

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA



Bradley C. Johnson & Karol M.
Johnson, Defendants and
Appellants

vs.

Barna, Guzy & Steffen, Ltd.,
Plaintiff and Appellee

Dale Kuhn, Patricia Kuhn,
Amber Kuhn Buchman, Karin
Kuhn Fritel, Samantha Kuhn
Heyl, Western State Bank, and
all persons unknown, claiming
any estate or interest in, or lien or
encumbrance upon, the real
estate described in the
Complaint,
Defendants

Case No.: Supreme Court No.
20170340

**APPELLANTS BRIEF &
PETITION
APPEAL FROM SUMMARY
JUDGMENT OF MCHENRY
COUNTY DISTRICT COURT
NORTHEAST JUDICIAL
DISTRICT FILE
NUMBER:25-2015-CV-00093**

**APPEAL OF ORDERS
DATED 7/14/2017, 8/11/2017 &
12/8/2017. DOCUMENTS 300
& 351**

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Hurtado v. California, 110 U.S. 516

(<https://supreme.justia.com/cases/federal/us/110/516/>)(1884)

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29. The U.S. Supreme Court recognized that it is nearly impossible for the legislative branch to overrule the Court's constitutional interpretations in

Washington v. Glucksberg, 521 U.S. 702, 720 (1997): "By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore exercise the utmost care whenever we are asked to break new ground in this field."

31. Bolling v. Sharpe 347 U.S. 497

32. Lawrence v. Texas

Statement of the Issues Presented for Review

11. The Appellants were repeatedly and egregiously denied Due Process and Fair and Open Trial on the issues and facts of the alleged debt to Barna Guzy and Steffens Ltd. for legal services (truly the false and fraudulent actions) provided by Bradley Kletscher and Tammy Schemmel. BGS repeatedly and without proper reason billed for more and more services, as less amount and clearly fraudulent services were provided. Then BGS sued for foreclosure in an amount that exceeds the Revolving Line of Credit Note and the Mortgage of Security. The Court erred in repeatedly granting Summary Judgment in direct defiance of the Rules of Civil Procedure, Common Law and the facts. The Court erred in judging alleged evidence for the purpose of granting the Plaintiffs Summary Judgment in defiance of the Law and Rules on Summary Judgment. It is clear to any reasonable person that collusion, crime, fraud, conspiracy to conceal crimes and misconduct, seeking for unjust gain and enrichment and other crimes and torts were and continue to be present in the services for which BGS billed, and the actions of the Court and Plaintiffs' attorneys. Regardless of any other issue, the Appellants have expressed and maintained their position on the billings of BGS from the time they were billed and throughout the McHenry County District Court proceedings. [9][10][11][30][32][34]

Due Process

No person shall...be deprived of life, liberty, or property, without due process of law....

The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law.[1] The Supreme Court of the United States interprets the clauses more broadly, concluding that these clauses provide four protections: procedural due process (in civil and criminal proceedings), substantive due process, a prohibition against vague laws, and as the vehicle for the incorporation of the Bill of Rights.

Due process is the legal requirement that the state must respect all legal rights that are owed to a person. Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law. Due process has also been frequently interpreted as limiting laws and legal proceedings (see substantive due process) so that judges,

instead of legislators, may define and guarantee fundamental fairness, justice, and liberty.

Fraud

Fraud on the Court, or Fraud upon the Court, is where a material misrepresentation has been made to the court, or by the court itself.

The main requirement is that the impartiality of the court has been so disrupted that it can't perform its tasks without bias or prejudice.

Fraud on the court occurs when the judicial machinery itself has been tainted, such as when an attorney, who is an officer of the court, is involved in the perpetration of a fraud or makes material misrepresentations to the court.

Nature of Proceedings

12. The proceedings have occurred over a 2.5 year period in McHenry County District Court. At the outset of the proceedings the Plaintiff's prematurely filed for Summary Judgment in violation of the Rules of Civil Procedure, using only the perjured affidavit of the President of BGS, attorney Charles Seykora as evidence. Mr. Seykora simply has no knowledge, first-hand or otherwise into the services and proceedings. He cannot know that the billings were fair, true and accurate; only that the billings were produced at the direction of attorneys Kletscher and Schemmel. **ONLY AFFIDAVITS BY ATTORNEYS KLETSCHER AND SCHEMMELL**

WOULD HAVE ANY VALIDITY OR EVIDENTIARY VALUE. SUCH AFFIDAVITS ARE GLARING IN THEIR ABSENCE.

13. The Hearing on the 20th of June 2016 had all the trappings and atmosphere of a kangaroo Court, with the outcome clearly pre-determined. The Judge warned that Appellants must conform to all of the Rules, did not issue the same to the Plaintiffs and co-defendants attorney, and then proceeded to violate the Rules himself and allow the Plaintiffs to simply ignore the Rules.

14. Attorneys Hanson and McIntee were clearly in collusion with one another, which did not become clear as to purpose until the Partial Summary Judgment was clarified as to purpose some months later. Attorney Hanson then lied about that, claiming it was for the Appellants benefit...yeh, right. Their collusion was clear in their weird grins at us, and disinterest in our petitions by Judge Benson. Until Appellants demanded a response to our petitions at the end of the Hearing, Judge Benson made no mention of them, and then responded they would become moot. [12]

15. Judge Benson finds in favor of the Plaintiffs for Partial Summary Judgment. The fact that a Judge did not know this is illegal is an issue. He is clearly not qualified for the position. We begin the Appeal Process. The NDSC remands the matter to District Court because of the Partial nature. [1][3][46][48][49]

16. Appellants file new petitions/motions with District Court. Per his clear bias, prejudice and discrimination, and failure to adhere to the Rule of Law, Judge Benson simply ignores these filings.[52][53][54][56][57]
17. Upon loss of the Partial portion, the co-defendants and attorney withdrew from participation, clearly indicating the nature of the collusion and corruption of the process and the Court/Judge.[55][67]
18. Plaintiffs file new petition for summary judgement. Hearing is promptly scheduled by Judge Benson.[58]
19. Again, the Hearing is fully slanted to the Plaintiffs. Appellants must demand that their petitions are argued. Again, all the trappings of a kangaroo court with a pre-determined outcome.
20. Judge Benson issues same decisions as previously, lacking in any effort to answer to lack of Due Process and failure to comply with Rules.[59]
21. Appellants began Appeal process, preceded by Petition for Rule 60 Hearing to give the District Court one last chance to correct the clearly illegal proceedings.[60][61][63][63][64][65]
22. Judge Benson attempts to prevent Appeal by requiring excessive, punitive and clearly biased bond. Appellants meet the bond. Rule 60 Hearing occurs. Again, no response from Plaintiffs or Judge on failure to provide Due Process. Same result occurred. Appellants proceed with Appeal.
[60][61][63][63][64][65][66][67][68][7][14]

Statement of The Facts

23. Appellants have little confidence on the outcome of this case. The District Courts are apparently part of the legal industry which has at some point in many cases ceased to serve truth, justice, facts, and the Laws as set in place by our representatives, becoming an arm of the legal industry controlled by the legal industry, not the people.
24. Still, Appellants must hope and pray, make our case, and see what another set of lawyers decide to impose on the lives of others.
25. The plaintiffs position has been that Appellants must pay the invoices for services without review, questioning or dispute here in ND. Then return to MN and see if a court will return the money to us. That is ridiculous and serves only to enrich lawyers that Appellants allege and have provided probable cause to accuse as corrupt. That requires, per the United States Constitution, Due Process.
26. This is not simply an appeal of decisions and orders by Judge Michael Benson but a report of a Criminal Conspiracy among Lawyers and Judges in North Dakota and Minnesota to defraud Bradley and Karol Johnson, and their disabled son's and wards, Dustin and Shane Johnson. This fraud has been primarily conducted in the Judicial System by denying the Constitutional and Civil Rights of the Johnson's, and seeking to pervert the course of justice to accomplish unjust enrichment

27. If the North Dakota Supreme Court is not willing to declare Fraud Upon the Court in these matters, it must at minimum, reverse the Order for Summary Judgment to allow a full, fair and complete judicial process to expose the truth of the crimes that have been and are being committed.
28. The appellants position is that the matter does not reach the threshold for Summary Judgment, and that the Plaintiffs, in collusion with the District Court Judge, and other parties to the action colluded in an illegal and criminal manner seeking to close the matter without Due Process of Law for the Appellants.
29. The appellants filed petitions after the remand of the first appeal by the NDSC in the fall/early winter of 2016/2017. Judge Benson simply ignored these petitions. The Appellees then refiled a Petition for Summary Judgment, for which the District Court scheduled a new Hearing. During the Hearing, Judge Benson ignored the Petitions the Johnson's had filed prior to the Plaintiff's new filing, again, as in March/April/May 2016, At the Hearing, this time argued by attorney Benjamin Williams for the Plaintiff, the Johnson's Petitions until near the end when the Johnson's insisted on being heard, which Judge Benson did grudgingly. Again, displaying great bias, prejudice, violation of Due Process and the Rule of Law and proceeded to again rule without Discovery.
30. The matter for the ND SC to decide is as follows:

31. Did Bradley and Karol Johnson receive Constitutionally protected Due Process?
32. Did the Court adhere to the Law and Rules in finding for Summary Judgment while MANY issues are outstanding and can be adjudicated only by a Full and Fair Trial?
33. Is there, at minimum, the Appearance of Impropriety and likely actual collusion between the Plaintiffs' attorneys, the Kuhn's attorney, and the Judge?
34. Are there issues of fact and law that have not been answered?
35. Does an affidavit by the CEO of the Plaintiffs law firm, who personally cannot, legally at least, have ANY knowledge as to legal services provided by Bradley Kletscher and Tammy Schemmel to Bradley and Karol Johnson, have ANY value?

Sequence of Key Events

36. Plaintiffs file affidavit by CEO of Barna, Guzy and Steffen. More detail later, but know that the affidavit is by necessity false, fraudulent and perjured. Note that attorneys whose services were billed did NOT file affidavits.
37. Plaintiffs file for Summary Judgment.
38. Appellants file for Discovery, etc.

39. McHenry County Assistant Clerk of Court attempts to schedule Hearings for the convenience and benefit of local attorney, Michael McIntee, without consulting Defendants/Appellants.
40. Appellants file a petition for review of conflict of interest and misconduct in the District Courts.
41. Initial Judge files a recusal.
42. Appellants file petitions and affidavits.
43. New Judge, Anthony Benson, is assigned.
44. Hearing is scheduled for June 26, 2016. Specifics of purpose of hearing are not revealed to Appellants.
45. At the Courthouse, immediately prior to the Hearing, attorneys McIntee and Hanson emerge together from an anteroom to the Judge's chambers.
46. At the Hearing, Judge Benson ignores the various petitions and information filed by us.
47. The detail of the Partial Summary Judgment is disclosed for the first time.
48. Near the end of the Hearing, Appellants ask about the petitions Appellants have filed. Particularly Discovery and Case Management. The Judge responds that those petitions are moot. Clearly no intent to provide Due Process by providing discovery prior to Summary Judgment.
49. Judge rules and orders Partial Summary Judgment.
50. Defendants/Appellants file for Appeal.
51. Appeal is rejected due to Partial Summary Judgment. Remand to District Court.

52. Defendants/Appellants file Petitions in response to rejection of Partial Summary Judgment. As usual, Judge Benson ignores Defendants/Appellants filings.
53. Upon the rejection of the Partial Summary Judgment, the Kuhn family, represented by attorney McIntee withdraw from active participation.
54. Plaintiffs re-file for Summary Judgment. Judge Benson promptly schedules Hearing for March 2017.
55. Hearing is held. Judge Benson attempts to hear only Plaintiffs Petition. Appellants insist on including the petitions Appellants made. Judge Benson grudgingly complies, was clearly intent on again denying Due Process.
56. Dale Kuhn meets with and communicates with Karol Johnson, thereby voiding attorney/client privilege. Provides explanations that defy all logic and facts. Clearly attempting to undo tremendous damage to his sister and her family. Fails.
57. Appellants file for order to conduct discovery on the Kuhn Family. Judge Benson ignores the issue.
58. Judge Benson again rules in favor of Plaintiff for Summary Judgment and against Defendants/Appellants on our Petitions, without providing legal basis.
59. Appellants file for a Rule 60 Hearing.
60. Appellants file for Appeal.
61. Judge Benson attempts to ignore the Rule 60 Petition.

62. NDSC Orders Judge Benson to hold Rule 60 Hearing.
63. Judge Benson attempts to prevent appeal by failing to deal with Bond.
64. Judge Benson requires ridiculous and excessive bond in a clear attempt to prevent the appeal.
65. Appellants meet bond requirement.
66. Appeal is expanded to include decision on Rule 60.
67. Appeal process begins.
68. Fact: Judge Benson clearly displayed bias, prejudice and corruption. He clearly colluded with attorneys Hanson, Williams and McIntee to deny Due Process and the Rule of Law. He acted promptly and in favor of these parties, and literally ignored and attempted to evade Defendants/Appellants actions and rights. The serious misconduct of attorneys Hanson, Williams, McIntee and Judge Benson constitute Fraud Upon the Court.
69. Conspiracy and Collusion by Plaintiff's Attorneys Mark Hanson and Benjamin Williams, Kuhn Defendant's Attorney Michael McIntee and Judge to Deny Due Process and seize the property of the Johnson's as quickly and quietly as a corrupt process would allow.
70. Upon the filing of the foreclosure lawsuit, attorney McIntee joined with attorney Hanson and developed a plan to expedite the foreclosure, with attorney Hanson being rewarded by avoiding a trial on the facts to protect his clients from exposure of criminal actions as attorneys, and attorney

McIntee being rewarded by obtaining the 80 acres Dale Kuhn covets by corruption and crime.

71. Upon discovery and disclosure by Defendants/Appellants of the relationship of the McHenry County Assistant Clerk of Court to Dale Kuhn's daughter Karin Kuhn Fritel, an assistant in the Pierce County Clerk of Courts Office, and the corruption being conducted to manipulate scheduling and more, the Judge originally assigned recused himself. The replacement judge then joined with his neighbor and co-lawyer in the little burg of Bottineau, attorney McIntee, to resume corruption of the process.
72. Multiple persons should have been removed from their positions in District Courts long ago, but apparently, the ND Court System considers corruption to be an everyday way of doing business.
73. Judge Benson proved his bias, prejudice and corruption in many ways and instances.
74. By refusing to acknowledge, hold hearings, and act on Defendants/Appellants petitions prior to the Hearing on Summary Judgment.
75. By ignoring Defendants/Appellants Petition based on Rule 60 and request for Bond decision until ordered to do so by the NDSC.
76. By setting the bond at \$100,000, a ridiculous amount to protect bare land. Clearly believing Appellants could not meet that requirement and would not be able to Appeal.

77. **Standing Clear to See In Its Stark Absence:** Plaintiff's Attorney Hanson and Williams, Co-Defendant Attorney McIntee and Judge Benson NEVER directly respond to the absence of DUE PROCESS, and the denial of Constitutional Rights. By repeated error and dishonesty in his findings and decisions, failing to acknowledge the issue of Due Process and Discovery prior to Summary Judgment, Judge Benson, Attorney Hanson, Attorney Williams, and Attorney McIntee committed Fraud Upon the Court. They simply ignored one of the most fundamental ideals of the Rule of Law.

78. Only after the NDSC Rejected the Appeal of the Order with a Partial Summary Judgment as being illegal did the Kuhn family, through their attorney Michael McIntee, withdraw from participation in the matter, and cease opposing the Johnson's efforts to obtain justice in their dispute with the Barna, Guzy and Steffens Law Firm. As the Kuhn family had no dog in that fight, their only reason for involvement, particularly on the side of the Plaintiffs, was to obtain the 80 acres of Karol Johnson's land on the cheap. The presence of corruption of the process, of the Judges, and of the Clerk of Court Offices is so clear. That Karin Kuhn Fritel who worked in the Pierce County Clerk of Court Office, (and is now the Clerk of Court, was and is a very close friend of Tina Johnson Powell (per their Facebook postings), who then was an assistant in the McHenry County Clerk's Office and is now the Clerk of Court in McHenry County, is absolute proof that the Johnson's cannot and did not receive Due Process through

fair proceedings. That attorney Mark Hanson colluded with attorney Michael McIntee to improperly influence his close Bottineau colleague attorney and Judge Anthony Benson is well beyond the standard of avoiding even the APPEARANCE of Impropriety.[34]

79. Conspiracy of Attorneys Kletscher & Schemmel of BGS with Attorney Hanson and Williams to Obstruct Legal Process to cover up crimes and misconduct in their services to Bradley and Karol Johnson.[34]
80. While the details of these crimes and misconduct are not the topic for the NDSC, knowing something about Defendants/Appellants allegations against them is key to understanding our claims, and reason a trial is necessary, not summary judgment. Further, their illegal attempts to avoid the exposure of a trial explains the motivation to corrupt the ND District Court to prevent the trial at which they would be exposed. These efforts are Fraud Upon the Court and must result in a dismissal of the actions.
81. Conspiring and colluding with the opposition in the Minnesota matters to “throw” the trials.[34]
82. Participation in corruption of judges in the Minnesota matters.[34]
83. Allowing the opposition to commit misconduct and crimes (perjury and subornation of perjury) in Court proceedings clearly against the Rules and Laws.[34]
84. Fraudulent and false billings.[34]

Appellants Legal Argument

85. Does the North Dakota Supreme Court believe in the Rule of Law, or the Rule of Lawyers.
86. Summary Judgment is to be granted only when there exist no matters for decision in a full and fair Trial. The Material Facts at issue are the validity of the billings of the Barna, Guzy and Steffens and the matter of the conduct of Bradley Kletscher and Tammy Schemmel in their representation of the Defendant. This matter has not been heard and decided on its merits in any Court. No one has been allowed to Hear the complaint of the Appellants the invoices are false and fraudulent; the services of the attorneys was fraudulent and dishonest. The issue is encompassed in the Affirmative Defense and Answers repeatedly in filings and have been expressed and supported subsequently. Barna, Guzy and Steffens chose the North Dakota venue for the resolution of billing and service issues, not the Appellants. Therefore, the North Dakota Courts is the venue for trial and decision on the merits of the matter. Rules of Civil Procedure and Due Process REQUIRE full Discovery, etc. prior to even a Hearing on Summary Judgment, to say nothing of a decision. The Court has twice failed to follow its own Rules and Procedures.
87. The District Court in McHenry County failed in many ways to provide Due Process and a fair and open process. The question now before the

North Dakota Supreme Court is whether it will uphold the Rule of Law, or the Law Industry. (similar to the Military Industrial Complex that Five Star General and President Eisenhower warned about) Keep in mind that the Plaintiff's are lawyers, and their claim for monies due is disputed by us, and Appellants have been denied the opportunity to defend against these claims. Appellants believe very strongly that the Legal Industry and a brotherhood of those who profit from it have conspired to Deny the very rights the Rule of Law is intended to uphold. Certainly, the Rights our Founding Fathers intended all citizens to be protected by.

88. Judge Benson repeatedly and improperly denied the Appellants petitions for discovery, document requests, subpoena's, depositions, answers to interrogatories, and admissions on file, together with the affidavits... Thereby denying Due Process, violating the Rules of Civil Procedure and proving that Judge Benson is fully biased, prejudiced and discriminatory in his attitudes and actions. A full review of the entire case and proceedings by the North Dakota Supreme Court and its multiple issues must occur prior to further proceedings by the District Court.
89. "A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law."
- Fabio v. Bellomo, 504 N.W.2d 758, 761

90. "Summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented." Illinois Farmers Ins. Co. v. Tapemark Co., 273 N.W.2d 630,634 Further, a "court's function on a motion for summary judgment is not to decide issues of fact, but solely to determine whether genuine factual issues exist." DLH, Inc., 566 N.W.2d at 70. **The "court must not weigh the evidence on a motion for summary judgment."** Murphy v. Country House, Inc., 240 N.W.2d 507, 512.
91. A procedural due process is essentially based on the concept of "fundamental fairness". For example, in 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental". As construed by the courts, it includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regards to the matter before them.
92. To put it more simply, where an individual is facing a deprivation of life, liberty, or property, procedural due process mandates that he or she is entitled to adequate notice, a hearing, and a neutral judge.
93. In *Bolling v. Sharpe* 347 U.S. 497 (1954), the Supreme Court held that "the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive." The Court thus

interpreted the Fifth Amendment's due process clause to include an equal protection element. In Lawrence v. Texas the Supreme Court added:

"Equality of treatment and the due process right to demand respect for conduct protected by the substantive guarantee of liberty are linked in important respects, and a decision on the latter point advances both interests."

95. The Court held in 1967 that "Appellants cannot leave to the States the formulation of the authoritative ... remedies designed to protect people from infractions by the States of federally guaranteed rights".
 96. Due process is best defined in one word--fairness. Throughout the U.S.'s history, its constitutions, statutes and case law have provided standards for fair treatment of citizens by federal, state and local governments. These standards are known as due process. When a person is treated unfairly by the government, including the courts, he is said to have been deprived of or denied due process.
 97. Our Multiple Requests for Due Process/Discovery
 98. The Johnson's on multiple occasions petitioned for Due Process and Discovery. The requests were simply ignored. Judge Benson made no attempt to explain his reason for refusing to provide for Discovery.
 99. Summary Judgment is NEVER appropriate unless and until all Parties have had access to full and complete Discovery. Failure to do so is failure of the District Court to provide Constitutionally Protected Due Process.
- The District Court ignored the Rules and Laws of the North Dakota Courts

in not Ordering Discovery, and further displayed Bias, Prejudice and Corruption in cooperation with the Plaintiffs Lawyers, and co-defendants Lawyers by not responding to Defendants/Appellants Petitions for Discovery. The Court furthered this illegal and corrupt conduct by declaring at the end of the June 26, 2016 Hearing that the several Petitions of the Johnson's would be moot upon issuance of his decision. The Hearing on Summary Judgment itself was not to have been conducted in the absence of Discovery, the Plaintiffs Motion for Summary Judgment was premature in the absence of Discovery, and the issues of misconduct in the McHenry County Courts, the Pierce County Court, and the collusion of plaintiff and co-defendants collusion with the Judge had been resolved.

100. The bedrock principle that trial must precede judgment is, of course, applied to civil and criminal cases alike. But in civil and administrative matters, this doctrine is also logically extended to every stage of the litigation process: as a matter of due process, for example, an appropriately tailored hearing must precede the issuance of a preliminary injunction, no less than the entry of a final civil judgment, because of the concern for the accuracy of both decisions and the recognition that distinct harms to the individual may flow from each.
101. A judgment may also be void under Rule 60(b)(4) if it is entered in a manner inconsistent with due process. A fair process or procedure requires at least an opportunity to: 1) present objections to the proposed action, to a 2) fair, neutral decision-maker. Due process does not create

property interests; it provides procedural safeguards against arbitrary deprivation of those interests.

102. Discovery, in the law of the United States and other countries, is a pre-trial procedure in a lawsuit in which each party, through the law of civil procedure, can obtain evidence from the other party or parties by means of discovery devices such as a request for answers to interrogatories, request for production of documents, request for admissions and depositions. Discovery can be obtained from non-parties using subpoenas. When a discovery request is objected to, the requesting party may seek the assistance of the court by filing a motion to compel discovery.
103. Judge Benson has failed to provide impartial and complete Due Process to the Appellants prior to issuing his decisions on Summary Judgment and other Issues. Judge Benson in his Rulings simply ignored and failed to respond to the Appellants Petitions, Filings and Arguments, written and verbal. Judge Benson deliberately and repeatedly denied the Appellants request for full and complete Discovery, prior to the Hearings. Only collusion by Judge Benson with the Plaintiffs and McIntee as attorney for co-defendants can explain such conduct. Judge Benson has acted to Rule on the basis of selected evidence, rather than complying with the Law that Summary Judgment is only to determine if issues for trial are present not to rule based on facts or evidence. Therefore, the Appellants are highly likely to prevail on appeal if this Petition is rejected.

104. Also, the Line of Credit is for \$200,000. The Judgment exceeds that, Fraud upon the court and upon the Johnsons. The existence of a line of credit, which is what the mortgage secures, is not evidence that the line was drawn only by the borrowers. Advances are subject to proof that legitimate, correct, true and honest advances occurred. No evidence has been presented on this. And Summary Judgment cannot consider in any case.
105. New Information and Evidence available in the aftermath of the Kuhn family voiding Privilege.
106. New evidence that has very recently become available to the Appellants via discovery and must be subject to the Rules of Civil Procedure, to full Discovery including but not limited to document and communication requests, interrogatories and depositions. The very core of a functioning judicial system requires that all information available be introduced and considered. The contrast of right and wrong is as stark as it gets. The enclosed Affidavits support the voiding of privilege. Only a full and fair trial can assure this.

Fraud Upon the Court

107. There is copious evidence of collusion of attorneys with District Court Judges in Minnesota and North Dakota. This evidence must be allowed to be presented in a full and fair trial.

108. The case for which Mr. Kletscher and Ms. Schemmel represented Bradley and Karol Johnson was rife with criminal acts, violations of the Rules of Civil Procedure, and the Rules of Professional Conduct. On these alone, there are many facts and issues that can only be sorted and determined at a full and complete trial, and therefore Summary Judgment is NOT APPROPRIATE.
109. At the Carver County trial the Plaintiff's trial lawyer brought to testify the Plaintiff's other lawyer, Kyle Bailey, to testify as an expert witness. Such testimony is specifically prohibited by the ROPC, and the Defendant's Attorney and the Judge should have immediately objected to this witness on that basis. That they did not is complete proof of the collusion and corruption of Bradley Kletscher had conspired and colluded against his clients and with the Plaintiff, bringing the Judge into the conspiracy to defraud Bradley and Karol Johnson. Bradley Kletscher and Tammy Schemmel were integral to this conspiracy.
110. In the absence of a Dismissal of the action with prejudice as a result of the Fraud Upon the Court, a trial in the matter of the billings of Barna, Guzy and Steffens for the services of Bradley Kletscher and Tammy Schemmel is essential for full facts to be revealed.
111. Fraud upon Bradley C. Johnson and Karol M. Johnson and their disabled sons Dustin C. Johnson and Shane R. Johnson.
112. The deliberate and criminal conduct of Bradley Kletscher, Tammy Schemmel and the firm of Barna, Guzy and Steffen itself deserves

criminal prosecution. That attorneys are above the law and free to defraud their clients can never be simply accepted as business as usual by the legal profession.

Conclusion

113. The proper resolution to this matter is dismissal with prejudice of the action by Barna, Guzy and Steffen. In its absence, a Court must reverse the order for Summary Judgment removing the matter for trial to a new venue, and Judge Benson removing himself from the matter.

PREAMBLE: A LAWYER'S RESPONSIBILITIES

114. [1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

Summary, Relief & Remedy

115. We call on the Justices of the North Dakota Supreme Court to correct the Denial of Equal Justice Under the Law Denied to the Appellants in McHenry County District Court.

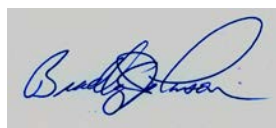
116. Find that Fraud Upon the Court has occurred and dismiss the entire matter with prejudice.

OR

117. Reverse Summary Judgment and remand the matter to district Court for Trial on the facts and issues.
118. With the Reversal of Summary Judgment and Remand, Order a Change of Venue.
119. The Plaintiffs suffer no harm if their claims are true, they need only prove their position to a jury. Defendants/Appellants **suffer irreparable harm** by upholding of Summary Judgment and if a full and fair trial is denied without receiving the Due Process guaranteed by the Constitution.

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Dated this 24 of March 2018.



Bradley C Johnson, Pro Se Karol
M Johnson, Pro Se

Supreme Court of North Dakota
Office of the Clerk

Barna, Guzy, & Steffen, Ltd.,)
)
)
 Plaintiff,)

ND Supreme Court No.: 20170340
McHenry County No.: 25-2015-CV-00093

vs.)

CERTIFICATE OF SERVICE

Bradley C. Johnson, Karol M.)
Johnson, Dale Kuhn, Patricia Kuhn,)
Amber Buchman, Karin Kuhn,)
Samantha Kuhn, and all person's)
unknown, claiming any estate or)
interest in, or lien or encumbrance)
upon, the real estate described in)
the Complaint,)

I hereby certify that on March 24, 2018, the following documents:

Appellants Brief and Appendix

was served via E-Mail with the **North Dakota Supreme Court** at supclerkofcourts@ndcourts.gov
and

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