

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HUNTERTON & ASSOCIATES
C. STANLEY HUNTERTON, ESQ. (1891)
627 S. Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 388-0098
Facsimile: (702) 388-0361

and
CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540

Attorneys for Interested Parties
Kirk and Amy Henry

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KIRK and AMY HENRY,

Plaintiffs,

vs.

FREDRICK RIZZOLO aka RICK RIZZOLO,
an individual; LISA RIZZOLO, individually
and as trustee of The Lisa M. Rizzolo Separate
Property Trust and as successor trustee of
The Rick J. Rizzolo Separate Property Trust;
THE RICK AND LISA RIZZOLO FAMILY
TRUST; THE RICK J. RIZZOLO SEPARATE
PROPERTY TRUST; THE LISA M. RIZZOLO
SEPARATE PROPERTY TRUST; THE RLR
TRUST; THE LMR TRUST; KIMTRAN
RIZZOLO, an individual.

Defendants.

Case No. 2:08-cv-635-PMP-GWF

**PLAINTIFFS' KIRK AND AMY
HENRY'S OMNIBUS REPLY IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS
TO DEFENDANTS RICK AND
KIMTRAN RIZZOLO**



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs KIRK and AMY HENRY, by and through their attorneys of record, hereby file the following Omnibus Reply in Support of Motion for Summary Judgment as to Defendants Rick and Kimtran Rizzolo.

POINTS AND AUTHORITIES

I. INTRODUCTION

The Court is familiar with the factual background of Plaintiffs Kirk and Amy Henry’s claims under the Nevada Uniform Fraudulent Transfer Act (“UFTA”). On November 11, 2011, Plaintiffs filed a Motion for Summary Judgment (#554) against Defendants Rick and Kimtran Rizzolo. Therein, Plaintiffs requested that the Court avoid Rick Rizzolo’s illicit transfer of proceeds from the sale of his interest in a Philadelphia strip club.

Unsurprisingly, Defendants’ respective Oppositions offered little to dissuade the Court that summary judgment is required. To begin with, Defendants did not contradict Plaintiffs’ Statement of Undisputed Facts which explicitly detailed their fraudulent conduct. Accordingly, all facts claimed by Plaintiff must be deemed admitted. See *United States v. Trans-World Bank, Inc.*, 283 F.Supp. 1100, 1101-02 (C.D. Cal. 1974) (where defendant does not file a statement of material facts setting forth all material facts to be litigated or any affidavit controverting the facts claimed by plaintiff, all facts claimed by plaintiff are deemed admitted); *Mendelsohn v. Capital Underwriters, Inc.*, 490 F.Supp. 1069 (N.D. Cal. 1979) (same).¹

¹ To that end, Defendants also violated Local Rule 56-1 which requires that a party responding to a motion for summary judgment include a concise statement of material facts with supporting evidence. See D. Nev. R. 56-1. This alone would justify granting Plaintiffs’ Motion as a party’s failure to comply is grounds for judgment against that party. *A.M. Capen’s Co. v. Am. Trading and Prod. Corp.*, 202 F.3d 469, 472 at fn. 4 (1st Cir. 2000); see also *Stepanischen v. Merchants Despatch Transp. Corp.*, 722 F.2d 922, 931-32 (1st Cir. 1983).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In response to the Motion, Rick Rizzolo repeats the same tired arguments that he has unsuccessfully presented to this Court time and time again. *See* Opposition of Rick Rizzolo (#559). Indeed, Rick Rizzolo argues—for what seems like the hundredth time—that he does not have an individual obligation to pay Plaintiffs. Rick Rizzolo further asserts that he transferred the disputed funds to Bart and Kimtran Rizzolo in repayment of supposed “loans” and without any fraudulent intent.

Kimtran Rizzolo, on the other hand, belatedly submitted an Opposition (#561) which contains arguments best described in a single word . . . incomprehensible.² Kimtran Rizzolo incorrectly argues that the financial transactions in question were not fraudulent because they occurred prior to the entry of Plaintiffs’ judgment against Rick Rizzolo. Lastly, Kimtran Rizzolo alleges that Plaintiffs’ claims are not viable because they have failed to establish a conspiracy.

One thing is certain; neither party met their burden under Fed. R. Civ. P. 56(c) by demonstrating that a genuine issue of material fact exists such that Plaintiffs are not entitled to judgment as a matter of law.

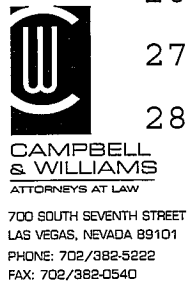
II. ARGUMENT

A. Rick Rizzolo Has A Definite Obligation To Pay Plaintiffs The Amount Owed Under The Settlement Agreement, Plea Agreements, And Final State Court Judgment

1. This Court has Ruled that Rick Rizzolo Must Pay Plaintiffs the Amount Owed Under the Settlement Agreement

It is indicative of Rick Rizzolo’s desperation that he is forced to repeat meritless arguments which His Honor has already overruled. Notwithstanding Plaintiffs’ final judgment against Rick Rizzolo, this Court has ruled that Rizzolo’s obligation to pay Plaintiffs is personal

² Kimtran Rizzolo’s response to Plaintiffs’ Motion for Summary Judgment was due on December 1, 2011. Despite this court-ordered deadline, she did not file her Opposition until December 6, 2011.



1 and absolute. His Honor expressly found that “Plaintiffs argue, and Defendants agree, that in the
2 event proceeds from the sale of the CRAZY HORSE TOO are insufficient to satisfy the \$9
3 million settlement obligation payable to the Henrys, Plaintiffs would be entitled to seek relief for
4 the balance from other assets of Defendant Fredrick Rizzolo.” *See* Order (#117).
5

6 But the support for Plaintiffs’ position does not stop there as His Honor plainly stated in
7 Rick Rizzolo’s criminal proceedings that even “assuming the Crazy Horse Too asset is never sold
8 for value or never sold for sufficient value to satisfy restitution obligations of Mr. Rizzolo, [it]
9 does not relieve Mr. Rizzolo of the restitution obligations imposed by the Court in the judgment.”
10 *See* Exhibit “1,” Transcript of April 26, 2011 Hearing, p. 44:14-18. The Court then ordered that
11 “Mr. Rizzolo []—independent of the sale of the Crazy Horse Too—commence paying restitution
12 obligations...” to Plaintiffs. *Id.* at 45:1-3.
13

14 2. Rick Rizzolo’s Futile Argument was Refuted in State Court Prior to 15 the Entry of Plaintiffs’ Judgment

16 Rick Rizzolo recently made this same argument when attempting to avoid an entry of
17 judgment against him in Plaintiffs’ state court action. *See* Exhibit “2,” Opposition to Motion to
18 Reduce Settlement to Judgment, pgs. 2-4. To be sure, Rick Rizzolo represented that the entry of a
19 judgment against him would contravene the settlement and guilty plea agreements because he did
20 not have “any personal or individual liability of restitution to Plaintiffs.” *Id.* at 4:7-8. Like his
21 Opposition, Rick Rizzolo completely neglected to mention that the Settlement Agreement
22 provided for his individual liability to Plaintiffs should the Crazy Horse Too fail to net sufficient
23 proceeds.
24

25 Once Plaintiffs informed the state court of this crucial fact, District Court Judge Timothy
26 C. Williams held that Rick Rizzolo’s duty to pay Plaintiffs is personal. Citing the Settlement
27 Agreement, Judge Williams stated that “[t]he plain language of the Agreement requires Defendant
28



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1 Rick Rizzolo to make the remaining payment of the settlement amount if the sale of the Crazy
2 Horse Too Gentlemen's Club does not net enough proceeds to meet the required amount." See
3 Exhibit "3," Order Granting Motion to Reduce Settlement to Judgment. *The Court then entered*
4 *a final judgment against Rick Rizzolo.* See Motion, Exhibit "2," Judgment.
5

6 To be clear, Plaintiffs have a binding judgment against Rick Rizzolo which renders his
7 assertions about his supposed lack of individual liability superfluous. Moreover, the Nevada state
8 court expressly denied Rick Rizzolo's deficient arguments in entering said judgment. While this
9 is more than enough to dispose of Rick Rizzolo's frivolous argument, the evidence of his
10 individual liability does not end there.
11

12 **3. Rick Rizzolo has Admitted That He Must Pay Plaintiffs On Numerous**
13 **Occasions**

14 As if the rulings of His Honor and Judge Williams were not clear enough, Rick Rizzolo,
15 through counsel, has repeatedly admitted that he is individually liable to Plaintiffs. For example,
16 in the September 6, 2006 City Council Meeting concerning the Crazy Horse Too, his attorney
17 Tony Sgro made the following admission:

18 COUNCILMAN WOLFSON: And then, Mr. Sgro, it's the
19 defendant corporation which agreed to pay the \$10 million in restitution, not Mr.
20 Rizzolo himself.

21 MR. SGRO: Its all coming from the proceeds of the sale of the club...

22 COUNCILMAN WOLFSON: Okay. So Mr. Rizzolo in his plea
23 agreement did not agree to pay the \$10 million in restitution personally.

24 MR. SGRO: Not in the plea agreement. However, he has executed a
25 document where he does, a separate independent agreement.

26 * * * *

27 There's another agreement that Mr. Rizzolo signed relative to the
28 payment of those fines.



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNCILMAN WOLFSON: And what is that document?

MR. SGRO: The settlement and release document.

* * * *

COUNCILMAN WOLFSON: And my final question, at least at this stage, is that should this thing blowup in our faces, whether by action of the City Council or the seller doesn't net the amount of money to pay Mr. Henry, Mr. Kirk Henry's lawsuit is still alive. And theoretically there is that remedy that could then be picked up again and prosecuted.

* * * *

MR. SGRO: Mr. Rizzolo's fines to pay only exist insofar as the assets he owns. This is the asset he owns. There is no financial ability to pay if the asset is stripped from him.

COUNCILMAN WOLFSON: I understand that. But you just told us that there is a settlement and release agreement. Is that part of the civil lawsuit in District Court?

MR. SGRO: You have to do a settlement and release to dismiss the underlying litigation; so yes, that was executed.

* * * *

COUNCILMAN WOLFSON: *Now, it's your position that the document also provided for Mr. Rizzolo's promise to pay the remaining \$9 million as well personally? I understand that he has to pay out of the proceeds of the sale.*

MR. SGRO: *Yes. The way the document is structured, Councilman, is that the Henrys are to be paid whether or not the sale of the club yields sufficient funds.*

COUNCILMAN WOLFSON: Okay. That answers my question. That's all I have for now. Thank you.

See Exhibit "4," Transcript of September 6, 2006 City Council Meeting, pgs. 5:9-9:3 (emphasis added).

Rizzolo's individual debt was also confirmed by Mark Hafer, Esq. during proceedings before His Honor:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THE COURT: *But is Mr. Hunterton correct in his argument that this settlement agreement as framed does provide for recourse beyond the sale proceeds of the Crazy Horse if the sale proceeds are not sufficient to net the \$9 million payment?*

MR. HAFER: *I would have to concede that point.*

THE COURT: Okay.

MR. HAFER: Yes, your Honor. That ultimately if there is a sale of the Crazy Horse and it doesn't net sufficient funds -- and that includes the real property underlying it as well.

THE COURT: Right.

MR. HAFER: Does not net sufficient funds to pay the Plaintiffs, then they might have a -- then they have a right to go back to state court and say: well, we have a deficiency under --

See Exhibit "5," Transcript of March 17, 2009 Hearing, pgs. 30:10-30:24 (emphasis added).

Based on the aforementioned judicial rulings and flat admissions, the Court should disregard Rick Rizzolo's argument that summary judgment is improper because he does not have an individual obligation to pay Plaintiffs.³

B. Defendant Rick Rizzolo Admitted That He Transferred The Disputed Funds With Actual Intent To Defraud Plaintiffs; A Representation Which Is Reinforced By Numerous Badges Of Fraud Under The UFTA

Rick Rizzolo claims that the assignment of proceeds was executed in satisfaction of an "antecedent debt" owed to Bart Rizzolo. In turn, Rick Rizzolo falsely alleges that Plaintiffs

³ In fact, the Court should not even consider Rick Rizzolo's tired argument that he does not owe a personal debt to Plaintiffs. The doctrine of judicial estoppel bars a party from making a factual assertion in a legal proceeding which contradicts an earlier assertion in the same or an earlier proceeding. *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990). This longstanding rule of law is directly applicable here since Rick Rizzolo's attorneys admitted that he must pay Plaintiffs.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

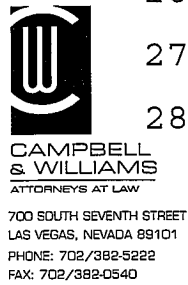
cannot prevail on their claim because they have not presented evidence that “the antecedent debt was not a valid and existing debt.” *See* Opposition of Rick Rizzolo, p. 9:15-17.⁴ This is wrong.

Rather, Rick Rizzolo cannot succeed in this defense because he has not presented *any* evidence whatsoever to verify the existence of this antecedent debt. Indeed, Rick Rizzolo did not submit any contracts, promissory notes, correspondence, or other documentation to prove Bart Rizzolo made these supposed “loans.” He likewise fails to provide any evidence that there was a formal agreement that the transfer of proceeds from the Philadelphia sale would constitute satisfaction of that debt. FRCP 56(c)(1) expressly provides that Rick Rizzolo cannot create a genuine issue of material fact without providing any evidence to corroborate his argument.

Irrespective of Rick Rizzolo’s lack of corroborating evidence for this newfound “antecedent debt” argument, the proof of his fraudulent intent is simply insurmountable. Rick Rizzolo attempts to minimize the impact of this proof by solely focusing on two written communications from his assorted attorneys that he purports are Plaintiffs’ principal pieces of evidence. *See* Opposition of Rick Rizzolo, pgs 7:28-8:1-2.

The first communication identified by Rick Rizzolo is an e-mail from defense counsel Dominic Gentile to Stuart Cohen, Vincent Piazza’s attorney in Philadelphia. *See* Motion, Exhibit “17,” Correspondence. It is unclear why Rick Rizzolo directed the Court to this communication as Plaintiffs’ claims do not hinge on its contents. To the contrary, this e-mail simply establishes one link in the chain of events underlying Plaintiffs’ cause of action. In reality, the Court should see Mr. Gentile’s statements regarding this alleged debt for what they are . . . a blatant effort to pad the record.

⁴ It must be noted that Rick Rizzolo did not even address the transfer of approximately \$200,000 to Bart Rizzolo in April 2008 in his Opposition.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The second communication in question is a fax cover sheet between Rick Rizzolo’s attorneys Mark C. Hafer, Esq. and John E. Dawson, Esq. *See* Motion, Exhibit “11,” Fax Cover Sheet. As the Court is well aware, this written communication contains a discussion between Rick Rizzolo’s legal counsel regarding his ability to assign the proceeds from the Philadelphia sale “before somebody else seeks to attach the payments...” *Id.* Obviously, this is a plain statement of intent to conceal assets from creditors yet Rick Rizzolo plays down this admission by noting a reference to loans as if that offhand comment affirms the legality of the proposed transaction.

This debate is unnecessary, however, as Rick Rizzolo flatly admitted that he assigned the proceeds to conceal the money from creditors when confronted with the fax cover sheet during his deposition. *See* Motion, Exhibit “4,” Deposition Testimony of Rick Rizzolo, pgs. 293-95. In the Opposition, Rick Rizzolo brands this conclusion as a “characterization” but his sworn deposition testimony speaks for itself.⁵ Even assuming *arguendo* that there was an antecedent debt, Rick Rizzolo’s admission of his intent to hinder, delay, and defraud Plaintiffs renders the assignment of proceeds from the Philadelphia sale voidable under the UFTA.

Nevertheless, Plaintiffs will address the multiple badges of fraud that are apparent here in case there is any remaining doubt in the Court’s mind as to Rick Rizzolo’s fraudulent intent.

- **Insider Transaction**

The fraudulent transactions identified by Plaintiffs in the Motion involve “insiders.” An “insider” for the purposes of the UFTA constitutes “a relative of the debtor.” NRS 112.150. Rick

⁵ It is well settled that a party may not create a genuine issue of material fact by contradicting his own previously sworn statement. *See Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 805 (1999) (citing to 17 Circuit Court decisions). This is exactly what Rick Rizzolo has tried to do here as he is now presenting a novel explanation in response to his own sworn deposition testimony.

1 Rizzolo's fraudulent scheme to defraud Plaintiffs out of the money from the Philadelphia sale
2 involved his father, Bart Rizzolo, and stepmother, Kimtran Rizzolo. Moreover, his wife, Lisa
3 Rizzolo played a substantial role in arranging the transfer of proceeds to Kimtran Rizzolo after
4 her husband's death. To be sure, Defendants' familial conspiracy to assist Rick Rizzolo's evasion
5 of his legal obligations is an important factor when establishing fraudulent intent under the
6 UFTA.
7

8 **• Concealment of Transfers and Assets**
9

10 The fraud indicator of concealment is also present as evidenced by the fact that Rick
11 Rizzolo's supervised release was revoked due to his failure to disclose the transactions arising out
12 of the Philadelphia sale to his probation officer and the Internal Revenue Service. Indeed, Rick
13 Rizzolo never disclosed the massive financial transactions or cash inflows to which he was a party
14 even though his terms of supervised release expressly required him to do so. The Court
15 specifically found that Rick Rizzolo concealed the disputed transactions in order to avoid
16 compensating Plaintiffs. *See* Motion, Statement of UDF, ¶ 18.
17

18 Further, Rick Rizzolo blatantly perjured himself during his deposition with regard to the
19 Philadelphia sale. He made multiple misrepresentations relating to his interest in TEZ Real Estate
20 LP including that 1) he sold his interest in 2003; 2) he did not remember executing any documents
21 relating to the sale; 3) that he received a total of \$1 million from the sale in one bulk payment;
22 and 4) he was not entitled to receive any more money from the sale. *See* Exhibit "6," Deposition
23 of Rick Rizzolo, pgs. 127, 131-32, 281-82. When confronted with evidence of these
24 misrepresentations, Rick Rizzolo was forced to admit that he had an expectation of further
25 proceeds in the form of monthly payments. *Id.* at 294-98.
26



1 Rick Rizzolo also concealed the assignment of proceeds and other relevant details
2 surrounding the Philadelphia sale throughout discovery. *See* Order (#537). His Honor has
3 already found that “Rick Rizzolo was deceptive in his discovery responses.” *See* Order (#536).
4 Additionally, Magistrate Judge Foley made a finding that Rick Rizzolo’s discovery responses
5 were “clearly deceptive” in such a manner that “the trier of fact may conclude that Mr. Rizzolo’s
6 false or deceptive answers to interrogatories demonstrate an ongoing intent to conceal his assets
7 or the disposition of those assets.” *See* Order (#437). It is indicative of Rick Rizzolo’s fraudulent
8 intent that Plaintiffs did not even know about the assignment of proceeds existed until after the
9 initial discovery period closed. *See* Motion for Leave to Amend (#518).
10
11

12 In his Opposition, Rick Rizzolo refers to evidence of his obfuscation of the facts as a “red
13 herring.” *See* Opposition of Rick Rizzolo, p. 10 fn 2. This glib dismissal of his concealment of
14 the Philadelphia transaction and assignment of proceeds from his probation officer, the Internal
15 Revenue Service, Plaintiffs, and, most importantly, this Court is nothing less than insulting.
16

17 • **Control Over Transferred Assets**

18 There is substantial evidence that Rick Rizzolo retained control of the funds transferred to
19 Bart and Kimtran Rizzolo by way of the assignment of proceeds. For example, Kimtran Rizzolo
20 admitted to paying Rick Rizzolo’s legal bills. *See* Exhibit “7,” Kimtran Rizzolo’s Interrogatory
21 Responses, p. 21. As the Court will recall, Kimtran Rizzolo testified about this arrangement
22 during Rick Rizzolo’s revocation proceedings which is reflected in His Honor’s finding that Rick
23 Rizzolo “failed to disclose payments made to him by his father and his father’s wife...” *See*
24 Motion, Exhibit “19,” Transcript of July 20, 2011 Revocation Hearing, pgs. 10-11. So clearly,
25 Rick Rizzolo had access to Bart and Kimtran Rizzolo’s money on demand.
26
27
28



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1
2 • **Existence of Pending or Threatened Litigation**

3 Suffice it to say, civil and criminal litigation has followed Rick Rizzolo since September
4 20, 2001 – the date of Kirk Henry’s beating. Plaintiffs immediately sued in state court while the
5 federal government escalated its ongoing criminal investigation of Rick Rizzolo and the Power
6 Company. Rick Rizzolo entered into the Settlement Agreement and pled guilty to the criminal
7 charges in 2006 which memorialized his debt of \$10 million to Plaintiffs. Accordingly, Rick
8 Rizzolo had knowledge of the underlying litigation and his debt to Plaintiffs when he transferred
9 \$200,000 of the proceeds from the Philadelphia sale to Bart Rizzolo in April, 2008.

10
11 As if the foregoing litigation was not sufficient, Plaintiffs filed the Complaint in the
12 instant action on May 16, 2008. Rick Rizzolo did not execute the assignment of proceeds to Bart
13 Rizzolo until April 18, 2009. *See* Motion, Statement of Undisputed Facts, ¶ 9. So not only did
14 Rick Rizzolo have knowledge of the previous civil and criminal litigation against him along with
15 the resulting debt, he had already been sued for other fraudulent transfers when he executed the
16 assignment of proceeds. Without question, Rick Rizzolo’s assignment of proceeds during the
17 pendency of this lawsuit weighs heavily in favor of a finding of fraudulent intent.

18
19 • **Transfer was of Substantially All of Rick Rizzolo’s Assets**

20 The Court is well versed in Rick Rizzolo’s protestations that he had no income or assets
21 with which to pay Plaintiffs. For example, Rick Rizzolo gave the following sworn testimony in
22 response to an Interrogatory requesting a full description of any asset or property that he owned:

23
24 I have my clothes and personal possessions with me where I live as a roommate
25 with a friend. I’ve got a watch and a few items of jewelry which I may have to
26 sell to a pawn shop for living expenses. I did sell my car for living expenses and
27 the IRS seized everything else.

28 *See* Exhibit “8,” Rick Rizzolo’s Supplemental Responses to Plaintiffs’ First Set of
Interrogatories.



1 Rick Rizzolo made the foregoing representation regarding his financial condition on
 2 December 29, 2008; just months before entering into the assignment of proceeds with Bart
 3 Rizzolo in the amount of \$789,000. Indeed, the record is rife with Rick Rizzolo's complaints of
 4 poverty. It is highly suspect, therefore, that he would assign hundreds of thousands of dollars to
 5 his father at a time when he allegedly had no assets or property to speak of.
 6

7 Based on the foregoing, there is no remaining issue of material fact that Rick Rizzolo
 8 assigned the proceeds from the Philadelphia sale with actual intent to hinder, delay, and defraud
 9 the Henrys. Rick Rizzolo conceded in his deposition that he entered into the subject transaction
 10 with the intention of concealing assets from Plaintiffs. Moreover, Rick Rizzolo's financial
 11 dealings with Bart and Kimtran Rizzolo bear multiple badges of fraud under the UFTA. The
 12 Court should disregard Rick Rizzolo's futile arguments and enter summary judgment on behalf
 13 of Plaintiffs.
 14

15 **C. The Fraudulent Transfers Between Defendant Rick And Kimtran Rizzolo**
 16 **Violate The UFTA Even Though They Occurred Before the Entry of**
 17 **Plaintiffs' Judgment**

18 Kimtran Rizzolo's erroneous argument is that Plaintiffs are not entitled to summary
 19 judgment because they were not judgment creditors at the time of the subject fraudulent
 20 transfers.⁶ See Opposition of Kimtran Rizzolo, pgs. 3:3-7; 3:22-4:6. Once again, the argument
 21 that Plaintiffs cannot maintain their UFTA claim without a final judgment has been made—and
 22 struck down—repeatedly.
 23
 24
 25

26 _____
 27 ⁶ In fact, Kimtran Rizzolo actually requests that the Court enter summary judgment *against*
 28 Plaintiffs. The Court should deny this request for the same reasons it should disregard her
 meritorious arguments regarding the effect of a judgment on Plaintiffs' cause of action under the
 UFTA.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court thoroughly disposed of this argument in its Order (#117) sustaining Plaintiffs’ objections to Magistrate Judge Foley’s February 3, 2009 Order (#82). His Honor first addressed on the effect of Plaintiffs’ efforts to secure a judgment in state court as follows:

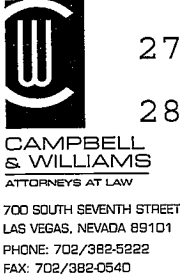
The Court does not find it dispositive the fact that the State court twice has denied Plaintiffs’ motion to reduce Defendant Rizzolo’s settlement obligations to judgment. Nor does the Court view it necessary for Plaintiffs to return to State court to seek a judgment unless and until the CRAZY HORSE TOO property is sold and the proceeds derived therefrom prove to be insufficient to satisfy the remaining \$9 million obligation due to Plaintiffs under the settlement agreement.

See Order (#117), p. 2:19-24.

In assessing the applicable law underlying this conclusion, the Court stated that “[a]lthough the Nevada Supreme Court has not specifically addressed the issue, other courts have found that the UFTA does not require a judgment before a creditor may seek relief from an allegedly fraudulent transfer, including avoidance.” *Id.* at p. 3:4-7 (citations omitted). Finally, the Court held that “Plaintiffs’ claim is contingent, but otherwise viable, and potentially would be frustrated by alleged wrongful asset transfers.” *Id.* at p. 3:9-10.

As such, Kimtran Rizzolo’s argument that the subject financial transactions were not fraudulent because Plaintiffs had yet to finalize their judgment in State court is meritless. Irrespective, Plaintiffs have since reduced the settlement agreement to judgment meaning any questions about the contingent nature of their claim are now moot. Kimtran Rizzolo has failed to demonstrate that the absence of a judgment at the time of the subject fraudulent transfers raises a genuine issue of material fact such that summary judgment would be inappropriate.⁷

⁷ To the extent that Kimtran Rizzolo asserts that the Court should deny summary judgment because she received some funds through Bart Rizzolo’s will, she is wrong. Kimtran Rizzolo’s entitlement under the will only means that she retains possession of *all* of the illicitly transferred funds from the Philadelphia sale. This does not affect her status as a transferee under the UFTA and the sole representative of Bart Rizzolo’s estate.



D. Plaintiffs Are Not Required To Bring A Conspiracy Claim Against Rick And Kimtran Rizzolo To Prevail Under The UFTA

Kimtran Rizzolo argues that Plaintiffs' cause of action for fraudulent transfer is not viable because they have not presented evidence of a "conspiracy" between her and Rick Rizzolo. See Opposition of Kimtran Rizzolo, p. 3:12-23. In short, Kimtran Rizzolo misunderstands the nature of Plaintiffs' claims against her. There is no requirement that Plaintiffs establish any sort of conspiracy. The Court has already recognized that Plaintiffs' "claim is plainly pled as fraudulent transfers, not as a conspiracy." See Order (#536), p. 8:12-13. The Court should ignore Kimtran Rizzolo's argument regarding the lack of proof to support a common law conspiracy claim.

III. CONCLUSION

Accordingly, it is respectfully requested that this Court grant summary judgment to Plaintiffs Kirk and Amy Henry in the amount of \$1,052,996.03. This sum represents the total amount of money that Rick Rizzolo fraudulently transferred to Bart and Kimtran Rizzolo in order to conceal assets from Plaintiffs and frustrate their recovery of the debt owed to them. All of these funds derive from Rick Rizzolo's surreptitious sale of his interest in TEZ Real Estate and therefore rightfully belong to Plaintiffs.

DATED this 19th day of December, 2011.

HUNTERTON & ASSOCIATES

CAMPBELL & WILLIAMS

By /s/ C. Stanley Hunterton
C. STANLEY HUNTERTON, ESQ. (1891)
627 South Seventh Street
Las Vegas, Nevada 89101

By /s/ Philip R. Erwin
Philip R. Erwin, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Victim Amy Henry

Attorneys for Victim Kirk Henry



CAMPBELL & WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing was served on the 19th day of December, 2011 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Philip R. Erwin, Esq.
An Employee of Campbell & Williams



**CAMPBELL
& WILLIAMS**
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540