

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

<p>Donna Mae Wald,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">v.</p> <p>The Honorable James D. Hovey, Judge of District Court, Southeast Judicial District, and Gerard Wald,</p> <p style="text-align: center;">Respondents.</p>	<p>Supreme Court Case No:</p> <p>District Court Case No.: 26-2021-CV-00023</p>
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Appendix of Petitioner

Dated this 29th day of September, 2021.

PAGEL HAGER LAW FIRM
1715 Burnt Boat Drive
Madison Suite
Bismarck, ND 58503
(701) 401-1000
rpagel@dakota.lawyer

By: Rodney Pagel
Rodney Pagel
ND Lic. No.: 05090

ATTORNEY FOR PETITIONER

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**IN DISTRICT COURT
COUNTY OF MCINTOSH
STATE OF NORTH DAKOTA
SOUTHEAST JUDICIAL DISTRICT**

Donna Mae Wald, Plaintiff, v. Gerard Wald, Defendant.	CASE NO.
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Complaint

Plaintiff, for her claims for relief, against the Defendant, alleges and states as follows:

- ¶1 Plaintiff is a citizen and resident of Bismarck, Burleigh County, North Dakota.
- ¶2 Defendant is a citizen and resident of Wishek, McIntosh County, North Dakota.
- ¶3 This court has jurisdiction over the parties and the subject matter of this action.
- ¶4 The parties were married on April 5, 1975.
- ¶5 The parties were divorced following a divorce trial and a Judgment of Divorce entered consistent therewith (Said Judgment being entered on the 28th day of January 2019). Following Motions presented to the court under Rule 59 and 60, an Amended and Final Judgment was issued by the District Court on May 2, 2019.
- ¶6 Under the terms of the Divorce Judgment(s), Plaintiff was awarded the 2017 and 2018 bales of hay crop.”
- ¶7 Said hay crop consisted of 1,372 alfalfa round bales and 541 hay/meadow/grass round bales, for a total of 1,913 bales.

¶8 At trial plaintiff valued these bales at a total of \$242,216 (\$178,820 for the 2017 hay crop and \$63,396 for the 2018 hay crop).

¶9 This value of \$242,216 was utilized by the divorce court in the context of providing for an “equitable” distribution of the marital estate. Absent plaintiff receiving these bales, she is deprived of this “asset” and the “equitable” distribution of the marital estate is no longer “equitable”.

¶10 Said Divorce Judgment further provided that “As to the hay crop, Donna shall provide fourteen (14) days’ notice of her intent to remove the bales and they shall be removed from the property awarded to Gerard within thirty (30) days of entry of Judgment.”

¶11 For varying reasons, Plaintiff was unable to remove hay bales within 30 days after the entry of Judgment / Amended Judgment. Plaintiff did seek to communicate with the defendant and remove the bales after a restraining order which defendant had filed against her Plaintiff had expired in August of 2019. At such time, defendant refused to turn over the hay bales

¶12 Plaintiff filed an action within the context of the divorce case seeking to hold defendant in contempt and / or for a redistribution of marital property to account for said hay bales and to have those hay bales turned over to her or to require that defendant pay her for the hay bales, all of which had remained on his property.

¶13 Plaintiff’s motions within the context of the divorce case were denied. The divorce court determined that Defendant was not in contempt of the divorce Judgment since plaintiff was required provide notice within 14 days, and pick up the bales within 30 days of entry of Judgment. The divorce court additionally denied the motion for redistribution of the marital estate to account for the value of the hay bales which had been kept by defendant since N.D.C.C. §14-05-24 required Plaintiff to establish that defendant had failed to disclose the bales or had failed to comply with an order of the court for the distribution of property and debts. Since neither of these pre-conditions

for re-distribution had occurred, the Court determined that “there is no method for which the Court could order redistribution of the property.”

¶14 Defendant has admitted, during testimony under oath, that he had not turned any portion of the 2017 and 2018 hay crop over to plaintiff.

¶15 Defendant has additionally made the following admissions under oath:

- a. Although he had a few bales left of the 2017 hay crop, most of that crop was “wiped out” as he had fed the 2017 hay crop to his cattle
- b. Between the time Plaintiff took photos and inventoried the bales and the time of trial, defendant continued to feed the 2017 hay crop.
- c. He has no idea how many bales remained from the 2017 hay crop as of the date of trial, in fact having no clue if it was one bale or 2,000 bales.
- d. As to the 2018 hay crop, Defendant could not identify how many of the 2018 hay bales existed at the time of trial, noting that the only thing he could tell the court is that it was “more than one but less than 2,000”.
- e. Defendant testified that after he figured Plaintiff was not going to come out and get the bales, he started feeding the 2018 hay crop, however he could not identify how many bales he had actually fed.
- f. Defendant also admitted that a DVPO existed against Donna, that all bales were located on his property, and that the DVPO did not expire until August 19, 2019, one day prior to Donna asking to retrieve the bales.
- g. Finally, Defendant admitted that he could see nothing in the Judgment which provided that if Plaintiff did not pick up the bales within 30 days, those bales became his property.

¶16 At no time has plaintiff received even one of the 1,913 hay bales awarded to her in the divorce Judgment.

¶17 At no time has plaintiff received one dollar of the \$242,000 in assets in the context of the hay awarded to her as her share of the equitable distribution of the marital estate.

¶18 At all times, defendant is the sole person who had control and use of these assets.

¶19 At all times, defendant has either kept these hay bales for his own use, sold them for his own gain, or fed them to his cattle for his own benefit, engaging in some of these actions even prior to the divorce trial in this matter.

¶20 At all times, plaintiff has been deprived of the value, use and benefit of \$242,000 in hay bales.

Unjust Enrichment

¶21 Plaintiff incorporates by reference paragraphs 1 through 20 above.

¶22 At all pertinent times the Defendant has been unjustly enriched as a result of the use, control, sale, and/or disposition (via feeding to cattle) of the 2017 and 2018 hay bales which were awarded to the plaintiff.

¶23 At all pertinent times, plaintiff has been impoverished and deprived of the use, control, sale and value of \$242,000 in hay (1,913 bales).

¶24 At all pertinent times, there exists a direct connection between plaintiff's impoverishment and defendant's enrichment as a result of, *inter alia*, the loss of use and value of the hay bales by plaintiff and the value gained by defendant in using, selling and/or feeding these hay bales to the betterment of himself, his business and/or his cattle.

¶25 At all pertinent times, there exists an absence of justification for the enrichment and impoverishment.

¶26 At all pertinent times, plaintiff has sought and progressed through the other remedies available to her by law and via the divorce action and thus is legally justified in bringing this action for Unjust Enrichment.

Tortious Conversion

¶27 Plaintiff incorporates by reference paragraphs 1 through 20 above.

¶28 At all pertinent times, defendant has wrongfully kept, retained and/or fed assets which were awarded to plaintiff in the divorce case, thus converting those assets to his own use, benefit and gain and depriving the plaintiff of the benefit of these assets.

¶29 At all pertinent times, many of these assets had been converted to defendant's own use, benefit and gain and did not in fact even exist at the time of trial as testified upon by defendant under oath.

Damages

¶30 Plaintiff incorporates by reference all paragraphs above.

¶31 As a result of defendant's actions, either via unjust enrichment, tortious conversion, or both, plaintiff has been deprived of assets valuing \$242,000 (1,913 bales).

¶32 Plaintiff is entitled to damages, and defendant is obligated to provide compensation / remuneration in the context of these damages, to Plaintiff in the amount of \$242,000 and/or 1,372 alfalfa round bales and 541 hay/meadow/grass round bales.

WHEREFORE, Plaintiff demand Judgment against the Defendant as follows:

A. For damages in excess of \$242,000, with interest thereon at the appropriate Judgment rate commencing September 1, 2020 and proceeding forward.

B. That the Court award plaintiff costs, disbursements and attorney's fees incurred in this action as appropriate under North Dakota law,

C. That the Court award further any just relief and post-Judgment interest as it deems appropriate.

Dated this 1st day of March, 2021

PAGEL LAW, PLLC
1715 Burnt Boat Drive
Madison Suite
Bismarck, ND 58503
(701) 401-1000
rpagel@dakota.lawyer.com

By: /s/ Rodney E. Pagel
Rodney E. Pagel
ND Lic. No.: 05090

ATTORNEY FOR PLAINTIFF

Donna Mae Wald,)
)
 Plaintiff,)
 vs.)
)
 Gerard Wald,)
)
 Defendant.)

File No. 26-2021-CV-00023

ORDER DENYING DEMAND FOR CHANGE OF JUDGE

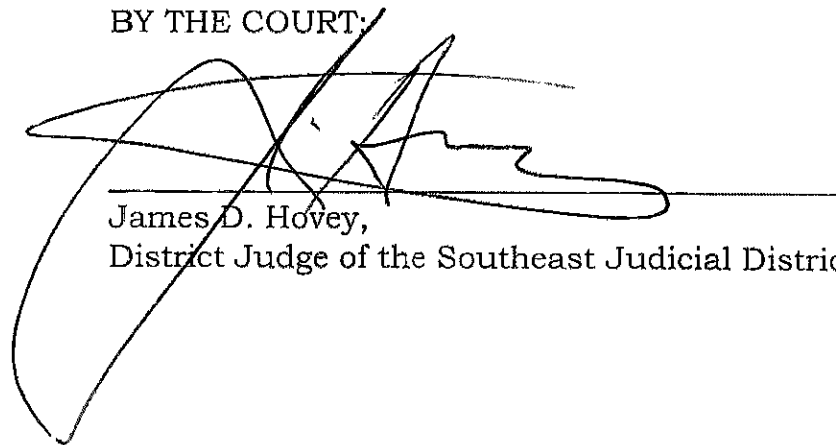
[1] This is an action brought by plaintiff, Donna Wald, against defendant, Gerard Wald, for damages arising out of unjust enrichment and tortious conversion. A review of the complaint shows your undersigned that the facts arise out of a divorce between plaintiff and defendant in File No. 26-2017-DM-00007.

[2] The Honorable Daniel D. Narum was assigned to File No. 26-2021-CV-00023 on September 20, 2021. On September 23, 2021, plaintiff filed her demand for change of judge seeking the removal of the Honorable Daniel D. Narum pursuant to N.D.C.C. §29-15-21. Plaintiff certifies that the Honorable Judge Narum has not ruled upon any matter pertaining to the proceeding herein. Judge Narum was the presiding judge in the divorce action, which facts give rise to the current lawsuit. A review of the case at bar shows your undersigned that many, if not all, of the factual issues of the case at bar were considered and decided by Judge Narum as part of the divorce proceedings. Both plaintiff and defendant were represented by

counsel and had an opportunity to be heard in the divorce proceeding. Because Judge Narum has ruled upon matters pertaining to this action or a proceeding in which the moving party was heard or had an opportunity to be heard the demand for change of judge is *denied*.

Dated this 27th day of September, 2021.

BY THE COURT:

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line.

James D. Hovey,
District Judge of the Southeast Judicial District