

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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| Cavare Inc.,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>Christopher B. Kjelogren,<br><br>Defendant-Appellant, | Supreme Court No. 20200128 |
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Appeal from Findings of Fact, Conclusions of Law and Order for  
Judgment, Entered March 11, 2020, and Order on Motion for  
Relief Under Rule 60, Entered March 4, 2021,  
Case No. 53-2017-CV-01076  
County of Williams, Northwest Judicial District  
The Honorable Josh B. Rustad, District Judge, Presiding

**BRIEF OF PLAINTIFF-APPELLEE CAVARE INC.**

FREDRIKSON & BYRON, P.A.

Lawrence Bender, ND Bar #03908  
Spencer D. Ptacek, ND Bar #08295  
1133 College Drive, Suite 1000  
Bismarck, ND 58501-1215  
lbender@fredlaw.com  
sptacek@fredlaw.com  
Telephone: 701.221.8700

*Attorneys for Plaintiff-Appellee  
Cavare Inc.*

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## **STATEMENT OF ISSUES**

[¶ 1] Plaintiff-Appellee Cavare Inc. (“Cavare Inc.” or “Cavare USA”) is dissatisfied with Defendant-Appellant Christopher B. Kjelgren’s (“Kjelgren”) Statement of the Issues. Kjelgren’s Statement of the Issues does not include the numerous factual issues raised by his brief. But Cavare USA does not object to limiting the Court’s review to the following two issues:

1. Whether the District Court clearly erred in finding Cavare USA is the actual owner of the PSDM Shares.
2. Whether the District Court abused its discretion in denying Kjelgren’s motion for relief under Rule 60.

## **STATEMENT OF THE CASE**

[¶ 2] Cavare USA is satisfied with Kjelgren’s Statement of the Case.

## **STATEMENT OF FACTS**

[¶ 3] Cavare USA is dissatisfied with Kjelgren’s Statement of Facts. Kjelgren’s Statement of Facts does not include many of the facts set forth in the Findings of Fact, Conclusions of Law, and Order for Judgment or the Order on Motion for Relief Under Rule 60 from which he appeals and which are relevant to this appeal. It also includes facts not found by the District Court and does not acknowledge which findings he disputes. *See* N.D.R.App.P. 28(b)(6). Cavare USA must therefore provide the Court with its own Statement of Facts.

### **I. Formation of PSDM**

[¶ 4] This case arose from a dispute between Kjelgren and Cavare USA over the ownership of a one-third share of Petroleum Services Drilling Motors, Inc. (“PSDM”) issued at the time of PSDM’s formation. For the sake of convenience the disputed property will be referred to as the “PSDM Shares”.

**A. Events prior to the formation of PSDM**

[¶ 5] PSDM's origin can be traced to Mike Palmer ("Palmer"), owner and operator of Mike Palmer Petroleum Services, Inc., d/b/a Petroleum Services and Tools or as Petroleum Services ("Petroleum Services"). Appendix ("App.") 212. Petroleum Services' business included leasing drilling motors to oil and gas companies in and around North Dakota for use in their drilling operations. *Id.*

[¶ 6] In 2011, Palmer began looking for a different supplier of drilling motors for Petroleum Services. *Id.* Palmer wished to expand Petroleum Services' drilling motors business. *Id.* Palmer approached Dick Ramsdell ("Ramsdell") about expanding Petroleum Services' drilling motor business. Ramsdell expressed an interest in jointly pursuing the expansion with Palmer. *Id.*

[¶ 7] Palmer's search for a new drilling motor supplier led him to Kjelgren and Cavare Ltd. ("Cavare Ltd." or "Cavare CAN"). *Id.* Cavare CAN was a company that designed and manufactured drilling tools out of Canada. *Id.* In 2011 Kjelgren was the president and a part-owner of Cavare CAN. *Id.* Kjelgren held a 20% share of Cavare CAN's common stock, as well as a 5% share of Cavare CAN's preferred stock. *Id.* Lawrence Robin ("Robin") owned 60% of Cavare CAN's common stock and 95% of Cavare CAN's preferred stock. *Id.* 20% of Cavare CAN's common stock was unissued. *Id.* Robin had been Cavare CAN's sole owner until Kjelgren took over as president of Cavare CAN in 2010. *Id.* Kjelgren remained president of Cavare CAN until mid-2016. *Id.*

[¶ 8] PSDM's articles of incorporation were executed on July 31, 2011, and were filed with the North Dakota Secretary of State on August 16, 2011. *Id.* at 213. No share certificates were ever issued. Kjelgren Brief, ¶ 35.

[¶ 9] The District Court’s findings note that many of the events leading up to the formation of PSDM are not materially in dispute. App. 212. This also appears to be the case on appeal, as Kjelgren does not dispute the foregoing.

**B. Issuance of the PSDM Shares**

[¶ 10] The District Court found the PSDM Shares were actually owned by Cavare CAN, not Kjelgren. The District Court based that finding on its consideration of all the facts and circumstances of the case, with a particular emphasis on several key facts. The District Court found that all the persons involved in the formation of PSDM, except for Kjelgren, believed Cavare CAN and not Kjelgren to be a one-third owner of PSDM along with Palmer and Ramsdell. The District Court also found that Cavare CAN and not Kjelgren paid consideration for the PSDM Shares. And the District Court found that the PSDM Shares were issued to Kjelgren and Kjelgren held the PSDM Shares in name only for the benefit of Cavare CAN, the actual owner. Kjelgren disputes these findings.

**i. Persons involved in the formation of PSDM believed Cavare CAN, not Kjelgren, to be a one-third owner of PSDM.**

[¶ 11] The District Court found that Palmer, Ramsdell, and Tricia Anderson (“Anderson”) believed Cavare CAN to be the actual owner of the PSDM Shares when PSDM was formed. App. 214 . Kjelgren does not appear to dispute this. *See* Brief of Appellant Christopher B. Kjelgren (“Kjelgren Brief”), ¶¶ 72–77. Instead, Kjelgren attempts to minimize this finding by pointing out that Palmer, Ramsdell, and Anderson were not privy to discussions between himself and Robin about ownership of the PSDM Shares. *Id.*

[¶ 12] The District Court also found that Kjelgren himself believed Cavare CAN to be the actual owner of the PSDM Shares when PSDM was formed. App. 214. Kjelgren disputes this, but the Court did not find his testimony to the contrary to be credible. *Id.*

Kjelgren made representations to Palmer, Ramsdell, and Anderson during the formation of PSDM that Cavare CAN would be the shareholder. *See* App. 78–80 (business plan describing Cavare CAN’s involvement and ownership in detail), 83–85 (e-mails showing naming of Kjelgren as individual shareholder in response to legal advice), 111 (noting Cavare CAN’s ownership and proposing use of Spinner Downhole Tools, Inc., “a holding company related to Cavare,” as the entity that would hold Cavare CAN’s shares). Persons involved in the formation of PSDM also noted that Kjelgren’s communications during formation were all using either a Cavare CAN phone number or e-mail address. *See* T.1, P.27–28, L.21–3; T.1, P.105, L.11–16.<sup>1</sup> Kjelgren did not deny these representations, but instead testified that he only led Palmer, Ramsdell, and Anderson to believe that Cavare CAN was the owner. *See* T.2, P. 23–24, L.20–3; T.2, P.26, L.14–21. The District Court did not find this testimony to be credible. App. 212–13. On appeal Kjelgren does not address his testimony wherein he claims to have misled the other PSDM shareholder about the true ownership of the PSDM Shares.

**ii. Cavare CAN paid consideration for the PSDM Shares while Kjelgren did not.**

[¶ 13] The District Court found that Cavare CAN, not Kjelgren, paid consideration for the PSDM Shares. App. 214. The District Court found that Cavare CAN contributed more than \$700,000 in assets to the formation of PSDM. *Id.* This finding was based on testimony by Palmer, Ramsdell, and Anderson. *See* T.1, P.29, L.9–16; T.1, P.74–76, L.7-4; T.1, P.102, L.3–16. This finding was also based on communications between Kjelgren, Palmer, Ramsdell, and Anderson explaining how Cavare CAN would contribute assets as

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<sup>1</sup> Cavare USA will use the abbreviations for references to the transcript used by Kjelgren in his brief.



an equal partner in the formation of PSDM. *See* App. 78–80. It is unclear whether Kjelgren genuinely disputes that Cavare CAN contributed assets as consideration for the PSDM Shares. *See* Kjelgren Brief, ¶ 40. At trial, Kjelgren testified that Cavare CAN did not contribute any assets because he, by way of price inflation, effectively sold the assets to Palmer and Ramsdell at Cavare CAN’s normal pricing. *See* T.2, P. 16–18, L.12–8. But the District Court did not find this testimony to be credible because it was contradicted by Kjelgren’s prior statements in discovery that Cavare CAN had contributed mud motors as consideration for the PSDM Shares. *See* App. 214; T. 2, P. 63–65, L. 15–2; App. 189, 197.

[¶ 14] The District Court also found that any contribution Kjelgren made to the formation of PSDM was in his capacity as an agent of Cavare CAN. App. 214–15. This was based on, among other things, Kjelgren’s own testimony wherein he admitted he participated in the formation of PSDM in his capacity as president of Cavare CAN. *See, e.g.,* T2, P.65–66, L.25–10; App. 202. Kjelgren does not address this agency relationship in his brief. Instead, Kjelgren lists various contributions he made to PSDM, without acknowledging they were in his capacity as president of Cavare CAN. *See* Kjelgren Brief, ¶¶ 37–41.

**iii. The PSDM Shares were issued to Kjelgren in name only, and he held them for the benefit of Cavare CAN.**

[¶ 15] The District Court found that Kjelgren held the PSDM Shares in name only for the benefit of Cavare CAN. App. 217. The District Court relied on testimony that the PSDM Shares were originally to be issued directly to Cavare CAN, but this was changed to Spinner Downhole Tools, Inc. (“Spinner”) and later to Kjelgren. *See, e.g.,* T.1, P.97-102, L.19–2. These plans were corroborated by e-mails admitted into evidence. App. 78–80 (business plan describing Cavare CAN’s involvement and ownership in detail), 83–85 (e-mails showing naming of Kjelgren as individual shareholder in response to legal advice),

111 (noting Cavare CAN's ownership and proposing use of Spinner Downhole Tools, Inc. as the entity that would hold Cavare CAN's shares). Robin testified that he had told Kjelgren to put the PSDM Shares in the name of an entity other than Cavare CAN because Robin was going through a divorce and didn't want additional Cavare CAN assets "popping up" in the divorce proceedings. T.1, P.125–27, L.22–1. Robin testified that he believed Cavare CAN was the true owner of the PSDM Shares and the Kjelgren held them in name only. *Id.*; T.1, P.128–29, L.21–2. Robin stated that an e-mail from Kjelgren to Robin shortly before Cavare CAN's impending bankruptcy confirmed this belief, in which Kjelgren stated "the one-third of P.S.D.M. is in my name. It should be transferred to your name. We will have to go to Williston to do this." T.1, P. 138–39, L.23–11; App. 95.

[¶ 16] Kjelgren disputes the District Court's finding that he held the PSDM Shares in name only. At trial, Kjelgren testified that he and Robin agreed the PSDM Shares would belong to Kjelgren individually, because Robin "wanted no part of" PSDM and downplayed the importance of Robin's divorce. The District Court did not find Kjelgren's testimony to be credible. App. 216–17. The Court noted Kjelgren's testimony was inconsistent with his prior statements in which he had indicated the PSDM Shares were to be held by an entity other than Cavare CAN because Robin was going through divorce proceedings and wanted to minimize the book value of Cavare CAN. *See* App. 185, 192, 202. Kjelgren does not address the July 15, 2016 e-mail in the present appeal aside from saying it was taken out of context. *See* Kjelgren Brief, ¶ 16.

## **II. Transfer of the PSDM Shares from Cavare CAN to Cavare USA**

[¶ 17] The District Court found that Cavare CAN transferred the PSDM Shares to Cavare USA prior to the former's bankruptcy in 2016. App. 217–18. The District Court based this finding on the testimony of Robin and Bill Beattie ("Beattie"), who testified that

they reached an agreement whereby First Directional Rentals, LLC (“First Directional”) purchased all the assets of Cavare CAN, including Cavare USA and the PSDM Shares. T.1, P.132–35, L.25–14; T.1, P.162–65, L.20–7; T.1, P.168–69, L.9–8; T.1, P.183–84, L.23–10; T.1, P.190–91, L.6–1; T.1, P.194–96, L.5–17. Cavare USA became a subsidiary of First Directional, and held all of Cavare CAN’s former assets either directly or through its Canadian subsidiary Cavare International, Inc. (“Cavare Int’l”). *Id.*

[¶ 18] Kjelgren disputes the District Court’s finding that the PSDM Shares were transferred to Cavare USA, arguing that the PSDM Shares were never sold because the invoices generated in connection with the above sale do not mention the PSDM Shares. *See* Kjelgren Brief, ¶¶ 58–60. But the District Court addressed this argument in its findings, reasoning as follows:

The Court agrees with Kjelgren that there does not appear to be a document evidencing the sale of the PSDM Shares, but disagrees that no sale occurred. The Court finds that it was the intent of Beattie and Robin [that] Cavare CAN would transfer all its assets, including its interest in the PSDM Shares, to First Directional pursuant to the terms of their oral agreement. There is no evidence to contradict or weaken the testimony of Beattie and Robin on this point, which the Court finds credible.

App. 218. Based on the foregoing, the District Court found that Cavare USA, as the successor to Cavare CAN, is the owner of the PSDM Shares, not Kjelgren.

### **III. Shareholder distributions made to Kjelgren**

[¶ 19] Kjelgren does not dispute that he received a total of \$230,000.00 in shareholder distributions from PSDM. Kjelgren also does not dispute that he has not remitted those payments to Cavare USA.

### **IV. Ownership of Cavare USA and Cavare Int’l**

[¶ 20] Robin testified at trial that he was an employee of Cavare Int’l, and that he owned no shares in either Cavare Int’l or Cavare USA. T.1, P.121, L.12–22. After trial,

Kjelgren moved to vacate the District Court's judgment because he believed Robin and Beattie testified falsely at trial regarding ownership of Cavare Int'l and Cavare USA. Following an evidentiary hearing, the District Court found that Robin was not an owner of Cavare Int'l or Cavare USA, nor was there an agreement in place for Robin to become an owner, as of October 31, 2019. App. 277–82. Discussions about ownership of Cavare Int'l had taken place, but no change of ownership or agreement to change ownership had been finalized. *See* T.3, P.41, L.2–7; T.3, P.68–69, L.6–8; T.3, P.73–76, L.4–21; T.3, P.90–92, L.13–3; *see also* App. 266 (discussing plan to restructure ownership of Cavare Int'l, but noting that Cavare USA remained the sole owner as of July 31, 2018); App. 274 (noting that paperwork had yet to be finalized for restructure of ownership for Cavare Int'l as of May 2019 meeting). Both Beattie and Robin testified that there had been plans for First Directional to transfer Cavare USA and Cavare Int'l to Robin in 2017, resulting in an invoice, but Robin never paid the invoice and the transfer never occurred. T.3, P.75, L.6–14; T.3, P.90–91, L.13–7. The Court also noted that, at trial, Robin testified that he had discussions with business associates about becoming an owner of Cavare USA or Cavare Int'l, though he was not questioned on these discussions. *See* T.1, P.152, L.21–25; T.1, P.160, L.19–24. As a result, the District Court found that Robin and Beattie did not testify falsely. App. 282–83. Kjelgren disputes the District Court's findings on these issues. *See* Kjelgren Brief, ¶¶ 80–97.

### **STANDARD OF REVIEW**

[¶ 21] The District Court determined that Cavare USA is the actual owner of the PSDM Shares. Kjelgren states that the Court reviews this determination *de novo* because it is a mixed question of law and fact. Kjelgren is incorrect.

[¶ 22] The District Court labeled its decision on share ownership a conclusion of law. But this is not determinative. “Whether a determination is a finding of fact or a conclusion of law is decided by the reviewing court and labels applied by the trial court are not conclusive.” *Webster v. Regan*, 2000 ND 89, ¶ 7 n.2, 609 N.W.2d 733. “A finding of fact is reached by natural reasoning, and a conclusion of law is reached by fixed rules of law.” *Nygaard v. Robinson*, 341 N.W.2d 349, 354 (N.D. 1983). A mixed question of fact and law is reviewable de novo only to the extent that resolution of the question must be arrived at by applying rules of law. *Id.*

[¶ 23] The District Court stated the issue of actual ownership of shares in a corporation is to be determined “from all the facts and circumstances of [the] case.” App. 220. In other words, the District Court relied on natural reasoning from the circumstances of the case, rather than a fixed rule of law, to draw an inference as to the actual ownership of the PSDM Shares. The District Court does cite and analyze decisions from other jurisdictions to bolster its finding of ownership, *see* App. 220–23, but there is nothing in the District Court’s decision to indicate it applied “fixed rules of law” to determine ownership of the PSDM Shares. Thus, the District Court’s finding that Cavare USA is the true owner of the PSDM Shares is a finding of fact. This aligns with the Court’s prior decisions which have held the issue of ownership of real property presents a question of ultimate fact. *See Chaffee-Miller Land Co. v. Barber*, 97 N.W. 850, 852 (N.D. 1903) (holding that the findings of ownership and right of possession are findings of ultimate facts).

[¶ 24] Findings of fact are reviewed under the clearly erroneous standard of review. *See* N.D.R.Civ.P. 52(a)(6). The Court has stated the following regarding the clearly erroneous standard:

A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, we are left with a definite and firm conviction a mistake has been made. In a bench trial, the district court determines the credibility of witnesses, and we do not second-guess those credibility determinations. Under the clearly erroneous standard of review, we do not reweigh the evidence or reassess the credibility of witnesses, and we will not retry a case or substitute our judgment for a district court's decision merely because we may have reached a different result. A choice between two permissible views of the weight of the evidence is not clearly erroneous under that deferential standard of review.

*Danuser v. IDA Mktg. Corp.*, 2013 ND 196, ¶ 31, 838 N.W.2d 488 (citations omitted).

[¶ 25] The Court applies the following standard when reviewing the denial of a motion to vacate a judgment under Rule 60(b):

This Court reviews a district court's denial of a motion to vacate a judgment for an abuse of discretion. In reviewing the district court's denial of a N.D.R.Civ.P. 60(b) motion to set aside a judgment, this Court does not determine whether the court was substantively correct in entering the judgment from which relief is sought. Instead, this Court determines only if the court abused its discretion in ruling that sufficient grounds for disturbing the finality of the judgment were not established. The district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. An abuse of discretion is never assumed and must be affirmatively established. We will not overturn a district court's decision merely because it is not the one we may have made. The district court's findings are not disturbed on appeal unless they are clearly erroneous.

*Paulson v. Paulson*, 2021 ND 32, ¶ 8, 955 N.W.2d 92 (citations omitted) (internal quotation marks omitted).

## **LAW AND ARGUMENT**

[¶ 26] The District Court’s decisions in this case should be affirmed. Kjelgren presents little in the way of legal argument on appeal. *See* Kjelgren Brief, ¶¶ 42–94 (citing, in total, one rule of civil procedure and two appellate court decisions over the course of eighteen pages). Instead, Kjelgren seeks to overturn the District Court’s findings of fact, particularly its finding of ownership of the PSDM Shares, by rearguing evidence on appeal. This Court has stated on numerous occasions that it will not reweigh evidence, reassess credibility, or reexamine findings made by the trial court on conflicting testimony. *See, e.g., Kruger v. Goosesen*, 2021 ND 88, ¶ 6. For this and for the other reasons stated below, the Court should affirm the District Court’s Findings of Fact, Conclusions of Law, and Order for Judgment as well as the District Court’s Order on Motion for Relief under Rule 60.

### **I. Kjelgren has not shown the District Court clearly erred when it found Cavare USA to be the owner of the PSDM Shares.**

[¶ 27] Kjelgren requests the Court reverse the District Court’s decision and hold that he, not Cavare USA, is the owner of the PSDM Shares. The District Court’s findings of fact cannot be set aside unless they are clearly erroneous. N.D.R.Civ.P. 52(a)(6). A finding of fact is clearly erroneous unless only if it is “induced by an erroneous view of the law, if there is no evidence to support it, or if, after reviewing all the evidence, [the Court is] left with a definite and firm conviction a mistake has been made.” *Danuser*, 2013 ND 196, ¶ 31, 838 N.W.2d 488. Kjelgren offers a litany of reasons why the Court should set aside the District Court’s decision on ownership of the PSDM Shares, but all of them require the Court to reweigh evidence considered by the District Court.

[¶ 28] First, Kjelgren argues the District Court erred because the PSDM Shares were issued in Kjelgren's name individually. Kjelgren Brief, ¶¶ 33–36. Kjelgren observes that a stock certificate is *prima facie* evidence of ownership, but goes on to note the undisputed fact that no certificate for the PSDM Shares was ever issued, rendering the point moot. *Id.* at ¶¶ 34–35. Other than that, Kjelgren's argument amounts to asking the Court to reweigh evidence of actual ownership of the PSDM Shares, which should not be done. Kjelgren's argument on this point should thus be disregarded.

[¶ 29] Second, Kjelgren argues the District Court erred because Kjelgren provided consideration for the PSDM Shares. Kjelgren Brief, ¶¶ 37–41. The Court found that Cavare CAN provided consideration for the PSDM Shares in the form of assets contributed to PSDM. App. 215. Kjelgren does not dispute this. Kjelgren Brief, ¶ 40. Instead, Kjelgren argues that because he performed services incident to the formation of PSDM, the District Court should have found that he provided consideration for the PSDM Shares. *Id.* at ¶¶ 38–40. But Kjelgren ignores the District Court's finding that Kjelgren's participation in the formation of PSDM was on behalf of Cavare CAN as its president and agent, not in his personal capacity. App. 215. A district court's finding of agency is a finding of fact reviewed under the clearly erroneous standard. *See SNAPS Holding Co. v. Leach*, 2017 ND 140, ¶ 19, 895 N.W.2d 763. This finding was supported by evidence. *See, e.g.*, T2, P.65–66, L.25–10; App. 202. Kjelgren presents no compelling argument for why the District Court's findings related to the issue of consideration are clearly erroneous.

[¶ 30] Third, Kjelgren argues the District Court erred because the intention of the parties was for Kjelgren to be the owner of the PSDM Shares. Kjelgren Brief, ¶¶ 42–57. Kjelgren provides no meaningful legal authority in connection with this argument; it is purely a presentation of evidence. The District Court found that Kjelgren and Robin



decided the PSDM Shares would be issued in the name of someone other than Cavare CAN in order to minimize the book value of Cavare CAN during Robin's then-pending divorce proceedings and held thereafter for Cavare CAN's benefit. App. 215–17. The Court did not find Kjelgren's testimony to the contrary to be credible. *Id.* at 217. This finding was based on evidence, including Kjelgren's own 2016 e-mail wherein he acknowledged the PSDM Shares should be transferred out of his name if he was no longer going to be involved with Cavare CAN. See T.1, P.125–27, L.22–1; T.1, P.128–29, L.21–2; T.1, P.138–39, L.23–11; App. 95. Kjelgren provides no convincing argument for why the District Court's finding on this issue is clearly erroneous.

[¶ 31] And fourth, Kjelgren argues the District Court erred because the PSDM Shares were not actually transferred from Cavare CAN to Cavare USA. Kjelgren Brief, ¶¶ 58–60, 65–71. The District Court found that PSDM Shares, along with all Cavare CAN's other assets, were transferred to First Directional, and Cavare CAN's U.S. assets (including the PSDM Shares) went to Cavare USA while Cavare CAN's Canadian assets went to Cavare Int'l, pursuant to the terms of the oral agreement between Robin and Beattie on behalf of Cavare CAN and First Directional. App. 217–18. This finding was supported by Robin and Beattie's testimony. See T.1, P.132–35, L.25–14; T.1, P.162–65, L.20–7; T.1, P.168–69, L.9–8; T.1, P.183–84, L.23–10; T.1, P.190–91, L.6–1; T.1, P.194–96, L.5–17. “The existence of an oral contract and the extent of its terms are questions of fact, subject to the ‘clearly erroneous’ standard of review under N.D.R.Civ.P. 52(a).” *Edward H. Schwartz Const. Inc. v. Driessen*, 2006 ND 15, ¶ 6. Kjelgren provides no compelling argument for why the Court's finding regarding the oral agreement to transfer the PSDM Shares is clearly erroneous.

**II. Kjelgren has not shown the District Court abused its discretion in denying his Rule 60(b)(3) motion.**

[¶ 32] Kjelgren also argues the District Court abused its discretion in denying his Rule 60(b)(3) motion. A district court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. *Paulson*, 2021 ND 32, ¶ 8, 955 N.W.2d 92. Kjelgren's only references to the foregoing standard are conclusory. *See* Kjelgren Brief, ¶¶ 86, 99. Otherwise, Kjelgren presents his view of the evidence to the Court in the hopes of getting a different decision. Because the District Court's findings supporting denial were not clearly erroneous, and because the District Court reached a rational decision based on those findings, the District Court's order denying Kjelgren's Rule 60(b)(3) motion should be upheld.

[¶ 33] The District Court found that Robin had discussions with Beattie and others about Robin becoming an owner of Cavare USA and Cavare Int'l, but these discussions never matured into actual ownership or a final agreement entitling Robin to ownership. *See* App. 277–83. These findings were supported by the testimony of Robin and Beattie, as well as inferences drawn from the evidence presented by Kjelgren. *See* T.3, P.41, L.2–7; T.3, P.68–69, L.6–8; T.3, P.73–76, L.4–21; T.3, P.90–92, L.13–3; App. 266, 274; *see also* T.1, P.152, L.21–25; T.1, P.160, L.19–24 (showing the extent of Robin's testimony on cross examination at trial about discussions he had concerning ownership of Cavare USA and Cavare Int'l). Kjelgren obviously disputes these findings, but he has not shown they are clearly erroneous. Based on these findings the District Court concluded Kjelgren failed to establish by clear and convincing evidence that Cavare USA obtained a judgment in this case through fraud, misrepresentation, or misconduct. App. 286–87. This conclusion is reasonable based on the Court's finding that Robin and Beattie's testimony was truthful.

[¶ 34] The District Court also found Kjelgren was not prevented from fully and fairly presenting his case. App. 283–84. This finding was based on evidence, particularly Kjelgren’s testimony at trial that he had researched Cavare Int’l and knew of Keith Wilson’s (“Wilson”) belief that Wilson and Robin owned Cavare Int’l. See T.2, P.59–60, L.23–4. Kjelgren also admitted at the evidentiary hearing that Wilson, whom Kjelgren knew personally prior to trial, could have served as witnesses during trial in 2019. See T.3, P.97–98, L.24–1. Based on these findings, which Kjelgren does not appear to dispute, the District Court concluded Kjelgren was not prevented from fully and fairly presenting his case because the information necessary to do so was available to him prior to trial. See App. 286 (citing federal case law for the proposition that a party may not prevail on a Rule 60(b)(3) motion when he has access to disputed information or knowledge of inaccuracies in his opponent’s representations). The Court’s decision on this issue was not an abuse of discretion because it was reasonable and in accordance with North Dakota precedent. See *Dvorak v. Dvorak*, 2001 ND 178, ¶ 12, 635 N.W.2d 135 (holding that, even if movant had proven fraud, Rule 60(b)(3) motion was properly denied because he was not prevented from presenting evidence that would have contradicted opposing party’s allegations at hearing in question).

### **III. Cavare USA has standing to pursue this case.**

[¶ 35] Finally, Kjelgren argues Cavare USA lacks standing to pursue this case. This portion of Kjelgren’s brief simply refers to the rest of his brief, so the basis of his argument is not clear. See Kjelgren Brief, ¶ 101. The doctrine of standing “focuses upon whether the plaintiff has *alleged* such a personal stake in the outcome of the controversy as to justify exercise of the Court’s remedial powers on his behalf.” *In Int. of D.D.*, 2018

ND 201, ¶ 13, 916 N.W.2d 765 (emphasis added). A party may not assert the legal rights and interests of another. *Albrecht v. Albrecht*, 2020 ND 105, ¶ 9, 942 N.W.2d 875. Cavare USA requested the District Court determine Cavare USA’s right to the PSDM Shares and corresponding shareholder distributions as against Kjelgren’s claim. *See* App. 15 (containing Cavare USA’s claim for declaratory relief). This is not an assertion of some third party’s right, but rather an assertion of Cavare USA’s right to declaratory relief. *See* N.D.C.C. § 32-23-01 (“A court of record within its jurisdiction shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”). Accordingly, Kjelgren’s argument about standing fails.

### **CONCLUSION**

[¶ 36] The District Court’s decision should be affirmed. The District Court correctly found that Cavare USA is the owner of the PSDM Shares. The District Court also correctly denied Kjelgren’s Rule 60(b)(3) motion.

Dated this 23rd day of August, 2021.

By: /s/ Spencer D. Ptacek  
FREDRIKSON & BYRON, P.A.

Lawrence Bender, ND Bar #03908  
Spencer D. Ptacek, ND Bar #08295  
1133 College Drive, Suite 1000  
Bismarck, ND 58501-1215  
lbender@fredlaw.com  
sptacek@fredlaw.com  
Telephone: 701.221.8700

*Attorneys for Plaintiff-Appellee  
Cavare Inc.*

### **CERTIFICATE OF COMPLIANCE**

The undersigned, as attorney for the Plaintiff-Appellee Cavare Inc., hereby certifies the above brief is in compliance with Rule 32(a)(8)(A) of the North Dakota Rules of Appellant Procedure. The total number of pages in the brief, excluding the certificate of service and this compliance totals 20 pages.

Dated this 23rd day of August, 2021.

By: /s/ Spencer D. Ptacek  
FREDRIKSON & BYRON, P.A.

Lawrence Bender, ND Bar #03908  
Spencer D. Ptacek, ND Bar #08295  
1133 College Drive, Suite 1000  
Bismarck, ND 58501-1215  
lbender@fredlaw.com  
sptacek@fredlaw.com  
Telephone: 701.221.8700

*Attorneys for Plaintiff-Appellee  
Cavare Inc.*

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

|   |                            |
|---|----------------------------|
| Cavare Inc.,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>Christopher B. Kjelgren,<br><br>Defendant-Appellant, | Supreme Court No. 20200128 |
|---|----------------------------|

Appeal from Findings of Fact, Conclusions of Law and Order for  
Judgment, Entered March 11, 2020, and Order on Motion for  
Relief Under Rule 60, Entered March 4, 2021,  
Case No. 53-2017-CV-01076  
County of Williams, Northwest Judicial District  
The Honorable Josh B. Rustad, District Judge, Presiding

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on August 23rd, 2021, a true and correct copy of the Brief of Plaintiff-Appellee Cavare Inc. was electronically filed with the Clerk of the North Dakota Supreme Court through the E-filing Portal which served copies by e-mail on the following:

Lynn M. Mesteth  
lynn@dwyerlawnd.com

Dated this 23rd day of August, 2021.

By: /s/ Spencer D. Ptacek  
FREDRIKSON & BYRON, P.A.

Lawrence Bender, ND Bar #03908  
Spencer D. Ptacek, ND Bar #08295  
1133 College Drive, Suite 1000  
Bismarck, ND 58501-1215  
lbender@fredlaw.com  
sptacek@fredlaw.com  
Telephone: 701.221.8700

*Attorneys for Plaintiff-Appellee  
Cavare Inc.*

73708882.1