



**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
PROBATE DIVISION**

**ELIZABETH BOHINC, et al**

**CASE NO. 2018 ADV 238045**

**Plaintiffs**

**vs.**

**EWALD SCHOLTZ, et al**

**Defendants**

**JUDGMENT ENTRY**

This matter came on for trial on September 20 through 23, 2021 upon the First Amended Complaint for Declaratory Judgment filed November 5, 2020, and the Counterclaim filed November 20, 2020, for Slander of Title.

Having heard the testimony of numerous witnesses, including all the parties and upon consideration of all of the documents admitted into evidence the Court finds as follows:

The decedent, Eckard Scholtz, ("Eckard") was a single man with three siblings: Ewald Scholtz, Eleonora Kinscher and Elizabeth Bohinc. Eckard also had a daughter, Monica Dobies, that he recognized as such although the father- daughter relationship was never established by court order.

Eckard had an estate plan, which included a last will and testament and other planning documents prepared by attorney Margaret Metzinger in 2005. Eckard also owned multiple accounts with transfer on death designations. Eckard's estate plan had remained consistent since 2010 until everything was changed during his last year of life between 2016 and 2017.

While Defendant Ewald Scholtz ("Ewald") had never been named a beneficiary in Eckard's will or multiple TOD designations prior to 2016, by the time of Eckard's death on

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August 8, 2017, Ewald and his wife Elizabeth were the sole beneficiaries of Eckard's substantial estate, to the exclusion of all previously named beneficiaries.

Margaret Metzinger testified that she had no contact with Eckard after she prepared his estate planning documents in 2005 until 2016 when her office received a call from Ewald on September 12, 2016. Notes from the call indicate that Ewald requested information about Eckard's Will and then said he needed to speak with someone about the Will by Friday of that week.

On September 14, 2016, Eckard, along with Ewald and Elizabeth met with Metzinger at her office. She testified that Eckard's physical condition had deteriorated in the years since she had last seen him and described him as looking very ill and frail. She testified that Ewald and Elizabeth were talking over him and took over the conversation with Metzinger. Elizabeth was described as assertive and informed Metzinger that she was a health care worker and that she was providing care for Eckard.

Metzinger testified that Eckard appeared to be afraid of Ewald and Elizabeth and that they appeared to have an agenda and were overbearing to the point that Metzinger felt very uncomfortable and asked them to leave the room so that she could meet with Eckard privately.

Once alone with Eckard, according to Metzinger's testimony, he told her that Ewald and Elizabeth had moved in and taken over everything. He also shared with her that after his estate planning in 2005 he learned that he had a daughter, Monica Dobies (Involuntary Plaintiff herein) and that he wanted to provide for her by leaving his house to her.

Metzinger testified that Eckard did not want documents sent to his home and was concerned about anyone else seeing them. When the meeting was concluded Metzinger learned that Ewald and Elizabeth were angry about being asked to leave the meeting and were causing a disturbance in the reception area. She further testified that she subsequently sent an engagement letter and received no response.

On September 20, 2016, Metzinger had a telephone conference with Elizabeth regarding Eckard's DPOA and University Hospital paperwork because he was hospitalized at the time of the call.

Metzinger testified that she was satisfied with Eckard's capacity to make an estate plan in September of 2016 but also testified that he told her he was concerned about Ewald's involvement in his finances and that Ewald's interference was not welcome.

Metzinger also testified that Ewald and Eckard showed up to her office in June of 2017 without an appointment at which time Ewald was angry, volatile, and loud, talking over everyone and demanding information regarding the deed to Eckard's home prepared in 2005.

The Court finds that Ewald was called to testify as if on cross examination. The Court finds that Ewald was evasive, argumentative, and completely lacking in credibility. Ewald acknowledged that he became involved with Eckard while Eckard was hospitalized at Parma hospital in August of 2016. He affirmed that he stayed with Eckard for two weeks following his discharge at the request of Eckard's medical providers. He also affirmed that he made an appointment for Eckard to meet with attorney Metzinger and could not explain why Eckard could not make the appointment on his own.

Ewald was questioned about multiple medical records including Plaintiffs' Exhibits 16 and 17 which reflected that he was attending appointments with Eckard and was described as pushy and rude and further described him as being a caregiver for Eckard. Ewald either denied or could not recall attending visits with his brother and assisting in making medical decisions.

Ewald was questioned about attending an appointment with Eckard with his primary care doctor at the Cleveland Clinic in October of 2016. Although Ewald could not recall the visit or interactions with Dr. Mary Corbett the Cleveland Clinic records indicate that Ewald attended a visit and relayed that his wife was preparing meals for Eckard. Notably, the records from a July 2016 visit do not indicate that Ewald was present. At that time Dr. Corbett expressed concerns about congestive heart failure and early Parkinson's.

Ewald was also questioned about his involvement with Eckard's finances. For example, he was asked about calls to Fidelity wherein he and Elizabeth were given permission to speak on behalf of Eckard (Plaintiffs' Exhibit 15). Again, Ewald denied or could not recall any involvement. Ewald denied any knowledge of being named Power of Attorney on Eckard's accounts and denied any knowledge of his wife, Elizabeth being named POA on any accounts despite the testimony and documents reflecting that he both accompanied Eckard in visits to multiple financial institutions and signed forms designating him as POA.

Just as Ewald could not remember being involved with Eckard's medical care and being designated POA and/or beneficiary on Eckard's accounts, Ewald could also not recall the circumstances surrounding a visit to the car dealership at which time Eckard purchased a new car and listed Ewald as the Transfer on death designee.

The Court finds that Defendant Elizabeth Scholtz was also called as if on cross examination and finds that she was also evasive and difficult and lacking in credibility. Elizabeth was asked specific questions regarding her interactions and representations with medical providers at Parma Hospital in August 2016. Elizabeth was questioned specifically about notes contained in the Parma Hospital medical records (Exhibit 12). While the records reflect that Eleonora Kinscher was the primary family contact for Eckard and that a Durable Power of Attorney for Health Care was in place, Eckard declined initially to have his family contacted about his hospitalization. It is not clear how Ewald and Elizabeth became involved but the social worker notes indicate that by the time discharge decisions were being made Elizabeth was referred to as the decision maker for Eckard.

While Eckard was hospitalized between August 2 and August 6, 2016, he was seen by a neurologist, Dr. John Andrefsky. Dr. Andrefsky's notes reflect that Eckard had confusion and multiple parkinsonian features. His CT scan showed extensive calcifications. The differential diagnosis included Fahr's disease, Lewy Body dementia, Parkinson's disease, frontotemporal dementia. When asked if she met with Dr. Andrefsky about his findings Elizabeth admitted that she did meet with the doctor and first gave an unlikely description of her and Eckard following the doctor down the hall to a nurse's station but then answered subsequent questions with "I

can't recall". Elizabeth could not recall any details of her discussion with the doctor and could not explain why Eckard needed therapy and supervision upon discharge.

Despite Elizabeth's continued assertions that Eckard's August 2016 hospitalization was the result of dehydration, Elizabeth took the initiative to contact Lisa Profio at University Hospital, Parma Medical Center to request a driving assessment for Eckard. (Defendants' Exhibit A). Again, Elizabeth could not recall any details of the driving assessment and denied having concerns about Eckard's health and ability to care for himself.

Elizabeth could also not recall contacting Metzinger's office to inquire about a DPOA, accompanying Eckard to financial meetings or banks despite evidence indicating that she did accompany Eckard (Plaintiffs' Exhibit and 26 and testimony of Raymond Glinka). She did acknowledge requesting beneficiary change forms from Fidelity but denied filling out any forms for Eckard.

Elizabeth also affirmed that she made two payments to attorney Margaret Karl for her work in updating Eckard's Will and estate planning documents. She did not have an explanation as to why she paid, and she did not indicate that Eckard had repaid her for the expense.

The Court finds that attorney Margaret Karl testified about her meetings with Eckard Scholtz on June 14 and June 20, 2017. Karl prepared a will for Eckard. Karl had notes regarding her meetings and a Summary of Estate plan prepared after the initial meeting that was picked up for review. Karl testified that Ewald and Elizabeth were at both appointments and that she did not have a policy of excluding anyone from her meetings with a client. Karl testified that she did not know that Eckard had met with attorney Metzinger months earlier. She testified that she routinely asks if there are prior planning documents but was not told about Eckard's existing will and other documents. She was also not aware of Eckard's significant non probate assets other than his house and his car. It is notable that Karl's notes indicate that Eckard's Will was supposed to leave his assets "evenly" between his siblings, but the word "evenly" was omitted from the Summary sheet. Karl testified that Eckard had told her that his assets should be divided equally between his three siblings.

Karl was asked about the preparation of beneficiary designations for Eckard's Fidelity accounts. Karl had no notes regarding Fidelity however Fidelity had in its file copies of envelopes from Karl's office addressed to Fidelity. Karl did not notarize any Fidelity change of beneficiary forms.

The Court heard the testimony of Eckard's long time financial adviser at Ameriprise, Raymond Glinka. Glinka met with Eckard two times in 2017. Glinka testified that he was surprised that Ewald and Elizabeth accompanied Eckard to these meetings as Glinka knew Eckard to be a private person, especially about his finances. Glinka testified that Eckard had never spoken of Ewald and Elizabeth before these meetings. Glinka testified that Eckard informed him that he was no longer driving, and that Ewald drove him to the meetings. Glinka observed that Eckard had aged significantly and recalled that Eckard was living with Ewald and that Ewald was Eckard's caregiver.

Glinka testified that he met alone with Eckard for about ten minutes and emphasized to Eckard that if he named Ewald or Elizabeth as POA on his accounts they would have access to the funds. Glinka also verified that Eckard understood that he was removing other beneficiaries in favor of Ewald. Eckard indicated that he understood but also told Glinka that he was taking care of other family members through designations on other accounts and was taking care of everyone with other assets.

The Court finds that both Plaintiffs testified. Elizabeth Bohinc testified that she had always been close with Eckard and that he was close with his nieces and nephews. Bohinc spent holidays with Eckard and had frequent visits with him. She was unaware of his August 2016 hospitalization, and it was after that when she began to lose contact with him. He didn't return her calls for several weeks and her sister Eleonora had also not seen him which was unusual. She went to his house at one point and when he was not home, she decided to wait for him on his porch. She observed Ewald driving Eckard's car. Eckard was angry and agitated and Ewald went into the house. She testified that the situation was awkward and uncomfortable. She was surprised to see Ewald because before that hadn't seen him since their father's funeral in 2008.

Bohinc testified that she was aware that Eckard had had gout for many years as well as high blood pressure. He was also increasingly incontinent. She testified about the family gatherings that Eckard did attend in 2016 and 2017 and the concerns about his declining health.

Eleonora Kincher testified that Eckard was her best friend. She also related that their relationship changed in 2016. She was unaware of his August hospitalization. He stopped coming to her home for regular visits. He missed calling her for her birthday. She prepared his favorite meal for his birthday in September of 2016 but when he didn't return her calls she delivered the meal to his home. Eckard was not at home and a neighbor told her that his brother had picked him up. She left him a note but did not hear from him.

Although Eckard no longer visited her and did not call she did observe him at several family gatherings in 2016 and 2017. She noted his declining health and increased incontinence. She observed that he had become quieter and more reserved.

At a family communion party in May of 2017 Eckard was having difficulty walking, had swollen legs and was incontinent. He was taken to a hospital for evaluation. In July of 2017 Eckard again became ill at a family party and was subsequently hospitalized.

The Court heard from a series of bank representatives regarding the changes in beneficiary designations that took place on June 14 and June 20 of 2017. With regard to Eckard's Fidelity accounts there was evidence that beneficiary change forms were submitted by mail and then in person "over the counter". There was testimony by Fidelity representative Wickerham that Ewald and Elizabeth were present with Eckard when the change forms were presented at the Fidelity office.

The Court heard the testimony of involuntary Plaintiff Monica Dobies. It is noteworthy that Dobies was not present at the trial to hear the testimony of several witnesses but gave testimony consistent with observations of other Plaintiffs and Metzinger. Dobies testified about meeting Eckard in 2010 after their meeting was arranged by her mother. Dobies and Eckard developed a relationship in which Eckard spent time with her, gave her thoughtful gifts and gave her cards and money for her birthday and Christmas. Dobies testified that Eckard

would deliver cards and gifts to her in person. She made clear that gifts were not expected and that she had no expectation of being a beneficiary of his estate upon his death.

Dobies testified that in February of 2011 Eckard brought a beneficiary designation form from Dreyfus to her to complete. He explained to her that he wanted her to be a beneficiary but that his nephew Eddie would also be a beneficiary because he had promised to leave money to Eddie.

Dobies testified about her observations of Eckard in 2016 and 2017. He became frail and less responsive. He often stared into space and was observed on occasion to be drooling. Eckard was late in delivering her card on Christmas of 2016 and her birthday in April of 2017. In January of 2017 she received a phone call from Eckard in which he seemed confused and out of character. She did not learn of Eckard's death until a chance meeting between her parents and Ewald after the fact. She testified that nothing had occurred prior to his death to change their relationship or estrange her from him.

At the close of their case the Plaintiffs moved this Court pursuant to Ohio Civ. R. 5(b) to amend their Complaint to conform to the evidence. Specifically, Plaintiffs moved the Court to allow the inclusion of Defendants' personal residence located at 27090 Newton Circle, North Olmstead, Ohio 44070 as a property at issue in the case for the purpose of forming a constructive trust.

The basis of Plaintiffs' motion was the testimony of Ewald Scholtz regarding his discovery responses wherein he answered that he used money that he received as a result of changes to the beneficiary designations for expenses at his personal residence. Plaintiffs argue, in defense of the counterclaim, that the residence became subject to a valid Lis Pendens because disputed funds were used to enhance the value of the home.

Defendants opposed the motion, relying on the prior briefing on a Motion to Dismiss the Counter claim wherein the issue of the residence not being at the center of this dispute was addressed.



The Court finds that the Defendants were made aware of the Lis Pendens and the basis thereof by letter from attorney Malemud to attorney Young on June 16, 2020.

The Court finds that allowing the amendment to the Complaint does not necessarily cause the property to “be at the very essence of the controversy” and does not necessarily validate the Lis Pendens and is not prejudicial to the Defendants.

The Court finds that the Motion to Amend is granted.

The Court finds that Defendant Ewald Scholtz was called to testify on direct examination as to the counter claim for slander of title.

Regarding the allegations in the First Amended Complaint claiming incapacity and undue influence the Court finds as follows.

The Ohio Supreme Court holds in the case of *West v. Henry*, 173 Ohio St. 498 that: “In a will contest, the essential elements of undue influence are (1) a susceptible testator, (2) another's opportunity to exert it, (3) the fact of improper influence exerted or attempted and (4) the result showing the effect of such influence.”

The same elements of undue influence have been held to apply to disputes over beneficiary designations, *Wallbrown, v. Kent State Univ.*, 143 Ohio App. 3d 762, *Neuman v. Trice*, 2012-Ohio-4206.

Further, where a confidential relationship exists between a donor and donee the transfer is looked upon with some suspicion that undue influence may have been brought to bear on the donor by the donee. *Wallbrown* at 768.

“In such cases a presumption of undue influence arises and the burden of going forward with evidence shifts to the donee to show that his conduct was free of undue influence or fraud and that the donor acted voluntarily and with a full understanding of his act and its consequences...the donee may rebut the presumption of undue influence by a preponderance of the evidence. *Wallbrown* at 768069

The Court finds that a fiduciary relationship existed between Eckard and Ewald and Elizabeth. From the time that Ewald was hospitalized August 2 of 2016 until his death a year later Ewald and Elizabeth insinuated themselves into his medical and financial affairs. They took over making and attending medical and financial appointments with him, they made and attended appointments with two separate lawyers, according to the testimony and exhibits not only did they attend appointments with Eckard, but they also spoke for him and represented to various persons that they were his caregivers. Further, they were named DPOA and POA over numerous accounts. Whether or not Eckard voluntarily gave the Defendants authority over his decision making, the facts clearly show that they exerted such authority, and it was not questioned by doctors, financial advisors and at least one attorney.

The Court finds that due to the finding that Defendants were in a fiduciary relationship with Eckard, the burden shifts to the Defendants to show that his actions and financial decisions during the final year of his life were not the product of undue influence.

The Court finds that Eckard Scholtz was susceptible. The Plaintiffs have produced witnesses and medical records that demonstrate Eckard's declining health and increased reliance on Ewald and Elizabeth. So drastic was the change in Eckard's behavior that his sisters and his daughter (who had no relationship between them) testified that in the last year of his life his physical appearance, behavior and affections changed drastically.

The Court finds that it has previously decided that a person does not need to be found incompetent or incapacitated in order to determine that they are "susceptible". In upholding this Court's position, the Court of Appeals for the Eighth District decided that although a testator was "mentally sharp" evidence of deteriorating health and increasing dependence on a caretaker are sufficient to find susceptibility. *Schwartz v. Tedrick*, 2016-Ohio-1218.

The Court finds that the Defendants had ample opportunity to assert undue influence as they inserted themselves into every aspect of Eckard's life from August of 2016 to 2017. Ewald and Elizabeth arranged and attended medical and financial appointments for Eckard. They were designated as persons to talk to and caregivers. On June 14, 2017, they met with Attorney Margaret Karl and then went to three different financial institutions (Huntington,

Dollar Bank and Third Federal) to change six beneficiary designations on Eckard's accounts. On June 20, 2017, they again met with Karl at which time Eckard executed new will and transfer on death affidavit for his house and assisted Eckard in changing the beneficiary designations on his Fidelity and BNY Mellon/Dreyfus accounts, a Symetra account, and his personal vehicle.

The Court further finds with respect to the third element of the *West* test — that improper influence was exerted or attempted the Defendants argue that there is no factual basis. Ohio courts have long recognized the inherent difficulty a plaintiff faces in proving allegations of undue influence and, accordingly, that "[t]he issues related to undue influence are generally determined upon circumstantial evidence and inferences drawn from a full presentation of facts that may be inconclusive when viewed separately." *Rich*, 13 Ohio App.3d at 104, 468 N.E.2d 365 [\*\*\*15], citing *Bd. of Edn. v. Phillips*, 103 Ohio St. 622, 626, 134 N.E.646, 19 Ohio L. Rep. 516 (1921).

The Court finds that the only explanation given by the Defendants as to how they happened to arrange for and attend every instance of Eckard changing his beneficiary designations is that they "can't recall". There is ample evidence in this case that both Defendants are "overbearing". The facts show that following Eckard's August 2016 hospital stay the Defendants involved themselves in every aspect of Eckard's life. The facts show that prior to August of 2016 Eckard's estate plan and beneficiary designations remained stable and reflected his existing relationships and expressions of intent. The facts show that while Eckard's physical and mental health were deteriorating the Defendants quickly and efficiently succeeded in the transfer of Eckard's entire estate to themselves, even though they had never been named as beneficiaries prior to 2017. The Defendants both claimed that they were unaware of the powers of attorney and beneficiary designations that occurred in 2017. The facts show, however, that within weeks of Eckard's death the Defendants had already claimed the multiple accounts that had been changed to their benefit. Elizabeth Scholtz testified that they only became aware of their inheritance when Ewald went through Eckard's mail. The accounts were claimed prior to the appointment of Ewald as Eckard's fiduciary leaving the Court to question by what authority Ewald accessed Eckard's mail or any other of his documents.

The Court finds that not only have the Defendants failed to rebut the presumption of undue influence there is simply no other explanation for the fact that Defendants received all Eckard's assets to the exclusion of the natural objects of his affection. Even the new Will that Defendants arranged and paid for made clear that Eckard wanted his estate assets to be divided among his siblings. Eckard's financial advisor was told by Eckard that his family would be provided for in his accounts.

In *Krischbaum v. Dillon* (1991), 58 Ohio St. 3d 58 the Ohio Supreme Court held that the undue influence resulted in the making of testamentary dispositions which the testator would not otherwise have made. In determining whether a particular influence brought to bear upon a testator was "undue," the focus is whether the influence was reasonable, given all the prevailing facts and circumstances.

The Court finds that Defendants exerted undue influence on Eckard to cause him to change the beneficiary designations on his house, car, and financial accounts.

The Court finds that the final element, the result showing the effect of undue influence, is established by the fact that within one year of his death Eckard's will, TOD designations for his house, car and bank accounts were all changed to the benefit of Defendants despite Eckard's long standing intention to leave his assets to his sisters, nieces, and nephews and to his daughter.

The Court finds that the changes to Eckard's beneficiary designations for the assets subject to this action are the result of the undue influence of Ewald and Elizabeth Scholtz and as such, finds that the designations are set aside.

The Court find and **Orders** that:

1. Huntington Bank account ending in number 0345- June 14, 2017, beneficiary designation is set aside and balance at death amount of \$72,241.22 is to be paid by the Defendants to the Estate of Eckard Scholtz

2. Huntington Bank account ending in number 2842- June 14, 2017, beneficiary designation is set aside and balance at death amount of \$26,980.51 is to be paid by the Defendants to the Estate of Eckard Scholtz
3. Third Federal Bank account ending in number 6657- June 14, 2017, beneficiary designation is set aside and balance at death amount of \$27,480.35 is to be paid by the Defendants to the Estate of Eckard Scholtz
4. Third Federal Bank account ending in number 6917- June 14, 2017, beneficiary designation is set aside and balance at death amount of \$651.08 is to be paid by the Defendants to the Estate of Eckard Scholtz
5. Third Federal IRA account ending in 5951- June 14, 2017, beneficiary designation is set aside and balance at death amount of \$15,499.95 shall be paid by the Defendants to Edward Scholtz per the previous February 2, 2010, designation
6. Dollar Bank account number ending in 9785- June 14, 2017, beneficiary designation is set aside and balance at death amount of \$44,977.91 shall be paid by the Defendants to the Estate of Eckard Scholtz
7. Ameriprise Annuity account number ending in 6190- June 19, 2017, beneficiary designation is set aside and balance at death amount of \$94,691.73 shall be paid by the Defendants to Elizabeth Bohinc, Monica Dobies and Edward Scholtz in equal 1/3 shares per the previous July 29, 2010, beneficiary designation
8. Ameriprise Brokerage account number ending in 4494- June 19, 2017, beneficiary designation is set aside and balance at death amount of \$21,685.57 shall be paid by the Defendants to Elizabeth Bohinc, Monica Dobies and Edward Scholtz in equal 1/3 shares per the previous July 29, 2010, designation
9. The June 20, 2017, beneficiary designation for Eckard's \$22,963.50 Chevy Cruz (VIN No. 1G1BE5SMXH7142424 is set aside and said vehicle or the value date of death value thereof shall be returned/paid by the Defendants to the Estate of Eckard Scholtz
10. Fidelity account number ending in 8595- June 20, 2017, beneficiary designation is set aside and balance at death amount of \$179, 547.70 shall be paid by the Defendants in

equal 50-50 shares to Elizabeth Bohinc and Rebecca Bohinc per the previous October 14, 2005, beneficiary designation

11. Fidelity account number ending in 6265- June 20, 2017, beneficiary designation is set aside and balance at death amount of \$11,781.40 shall be paid by the Defendants to the Estate of Eckard Scholtz
12. BNY/Dreyfus account number ending in 7099- June 20, 2017 beneficiary designation is set aside and balance at death amount of \$17,095.84 shall be paid by the Defendants to Monica Dobies pursuant to the previous February 5, 2011, beneficiary designation
13. BNY/Dreyfus account number ending in 3803- June 20, 2017, beneficiary designation is set aside and balance at death amount of \$22, 505.22 shall be paid by the Defendants to Rebecca Bohinc pursuant to the previous November 4, 1998, beneficiary designation
14. Symetra account number ending in 9284- June 20, 2017, beneficiary designation is set aside and date of death balance in the amount of \$14, 501.28 shall be paid by the defendants to Eleonora Kinscher and Elizabeth Bohinc as equal 50-50 beneficiaries pursuant to the previous August 27, 2004, beneficiary designation
15. The July 6, 2017, TOD Affidavit and June 20, 2017, TOD Affidavit are set aside so that 9630 Idlewood Drive, Brooklyn, Ohio 44144-3121 shall be transferred to Eleonora Kinscher and Elizabeth Bohinc pursuant to the previous November 22, 2005, TOD affidavit.

The Court further finds and **Orders** that the Complaint for Constructive Trust and Accounting are also granted.

The Court finds that Defendants have made a Counterclaim for Slander of Title.

“Slander of title is a tort action against one who falsely and maliciously defames title to property and causes some special pecuniary damages or loss.” *Silberhorn v. Flemco, L.L.C.*, 8th Dist., Cuyahoga County Case No. 108346, 2020 WL 1189746, 2020-Ohio 913, ¶ 16 citing *Acme Construction Co. v. Continental National Indemnity Co.*, 8th Dist., Cuyahoga County Case No. 81402, 2003 WL 194879, 2003-Ohio-434, ¶ 46. In order to prove slander of title, Ewald and

Elizabeth Scholtz must establish: (1) there was a publication of a slanderous statement disparaging claimant's title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages, all of which was alleged in the Counterclaim filed by Ewald and Elizabeth Scholtz. *Silberhorn*, ¶ 16 citing *Green v. Lemarr*, 139 Ohio App.3d 414, 430-431, 744 N.E.2d 212 (2nd Dist. 2000).

The Court finds that Plaintiffs filed a Notice of Lis Pendens against Defendants' home due to his response to discovery regarding use of disputed funds. The discovery responses were given only after this Court ordered Ewald to comply with discovery requests.

Counsel for Plaintiffs communicated the basis of the Notice of Lis Pendens to Defendants' counsel in writing. Plaintiffs have made a good faith argument for the legitimacy of the Lis Pendens. Whether or not the Notice should have been filed, the Court finds that Defendants have failed to demonstrate that Plaintiffs' actions were made with malice or with reckless disregard.

The Court further finds that Defendants have not demonstrated actual or special damages other than the attorney fees incurred in responding to the Notice and pursuing the counterclaim.

The Court finds and **Orders** that Defendants have not proved the elements of Slander of Title and the Counter Claim is hereby **denied** and **dismissed**.

It is further **ORDERED** that the Clerk of Court shall serve upon all parties notice of this judgment and date of entry pursuant to Civ. R. 58(B).

**IT IS SO ORDERED.**

  
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**JUDGE LAURA J. GALLAGHER**