 15-6-11(b)(1), for presenting papers before the Court for an improper purpose?

The Circuit Court held that sanctions were proper.

SDCL 15-6-11(b)(1)
SDCL 15-6-11(c)(2)

Healy v. Osborne, 2019 SD 56, 934 N.W.2d 557.
Healy Ranch, Inc. v. Healy, 2022 SD 43, 978 N.W.2d 786.
Healy Ranch Partnership v. Mines, 2022 SD 44, 978 N.W.2d 768.
Healy v. Fox, 46 F.4th 739 (8th Cir. 2022).

STATEMENT OF THE CASE

This appeal has its genesis in several prior lawsuits where Bret Healy's claims to personally, or through a partnership he claims to own, control more than a one-third interest in Healy Ranch, Inc. and the Healy Ranch that is owned by Healy Ranch, Inc. The prior decisions include:

- *Bret Healy v. Mary Ann Osborne, et al.*, 07CIV.17-23, 2019 SD 56, 934 N.W.2d 557 ("Healy I").
- *Healy Ranch, Inc. v. Bret Healy and d/b/a Healy Ranch Partnership*, 07CIV.19-71, 2022 SD 43, 978 N.W.2d 786 ("Healy II").
- *Healy Ranch Partnership v. Sheila Mines, et al.*, 07CIV.21-11, 2022 SD 44, 978 N.W.2d 768 ("Mines").
- *Bret Healy v. Albert Steven Fox, et al.*, 3:21-cv-3004, 46 F.4th 739 (8th Cir. 2022) ("Fox").
- *Bret Healy v. Healy Ranch, Inc., et al.*, 07CIV.22-12, #30134, 989 N.W.2d 103, 2023 WL 3167113 (SD 2023) ("Healy III").
- *Bret Healy v. Healy Ranch, Inc.*, 07CIV.23-21 ("Healy IV").
- *Bret Healy, individually and as stockholder, v. Healy Ranch, Inc., et al.*, 07CIV.23-27 ("Healy V").
- *Bret Healy, individually and as stockholder, v. Healy Ranch, Inc., et al.*, 07CIV.23-37 ("Healy VI").
- *Bret Healy v. Supreme Ct of S.Dakota*, 4:23-cv-04118-RAL, 2023 WL 8653851 (D.S.D. 2023) ("Healy 2nd Fed).

Petition for Court Supervised Dissolution was served upon Bret Healy on November 29, 2023. (SR 10.) On December 19, 2023, Healy Ranch Partnership, through its attorney of record, Tucker Volesky, filed a Motion to Dismiss with a Certification of Healy Ranch Partnership dated December 19, 2023. Healy Ranch Partnership is not a party, was not served, and did not make a motion to

intervene. The Certification was executed by Bret Healy as a managing partner, and in which document Bret Healy purports to be the majority partner of "Healy Ranch Partnership," which he represents owns "100% of the common stock of HRI." (App. 36-39, SR 196, 50-52.)

In December 28, 2023, the Honorable Circuit Judge, Patrick T. Smith, issued an Order to Show Cause and Notice of Hearing to Tucker Volesky and Bret Healy as to whether or not sanctions were warranted against them pursuant to SDCL 15-6-11(c) for alleged violations of SDCL 15-6-11(b)(1), (2), (3), & (4). (SR 197.)

A hearing on the Order to Show Cause was held on January 23, 2024, in the Davison County Courthouse, Mitchell, South Dakota, with Bret Healy appearing personally and represented by counsel, Tucker Volesky. (HT p.3, SR 738.) Healy Ranch, Inc.'s counsel, Lee Schoenbeck, appeared telephonically and Healy Ranch, Inc.'s shareholders and officers, Bryce Healy and Barry Healy, appeared personally. The Court took testimony at the hearing.

Subsequently, on March 18, 2024, the Court issued a Memorandum Decision on Rule 11 Sanctions with Findings of Fact and Conclusions of Law. The Court concluded that Bret Healy violated SDCL 15-6-11(b)(1) and that Tucker Volesky violated SDCL 15-6-11(b)(1)-(3). (App. 1-35, SR 804-838.)

STATEMENT OF THE FACTS

Because this proceeding is largely about procedural issues, the matters set forth above under the Statement of the Case are incorporated herein. Particularly, the prior court decisions are relevant to the Statement of the Facts.

The following Healy lawsuits approved sanctions against Bret personally, not counting this appeal of the dissolution matter:

- Healy I: *Healy v. Osborne*, 2019 SD 56, ¶¶ 37-38, 934 N.W.2d 557, 567.
- Healy III: *Healy v. Healy Ranch, Inc.*, #30134, 989 N.W.2d 103, 2023 WL 3167113 (SD 2023) (SR 820.)
- Healy 2nd Fed: *Healy v. Supreme Ct of S.Dakota*, 4:23-cv-04118-RAL, 2023 WL 8653851, at 12 (D.S.D. 2023). (SR 230; See also, App. 40-43, 2024 WL 2150336.)

The following Healy lawsuits ruled directly or indirectly that Healy Ranch, Inc. was owned one-third by Bret Healy, Bryce Healy, and Barry Healy:

- Healy I: *Healy v. Osborne*, 2019 SD 56, ¶¶ 21, 28-29, 934 N.W.2d 557, 563 & 565.
- Healy II: *Healy Ranch, Inc. v. Healy*, 2022 SD 43, ¶¶ 49-59, 978 N.W.2d 786, 800-804.
- Fox: *Healy v. Fox*, 3:21-cv-3004, 46 F.4th 739, 742 & 744, (8th Cir. 2022).
- Healy 2nd Fed: *Healy v. Supreme Ct of S.Dakota*, 4:23-cv-04118-RAL, 2023 WL 8653851, at 5 & 7 (D.S.D. 2023). (SR 215 & 218.)

The following Healy lawsuits determined that the Healy Ranch Partnership does not have an interest in Healy Ranch:

- Healy I: *Healy v. Osborne*, 2019 SD 56, ¶¶ 28-29, 33, 934 N.W.2d 557, 565-566.
- Healy II: *Healy Ranch, Inc. v. Healy*, 2022 SD 43, ¶¶ 49-59, 978 N.W.2d 786, 800-804.
- Mines: *Healy Ranch Partnership v. Mines*, 2022 SD 44, ¶¶ 51-60, 978 N.W.2d 768, 782-784.
- Fox: *Healy v. Fox*, 3:21-cv-3004, 46 F.4th 739, 744-745 (8th Cir. 2022).

The following Healy lawsuits had decisions that resulted in Bret not being able to litigate ownership of Healy Ranch, Inc. anymore:

- Healy I: *Healy v. Osborne*, 2019 SD 56, ¶¶ 21, 30, 33, 934 N.W.2d 557, 563, 565-566.
- Healy II: *Healy Ranch, Inc. v. Healy*, 2022 SD 43, ¶¶ 49-59, 978 N.W.2d 786, 800-804.
- Mines: *Healy Ranch Partnership v. Mines*, 2022 SD 44, ¶¶ 58-60, 978 N.W.2d 768, 783-784.
- Fox: *Healy v. Fox*, 3:21-cv-3004, 46 F.4th 739, 744 & n.2, 745-746 (8th Cir. 2022).
- Healy 2nd Fed: *Healy v. Supreme Ct of S.Dakota*, 4:23-cv-04118-RAL, 2023 WL 8653851, at 5-7 & 10-11. (SR 215-218, 225-226.)

STANDARD OF REVIEW

The Trial Court's decision awarding sanctions under Rule 11 is reviewed under an abuse of discretion standard. *Pioneer Bank and Trust v. Reynick*, 2009 SD 3, ¶ 13, 760 N.W.2d 139, 143. To find an abuse of discretion by the trial court, the Supreme Court would need to find that the trial court exercised its discretion "to an end or purpose not justified by, and clearly against, reason and evidence." *Id.*

ARGUMENT

Circuit Judge Patrick Smith properly sanctioned Bret Healy, pursuant to SDCL 15-6-11(b)(1), for presenting papers before the court for an improper purpose.

Bret Healy signed a document entitled "Certification of Healy Ranch Partnership" on December 19, 2023, the same day as Tucker Volesky's Motion to Dismiss, and filed the same with the Trial Court. (SR 196, 51-52.) SDCL 15-6-

11(b) authorizes the Trial Court to impose sanctions on any person who signed any papers, even if that person is not a party to the action. *Anderson v. Production Credit Ass'n*, 482 N.W.2d 642, 645 (SD 1992). The law does not allow Bret Healy to escape responsibility for actions by claiming that he couldn't be sanctioned because he had an attorney or by claiming that he couldn't be sanctioned because he wasn't a party.

Bret Healy has been a party to lawsuits in which courts have noted that Healy Ranch Partnership lacked involvement since Healy Ranch, Inc. was created in 1994. (See, Healy I: *Healy v. Osborne*, 2019 SD 56, ¶ 29, 934 N.W.2d 557, 565; and Mines: *Healy Ranch Partnership v. Mines*, 2022 SD 44, ¶ 17, 978 N.W.2d 768, 775.) Armed with that knowledge, Bret Healy signed the fraudulent document entitled "Certification of Healy Ranch Partnership." (App. 40, SR 196.) In the document, he purports to be the "majority partner" of Healy Ranch Partnership and he claims that Healy Ranch Partnership owns "100% of the common stock of [Healy Ranch, Inc.]." (App. 36-39, SR 196, 51-52.)

Circuit Judge Patrick Smith was correct in holding Bret Healy accountable for the improper filing that he signed, which formed the basis for the motion he was pursuing. Bret Healy was within the court's jurisdiction because Bret Healy had been personally served with the Petition for Court Supervised Dissolution. (SR 10.) The entity he purportedly filed on behalf of, Healy Ranch Partnership, was not served, is not a party, and did not move to intervene. (See also, SR 801, where HRI raised the issue of HRP's lack of standing as an interested party in this matter.)

Bret Healy contends that he can't be sanctioned because only an unrepresented party can be sanctioned.

Bret Healy ignores that SDCL 15-6-11(c)(2)(A) provides as follows:

> (A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision 15-6-11(b)(2).

The rule only makes sense in excluding sanctions against "represented parties" for violations of (b)(2) if they can, in fact, be sanctioned for violation of other sections. If represented parties could never be sanctioned under SDCL 15-6-11, then it would be unnecessary to include the language contained in SDCL 15-6-11(c)(2)(A).

Furthermore, by reading the next rule, it's clear that monetary sanctions can be awarded against a represented party, because the statute says "against the party which is, or whose attorneys are, to be sanctioned." SDCL 15-6-11(c)(2)(B).

In this matter, the Court concluded in its Memorandum Decision, which is incorporated into its Finding of Fact, that Tucker Volesky and Bret Healy were acting as co-conspirators in their conduct. (SR 831, n.5.)

Circuit Judge Patrick Smith followed the notice and reasonable opportunity to respond requirements of SDCL 15-6-11(c). The court entered an Order to Show Cause of its own initiative that described the conduct that appeared to violate SDCL 15-6-11(b), as required by SDCL 15-6-11(c)(B). (SR 197-199.)

In imposing the sanction, Judge Smith explained why sanctions were in an amount necessary to deter repetition of such conduct. SDCL 15-6-11(c)(2). Finally, Judge Smith in detail described the conduct that he determined to

constitute a violation of the rule and he explained the basis for the sanctions he imposed in his thirty-five page Memorandum Decision on Rule 11 Sanctions with Findings of Fact and Conclusions of Law. (App. 1-35, SR 804-838.) The Trial Court's Memorandum Decision was incorporated by reference into the document entitled Findings of Fact and Conclusions of Law in Support of Rule 11 Sanctions Against Bret Healy and Tucker Volesky. (SR 839-840.) Judge Smith walked through the history of sanctions against Bret Healy, which history did not yet include the sanctions imposed by the Federal District Court in the amount of $49,271.70. (App. 40-43.) Judge Smith reasoned:

> Past sanctions have had no effect on Bret Healy, despite totaling over $120,000.00 . . . [i]t is the intent of this Court to impress upon Mr. Healy that his actions have consequences and should not continue, and the finding of this Court that the doubling of his past sanctions will do so. It is the ORDER of the Court that Bret Healy be sanctioned in the amount of $240,000.00 for violating SDCL 15-6-11(b)(1). This is a substantial amount, but not unwarranted.

(App. 34, SR 837.)

As the Court will note throughout Bret Healy's Brief, he persists in using language that casts doubt on prior Court rulings that he only has a one-third interest in Healy Ranch, Inc., or that Healy Ranch is owned by Healy Ranch, Inc. For example, on page four, he refers to actions of Healy Ranch, Inc. as "purportedly on behalf of HRI." On page five, he refers to the transfer of Mary Ann Osborne's stock as "claims to have transferred." On page six, he reports "[d]espite the fact that no Court has conclusively determined ownership of Healy Ranch," and again refers to an action taken by HRI as "purportedly on behalf of HRI." Similar language appears throughout the brief. Bret Healy's brief is a

testament to his disregard for the prior rulings of the several courts that have been forced to deal with the Healy Ranch situation.

Finally, Judge Smith's sanctions against Bret Healy were for violations of SDCL 15-6-11(b)(1), and thus do not run afoul of the limitation for a represented party contained in SDCL 15-6-11(c)(2)(A).

CONCLUSION

The Honorable Patrick Smith's decision to award sanctions against Bret Healy was not an abuse of discretion. Judge Smith exercised his discretion in a justified manner, clearly supported by reason and evidence. His decision should be affirmed.

DATED this 14th day of November, 2024.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements set forth in SDCL 15-26A-66(b)(4). This brief was prepared using Microsoft Word 2013, with 12 point Georgia font. This brief contains 1,953 words, excluding table of contents, table of authorities,

jurisdictional statement, statement of legal issues, and certificate of counsel. I relied on the word count feature in Microsoft Word 2013 to prepare this certificate.

DATED this 14th day of November, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 14, 2024, I served a true and correct copy of the foregoing *Appellee's Brief* via U.S. Mail, postage prepaid, and via electronic means on the following:

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PROCEDURAL HISTORY

This Brule County Matter came before the Court on January 23, 2024, in the Davison County Courthouse in Mitchell, Davison County, South Dakota on Healy Ranch Partnership's Motion to Dismiss, and the Court's Order to Show Cause for Rule 11 Sanctions against Tucker Volesky, as counsel for Bret Healy, and Bret Healy, effected shareholder of Healy Ranch, Inc., and acting on behalf of Healy Ranch Partnership, purported effected shareholder of Healy Ranch, Inc. Bret Healy was represented by his counsel Tucker Volesky. Healy Ranch, Inc. was represented by counsel Lee Schoenbeck. Bryce Healy and Barry Healy, effected shareholders of Healy Ranch, Inc., were personally present.

The Court ruled on the Motion to Dismiss orally from the bench on January 23, 2024. The Court held that it has jurisdiction to make a determination as to whether a corporation should be dissolved under the statutes of the State of South Dakota. Further, the Court found that there is no threshold determination to be made before it has personal and subject matter jurisdiction over the dissolution.[1]

[1] The Court further expounded on its jurisdictional ruling via email with the parties on January 25, 2024, which is part of the record herein. The Court recognized Bret Healy's objection in his Motion to Dismiss on the grounds that there was not the required number of votes allowed to dissolve the corporation and therefore, grant jurisdiction to circuit court. However, this Court held that it was uncontested that a meeting was held, and alleged and so found that

The Court brought the Order to Show Cause due to Bret Healy's continued claims that he has greater ownership of Healy Ranch, Inc. and his challenge to the dissolution based upon that, despite prior rulings by many courts that have heard these issues. This was the sole basis for his Motion to Dismiss and his attempt to challenge the jurisdiction of this Court. After hearing the arguments and reading the briefs of both parties, the Court now issues this memorandum decision, findings of fact, and conclusions of law.

FACTS FOUND BY THE COURT

On October 6, 2023, a Plan of Liquidation and Dissolution was adopted by the Board of Directors of Healy Ranch, Inc (HRI) and was adopted on October 20, 2023. Petitioner's Exhibit A. On November 15, 2023, a majority of the common stock shareholders voted for dissolution of the Corporation at a meeting of the shareholders.[2] According to the Petition and well-established precedent, the shareholders include Bryce Healy, Barry Healy, and Bret Healy, each owning 99,782.66 shares or having a 1/3 interest in the corporation. On November 17, 2023, HRI petitioned this Court for a supervised dissolution of the Corporation under SDCL 47-1A-1430(4).

On December 19, 2023, despite Bret Healy having indicated no opposition to the dissolution, Healy Ranch Partnership (HRP) filed a Motion to Dismiss. HRP referred to a Warranty Deed from HRP to HRI claiming that HRP owns at least a majority of the capital stock in HRI. Respondent's Exhibit 2. HRP opposed the Plan of Liquidation and Dissolution which they contend

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a majority of shareholders voted in favor of dissolution of Healy Ranch, Inc., thereby granting jurisdiction to the circuit court in compliance with *In re F.E. Schundler Feldspar Co.*, 19 N.W.2d 337 (S.D. 1945).

[2] Providing further evidence that this motion was brought for an improper purpose, a claim that all shareholders, including Bret Healy, favored dissolution was levied and unchallenged in *Brett Healy v Healy Ranch, Inc., Bryce Healy & Barry Healy*, 07CIV23-27 in the Response to Plaintiff's Motion for Court Ordered Forensic Accounting filed wherein it is stated without challenge that Defendant is appreciative that Brett Healy will not be resisting the winding up of the corporation. *Defendant's Response to Plaintiff's Motion for Court Ordered Forensic Accounting* (Sept. 20, 2023). This is further supported by the transcript of the motions hearing in that matter wherein all parties openly discussed the contemplated dissolution and while the nature of such proceeding undoubtedly would be at issue, no mention of challenging the mere commencement of the same was made. *Motions Hearing Transcript*, 40:23-25; 41:1-25 (Sept. 27, 2023).

has not been approved because a majority of shares of HRI did not approve the proposal. Respondent's Exhibit 4. HRP argued that the Circuit Court lacked jurisdiction under SDCL 47-1A-1430(4).

On December 29, 2023, this Court entered an Order to Show Cause, and directed Tucker Volesky, attorney for HRP and Bret Healy, and Bret Healy, purported effected shareholder of HRP, to show cause to establish that they have not violated SDCL 15-16-11(b) by filing a frivolous motion to dismiss based upon falsehoods, with no chance at a favorable ruling and no hope for a change of past decisions, and for purpose of harassment and delay.

In order to best analyze the question of sanctions, this Court, for purpose of substantiating the Order to Show Cause and establishing the true purpose of the current filing, will next provide an overview of the litany of lawsuits filed by or against Bret Healy, either solely or on behalf of HRP and in many cases by his attorney, Tucker Volesky, demonstrating that their continued claims of ownership are knowingly false. The history of the litigation between the parties, and the actions taken by Mr. Volesky in many, is instructive on the questions raised, and review required of a court considering sanctions under SDCL15-16-11.

Bret Healy v. Mary Osborne, Bryce Healy, Barry Healy, Healy Ranch Partnership, Healy Ranch, Inc., and Albert Steven Fox (07CIV17-23)

On May 11, 2017, Bret Healy filed a complaint in Circuit Court alleging conversion, breach of contract and implied duty of good faith, fraud and conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence. HRI, Bryce, and Barry, with Albert Fox joining, moved for summary judgment based on the statute of limitations. Mary Ann and HRP moved for summary judgment contending that his claims were time-barred, and that he did not sufficiently prove damages.

The Circuit Court found that Bret's claims were barred by the statute of limitations for all his claims. The Court concluded that Bret had constructive notice, if not actual notice, that HRI claimed an interest in Healy Ranch, and he should have been put on notice as president of HRI. After this ruling, the Defendants moved the Circuit Court to grant attorney's fees and costs. The Circuit Court concluded that the lawsuit was frivolous and malicious and held that Bret filed this lawsuit with an improper purpose, thereby attempting to prevent HRI from selling Healy Ranch. Further, the Circuit Court granted attorney's fees, sales tax, and costs to Mary Ann Osborne in the amount of $32,606.524, HRI, Barry Healy, and Bryce Healy in the amount of $38,283.88, and Albert Fox in the amount of $14,405. Bret appealed the Circuit Court's ruling to the Supreme Court of South Dakota, which is discussed below, along with a continuing overview of the entirety of the litigation between the parties.

Healy v. Osborne ("Healy I")

A recitation of facts in the Supreme Court's opinion will detail the history of the family, the partnerships, and the corporations relevant to the multitude of lawsuits. The Healy family has retained ownership of the Healy Ranch since 1887. *Healy v. Osborne*, 2019 S.D. 56, ¶ 3, 934 N.W.2d 557, 560. In 1969, Emmett Healy, Bret's grandfather, and Robert Healy, Bret's father, created a partnership, and after Emmett died his ownership interest was transferred to his wife DeLonde Healy. *Id.* Three years later, Robert and DeLonde created a second partnership (1972 partnership), and Robert agreed to share his 1/2 interest with his wife Mary Ann while DeLonde owned the other 1/2. *Id.* ¶ 4. The parties did not sign a partnership agreement, but they executed and recorded a warranty deed for the transfer of Healy Ranch into the 1972 partnership. *Id.* Robert died in November of 1995, and his 1/2 interest in the 1972 partnership was transferred entirely to his wife Mary Ann. *Id.*

After Robert's death, the Healy family decided to transfer some responsibility in the Healy Ranch to Bret by executing an agreement on November 25, 1986, forming a third partnership (the 1986 partnership). *Id.* ¶ 5. Bret held a 25% interest in the 1986 partnership, and Mary Ann held a 75% interest in the 1986 partnership. *Id.* DeLonde signed a general warranty deed relinquishing her rights in the ranch and transferring an interest in the 1972 partnership to Bret. *Id.* However, he was only granted a 25% interest overall in the 1972 partnership with Mary Ann receiving a 75% interest, and the instrument was never recorded. *Id.*

On March 12, 1995, DeLonde and Mary Ann executed a warranty deed transferring Healy Ranch from the terminated 1972 partnership to HRI which was owned solely by Mary Ann. *Id.* ¶ 6. The deed was recorded with the Brule County Register of Deeds on March 13, 1995. *Id.*

In 2000, Bret, Barry, and Bryce each purchased a 1/3 interest in HRI from Mary Ann via contract for deed. *Id.* ¶ 7. Beginning in 1999, Bret was president of HRI. *Id.* Bret and his brother managed the corporation together, with Bret signing mortgages on behalf of HRI, and the mortgages representing that HRI was the sole owner of Healy Ranch. *Id.* at 561. Without indicating any ownership of the ranch by HRP, Bret purchased land from HRI to build a home. *Id.* Further, Bret initiated a lawsuit on behalf of HRI alleging that certain land and fences belong to HRI and did not name HRP as a party to the lawsuit. *Id.* ¶ 8.

In 2016, discussions between Bret, Barry, and Bryce began in relation to selling the ranch. *Id.* ¶ 9. Barry and Bryce supported the sale, and Bret opposed. *Id.* Bret affirmed HRI's ownership of the ranch when he signed an agreement for reimbursements from the Corporation for improvements made by him. *Id.* In April of 2017, Bret met with an attorney to discuss the sale and alleged that he learned, for the first time, that Healy Ranch was transferred by Mary Ann to HRI. *Id.* ¶ 10. He further alleged that the family attorney, Albert Fox, Mary Ann, and Bryce "created

false corporate resolutions, false title information, and sixteen forgeries of [his] signature on corporate minutes." *Id.* These alleged discoveries resulted in him filing an action on May 11, 2017. *Id.* ¶ 11.

During the time of filing the lawsuit, Bret took out ads in farm-related journals claiming that HRI lacked clear title to Healy Ranch. *Id.* ¶ 12. Two weeks before this lawsuit was commenced, Bret sent letters to Wells Fargo, First National Bank, Brule County Register of Deeds, and Brule County Abstract alleging that HRI did not have good title to Healy Ranch. *Id.* Further, Bret filed a notice of lis pendens to cloud the title of Healy Ranch. *Id.*

The Supreme Court "decline[d] to address Bret's claim of ownership because the threshold issue in this case centers on the timeliness of Bret's claims for conversion, breach of contract, fraud, conspiracy to commit fraud, unjust enrichment, breach of fiduciary duties, and negligence." *Id.* ¶ 21 at 563. The Supreme Court held that Bret was aware that he and his brothers purchased a 1/3 share interest in HRI reasoning that Bret was the president of HRI for numerous years signing documents on behalf of the corporation. *Id.* ¶ 28 at 564.

Bret's argument that he retained an interest in HRP failed in part because he did not record the partnership agreement or the deed in 1989. *Id.* ¶ 29. Further, partnership returns and tax returns were not filed for HRP after 1995, with Bret's financial statement in 2001 reflecting that his only asset were his shares in HRI. *Id.* Bret sent an email to Barry in June of 2016 stating: "I owned 25% of the place – mom insisted on 1/3 to everyone – so yes I put all my chips back in for 8%..."[3] *Id.*

The Supreme Court affirmed the Circuit Court's ruling that the statute of limitations ran on Bret's claim against Fox for legal malpractice due to a lack of continuing representation. *Id.* ¶ 32 at 566. Further, the Court concluded that the Circuit Court utilized the proper procedure by relying

[3] Confirming his understanding that Mary Ann gave disproportionate percentages of her share to her sons, to create in each of them a 1/3 ownership interest.

upon the proper statute of limitations in making its determination on summary judgment. *Id.* ¶ 33. The Supreme Court upheld the Circuit Court's decision awarding attorney's fees because there was no evidence in the record suggesting that Bret was reasonable in bringing these claims. *Id.* ¶ 37 at 567. The Court noted that the email sent in 2016 to Barry solidified Bret's knowledge that HRI owned Healy Ranch. *Id.* Upon disagreement with his brothers, Bret brought a frivolous lawsuit to stop the sale of Healy Ranch and not on the basis that "his partnership interest remained enforceable." *Id.* The Court awarded additional appellate attorney's fees to Mary Ann in the amount of $7,500, to Barry, Bryce, and HRI in the amount of $7,500, and to Albert Fox in the amount of $3,450. *Id.* ¶ 38.

The total amount of attorney's fees award by the Circuit Court and the Supreme Court in this matter is $101,745.42.

Bret James Healy, HRP v. Brule County Abstract, David Larson, Mary Alice Larson, Larson Law PC (07CIV18-40)

This is the first lawsuit that Bret brought on behalf of HRP. The Complaint alleges that the Defendants wronged Bret by aiding and abetting theft by deception, conspiracy to commit fraud, breach of fiduciary duty by David Larson and Larson Law PC, aiding and abetting breach of fiduciary duty, and negligence. Approximately one month later, Bret dismissed this lawsuit without prejudice.

Healy Ranch, Inc. v. Bret James Healy and d/b/a Healy Ranch Partnership (07CIV19-71)

In this matter, HRI claims that they have a valid warranty deed conveying title of Healy Ranch to HRI. Plaintiff's Exhibit A. Defendants filed a Notice of Claim of Interest which was recorded on January 25, 2018, claiming that the deed conveying the property to HRI was not valid because of a prior conveyance in 1986. Plaintiff's Exhibit B. HRI claims that the Notice of Claim

of Interest was used to slander title because it is false and derogatory to HRI's title to Healy Ranch. HRI asked for the Circuit Court to recognize their marketable title to Healy Ranch and afford them attorney's fees from Defendants.

Defendants' claim relies on the alleged 1986 agreement that he argues invalidates the 1995 deed which Plaintiff uses to claim ownership of Healy Ranch. HRI filed for summary judgment alleging that the claim was time-barred under SDCL 43-30-3 which states that the statute of limitations is 22 years. Defendants reads the statute to grant him 23 years to file a Notice of Claim of Interest. The Circuit Court held that the limitation begins running when the deed is recorded. The Court granted HRI's motion for summary judgement, voiding Defendants' Notice of Claim of Interest.

After the Court's ruling on summary judgment, HRI requested attorney's fees under SDCL 43-30-9. The Circuit Court concluded that the evidence presented by HRI is not sufficient to support a ruling in their favor for attorney's fees because it must be supported by a showing that Defendants were motivated solely by intent to slander title. In *Healy v. Osborne* (*Healy I*), the Court specifically did not rule on the merit of Bret's claim under the 1986 partnership which is the basis for filing the Notice of Claim of Interest.

HRI appealed the Circuit Court's ruling on attorney's fees. Bret appealed the Circuit Court's determination that HRI possesses marketable record title to Healy Ranch, all discussed below.

Healy Ranch, Inc. v. Bret Healy ("Healy II")

This Court will recite only the additional facts found within the opinion as not to repeat the facts utilized by the Supreme Court in *Healy I*. In 1995, Mary Ann filed articles of incorporation forming HRI as the sole owner. *Healy Ranch, Inc. v. Bret Healy*, 2022 S.D. 43, ¶ 4, 978 N.W.2d

786, 791. The Supreme Court reiterated that even though Bret's prior submissions to the Court detailed his contention about which entity own Healy Ranch, the Court found "that Bret did not bring a quiet title action challenging ownership to Healy Ranch and, therefore, we were not called to decide upon the question of ownership." *Id.* ¶ 9 (quoting *Osborne*, 2019 S.D. 56, ¶ 20, 934 N.W.2d at 563).

Bret filed his notice of claim in January of 2018 during the pendency of the appeal in *Healy I* noting adverse claims to Healy Ranch under the South Dakota Marketable Title Act (SDMTA) citing SDCL 43-30-5. *Id.* ¶ 10 at 792. After the Court's decision in *Healy I*, HRI filed a quiet title action to establish marketable title under the SDMTA to void Bret's notice of claim. *Id.* ¶ 12. The issue both parties raised relates to the statute of limitations, HRI claims that the 22-year statute of limitations applies, and Bret claims that the 23-year statute of limitation applies. *Id.* ¶¶ 12-13. In his counterclaim, Bret requested to quiet title to Healy Ranch in HRP to assert the partnership's ownership under two deeds—one recorded in 1986 and one recorded in 1990. *Id.* ¶ 13. HRI contends that they are entitled to summary judgment under res judicata. *Id.*

The Supreme Court reasoned "any apparent incongruity or confusion related to the twenty-two and twenty-three-year periods can be resolved by focusing less on the different lengths of time and more on the discrete purpose of each". *Id.* ¶ 34 at 796. The Court held that Bret timely recorded his notice of claim. *Id.* ¶ 35 at 797. The Court declined to use the 22-year statute of limitations which would have extended back in time to November 26, 1997. *Id.* The Court concluded that, while there is no dispute that HRI held title to Healy Ranch on that date, marketable title is subject to "claims...and defects of title...not extinguished or barred by...this chapter[,]" including the claim stripping provision in SDCL 43-30-3. *Id.*

The Court analyzed the deed from March 13, 1995, and applied the 23-year statute of which is March 13, 2018, holding that Bret's notice of claim from January 5, 2018, was not time-barred. *Id.* ¶ 36. However, the Court could not rule on the merits of HRP's ownership until they looked at the claims Bret made in *Healy I* and decided whether he could and should have brought these claims in the prior case. *Id.* ¶ 37 at 798.

The Court then addressed HRI's contention that res judicata bars Bret from pursuing his counterclaim seeking to quiet title in HRP because of the Court's decision in *Healy I*. *Id.* ¶ 39. The Court analyzed the elements of res judicata under claim preclusion and issue preclusion theories. *Id.* ¶¶ 42-45 at 799. The Court concluded that issue preclusion could not be utilized in this case as the question decided in *Healy I* did not relate to the question in the quiet title action but rather it related to ownership of Healy Ranch. *Id.* ¶ 46 at 800. The Court further reiterated that it did not decide ownership, it simply made a "comment on the unlikely nature of Bret's untimely effort to assert his partnership interest." *Id.* ¶ 47. Nonetheless, the Court found that the doctrine of res judicata applies because Bret's counterclaim is a clear effort to litigate the same cause of action as he did in *Healy I*. *Id.* ¶ 49. The Court concluded that "[t]he underlying facts are the same, as is Bret's principal argument that HRI does not truly own Healy Ranch." *Id.*

Further, the Court reasoned that Bret knew of the 1995 deed in 2017 when *Healy I* was filed and knew that HRI was claiming ownership of the Healy Ranch because of the 1995 deed. *Id.* ¶ 50. Bret described his theory of HRP's ownership of the Healy Ranch. *Id.* The Supreme Court notes in Footnote 11 of their opinion, "[t]he fact that Bret did not bring an alternate claim to quiet title in *Healy I* is not an impediment to claim preclusion because it would have been appropriate for him to do so then, rather than later through piece-meal litigation." *Id.* (citing SDCL 15-6-8(a), (e)).

The Court addresses its quote in *Healy I* that "Bret did not bring a quiet title action challenging ownership to Healy Ranch." *Id.* ¶ 57 at 802 (quoting *Osborne*, 2019 S.D. 56, ¶ 20, 934 N.W.2d at 563). The Court noted that he had the opportunity do so, and he asserted in his *Healy I* appeal that he "asserted a sort of implicit quiet title claim, but to no avail." *Id.* Further, the Court explained that Bret had the opportunity to bring a quiet title claim in 2017, but he pursued other claims which were not successful. *Id.* The Court explains that this should have communicated to him that it was the end of the dispute, and he cannot bring these claims against his family in an attempt to bring an action based upon "the same wrong premised upon the same facts." *Id.* The notice of claim was timely filed; however, the Supreme Court conclude that the claim was barred under res judicata. *Id.* The Court further affirmed the circuit court's denial of attorney fees to HRI because the stringent standard requiring an exclusive intent to slander title in bringing the action was not met. *Id.* ¶ 64 at 803.

HRP v. Sheila Mines, Larry Mines, Mary Ann Osborne, Estate of Robert Emmett Healy, Estate of Evelyn Sharping, Estate of Randolph Sharping, Estate of Raymond Sharping, Brule County

(07CIV21-11)

HRP brought this lawsuit asking for the Circuit Court to issue a judgment that HRP has marketable legal and marketable title of property that was sold to the Sharpings. HRP claims that Mary Ann was not allowed to convey the land to the Sharpings because HRP had title under the 1986 partnership agreement, and she did not received authorization from Bret Healy, as a partner, to convey the land. The Defendants answered, requesting that HRP's Complaint be dismissed with prejudice, attorney's fees, and costs. Attorney Jack Hieb, on behalf of Mary Ann brought a Motion for Rule 11 sanctions because of the decision by the Supreme Court of South Dakota that the claims were time-barred.

The Circuit Court found that the Supreme Court ruled in *Healy I* that "claims with respect to Mary Ann's sale of RH-2 [the land in question] to Raymond and Evelyn Sharping have also expired." The Circuit Court further reasoned that "even viewed in the light most favorable to Bret, there is no evidence in the record to suggest that Bret had any reasonable basis to believe his claims were valid" and that "he had actual knowledge that HRI held title to Healy Ranch." The Circuit Court relied on the affirmance by the Supreme Court of South Dakota which reasoned that the 1986 partnership did not have interest in Healy Ranch. Rather, the 1972 partnership had an interest in the Healy Ranch which consisted of partners, DeLonde and Mary Ann and concluded that Mary Ann's interest in the 1972 partnership agreement terminated when Mary Ann transferred Healy Ranch to HRI. The Circuit Court concluded that Bret cannot maintain a quiet title action because it has been decided that he did not have an interest in the 1972 partnership, and the 1986 partnership did not have an interest in Healy Ranch. Therefore, the Circuit Court concluded that Bret cannot bring this quiet title action because he lacks any claim of title in fee to the property.

The Circuit Court relied on the Supreme Court's opinion that once HRI was created, HRP ceased to continue its business and was completely disregarded by Bret up until the beginning of these lawsuits. The Circuit Court concluded that Bret did not have majority approval to bring suit on behalf of HRP. The Defendants' motion for summary judgment was granted because the Court reasoned that Bret's allegations that the Sharpings were only given permission to be on RH-2 cannot overcome the warranty deed that was issued by Mary Ann, and the Sharpings and the Mines had paid all applicable taxes to the land since 1992. HRP's motion for summary judgment was denied. The Court denied the motion for sanctions against the Plaintiff because the Court did not find that the quiet title action brought by Bret, on behalf of HRP was frivolous or malicious. HRP appealed this decision.

HRP v. Mines

The land at issue, RH-2, was transferred to HRP, which consisted of DeLonde, Robert, and Mary Ann, in 1972 via contract for deed with Sheldon and Elsie Munger. *Healy Ranch Partnership v. Mines*, 2022 S.D. 44, ¶ 4, 978 N.W.2d 768, 773. Sheldon transferred his interest in RH-2 to Phyllis Kott, Phyllis and her husband transferred their interest in RH-2 to HRP in April 1990 via contract for deed which was recorded later in the month. *Id.* ¶ 5.

Between 1972 and 1990, Robert passed way, leaving his interest in HRP to Mary Ann causing HRP to be an equal partnership between DeLonde and Mary Ann. *Id.* In 1986, Bret returned to assist in managing the ranch. *Id.* ¶ 6. During this time, a new partnership agreement was executed between Mary Ann, Bret, and DeLonde, which included granting DeLonde's 25% interest in the 1972 HRP to Bret. *Id.* ¶ 7. Bret assisted Healy Ranch in navigating through the bankruptcy proceedings after execution of the agreement in 1986. *Id.* ¶ 8. From 1989-2006, Bret moved out of South Dakota, however, he stayed involved with Healy Ranch and HRI. *Id.* ¶ 9.

The main issue in this case, was Phyllis Kott's transfer of the 46-acre RH-2 tract to HRP pursuant to the contract for deed in 1990. *Id.* ¶ 10. The Supreme Court determined that there are three facts that are undisputed:

> 1) Raymond Sharping began possessing and farming the 46-acre tract and paying property taxes associated with it; 2) no member of the Healy family, either individually or on behalf of the Ranch, has possessed, farmed, or paid real estate taxes associated with RH-2 since 1990; and 3) Mary Ann executed a warranty deed on August 1, 1992, conveying RH-2 to Raymond and Evelyn Sharping.

Id. After Evelyn Sharping's death in 1993, Raymond terminated Evelyn's life estate in RH-2 which was later recorded with the Brule County Register of Deeds. *Id.* ¶ 11 at 774. Raymond continued to farm RH-2 and pay the costs associated with the land until his death in 1998. *Id.* ¶ 12. After his death, Randolph Sharping, Raymond's son, continued to farm RH-2 and pay the costs associated

with it. *Id.* ¶ 14. On June 21, 2012, Randolph executed and recorded a warranty deed for RH-2 in favor of Larry and Sheila Mines. *Id.* On behalf of HRI, Bryce Healy, executed and recorded a quit claim deed to RH-2 in favor of Randolph, and Randolph's estate issued a personal representative's deed for RH-2 to Larry and Sheila Mines, who have farmed the land and paid costs associated with it since. *Id.*

Mary Ann signed a deed in 1992 conveying RH-2 to the Sharpings in her personal capacity and as executor of her husband's estate. *Id.* ¶ 15. The deed was not recorded, and it is unknown whether the deed was delivered. *Id.* Bret claims that he did not discover the deed until 2017. *Id.* However, a few days after Mary Ann's signing of the 1992 deed, "the Brule County Planning Commission approved her dedication and plat, which designated the 46-acre tract as Lot RH-2 of the 'Sharping Subdivision.'" *Id.*

In 1994, Mary Ann created HRI as the sole shareholder. *Id.* ¶ 16. In 1996, Mary Ann and DeLonde executed a warranty deed transferring Healy Ranch from HRP to HRI, not including RH-2. *Id.* Over the next few years, Bret, Bryce, and Barry purchased shares in HRI from Mary Ann until each of them had a 1/3 interest in HRI. *Id.* In Bret's view, HRP is the owner of the Healy Ranch because of Mary Ann's lack of authority to transfer the land from HRI to HRP before receiving his consent. *Id.* ¶ 17 at 775. Bret contends that Mary Ann converted her 75% interest in HRP to HRI when she transferred the land to HRI, leaving Bret with an additional 25% interest in HRI. *Id.* Bret reasons that HRI became a partner with Bret, in HRP. *Id.* Therefore, Bret theorizes that he and his brother purchased Mary Ann's 75% interest in HRI and left him with an additional 25% in HRI under the 1986 partnership agreement. *Id.* However, the Supreme Court stated that Healy Ranch's lenders deal with HRI, mostly due to the actions of Bret as acting president of HRI, not HRP. *Id.*

In *Healy I*, Bret claimed that the transfer of RH-2 "caused the loss of land" because he will not be able to recover the land because Raymond Sharping and Larry Mines were innocent buyers. *Id.* ¶ 19. However, Bret also makes the claim that RH-2 was never transferred because Mary Ann did not have the authority to transfer the land from HRP to HRI, arguing that HRP owns the land in question because the transfer is "null and void." *Id.* ¶ 20. Bret claims that he did not lose the land because the Sharpings and Mines were farming the land and paying taxes on the land through the permission of HRP. *Id.* Next, the Court discussed their holding in *Healy I*, in which they held that Bret's claims were time-barred due to his actual or constructive notice of the claims he could have brought years prior to his filing in 2017. *Id.* ¶ 23 at 776. (quoting *Osborne*, 2019 S.D. 56, ¶¶ 20-21, 934 N.W.2d at 565).

After the Supreme Court issued its opinion in *Healy I*, Bret brought a lawsuit on behalf of HRP to quiet title to RH-2. *Id.* ¶ 24. In Mary Ann's motion to dismiss, she asserts that Bret does not have the authority to bring this action on behalf of HRP as a minority partner, and that they have no legal interest in RH-2. *Id.* ¶ 25. Larry and Sheila Mines, along with the Estates of Evelyn, Raymond, and Randolph, denied HRP's claim of ownership of RH-2 and filed a counterclaim that they acquired title through adverse possession. *Id.* ¶ 26. Larry and Sheila Mines, along with the Sharpings' estates filed a joint motion to dismiss the complaint for failure to state a claim and, similar to Mary Ann's brief, argued that the Court in *Healy I* decided ownership issues. *Id.* ¶ 27. Further, Larry and Sheila Mines filed a motion for summary judgment on their counterclaim for adverse possession. *Id.* ¶ 28. After the Circuit Court's ruling, HRP appealed, raising two issues: "(1) Whether the circuit court erred when it granted the Mineses' motion to dismiss; and (2) Whether the circuit erred when it granted the Mineses' motion for summary judgment on their counterclaim alleging adverse possession." *Id.* ¶ 31 at 777.

The Supreme Court held that the Circuit Court's ruling on the motion to dismiss was erroneous. *Id.* ¶ 39 at 779. The Court held that the Circuit Court incorrectly read *Healy I* by utilizing certain factual findings regarding ownership of the Ranch. *Id.* The Court noted that Bret did not "bring a quiet title action challenging ownership to Healy Ranch." *Id.* ¶ 40 (*Osborne*, 2019 S.D. 56, ¶ 20, 934 N.W.2d at 563). Lastly, the Court concluded that the Circuit Court improperly relied on partnership law in determining that Bret could bring the quiet title claim on behalf of HRP. *Id.* ¶ 43 at 780.

The Court next looked to determine whether Bret, on behalf of HRP, may claim that the use of RH-2 by the Sharpings was permissive, given his entirely different position on the tract of land in *Healy I*. *Id.* ¶ 50 at 782. In his deposition in *Healy I*, Bret claimed that the transfer of RH-2 caused him a loss of land. *Id.* ¶ 51. In the current action, Bret, on behalf of HRP, claims that Mary Ann did not have the authority to transfer RH-2 without consulting with him as a mutual partner of HRP. *Id.* ¶ 52. The Court held that the use of judicial estoppel is appropriate because "Bret may not, in the name of HRP, re-fashion his claim regarding RH-2 into a quiet title action that contemplates that land was never transferred and, instead, has been permissively used for the past thirty years by others who have farmed it and paid taxes." *Id.* ¶ 60 at 784.

In relation to the Mineses' adverse possession claim, the Court held that "[they] are able to tack at least two years of possession by Randolph Sharping from the time proceeding the execution of the warranty deed in 2012 so long as Randolph Sharping's possession of RH-2 was similarly adverse." *Id.* ¶ 69 at 786. The Court affirmed the Circuit Court's decision granting the Mineses' motion for summary judgment on the theory of adverse possession holding that the title to RH-2 is quieted for the Mineses, and HRP's quiet title claim is foreclosed. *Id.* ¶ 70.

Bret Healy v. Healy Ranch, Inc. (07CIV22-12)

In this action, Bret brought an application for inspection of records pursuant to SDCL 47-1A-1604 to 1604.2 and asked for attorney's fees and costs. HRI brought affirmative defenses of accord and satisfaction, estoppel, fraud, laches, res judicata, issue preclusion, and waiver. Further, HRI brought counterclaims for attorney's fees for frivolous and malicious filing, injunction, and asked the complaint to be dismissed. HRI filed a motion for a protection order, and Bret brought a motion for an order to permit inspection and copying of records.

The Circuit Court, on its own motion for judgment on the pleadings, reasoned that Bret was entitled to the records that he sought, and that there was no evidence to prove that he had not received those records. The Circuit Court conclude that HRI granted Bret access to all the records he requested. The Circuit Court did not find the necessary proof required for the extreme penalty of barring Bret from redressing the court system and denied HRI's counterclaim for injunction. Further, the Circuit Court concluded that Bret was not seeking corporate records for a proper purpose and requested unnecessary discovery. Lastly, the Circuit Court granted HRI attorney's fees in the amount of $13,655.

Bret appealed the Circuit Court's decision, and the Supreme Court summarily affirmed, awarding $5,009.60 in appellate attorney's fees to paid be paid by Bret to HRI. The total amount of attorney's fees award in this file was $18,644.

State of South Dakota v. Bret James Healy (07CRI17-69)

This action is included by this Court to detail the nature of the relationship between the family members in this action. The Court will take judicial notice of this file. Bret was arrested on April 25, 2017, and later charged with 2 counts of Simple Assault and 1 count of Trespassing. On the evening in question, Bret pushed his way into Barry's residence and allegedly committed an

assault on Barry's wife, Brandy Healy. On September 25, 2018, Bret was acquitted by a jury on all charges.

Bret Healy v. Brandy Healy, Delacey Grayce Owens, Barry Healy (07CIV20-10)

Bret brought an action alleging that Brandy wrote false police reports in her police interview in 07CRI17-69. Bret alleged that the Defendants continued to pursue false allegations until trial in September of 2018. The Defendants filed a motion for summary judgment which was granted as Bret could not meet his burden of proof as to the element of causation for malicious prosecution.

Brandy Healy v. Bret James Healy (07TPO18-11)

Bret James Healy v. Barry Healy (07TPO22-06)

The above actions are listed to demonstrate the contentious nature of the familial relationship with members of the Healy family and the Court takes judicial notice of these files. The two protections orders were brought by the parties stemming from issues within the family, and in relation to the litigation that began in 2017. Both petitions were denied.

Healy v. Fox

This action was filed in the Federal District Court, and Bret filed an amended complaint, after the Defendants filed a motion to dismiss, bringing a claim under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Bret's complaint from August 8, 2017, alleges that he received HRI tax documents during discovery in a state lawsuit showing that HRI's shares from 1994 to Mary Ann are void because Mary Ann did not provide proper consideration. *Healy v. Fox*, 572 F.Supp.3d 730, 734 (D.S.D. 2021). On August 1, 1994, Mary Ann, with assistance from Attorney Fox, signed Articles of Incorporation for HRI authorizing the corporation to issue 1,000,000 shares of common stock. *Id.* On the same day, Fox, on behalf of Mary Ann, caused HRI

to issue 299,348 shares of common stock which made up all of the issued and outstanding shares of the corporation. *Id.*

Bret contends that Mary Ann did not provide proper consideration for the shares in HRI which causes them to be void. *Id.* at 734-735. However, the Federal Court reasoned that Mary Ann transferred Healy Ranch to HRI from a previous partnership in 1995 which conveyed to HRI record title to the Healy Ranch. *Id.* at 735. Bret alleges that Mary Ann never owned the land because it was owned by the partnership. *Id.* Therefore, he alleges the partnership property belongs to the partnership and not to Mary Ann as an individual. *Id.* This caused the conveyance to HRI in exchange for consideration for the shares to be void because the transfer was invalid. *Id.*

Bret further argues that the HRI became a RICO "enterprise" defined by 18 U.S.C.§ 1961(4) which was used by "the Defendants to defraud him out of over $2 million over the course of the next seventeen years. *Id.* Moreover, Bret contends that the Defendants violated 18 U.S.C. §§ 1341 ("mail fraud") and 1344 ("bank fraud") which are considered "racketeering activity" under 18 U.S.C. § 1961 (1) which entitled him to relief under 18 U.S.C.§ 1962 (c) and (d). *Id.*

Bret claims that the mail fraud occurred when Mary Ann sold her interest in HRI to Bret, Bryce and Barry in 2000. *Id.* In furtherance of his claim, Bret contends that Bryce sent him K-1 tax documents listing his 1/3 share in HRI which prompted him to invest over $2 million of his personal funds for the improvement and operation of Healy Ranch. *Id.* at 735-736. Bret asserts that he would not have invested his money into HRI if he had knowledge that his shares were not valid. *Id.* at 736.

Bret alleges that the bank fraud occurred when the Defendants entered into an agreement to fraudulently utilize Bret's investment in the HRI for bank loans. *Id.* Further, Bret argues that

Fox removed old corporate minutes and drafted new minutes for 2000 through 2004 and 2006 through 2008 and forged Bret's signature on one of the loan applications. *Id.*

The Federal Court rejected all of this and reasoned that an important consideration of Bret's RICO conspiracy is that it stems from the same fraudulent transfer of Healy Ranch from the partnership to HRI that he alleged in his state court action. *Id.* at 743 (citing *Osborne*, 934 N.W.2d at 564-65.). The Court concluded that Bret's RICO claim is based on the "underlying facts" from his state court cause of action which meets the first element of res judicata. *Id.* Bret's state court claim was barred by the six-year statute of limitations for intentional tort and contract claims. *Id.* (citing *Osborne*, 934 N.W.2d at 563). Bret's RICO claim in Federal Court is afforded a four-year statute of limitation. *Id.* (citing *Ass'n of Commonwealth Claimants v. Moylan*, 71 F.3d 1398, 1402 (8th Circ. 1995)). Bret's second claim does not allow him a longer statute of limitation, and therefore, the state court's granting of summary judgment qualifies as a "final judgment on the merits" which satisfies the second element of res judicata. *Id.* Bret did not contest that the third element for res judicata is met because the parties are the same in the federal action as they were in the state court action. *Id.* The Federal Court concluded that Bret had the necessary information to make his claims in his Amended Complaint six weeks before the state circuit court made their determination. *Id.* This granted Bret "a full and fair opportunity to litigate…that claim" because "newly-discovered evidence does not provide an exception to res judicata." *Id.* (quoting *Est. of Johnson by & through Johnson v. Weber*, 892 N.W.2d 718, 733 (S.D. 2017). The Federal Court concluded that Bret's RICO claim was barred by res judicata. *Id.*

In relation to the Defendant's statute of limitations argument for their motion to dismiss, the Court stated that it:

> [did] not foresee any "odd consequence" to granting Defendant's motion to dismiss given that Bret could have discovered the corporate defects at the center of his

> Amended Complaint using reasonable diligence when he purchased one-third of the shares in HRI in 2000 and throughout his seventeen years as president of HRI.

Id. at 749. The Court concluded that if Bret had used "reasonable diligence," he would have discovered his alleged injury before the RICO statute of limitations had passed. *Id.* at 750. Bret appealed this decision to the 8th Circuit Court of Appeals.

Healy v. Fox

The Court of Appeals, like the prior courts, laid out quite thoroughly the relevant facts relevant to Bret's claim. The Court of Appeals, like all courts before it, reasoned that all the partnership's interest in Healy Ranch was conveyed to HRI, including Mary Ann's share and Bret's share. *Healy v. Fox*, 46 F.4th 739, 742 (8th Cir. 2022). Mary Ann conveyed her shares to Bret, Barry, and Bryce creating a 1/3 ownership share in each of them. *Id.* Bryce sent Bret K-1 tax forms showing Bret's 1/3 interest in HRI. *Id.* In 1999, Bret became president and director of HRI. Id.

Next, the Court detailed Bret's lawsuit from 2017 in which he sued Mary Ann, Bryce, Barry, Fox, HRP, and HRI alleging that the 1995 transfer of Healy Ranch from the partnership to HRI was done without Bret's knowledge or consent. *Id.* Further, Bret alleged that Mary Ann, "falsely and fraudulently failed to disclose to [Bret] that he she had conveyed all the partnership assets to a corporate entity," and Mary Ann and the other defendants "concealed the true facts for the purpose of defrauding [Bret]." *Id.*

The Court of Appeals concluded, like the Supreme Court of South Dakota in *Healy II* with Bret's quiet title claim, that Bret's RICO action is the same cause of action as his claim in *Healy I*. *Id.* at 744. Similar to *Healy II*, "Bret is again addressing the same wrong he identified in [Healy I]—the alleged wrongful conduct by members of his family to vest HRI with ownership of the Ranch." *Id.* (quoting *Healy II*, 978 N.W.2d at 800).

The current action and the action in *Healy I* evolved from Mary Ann's formation of HRI in 1994 and the transfer of Healy Ranch from the partnership to HRI in 1995. *Id.* In this action, "Bret alleged that the defendants fraudulently represented to him that he owned shares in HRI, which is premised on the claim that the stock is void because the transfer of the partnership's interest in the ranch to HRI was not valid consideration for the issuance of HRI stock." *Id.* The Court of Appeals concluded that the wrong Bret is seeking to redress in both actions is the Defendants' depriving him of ownership. *Id.* at 745. Further, the Court of Appeals held that Bret had a full and fair opportunity to litigate his claim for validity of stock issuance. *Id.* The Court concluded that Bret's federal suit is the same cause of action as his state court suit, and res judicata applied. *Id.*

Healy v. Supreme Court of South Dakota

Bret's federal claim against the Supreme Court of South Dakota and its sitting members, and others, consisted of four causes of action: 1) Violation of Due Process against the Supreme Court of South Dakota relating to an appellate decision it rendered allegedly depriving the Plaintiffs of their property and liberty interests; 2) Fraud, Misrepresentation, and Other Misconduct against various defendants; 3) Fraud Upon the Court against various defendants; and 4) Injunctive and Declarative Relief under 28 U.S.C. § 2201. *Healy v. Supreme Court*, F.4th 1, 1 (D.S.D. 2023). The claims from Bret relate to the multitude of lawsuits regarding ownership of the Healy Ranch, HRI, and litigation from state and federal courts resolving the ownership dispute. *Id.* at 2. The current federal matter, like prior state and federal matters, brought "various claims which, though based on alternative legal theories and seeking distinct forms of relief, ultimately attempted to assert that HRP and Plaintiff Bret Healy had greater ownership in HRI and its assets." *Id.* Bret and

HRP, once again, seek to relitigate ownership of Healy Ranch by bringing claims alleging constitutional issues and fraud in prior litigation. *Id.*

The Federal District Court notes in Footnote 1:

> The court in *Healy I* specially "decline[d] to address Bret's claim of ownership" and instead "center[ed] on the timeliness of Bret's claims." *Healy I*, 934 N.W.2d at 563. The court found Bret's contract and torts claims untimely and barred by the statute of limitations; in so deciding the *Healy I* court effectively prevented Bret Healy from challenging that each Bret, Barry, and Bryce owned one-third of HRI, indirectly confirming the ownership status quo. In *Healy II*, a quiet title action, Plaintiffs attempted to argue HRP owned the Healy Ranch, but the Supreme Court of South Dakota determined the claim was barred under res judicata. In *Mines*, HRP, controlled by Bret, argued that it, and not HRI, owned certain land and filed an action to quiet title to property, but the court decided against HRP and determined the Mineses retained title. Lastly, in *Fox*, this Court determined Plaintiff Bret Healy's action under 18 U.S.C. § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act was barred by res judicata and ruled for the defendants, which the Eight Circuit affirmed on the same grounds.

Id. Bret brought his claim to the Federal Court asking it to vacate, void, or set aside prior final judgments in state and federal court, thereby declaring Bret to own 2/3 of HRI, despite what was adjudicated in state court. *Id.* at 3. Further, Bret asks this Court reduce Barry and Bryce's shares in HRI to 1/6, despite what was previously adjudicated in state court. *Id.*

According to Bret's Complaint in Federal Court, he asked the Court to reverse *Healy I*, *Healy II*, and *Fox* and rule that Bret prevailed, despite the prior rulings from the Supreme Court of South Dakota and federal courts barring his claims under res judicata. *Id.* at 3. The Amended Complaint adds requests to the original Complaint a request to "[d]eclar[e] Plaintiff's future rights and remedies unaffected" by the past decisions of courts, while requesting punitive damages, attorney's fees, and costs. *Id.* at 4.

The Court held that the Rooker-Feldman doctrine, which when applicable prevents federal district courts from hearing direct appeals of state court decisions, applies to Claims 1 and 5 of Plaintiff's Amended Complaint. *Id.* at 10. Bret lost in *Healy I* and *Healy II* because the Supreme

Court of South Dakota ruled that Bret did not prevail on his claims which thwarted his claim of ownership that he owns more than 1/3 of HRI along with its assets. *Id.* (citing *Healy I*, 934 N.W.2d at 565) (citing *Healy II*, 978 N.W.2d at 800-03).

Bret alleges that the judgments rendered by the state courts affecting ownership of HRI and the ranch caused the injury that Bret brings in this federal action. *Id.* In Claim 1 of Bret's Complaint, he alleges that the South Dakota Supreme Court "deprived" Bret of "significant property and liberty interests" without a meaningful hearing and due process when they decided that Bret owned a one-third interest in HRI. *Id.* In Claim 5 of Bret's Complaint, he argues that the Supreme Court of South Dakota decided the prior cases "in the complete absence of all jurisdiction" and deprived him of civil rights, due process, and a violation of 42 U.S.D. § 1983 because the ruling limited Bret's ownership to a one-third interest in HRI. *Id.* The Court concluded that Rooker-Feldman doctrine applies, and the Court lacks subject-matter jurisdiction over the action. *Id.* at 14.

Additionally, the Court held that if the Rooker-Feldman doctrine does not apply, the Court lacks subject matter jurisdiction over the Supreme Court of South Dakota, the justices, and Circuit Judge Sogn (sitting on the Supreme Court by assignment) under the Eleventh Amendment of the Constitution. *Id.* Further, the Court concluded that judicial immunity disallows Bret from suing Judge Sogn and the justices individually. *Id.* at 16. For the Court to have jurisdiction of Claims 2, 3, and 4, the Court must have jurisdiction over Claims 1 and 5. *Id.* at 17. The Court may not exercise supplemental jurisdiction due to Bret's lack of viable federal claims. *Id.*

Res judicata bars the claims from Bret "because the state-law claims—Claims 2, 3, and 4—arise out of the same nucleus of facts where 'the wrong sought to be redressed is the same' as the prior state court case[s]." *Id.* at 20. Further, the Court states "[i]n *Healy I*, *Healy II*, and the

prior federal litigation, like in this case, 'the wrong sought to be redressed' is Plaintiff Bret Healy's assertion of greater ownership in HRI and its assets, or in the cases of *Mines*, HRP's claims to HRI's assets." *Id.* The Court concluded that the first element of res judicata is met because the fraud, misconduct, and misrepresentation claims arise out of the same nucleus of facts. *Id.* at 21. The second element of res judicata is met because the prior litigation in state and federal court resulted in final judgments on the merits that affected Bret's ownership in HRI. *Id.* The third element of res judicata, dealing with same parties, is met for the Healys, Mineses, HRI, Osborne, and Fox. *Id.* The fourth element of res judicata is met because Bret had the opportunity to present Claims 2, 3, and 4 of the alleged fraud after the decision in *Healy I*. *Id.* at 23. The elements for res judicata are met, which bars Bret's relief including the seeking to reverse or vacate the 8th Circuit's final decision and the final decisions from the South Dakota Supreme Court. *Id.*

Lastly, the Federal Court held that "[a]lthough Bret Healy's counsel at the hearing [Mr. Volesky] provided zealous representation, the arguments made about why the Rooker-Feldman doctrine or judicial immunity did not apply or how res judicata does not bar the state law claims were not warranted by existing law or a good faith, nonfrivolous argument for some modification or extension of existing law. The history of litigation combined with the absence of merit of the claims justify an award of attorneys fees to the non-state defendants [the parties who sought them] as sanctions under Fed.R.Civ.P. 11(b)(1) and (2)." *Id.* at 25. As of this writing it is unknown what amount of attorney fees were awarded.

ANALYSIS AND CONCLUSIONS OF LAW

This Court brought an Order to Show Cause for Rule 11 sanctions on its own initiative under SDCL 15-6-11(c)(1)(B). The statute provides that: "[o]n its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an

attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto." SDCL 15-6-11(c)(1)(B). The Court directed Bret Healy and Mr. Volesky, as counsel to Bret Healy, to show cause as to why they did not violation SDCL 15-6-11(b).

SDCL 15-6-11(b) states:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
> (1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for extension, modification, or reversal of existing law or the establishment of new law;
> (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further litigation or discovery; and
> (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on lack of information or belief.

SDCL 15-6-11(b) places a duty on attorneys "to conduct a 'reasonable inquiry' into the facts and law prior to commencing any action." *Smizer v. Drey*, 2016 S.D. 3, ¶ 17, 873 N.W.2d 697, 703 (quoting *Anderson v. Prod. Credit Ass'n*, 482 N.W.2d 642, 645 (S.D.1992)). The Supreme Court has previously stated that the intent for "sanctions under SDCL 15-6-11 is to deter abuse by parties and counsel." *Id.* ¶ 18 (citing *Anderson*, 482 N.W.2d at 645) (quoting *Rodgers v. Lincoln Towing Serv., Inc.*, 771 F.2d 194, 205 (7th Cir.1985)). The objective is "to reduce the reluctance of courts to impose sanctions by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions." *Id.* (citing *Anderson*, 482 N.W.2d at 645) (quoting *Rodgers*, 771 F.2d at 205). Here, Mr. Volesky abrogated his duty. Not only did he fail to find support for his position, he did so despite each and every time a judge told him his claim had no merit, effectly doubling down on his poor decisions and ignoring his duty to act as

the gatekeeper to the court, assisting in the prevention of just such cases he was in fact bringing, culminating in this latest attempt to relitigate perceived past wrongs.[4]

The Supreme Court of South Dakota has specifically stated:

> A frivolous action exists when the proponent can present no rational argument based on the evidence or law in support of the claim. To fall to the level of frivolousness there must be such a deficiency in fact or law that no reasonable person could expect a favorable judicial ruling. Frivolousness connotes an improper motive or legal position so wholly without merits as to be ridiculous.

Johnson v. Miller, 2012 S.D. 61, ¶12, 818 N.W.2d 804, 807-808 (quoting *Ridley v. Lawrence Cnty. Commn.*, 2000 S.D. 143, ¶ 14, 619 N.W.2d 254, 259). In order to determine whether a claim or defense is frivolous, it must be examined using an objective standard. *Id.* Additionally, the Court has stated "we do not apply the test for frivolity to 'meritorious actions that prove unsuccessful, legitimate attempts to establish a new theory of law, or good-faith efforts to extend, modify, or reverse existing law.'" *Id.* ¶ 17 at 809 (citing *Hartman v. Wood*, 436 N.W.2d 854, 857 (S.D.1989)) (quoting *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063, 1069 (Colo.1984)). In this case, it cannot be said that Bret Healy was merely putting forth an unsuccessful theory or making a good faith effort to modify existing law. Here the very issue he is litigating has been determined contrary to his position, and frequently. Objectively and on its face this action is frivolous defined. No rational argument exists to support it, no basis to argue for change has any chance of success, and no reasonable person should expect a favorable ruling. It is clear and the finding of this Court that Mr. Healy is motivated to bring this action not by any belief in a supported legal claim, as those

[4] Although this in fact does not appear to be the latest attempt. Recently filed and currently pending in this matter is HRI's Motion to Dismiss an Answer and Counterclaim filed by Bret Healy via Tucker Volesky, wherein it appears the entirely of the prior litigation is, once again, being restated in an attempt to relitigate previously determined issues. That matter is pending and will be addressed separately.

have all been turned away at the courthouse steps, but rather a clear and continuing effort to harass or cause unnecessary delay or needlessly increase the cost of litigation.[5]

In general, SDCL 15-6-11(c) states: "[i]f, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated §15-6-11(b) or are responsible for the violation." The nature of the sanctions is detailed in the statute as:

> A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all reasonable attorneys' fees and other expenses incurred as a direct result of the violation.
> (A) Monetary sanctions may not be awarded against a represented party for violation of subdivision 15-6-11(b)(2).

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[5] While this court finds that the basis of this challenge to dissolution is frivolous, and intended only to delay and harass, it should be noted that the Supreme Court held in *Healy II* that:

> [E]ven if a court could conclude from these prior admissions that Bret's motivation for filing the notice of claim at issue here was no different than his reason for commencing the action in *Healy v. Osborne*, SDCL 43-30-9 contains a particularly demanding standard. The statute conditions an award of attorney fees upon a finding that the party who filed a notice of claim did so "for the purpose only of slandering title[.]" SDCL 43-30-9 (emphasis added). That issue has not been previously litigated and the circuit court correctly concluded that the record was insufficient to meet the standard under SDCL 43-30-9. From our review of the record, the circuit court's denial of HRI's request for attorney fees was not erroneous.

Healy II at ¶ 64. It was this Court's denial of sanctions in that matter that was affirmed. A challenging yet colorable claim was put forth, and the high standard that slander of title be the only basis for attorney fees was spelled out. No such limiting language such as "only" is contained in SDCL 15-6-11(b)(1). That said, This Court has been where Justice Gilbertson was, writing for the majority, as well as now where Justice Zinter sat in dissent, in *Johnson v Miller*, 2012 S.D. 61, 818 N.W.2d 804. While that case dealt with sanctions in the context of SDCL 15-17-51, the discussion of frivolity it quite instructive and an excellent guide for the circuit courts. The Supreme Court ultimately upheld the lower court determination that the standard of frivolity was not met, while the dissent pointed out that deference to the trial court is laudable, but not without limits where, in the opinion of the dissent, a clear abuse of discretion occurred and more than a hindsight review points out a clearly frivolous cause of action. This Court previously denied claims for sanctions for conduct similar to that found in this case by the same actor, but upon reviewing yet another effort to address the same issues previously determined, said claim being pursued after being so advised by numerous courts of its lack of merit, ultimately in this case the motion for dismissal, for all the reasons contained herein, meets the standard for sanctions under SDCL 15-6-11. This is equally true for sanctions on counsel, whom has had his actions previously described as "zealous representation," *Healy v Supreme Court* at 25, but has crossed into the role of co-conspirator.

> (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

SDCL 15-6-11(c)(2). The Court must describe the conduct in violation of SDCL 15-6-11(b) as necessitated by SDCL 15-6-11(c) which reads, "[w]hen imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanctions imposed." SDCL 15-6-11(c)(3).

The Supreme Court of South Dakota has not addressed the issue of a state circuit court imposing sanctions on a party and attorney on its own motion. However, the issue of a District Court sanctioning an attorney on its own motion has been before the Eighth Circuit Court of Appeals. In *Willhite v. Collins*, a party brought unsuccessful state actions and after being unsuccessful, brought an action with similar claims in federal court. *Willhite v. Collins*, 459 F.3d 866, 868 (8th Cir.2006). The attorney was sanctioned by the District Court, which held that the attorney was "remiss in either neglecting to consider or entirely disregarding, the doctrines of res judicata and collateral estoppel" and "no competent lawyer could reasonably believe there was a colorable or legally-supportable claim." *Id.* at 870. The Court of Appeals upheld the District Court's finding and found it appropriate. *Id.* at 867.

The Court of Appeals, in a later decision, found that the sanctions in that case were appropriate because *Willhite* illustrated an "obvious and egregious disregard of res judicata, where an attorney 'and his clients had subjected the defendants to repeated litigation over matters that had[d] been finally adjudicated'—commencing a fifth lawsuit on the same subject matter." *C.H. Robinson Worldwide, Inc v. Lobrano*, 659 F.3d 758, 767 (quoting *Willhite*, F.3d at 868).

In *Willhite*, the District Court imposed a sanction of $66,698.30 in attorney's fees which the Court of Appeals concluded was "substantial, but not unwarranted." *Willhite*, F.3d at 869.

Further, the Court found that when awarding sanctions, they should be "no greater than sufficient to deter future misconduct by the party," however a large award was imperative to deter the attorney's misconduct. *Id.* (quoting *In re Kujawa*, 270 F.3d 578, 583 (8th Cir.2003)). The attorney, much like Bret Healy, had been sanctioned multiple times in lower courts in the underlying litigation which was unsuccessful in deterring his misconduct. *Id.* Moreover, the Court found that the attorney's sanctions were appropriate because he "failed to act as the gatekeeper to prevent such abuses." *Id.* at 870. Here to, this Court finds that a large award is imperative as a deterrence.

The District Court utilized two types of authority to support its imposition of sanctions: Rule 11 and the court's inherent powers. *Id.* However, the District Court did not clarify the authority for the sanctions it imposed and was encouraged to state the authority for each sanction imposed. *Id. See Fuqua Homes, Inc., v. Beattie*, 388 F.3d 618, 628 (8th Cir.2004) (remanding for failure to identify the source of authority for the sanctions imposed).

This Court will be utilizing SDCL 15-6-11 in its imposition of sanctions on Bret Healy and Tucker Volesky. Bret Healy has subjected the current parties, other family members, and past attorneys to numerous amounts of litigation with numerous arguments that erroneously claim ownership of certain land, and corporate stock. The Court has detailed the multitude of lawsuits Bret brought on the basis that he owns more than 1/3 ownership of HRI. The most telling decision comes from the Federal District Court, authored by Chief Justice Roberto Lange, in which he repeatedly explains that Bret's claims are barred by res judicata on the issue of ownership. Not only does Bret continue to argue these issues, but Mr. Volesky continues to file pleadings aligning with Bret and signing the pleadings on behalf of his client. While the Supreme Court of South Dakota has stated in multiple opinions that they have not and are not deciding on the issue ownership, a quote frequently used by Mr. Volesky in briefs and pleadings, the Federal District

Court reasoned that the Supreme Court is maintaining the "status quo" of ownership of HRI. And ultimately this dictum is of no consequence, as the prior rulings barred Bret Healy's claims regardless.

In the motion dismiss in the current case, Bret details the alleged business activity that HRP has participated in throughout the years, despite the Supreme Court reasoning that HRP has ceased to exist since the formation of HRI. Since litigation began in 2017, Bret has attempted to argue on numerous occasions and in numerous state and federal actions that HRP has participated in meaningful business activities. Further, Bret has contended in these actions that HRP is the rightful owner of Healy Ranch and has a greater interest in HRI. The Court concludes this is a false contention that has not been supported by any state court or upheld by the Supreme Court of South Dakota or the Federal Courts.

The Court would be remiss if it did not address the claims that are put forth in Bret's memorandum of law in support of the motion to dismiss the action for the Dissolution of HRI as it is this motion that is the basis for the Court taking action.

Bret claims that HRP settled a case in Brule County in case file 07CIV13-66. However, this is false, and a blatant misstatement of the parties and pleadings in that lawsuit. Bret commenced a lawsuit on behalf of HRI against Larry Mines. Further, in the Complaint in 2013, HRI is recognized by Bret as being a corporation organized under South Dakota law and owning the land of Healy Ranch that has been at issue in the multitude of cases brought by and against Bret. There is no indication that this lawsuit was brought on behalf of HRP in the pleadings or case caption. Bret's attempt to allege that HRP's business has continued through a lawsuit that had no relation to HRP is an attempt to assert that HRP's ownership in HRI and the land, and is based

upon a falsehood. The undisputed facts are that the first lawsuit brought on behalf of HRP by Bret was commenced in 2018, after the commencement of this litigious family dispute.

Further, Bret argues that the Articles of Incorporation of HRI do not indicate any contributions or exchanges for issuance of any shares at the inception of HRI. However, the Supreme Court of South Dakota and the Federal Court stated in multiple opinions that Mary and DeLonde later transferred Healy Ranch from the partnership to HRI. This is the consideration for HRI which, at the time, was solely owned by Mary Ann. Bret's persistent claims on the issue of consideration are naught because it has been decided and analyzed by multiple courts in multiple opinions that he is barred from bringing this claim.

In another attempt to prove partnership business, Bret asserts that HRP filed a tax return in 1985 indicating that HRP began operating in 1961. Nevertheless, this is contrary to information utilized by the parties in *Healy I* which stated, according to arguments presented, that there were multiple partnerships formed throughout the years with the Healy family with only the last formation of a partnership giving Bret an interest. The Supreme Court of South Dakota, with the Federal Court affirming, has held that the Bret did not participate in meaningful partnership business after the formation of HRI. In reality, HRP ceased to carry out business until the litigation began in 2017. Bret has attempted to use HRP as a vehicle to bring claims against HRI and his family, these claims have all been rendered unsuccessful. Despite the rulings against him, Bret continues to inappropriately "act on behalf of HRP" to bring similar claims of ownership after being denied relief for the same claims he now brings.

Bret has been put on notice through the numerous lawsuits listed above that his claims are without merit. Despite the rulings from prior courts, Bret continues to pursue litigation against his family, attorneys, rightful landowners, justices, Judge Sogn, and the Supreme Court of South

Dakota. Included in the lawsuit detailed above, is a criminal matter, two petitions for temporary protection orders, and a civil lawsuit brought by Bret for wrongful prosecution. These show the level contention and multitude of the issues within this family and evince the true motive for Bret's actions.

Instead of relying upon multiple Supreme Court, Federal District Court, and Eighth Circuit Court of Appeals decisions, Bret and Mr. Volesky have continued to belabor issues that have been litigated and barred by res judicata or dismissed on other grounds. In reliance on their personal thoughts and views of their potential claims, Bret and Mr. Volesky have attempted to relitigate issues with different claims that arise from the same facts of prior lawsuits. Moreover, when Bret is barred from litigating one issue or a higher court rules in a manner that they disagree with, Bret finds a new issue based upon the same facts that could have and should have been address within prior litigation. And he has been told this, time and time again. For example, Bret is claiming in the current dissolution that the email utilized by the Supreme Court in *Healy I* was forged by Barry to appear to be sent form his personal email account. Therefore, the Supreme Court's reliance that Bret admitted to the ownership of HRI is null and void due to Barry's fraud. Once again, the Courts have held in multiple decisions that Bret is not allowed to bring claims based upon newly discovered evidence that could have been brought in the prior lawsuit. The alleged forgery of the email is another attempt to relitigate past issues.

Bret was ordered to pay attorney fees by the Circuit Court and the Supreme Court, totaling $120,390.02. Further, Bret was ordered to pay sanctions by the Federal Court, and the amounts are still being considered. This has not deterred him. Mr. Volesky is duty bound to scrutinize every claim he files, and to review the appropriateness of each. This has not been done. Rule 11 provides that an action for sanctions is proper if it is shown that the litigation is brought for an improper

purpose such as harassment, for claims brought that have no basis in law, for claims that have no basis to assert that a modification or reversal of existing law will ultimately support such claims, and that such lack of support for any claim is excusable due to a lack of information. Here, they are, they do not, they do not, and they are inexcusable.

Past sanctions have had no effect on Bret Healy, despite totaling over $120,000.00. Mr. Volesky has not been deterred or counseled his client on the wisdom of pursing frivolous actions. It is the intent of this Court to impress upon Mr. Healy that his actions have consequences and should not continue, and the finding of this Court that the doubling of his past sanctions will do so. It is the ORDER of the Court that Bret Healy be sanctioned in the amount of $240,000.00 for violating SDCL 15-6-11(b)(1). This is a substantial amount, but not unwarranted. Regarding Mr. Volesky, he is aware that the South Dakota Circuit Courts, the South Dakota Supreme Court, the Federal District Court, and the Federal Circuit Court have all clearly ruled that continued attempts to relitigate the issue of stock and land ownership in whatever form is barred, and yet the filings continue, and rather than acknowledge this, at each stage he has been involved he has effectively doubled down on his error, with the most recent[6] being the basis for his motion to dismiss this dissolution, a dissolution that is questionable his client even resists[7]. But they used an opportunity to challenge it to attempt re-litigation once again. To deter such action and to hold accountable his disregard of his responsibilities Mr. Volesky is sanctioned $10,000.00 for violating SDCL 15-6-11(b)(1), (2) & (3). In arriving at this figure, this Court has considered the substantial amount of attorney fees sought by opposing counsel, and has reviewed when attorney fees have been sought by Mr. Volesky, and safely and conservatively estimates that Mr. Volesky has billed in excess of $100,000.00. The disgorging of no less than 10% of that figure is an appropriate amount to deter

[6] But see footnote 4.
[7] See footnote 2.

future sanctionable conduct. Mr. Volesky is further required to comply with any directive of the South Dakota Disciplinary Board of the State Bar, to whom this Court is duty bound to report.

All sanctions are payable into the Brule County Clerk of Courts.

Any finding of fact better designated a conclusion of law, and vice versa, should be considered as such. Any reference to any prior court record is judicially noticed where appropriate. Additionally, attorney fees are awarded against Bret Healy in favor of Petitioners regarding the Motion to Dismiss and subsequent proceedings, upon proper submission of a claim for the same and subject to hearing on what constitutes reasonable and appropriate fees.

Attest:
Miller, Charlene
Clerk/Deputy

BY THE COURT:
3/18/2024 11:39:29 AM

Hon. Patrick T. Smith
First Circuit Court Judge

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	: SS	
COUNTY OF BRULE	)	FIRST JUDICIAL CIRCUIT
	)	07CIV23-000058
IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.	)	CERTIFICATION OF HEALY RANCH PARTNERSHIP

I, Bret Healy, the managing, majority partner of Healy Ranch Partnership, hereby certifies that the Substitute Motion dated November 15, 2023, attached as Exhibit 4 to the Motion to Dismiss, was proposed and supported by the shareholders holding a majority of the outstanding shares of Healy Ranch, Inc.'s common, paid-up, capital stock, at a meeting of the shareholders held November 15, 2023.

Dated this 19th day of December 2023.

Bret Healy

Healy Ranch Partnership
Bret Healy, Managing Partner

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF Brule)

On this the 19th day of December, 2023, before me, Bret Healy, the undersigned officer, personally appeared Bret Healy, who acknowledged himself to be the Managing Partner of Healy Ranch Partnership, and that he, as such Managing Partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Partnership by himself as Managing Partner.

In Witness Whereof, I hereunto set my hand and official seal.

ABAGAEL KENOBBIE
Seal
Notary Public
South Dakota

Abagael Kenobbie
Notary Public, South Dakota

My Comm. Expires: 9/4/2024

(SEAL)

EXHIBIT 4

hand delivered 11-15-2023

Substitute Motion dated November 15, 2023

1. Whereas Bryce Healy owns, at best, 1/6 of Healy Ranch Inc. (HRI) paid-up capital stock, if any such valid stock exists; and
2. Whereas Bryce Healy has, himself, never paid for any HRI capital stock and has never provided proof of such a purchase; and
3. Whereas Barry Healy owns, at best, 1/6 of Healy Ranch Inc. (HRI) paid-up capital stock, if any such valid stock exists; and
4. Whereas Barry Healy has, himself, never paid for any HRI capital stock and has never provided proof of such a purchase; and
5. Whereas, voting as a block, Barry Healy and Bryce Healy own insufficient HRI paid-up capital to adopt the proposed dissolution and plan of liquidation and dissolution; and
6. Whereas the HRI stockholder list, fourth version produced for the 1-23-2023 annual HRI meetings, states that Barry Healy and Bryce Healy each, as of March 11, 1995, owned 24,936 shares of HRI paid-up capital stock; and
7. Whereas Bryce Healy and Barry Healy, and their counsel, Schoenbeck Law, have represented to state and federal courts in litigation known as Healy I, Healy II, Healy Ranch Partnership v Mines and RICO, that they first became stockholders in HRI per the 2-11-2000 contract for the purchase of 162,000 shares of HRI stock from stock incorporator Mary Ann Osborne, resultant in 54,000 shares of HRI stock each for Bryce Healy and Barry Healy; and
8. Whereas the said HRI stockholder list states that pursuant to the 2-11-2000 contract for the purchase of 162,000 shares of HRI stock from stock incorporator Mary Ann Osborne, Barry Healy and Bryce Healy acquired an additional 74,846 shares each; and
9. Whereas 54,000 does not equal 74,846; and
10. Whereas Bret Healy has produced competent evidence placed into HRI's corporate record that Healy Ranch Partnership paid for 100% of the common stock of HRI; and

Continued

11. Whereas Bret Healy has produced competent evidence placed into HRI's corporate record that he is the managing, majority partner of Healy Ranch Partnership; and
12. Whereas Bret Healy and Healy Ranch Partnership oppose the proposed dissolution and plan of liquidation and dissolution; and

Therefore, be it resolved,

13. The stockholder list produced by Barry Healy and Bryce Healy is a demonstrably false document, produced as genuine, that cannot provide the basis for their evidence free assertion of ownership of 99,782 shares each of HRI's common, paid-up, capital stock; and
14. Bryce Healy and Barry Healy owned zero shares of HRI paid-up capital stock prior to 2-11-2000, according to their repeated assertions in the litigation noted above; and
15. The proposed dissolution and plan of liquidation and dissolution, being opposed by the holder(s) of a majority of HRI's paid-up capital stock, if any such valid stock exists, is not adopted.

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

BRET HEALY, HEALY RANCH PARTNERSHIP, Plaintiffs, vs. SUPREME COURT OF SOUTH DAKOTA, HEALY RANCH INC., MARY ANN OSBORNE, BARRY HEALY, ALBERT STEVEN FOX, LARRY MINES, SHEILA MINES, BRYCE HEALY, Defendants.	4:23-CV-04118-RAL ORDER ON POST-DISMISSAL MOTIONS AND FOR SANCTIONS AMOUNTS

On December 14, 2023, this Court entered an Opinion and Order Dismissing Case and for Sanctions, Doc. 67, explaining why Plaintiffs Bret Healy and Healy Ranch Partnership had no viable federal claims in this case, granting the various defendants' motions to dismiss, granting certain defendants' motions for attorneys' fees and costs, and inviting those defendants' attorneys to file affidavits setting forth the amounts of fees and costs sought. That opinion and order ended with the statement, "once this Court determines the amount of sanctions to impose, this case will be dismissed." Doc. 67 at 26.

After entry of that opinion and order, Plaintiffs filed a Motion for Reconsideration, Doc. 74, and supporting brief and accompanying materials, Doc. 75. Plaintiffs then filed a Motion for Leave to File Second Amended Complaint, Doc. 86, proposed Second Amended Complaint, Doc. 86-1, and brief in support thereof, Doc. 87. Plaintiffs then filed a Second Motion for Extension of

Time to Accomplish Service, Doc. 90, seeking more time to serve the justices of the Supreme Court of South Dakota and one circuit judge who sat by designation, whom Plaintiffs sued contending that, in ruling on an appeal where Plaintiffs were the appellants, the justices "took actions in the complete absence of all jurisdiction." Doc. 63 at 351–60. The CM/ECF filings in this case indicate that all the justices subsequently were served, Docs. 101, 102, 103, 104, 105, 106, rendering this last motion moot. Defendants oppose the various motions. Docs. 76, 77, 78, 79, 88, 89, 92.

Meanwhile, the attorneys representing the defendants entitled to receive attorneys' fees and costs filed affidavits and then supplemental affidavits after doing further legal work to respond to Plaintiffs' ongoing and longstanding strategy of litigiousness over matters already resolved legally in final decisions in this and other courts. Docs. 68, 69, 70, 71, 80, 83, 95; see also Healy v. Fox, 572 F. Supp. 3d 730 (D.S.D. 2021), aff'd, Healy v. Fox, 46 F.4th 739 (8th Cir. 2022); Healy v. Osborne, 934 N.W.2d 557 (S.D. 2019); Healy Ranch, Inc. v. Healy, 978 N.W.2d 786 (S.D. 2022); Healy Ranch P'ship v. Mines, 978 N.W.2d 768 (S.D. 2022). This Court deems those amounts proper to award as sanctions.

More recently, the justices and one judge sitting by designation on the Supreme Court of South Dakota handling Plaintiffs' prior appeal filed a Motion to Dismiss, Doc. 109, and supporting brief, Doc. 110, as well as a motion to relieve them from needing to answer, Doc. 98. This Court already had provided its reasoning on why Plaintiffs had no viable claim against the justices and judge sitting by designation. Meanwhile, Plaintiffs' attorney Tucker Volesky filed a Motion to Withdraw, Doc. 107, citing a conflict of interest without additional explanation. In another federal case pending before the undersigned, Plaintiff Bret Healy (represented initially by attorney Volesky) is suing a clerk of court, circuit judge and county after entry of a memorandum decision

imposing sanctions of $240,000 against Plaintiff Bret Healy under the state law version of Rule 11, as well as $10,000 against Volesky, and the fallout from that state court ruling might be the source of the conflict of interest. Healy v. Miller, 4:24-cv-4053-RAL, Doc. 1, Doc 1-1. Volesky filed a motion to continue deadlines and sought a hearing on his motion to withdraw. Doc. 112. Some of the defendants have filed a motion to prohibit Plaintiff Bret Healy from appearing pro se on behalf of his fellow plaintiff Healy Ranch Partnership. Doc. 111. Indeed, a non-lawyer can represent himself, but not others, including business entities. See Smith v. Rustic Home Builders, LLC, 826 N.W.2d 357, 359–60 (S.D. 2013) (citing United States v. Hagerman, 545 F.3d 579, 581 (7th Cir. 2008)).

This Court is unpersuaded that there is cause to reconsider its decision, deems the proposed second amended complaint to be futile for the reasons contained in the prior opinion and order, and for reasons explained therein concludes that the judicial officers of the State of South Dakota are entitled to be dismissed. This Court deems the requested amounts for sanctions to be proper. The remaining motions are largely moot, though this Court will allow Volesky to withdraw from representing Plaintiffs. Judgment of dismissal will now enter. Therefore, it is

ORDERED that Plaintiffs' Motion for Reconsideration, Doc. 74, Plaintiffs' Motion for Leave to File Second Amended Complaint, Doc. 86, and Plaintiffs' Motion for Continuance, Doc. 112, are denied. It is further

ORDERED that Plaintiffs' Motion for Extension of Time to Accomplish Service, Doc. 90, and the motion to relieve state judicial officers from answering, Doc. 98, are denied as moot. It is further

ORDERED that the judicial officers' Motion to Dismiss, Doc. 109, is granted to the extent it had not already been granted, for the reasons contained in the prior opinion and order, Doc. 67. It is further

ORDERED that attorney Volesky's Motion to Withdraw, Doc. 107, is granted. It is further

ORDERED that judgment for sanctions enters against Plaintiffs, jointly and severally, and in favor of Defendant Mary Ann Osborne for $16,487.51; in favor of Defendants Healy Ranch, Inc., Barry Healy, Bryce Healy, Larry Mines and Sheila Mines for $14,463.63; and in favor of Defendant Steven Fox for $18,320.56. It is finally

ORDERED that judgment of dismissal with prejudice enters in favor of the defendants on all claims.

DATED this 11th day of April, 2024.

BY THE COURT:

ROBERTO A. LANGE
CHIEF JUDGE

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 30666

IN THE MATTER OF THE DISSOLUTION OF HEALY RANCH, INC.

APPEAL FROM THE CIRCUIT COURT
FIRST JUDICIAL CIRCUIT
BRULE COUNTY, SOUTH DAKOTA

THE HONORABLE PATRICK SMITH
Circuit Court Judge

REPLY BRIEF OF APPELLANT BRET HEALY

Notice of Appeal filed March 25, 2024

Appellant Bret Healy
P.O. Box 731
Chamberlain SD 57325
(605) 216-1825
Email: brethealy@gmail.com

January 3, 2025

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INTRODUCTION

Judge Patrick Smith of the First Judicial Circuit sanctioned Bret in the amount of $240,000 for an alleged violation of SDCL 15-6-11(b)(1) ("Rule 11") ("This Court brought an Order to Show Cause for Rule 11 sanctions on its own initiative under SDCL 15-6-11(c)(1)(B)"). App. 0065. Again, the sanctions were not imposed under the Court's inherent authority but under Rule 11. Bret contends that Judge Smith committed reversible error by sanctioning him pursuant to Rule 11, and a failure by the South Dakota Supreme Court to vacate the sanctions will deprive Bret of his federal and state constitutional due process rights.

Bret argues, and Appellee cites no case law to the contrary, that under the plain and unambiguous language of Rule 11, sanctions apply only to attorneys and parties . . . there is nothing in the language of Rule 11 that suggests a non-party who verifies a document on behalf of his partnership, but does not file it with the Court, may be sanctioned in an amount 24 times the amount imposed upon his legal representative who personally drafted and filed the "sanctionable" motion to dismiss. In fact, Bret never filed ***any*** document with the Court at the time the Court issued the Order to Show Cause.

In summation, the record unmistakably shows Bret was never a party to the litigation, he was not subject to the jurisdiction of the Court, he was not provided notice or an opportunity to be heard in his individual capacity at the hearing, and the sanctions were excessive, especially taking into consideration Bret did not initiate the underlying action. Accordingly, there was no legal basis for sanctioning him.

FACTUAL MISCHARACTERIZATIONS IN APPELLEE'S BRIEF

Adhering to the old saying that "the best defense is a strong offense," Barry and Bryce Healy, who must avoid litigating their blatant theft of Healy Ranch Partnership property -

especially the personal property of HRP - at all cost, assert fabrications against non-party Bret Healy that is irrelevant to the issue of whether Judge Smith committed reversible error in holding Bret was liable for a violation of SDCL 15-6-11(b)(1). Appellee's fabricated stories are a misguided attempt to persuade this Court that Bret is a litigious fanatic with no factual or legal basis for his claims.

A. Prior Cases Do Not Support Sanctions Against Bret as a Non-Party.

By way of example of the outright fabrications, Barry and Bryce claim the following lawsuits support Judge Smith's sanctions against Bret as a non-party:

- *Healy v. Osborne*, 2019 SD 56, ¶¶ 37-38, 934 N.W.2d 557, 567.

In said case, the Court awarded the defendants their attorneys' fees. Further, Bret was a named party in the action.

- *Healy v. Healy Ranch, Inc.*, 989 N.W.2d 103, 2023 WL 3167113 (SD 2023) SR 820.

Bret successfully argued this case which was not appealed by Barry and Bryce Healy. Again, an award of attorneys' fees was imposed on Bret, because he was a PARTY to the action and was named in his individual capacity.

- *Healy v. Supreme Ct of S. Dakota*, 4:23-cv-04118- RAL, 2023 WL 8653851 (D.S.D. 2023). SR 230

Chief Judge Roberto Lange granted attorneys' fees. This action has been appealed to the Eighth Circuit and is currently under review. Once again, however, the attorneys' fees were awarded against Bret, because he was a named party.

B. Ownership Rights of Healy Ranch Partnership Have Not Been Determined Based on the Merits of the Case.

Also, NO court has ever issued a statement, formal or otherwise, that conclusively determined the ownership rights of Healy Ranch Partnership based upon the merits of Bret's claims. In fact,

Judge Smith admitted that the South Dakota Supreme Court had not decided ownership and describes core holdings by this Court as mere dictum:

> ***"While the Supreme Court of South Dakota has stated in multiple opinions that they have not and are not deciding on the issue ownership***, a quote frequently used by Mr. Volesky in briefs and pleadings, the Federal District Court reasoned that the Supreme Court is maintaining the "status quo" of ownership of HRI. And ***ultimately this dictum is of no consequence***, as the prior rulings barred Bret Healy's claims regardless." (Emphasis added)

App. 10, 16, 30-31. Further, the South Dakota Supreme Court, in its filings in *Healy v. Supreme Ct of S.Dakota ("Second Federal Action")*, 4:23-cv-04118- RAL, 2023 WL 8653851, at 5, 7 (D.S.D. 2023), at both the District Court and Eighth Circuit levels does not address whether it decided stock ownership. Finally, the South Dakota Supreme Court, in its filing with the Eighth Circuit, correctly described Bret's action as follows:

> The operative Complaint is the First Amended Complaint. App. 163, R. Doc. 63, at 1. In Count 1 it sought damages against the Supreme Court of South Dakota for violations of its rights to due process under the U.S. Const. amend. XIV. In Counts 2 and 3 it sought relief pursuant to Fed. R. Civ. P. 60(b)(3) and (d) due to the fraud and misconduct of its opponents and their counsel in state and bankruptcy courts. In Count 4 it sought a declaration of rights pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201. In Count 5 it sought damages pursuant to 42 U.S.C. §1983 for the alleged due process violations by the justices of the Supreme Court of South Dakota.

Id. The foregoing citation means that the very decision heavily relied upon by Judge Smith in his Sanctions Order centered on causes of action related to due process and litigation misconduct – for which Judge Lange stated he did not have jurisdiction over – and that a state forum existed.

Despite these uncontroverted and absolute facts, Appellee still claims that the "following Healy lawsuits ruled directly or indirectly that Healy Ranch, Inc. was owned one-third by Bret Healy, Bryce Healy, and Barry Healy":[1]

- *Healy v. Osborne ("Healy I")*, 2019 SD 56, ¶¶ 21, 28-29, 934 N.W.2d 557, 563, 565.

[1] Appellee's Brief at p. 4.

- *Healy Ranch, Inc. v. Healy ("Healy II")*, 2022 SD 43, ¶¶ 49-59, 978 N.W.2d 786, 800-804.

- *Healy v. Fox ("Fox Federal Action")*, 3:21-cv-3004, 46 F.4th 739, 742, 744, (8th Cir. 2022).

- *Healy v. Supreme Ct of S.Dakota ("Second Federal Action")*. 4:23-cv-04118-RAL, 2023 WL 8653851, at 5, 7 (D.S.D. 2023). (SR 215 and 218.)

In *Healy I, Healy II,* and the *Fox Federal Action*, Attorney Schoenbeck repeatedly and consistently stated to the Courts that the Healy brothers purchased all the issued HRI stock shares (162,000) on February 11, 2000, per a contract for deed, with each brother purchasing one-third or 54,000 shares each. On November 15. 2023, in the *Second Federal Action*, Attorney Schoenbeck again argued that the stock transaction in question was the same as that which occurred on February 11, 2000. In the Petition for Voluntary Dissolution filed with the lower Court on November 17, 2023 - 2 days after their filing in federal court centered on the stock sale of 162,000 shares[2] – Schoenbeck now claims there are 299,348 shares. Contrary to the position taken by attorney Schoenbeck and his clients, i.e., 162,000 shares, and argued before this Court, the federal District Court, and the Eighth Circuit Court of Appeals from 2017 through November 15, 2023, the total outstanding number of shares of HRI stock increased by 137,348 shares.[3] No court has made any determinations as to the owners of these 137,348 "ghost shares" which of course requires imaginary arithmetic to calculate.

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[2]*See* 4:23-cv-0418 RAL. Dkt. 57.

[3] Attorney Schoenbeck, his clients, and all defendants maintained that each brother held 162,000 shares of HRI stock up until November 17, 2023, when without corroborating evidence or even any argument, Schoenbeck increased the amount of HRI shares by 137,348. At a minimum, this is a "perceptibly different" position as articulated by Justice Salter in *Healy Ranch Partnership v. Mines*, 2022 S.D. 44, ¶ 50, 978 N.W.2d 768, 782)("Bret's arguments regarding RH-2 in *Healy v. Osborne* and his assertions regarding the same tract of land made in this action are perceptibly different.") As such, attorney Schoenbeck should be judicially estopped from straying from his previous claims.

C. No Court Has Determined that Healy Ranch Partnership Does Not Own an Interest in Healy Ranch, Inc.

Next, Appellee argues that "[t]he following Healy lawsuits determined that the Healy Ranch Partnership does not have an interest in Healy Ranch":[4]

- *Healy I*:

No such determination was made, and the Court expressly noted "We decline to address Bret's claim of ownership...." *Healy I* at p. 562.

- *Healy II*:

Healy II voids the Notice of Claim of Interest filed by HRP and Bret, denies the sanctions sought by HRI for slander of title, and does not grant the relief sought by HRI for marketable title. Further, in *Healy II*, the South Dakota Supreme Court - for the first time - declares that decisions based on the statute of limitations are preclusive for purposes of claim preclusion. Attorney Schoenbeck had made no argument in *Healy II* regarding claim preclusion and admitted that *Healy I* was not a judgment on the merits. Regardless, the Court noted that it "did not determine the question at issue in this quiet title action, which relates to ownership of the Ranch." *See Healy*, 2019 S.D. 56, ¶ 21, 934 N.W.2d at 563 ("We decline to address Bret's claim of ownership[.]").

- *Healy Ranch Partnership v. Mines ("Mines Case")*, 2022 SD 44, ¶¶ 51-60, 978 N.W.2d 768, 782-784.

While Attorney Schoenbeck does not identify the legal description for what he notes as "Healy Ranch", it appears that he is referring to the land described in the 1995 Warranty Deed filed on March 13, 1995. Said deed specifically excludes land described as RH1 and RH2. The *Mines Case* revolved around RH2, so the listing of this case for the "fact" that the Court ruled that HRP

[4] Appellee's Brief at p. 4.

does not have an interest in "Healy Ranch" is meaningless. Further, the South Dakota Supreme Court held that the Circuit Court incorrectly read *Healy I* by utilizing certain factual findings regarding ownership of the Ranch

- *Fox Federal Action*:

The Eighth Circuit decision relied upon the doctrine of res judicata and the decision by the South Dakota Supreme Court to conclude that statute of limitations decisions could be claim preclusive. There was no consideration of the merits of Bret's claims.

D. No Court Has Ordered Bret to Refrain from Defending his Property Rights.

Finally, Appellee argues that the following "lawsuits resulted in Bret not being able to litigate ownership of Healy Ranch, Inc. anymore:"[5]

- *Healy I*:

No such determination was made. Again, the Court stated that "[w]e decline to address Bret's claim of ownership...."

- *Healy II*:

Attorney Schoenbeck ignores the Court's holding in *Healy II*: "For the foregoing reasons, we affirm the circuit court's decision to void the notice of claim and its decision to deny attorney fees under SDCL 43-30-9." *Healy II* did not involve stock ownership of HRI nor did the South Dakota Supreme Court claim that it did.

- *Mines Case*:

The portion of the *Mines Case* cited by Attorney Schoenbeck does not support his claim that Bret can no longer litigate the stock ownership of HRI.

- *Fox Federal Case*:

[5] Appellee's Brief at p. 5.

Relying solely on the South Dakota Supreme Court's decision in *Healy II*, the Eighth Circuit determined that a statute of limitations decision was claim preclusive. Attorney Schoenbeck had admitted in *Healy II* that *Healy I* was not a judgment on the merits, and there was no holding that Bret or HRP could no longer litigate ownership of Healy Ranch, Inc.

- *Healy v. Supreme Ct of S. Dakota (Healy Second Federal Case")*, 4:23-cv-04118-RAL, 2023 WL 8653851, at 5-7 & 10-11. (SR 215-218, 225-226.)

This case is currently on appeal in the Eighth Circuit.

Given Bret's ability to demonstrate the falsity of Appellee's claims regarding the number of outstanding shares and the capitalization of Healy Ranch, Inc., as he did under oath, unrefuted, and unchallenged at the show cause hearing held on January 23, 2024, it is the Appellee and its attorney who should be hauled into Court to answer for their intentional fabrications.

ARGUMENT

A. As a Non-Party, Bret Cannot Be Sanctioned under Rule 11.

Appellee argues that "Bret contends he can't be sanctioned because only an unrepresented party can be sanctioned." Appellee's Brief at p. 7. Schoenbeck relies on SDCL 15-6-11(c)(2)(A) as support for his position:

> Monetary sanctions may not be awarded against a represented party for violation of subdivision 15-6-11(b)(2).

Id. To the contrary, Bret's primary argument focused on the Court's inability to sanction a non-party – not just an unrepresented party - under Rule 11. Appellee's weak attempt to thwart Bret's position must fail.

Judge Smith sanctioned "Tucker Volesky, as counsel for Bret Healy, and Bret Healy, effected shareholder of Healy Ranch, Inc., and acting on behalf of Healy Ranch Partnership,

purported effected shareholder of Healy Ranch, Inc."[6] App. 0041. However, without more, Bret's position as a shareholder in HRI does not automatically make him a party. *See RP Family, Inc. v. Commonwealth Land Title Ins. Co.*, 2011 U.S. Dist. LEXIS 137334, 2011 WL 6020154, at *2 (E.D. N.Y. Nov. 30, 2011) ("An employee of a corporate party who is not an officer, director, or managing agent is not subject to deposition by notice.").

Nor is a shareholder generally considered a party merely because the corporation is a named party in the litigation. *See DeVolk v. JBC Legal Group, P.C.*, 2008 U.S. Dist. LEXIS 32257, 2008 WL 1777740, at *1 (M.D. Fla. Apr. 18, 2008) (characterizing the president and sole shareholder of the defendant professional corporation as a "nonparty"); *Peoria Day Surgery Ctr. v. OSF Healthcare Sys.*, 2008 U.S. Dist. LEXIS 20499, 2008 WL 724798, at *2 (C.D. Ill. Mar. 17, 2008) (analyzing the relevance of subpoenas served to shareholders of the plaintiff); *Benfield Inc. v. Talbott,* 2006 U.S. Dist. LEXIS 92959, 2006 WL 3833461, at * 3 (S.D. N.Y. Dec. 22, 2006) (finding that the chief executive of the parent corporation of the defendant entities could not be deposed by notice and required a subpoena).

In *Caldwell v. Farris (In re Rainbow Magazine, Inc.),* 136 B.R. 545, 548-56 (B.A.P. 9th Cir. 1992), Caldwell was the sole shareholder and chief executive officer of the debtor, a corporate entity. A motion was filed for an order assessing sanctions against the corporation, its counsel and Caldwell, the non-party, under Rule 11 on the grounds that the bankruptcy petition was filed in bad faith and for an improper purpose. After a hearing, the lower court assessed sanctions against the corporation and Caldwell in the sum of $261,000, jointly and severally, determining that the filing of the petition was an abuse of the bankruptcy process. The appellate

[6] Additionally, Judge Smith erroneously claimed that Bret was represented by Volesky. *Id.* Volesky made it clear he represented Healy Ranch Partnership.

court found that the bankruptcy court did not abuse its discretion in determining that the petition was frivolous and filed for an improper purpose. However, in response to the appellants' argument that sanctions could not be imposed against Caldwell because he was a non-party, non-attorney who did not sign the paper in question, the Court refused to side with the lower court. Pertinent to the Court's inquiry, Rule 9011 provides, in part:

> If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction . . .

The bankruptcy court concluded that the plain language of the rule does not contemplate sanctions against a person who is neither the person who signed the offending pleading nor a party and that the reach of Rule 11 should not extend beyond its plain language. Were such a rule not observed, virtually every mere stockowner of any corporation would automatically be subject to the Court's authority any time the corporation was involved in a lawsuit; there is no authority for such a broad proposition.

Other Courts have concluded that "party" means only those entities who are parties of record in a proceeding – which Bret is not. *See City of Louisville v. Christian Bus. Women's Club, Inc.*, 306 S.W.2d 274, 276 (Ky. 1957) (holding that "[t]he term 'party' clearly means a party to the proceeding); *Keith v. Gore*, 24 Ky. 8 (1829) (interpreting "parties" as "only those who were before the court by service of process[]"); *Megronigle v. Allstate Prop. & Cas. Ins. Co.*, 671 S.W.3d 293, 297 (Ky. 2023).

Yet other Courts have recognized the Court's right to sanction non-parties, but not before there has been a finding of contempt. For example, in *CB Condos., Inc. v. GRS S. Fla., Inc.*, 165 So. 3d 739, 741-42 (Fla. Dist. Ct. App. 2015), the Court found that the trial court had departed

from the essential requirements of the law in ordering sanctions against a non-party for a discovery violation in the absence of a finding of contempt:

> Rule 1.380(b)(1), Florida Rules of Civil Procedure (1994), provides for sanctions in the event that a nonparty deponent fails to comply with an order of the court requiring him to be sworn or to answer questions: If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of the court.

The Court concluded that the lower court could not sanction a nonparty without first finding that nonparty in contempt. *Gen. Ins. Co. of Am. v. E. Consol. Utilities, Inc.*, 126 F.3d 215, 221 (3d Cir. 1997) (finding that an order sanctioning a non-party was improper under Rule 37 or Rule 45); *Nike, Inc. v. Wu*, 13-CV-8012, 2020 U.S. Dist. LEXIS 9102, 2020 WL 257475, at *27 (S.D.N.Y. Jan. 17, 2020) ("[E]ven where non-party is subject to a court-ordered deposition or subpoena, and fails to comply, the only remedies available are those for contempt").

Because Bret was not a named party in the dissolution proceeding, he cannot be sanctioned under Rule 11.

B. Legal Precedent Cited by Appellee is Inapposite.

Appellee cites *Anderson v. Production Credit Ass'n*, 482 N.W.2d 642 (SD 1992), for the proposition that the Court can sanction non-parties. However, Appellee clearly misunderstands the facts of the case. The party sanctioned was the ***attorney*** representing the appellants, and as such, was clearly subject to Rule 11 sanctions. The Andersons alleged that the Production Credit Association ("PCA") defrauded them of an undetermined amount of money. The action was commenced by Laprath, the Anderson's attorney. Counsel for PCA notified Laprath of its intention to pursue SDCL 15-6-11(b) sanctions if Andersons persisted in prosecuting the action, because it was barred by the statute of limitations. The trial court entered a judgment against

Laprath for violation of SDCL 15-6-11(b)[7] and ordered her to pay PCA's expenses in the amount of $6,085.56. Laprath argued that sanctions against her were not appropriate because she was not a party to the action. The Court held that the lower court could impose sanctions upon an attorney or any person who ***signed*** the pleading or other papers. Based thereon, the trial court's decision was upheld. This case lends no support to Appellee's contentions that Bret can be sanctioned under Rule 11 as a non-party.

C. Bret Did Not File Any Document with the Court.

Appellee claims that Bret "signed a document entitled 'Certification of Healy Ranch Partnership' on December 19, 2023, the same day as Tucker Volesky's Motion to Dismiss, and filed the same with the Trial Court." Appellee's Brief at p. 5. Appellee contends this document is sufficient to justify imposing Rule 11 sanctions on Bret as a non-party. However, the Certification was signed by Bret in his capacity as managing partner of Healy Ranch Partnership. He did not file the document with the Court. Additionally, and contrary to Appellee's contentions, there was no evidence presented to the Court that proved the document was "fraudulent". Appellee's Brief at p. 6. As such, the Certification is insufficient to justify the imposition of sanctions on a non-party.

D. Bret Did Not Receive Notice and an Opportunity to be Heard; Lower Court did not have Jurisdiction over Bret.

[7] SDCL 15-6-11(b) provides: If a pleading, motion or other paper is signed in violation of this rule [15-6-11(a)], *the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction,* which shall include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee. (Emphasis added.)

Appellee argues that "Bret Healy was within the court's jurisdiction because Bret Healy had been personally served with the Petition for Court Supervised Dissolution." Appellee's Brief at p. 6. Assuming that such service was sufficient to bestow jurisdiction on the Court (which it was not), the ensuing facts negate any assertion that Bret received proper notice. For example, the Petition for Voluntary Dissolution clearly states that the shareholders were not named parties. App. 0098. The Order to Show Cause was served on Tucker Volesky and Chris McClure – not Bret. App. 0118. Further, Schoenbeck served the Notice of Entry on Volesky and McClure but not Bret. There is nothing in the record that demonstrates Bret had adequate notice of and an opportunity to be heard on the imposition of such sanctions.

The imposition of sanctions under Rule must comport with due process requirements. *Lucha, Inc. v. Goeglein*, 575 F. Supp. 785, 788 n.1 (E.D. Mo. 1983); *Rindahl v. Daugaard*, 2011 U.S. Dist. LEXIS 113050, at *18 (D.S.D. Sep. 30, 2011)("Because sanctions can only be imposed under Rule 11(c), however, after the court has given notice and a reasonable opportunity to respond, the court will not impose sanctions here."). There was no due process for Bret in this case. For example, Judge Smith specifically noted there was NO authority for his order. Judge Smith used a variety of cases to sanction Bret that he never noted in his show cause order, culminating in this statement from his Sanctions Order:

> Bret has been put on notice through the numerous lawsuits listed above that his claims are without merit. Despite the rulings from prior courts, Bret continues to pursue litigation against his family, attorneys, rightful landowners, justices, Judge Sogn, and the Supreme Court of South Dakota. Included in the lawsuit detailed above, is a criminal matter, two petitions for temporary protection orders, and a civil lawsuit brought by Bret for wrongful prosecution. These show the level contention and multitude of the issues within this family and ***evince the true motive for Bret's actions.*** (Emphasis added).

Bret evidently was required to read Judge Smith's mind. Bret never had an opportunity to dispute the relevance or interpretation of those matters at any time prior to issuance of the order.[8] Finally, Bret's sworn testimony in this matter was uncontested by the Appellees, because they could not contest it. And yet, Judge Smith never took note of and failed to point out any of Bret's sworn testimony he believed to be false.

The proceedings before Judge Smith were undoubtedly deficient in that Bret never received notice in his individual capacity and was not provided a reasonable opportunity to be heard. As such, the court cannot impose sanctions and be faithful to the due process requirements of the federal and state constitutions.

E. Assuming the Imposition of Sanctions was Proper, the Assessed Amount was Excessive.

SDCL 15-6-11(c)(2) provides:

> A sanction imposed for violation of this rule shall be limited to ***what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated***. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant (A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b)(2). (Emphasis added)

Because SDCL is reflective of the federal Rule 11, the Advisory Committee's list is instructive:

> Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; . . . whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; [and] what amount is needed to deter similar activity by other litigants.

[8] Judge Smith never noted the forged email in his Show Cause Order nor his novel, new interpretation of said email that Osborne gifted differential amounts of her interest in Healy Ranch Partnership to each of her three sons – but utilized his novel new interpretation of said forged email in his Sanctions Order. Again, Bret was required to read Judge Smith's mind.

First, the conduct at issue was neither improper nor negligent. The underlying suit was initiated by Bret's two brothers seeking dissolution of the family's legacy. As no Court has ruled on the ownership of HRI, Healy Ranch Partnership was well within its rights to oppose the action. Bret, in his individual capacity, took no action that warranted sanctions. Second, Bret is not trained in the law, and therefore, he and the partnership were always represented by legal counsel at all relevant times. Third, there is no indication that Bret appeared unable or unwilling to learn from what the Court considered to be his mistakes. He did not file the underlying suit. [redacted]

[redacted]

The sanctions imposed by Judge Smith will impose an unjustifiable hardship on Bret, and for whom $240,000 (in addition to attorneys' fees) would likely threaten financial disaster. Further, Judge Smith abused his discretion in awarding this exorbitant amount without making findings as to the reasonableness of the sanction award and the basis of the calculation of the fees and the sanction award.

A final problem is the fact that the sanctions awarded in this case are much more severe than the sanctions awarded in similar bad faith filing sanction cases. *See, e.g., Kucera v. Inbody*, 210 F.3d 379 (8th Cir. 2000) (table) (affirming $1000 sanction against plaintiff after the fourth in a series of frivolous lawsuits); *Kurkowski v. Volcker*, 819 F.2d 201, 203-04 (8th Cir. 1987) (affirming Rule 11 sanction that required the plaintiffs to pay defendants' attorney fees of over $5400). Further, the Rule 11 sanctions granted by the trial court in *Anderson v. Production Credit Ass'n*, 482 N.W.2d 642 (SD 1992), was for the modest amount of $6,085.56 and were the costs borne by the prevailing party, the PCA. An additional sanction of $2,128.96 for appellate fees was granted. This was no punitive sanction like what Judge Smith bestowed upon Bret.

Finally, Judge Smith's Sanctions Order violates §23 of South Dakota's Constitution ("Excessive bail shall not be required, excessive fines imposed, nor cruel punishments inflicted) and the Eighth Amendment to the United States Constitution. *See Austin* v. *United States*, 509 U. S. 602, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993) ("civil *in rem* forfeitures fall within the Clause's protection when they are at least partially punitive.") As noted, supra, Judge Smith sanctioned Bret 24 times more than the amount imposed upon his educated legal representative. United States Supreme Court's precedent clearly supports Bret's position that the sanctions imposed upon him is excessive. Specifically, in *Timbs v. Indiana*, 586 U.S. 146, 148-50, 139 S. Ct. 682, 686-87 (2019), the police seized Timbs' $42,000 Land Rover which he had purchased with insurance funds. The State brought a civil suit for forfeiture of Timbs's Land Rover, charging that the vehicle had been used to transport heroin. Although finding that Timbs's vehicle had been used to facilitate violation of a criminal statute. the court denied the requested forfeiture, observing that Timbs had recently purchased the vehicle for $42,000, more than four times the maximum $10,000 monetary fine assessable against him for his drug conviction. Forfeiture of the Land Rover, the court determined, would be grossly disproportionate to the gravity of Timbs's offense, hence unconstitutional under the Eighth Amendment's Excessive Fines Clause and the Fourteenth Amendment. *Id.* at 684 (2019)("The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment.") Clearly, 24 times is more egregious than 4, and based thereon, Judge Smith's sanctions violate both federal and state law and violate the federal and state constitutional rights of Bret

Conclusion

Based upon the foregoing, Bret Healy respectfully requests that the Supreme Court overturn Judge Smith's Sanctions Order.

Dated this 3rd day of January, ~~2024~~ 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Appellant's Reply Brief was submitted to the Clerk of the South Dakota Supreme Court for filing via electronic email to SCClerkBriefs@ujs.state.sd.us and was served by electronic email on the following:

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CERTIFICATE OF COMPLIANCE

In accordance with SDCL §15-26A-66(b)(4), I hereby certify that this brief complies with the requirements set forth in the South Dakota Codified Laws. This brief was prepared using Microsoft Word 2019 and contains 4,809 words from the Introduction through the Conclusion. I have relied on the word count of a word-processing program to prepare this certificate.

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