

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 189CV3122

JAMES FETZER

Defendant

REQUEST FOR RELIEF FROM JUDGMENT OR ORDER

Now comes James Fetzer, Ph.D., Pro se, the Defendant asking the Court to set aside the Decision and Order of Judge Frank Remington on June 20, 2024, and permit this case to proceed (Exhibit 1). All previous submissions in Case No. 18CV3122 are incorporated and adopted for the purpose of this request.

The Wisconsin Rules of Civil Procedure Chapter 801 have already been satisfied in this case since this matter commenced by the Pozner Complaint filed on November 27, 2018 (Exhibit J of MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT, filed on Jun 17, 2024).

Wisconsin Rules of Civil Procedures Chapter 802 have not been followed since the Court dismissed the case before the Plaintiff had even filed an answer to Defendant's complaint based on new claims.

802.01 Pleadings allowed; form of motions. (1) PLEADINGS. There shall be a **complaint** and an **answer**; a **reply** to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a 3rd-party complaint, if a person who was not an original party is summoned under s. 803.05, and a 3rd-party answer, if a

3rd-party complaint is served.. Sup. Ct. Order, 67 Wis. 2d 585, 614 (1975). (Emphasis added.)

U.S. Constitution, Fourteenth Amendment, Procedural Due Process—Civil:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. **No State shall make or enforce any law which shall abridge** the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, **without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added.)

See Standard of Review below.

Inexplicably, the Court intervened in the opening pleading process here and entered a summary judgment based solely on the complaint, without permitting the Plaintiff to answer and the Defendant to reply. This error is self-evident.

Plaintiff and Defendant asked for a jury trial. This court action has overruled the wishes of both Parties. The bifurcated damages proceeding was manifestly unfair to Defendant since the *damages* jury was conducted before any preceding findings of fact were litigated. In essence, the Court allowed the *damages* jury to punish Defendant without having convened a *claims* jury. Such an abuse of due process is impermissible.

Also, as a consequence of this bifurcation, the Court denied the Defendant discovery on his counterclaims for Abuse of Process, Fraud and Theft by Deception and Fraud upon the Court (Exhibit N).

A summary judgement action requires that there be no disputes of material facts. Since the Plaintiff had no opportunity to answer, such information was not even available to the Court to determine whether this case was ready for such a determination. The evidence shows that it was not. See tables following. The complaint was filed on June 17, 2024, and with no answer from Plaintiff or opportunity to reply by Defendant, the Decision and Order was issued on June 20, 2024.

Nonetheless, based on prior evidence submitted by the parties in this matter, including evidence submitted in Defendant's extant complaint, many disputes of material fact are known, including the following tables of the more glaring disagreements in addition to the violations of due process identified above.

DUE PROCESS IMPROPRIETIES

| <i>No.</i> | <i>Due Process Fairness</i> | <i>Conduct of the Court</i> |
|------------|---|--|
| 1. | The parties agreed to a jury trial on the merits. | A jury trial on the merits was requested (Exhibit J) but denied; the Court insisted on a damages trial which returned a punitive \$450,000 judgment—having sidestepped a trial on the merits totally. Decision and Order on Post-Verdict Motions (Dec. 12, 2019) |
| 2. | Discovery on the merits and damages are fundamental elements of trial by jury | Defendant was denied discovery on counterclaims and damages due to bifurcation resulting in the unfair damages judgment. Telephone Motion Hearing (Apr. 18, 2019) Exhibit N |
| 3. | In normal course, hearings with the parties are required before judgments are entered | Summary Judgment and Order were entered (a) before Plaintiff's answer, (b) before Defendant's reply, and (c) before a hearing. Decision and Order, Jun. 20, 2024 (Exhibit 1) |
| 4. | In normal course, hearings with the parties are required before judgments are entered | Motions to Seal and Order to seal were entered without a hearing. Order on Motion to Seal or Redact a Court Record (Ju. 22, 2024) Exhibit 4 |
| 5. | Complaints of fraud must be plead with particularity | The Court Opinion made light of the detail submitted as if to imply that the particularity requirement to show fraud was somehow inappropriate. Decision and Order, Jun. 20, 2024 ("Fetzer's rambling papers.") Exhibit 1 |
| | | |

DISPUTES OF MATERIAL FACT

| <i>No.</i> | <i>Plaintiff's Claim</i> | <i>Defendant's Claim</i> |
|------------|--|---|
| 1. | Sandy Hook was real with 26 dead. Exhibit J. | Sandy Hook was a FEMA L366 "course" Planning for the Needs of Children in Disasters |

| | | |
|----|--|--|
| | | <p>managed by Contact Christopher Ackley in Bridgeport CT just 18 miles from Newtown CT. Nobody died. Crisis actors were employed. Exhibit L</p> <p>This Court disallowed material evidence proving the FEMA teaching drill. Exhibit M</p> |
| 2. | <p>Death certificate was complete with file number, town, and state certifications was claimed to be “not materially different from published version.” Exhibit J.</p> | <p>Published death certificate was incomplete with no file number and neither town nor state certification. Exhibit K</p> |
| 3. | <p>No experts were provided to authenticate death certificate. Only the words of unqualified attorney were provided and must be considered unremarkable. Exhibit J</p> | <p>Two uncontested expert witnesses verified complete and incomplete versions were both fake.</p> <p>Court acted <i>sua sponte</i> to ignore these experts as “not helpful,” thus biasing the inquiry. Exhibit R</p> |
| 4. | <p>The witness deposed by Plaintiff named “Leonard Pozner” was never verified as a real person.</p> | <p>Defendant posited that “Leonard Pozner” was an imposter fiction and was denied discovery to verify it due to the bifurcation of the case by the Court. Telephone Motion Hearing (Apr. 18, 2019) Exhibit N</p> |

STANDARD OF REVIEW

SUMMARY JUDGMENT

Summary judgment is appropriate when there is no material factual dispute and the moving party is entitled to judgment as a matter of law. *Germanotta v. National Indem. Co.*, 119 Wis. 2d 293, 296, 349 N.W.2d 733 (Ct. App. 1984). Summary judgment methodology is well established. *See, e.g., Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶¶ 20-24, 241 Wis. 2d 804, 623 N.W.2d 751. *See also Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987)

DUE PROCESS

The Wisconsin State Constitution and U.S. Constitution provide virtually identical procedural due process and equal protection safeguards. *County of Kenosha v. C. & S. Management, Inc.*, 223 Wis.2d 373, 588 N.W.2d 236 (1999), 97-0642. *See also State v. Ehlenfeldt*, 94 Wis.2d 347, 355, 288 N.W.2d 786 (1980) (the procedural due process requirement of fair notice).

Exercise of selectivity in enforcement does not create a constitutional violation. A violation occurs when there is **persistent selective and intentional discrimination** in the enforcement of a statute in the absence of a valid exercise of prosecutorial discretion. A defendant has the initial burden to present a prima facie showing of discriminatory prosecution before being entitled to an evidentiary hearing. *State v. Kramer*, 2001 WI 132, 248 Wis. 2d 1009, 637 N.W.2d 35, 99-2580. (Emphasis added.)

See Carey v. Piphus, 435 U.S. 247, 259 (1978). “[P]rocedural due process rules are shaped by the **risk of error inherent in the truth-finding process** as applied to the generality of cases.” *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976). (Emphasis added.) This may include an obligation, upon learning that an attempt at notice has failed, to take “reasonable followup [stet] measures” that may be available. *Jones v. Flowers*, 547 U.S. 220, 235 (2006).

Hearing. “[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “Parties whose rights are to be affected are entitled to be heard.” *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863).

Impartial Tribunal. Just as in criminal and quasi-criminal cases, an impartial decision-maker is an essential right in civil proceedings as well. “The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. . . . At the same time, it preserves both the appearance and reality of fairness . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present

his case with assurance that the arbiter is not predisposed to find against him.” *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970); *See also Marshall v. Jerrico*, 446 U.S. 238, 242 (1980); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982).

FRAUD

“802.03(2) (2) Fraud, mistake and condition of mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake **shall be stated with particularity**. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.” Wisconsin Statutes & Annotations, 802. Civil procedure — pleadings, motions and pretrial practice. 802.03 Pleading special matters. (Emphasis added).

RELIEF SOUGHT

The Court should set aside the Judgment and Order of June 20, 2024, as well as the Seal Judgment and Order of June 22, 2024.

The Court should allow this litigation to proceed and refrain from further *sua sponte* summary judgment motions at least until the discovery phase has been fully completed.

The Court should stay indefinitely any proceeding to attempt to collect on the damages ruling.

Respectfully submitted,

/S/ James H. Fetzer, Ph.D.

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Submitted June 24, 2024

CERTIFICATE OF SERVICE

I, James Fetzer, Ph.D. hereby certify that per Clerk procedures, a copy of the **REQUEST FOR RELIEF FROM JUDGMENT OR ORDER** was served on the Plaintiff by Wisconsin Court e-filing on June 24, 2024.

/s/ James H. Fetzer, Ph.D.

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PROPOSED ORDER

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

LEONARD POZNER,

Plaintiff,

vs.

Case No. 189CV3122

JAMES FETZER

Defendant

COURT ORDER

I, Judge Frank Remington, in the above-caption case do hereby grant Defendant's motion and order a continuation of this litigation with the next step being an ANSWER by the Plaintiff to Defendant's complaint MOTION TO OPEN JUDGMENT PURSUANT TO EXTRINSIC FRAUD AND FRAUD UPON THE COURT filed **and** placed on the docket by the Clerk on June 17, 2024, and to be responded to within the time limit specified by the Rules of Civil Procedure from the filing date of this ORDER.

SO ORDERED

Judge Frank Remington

Date