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MICHAEL C. PREZEAU
District Judge
512 California Avenue
Libby, MT 59923

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**MONTANA NINETEENTH JUDICIAL DISTRICT COURT
LINCOLN COUNTY**

ESTATE OF CHRISTINE)	
ANNE REEDER,)	
)	
Plaintiff,)	DV-09-16
)	
-vs-)	
)	
HAMMER HOLDINGS TRUST,)	
MILOVICH FAMILY TRUST,)	
REVERE FAMILY TRUST, CAR)	
HOLDINGS, CONSOLIDATED)	
CREATIVE VENTURES, LTD, aka)	
STAN H. Olson, LTD, aka S.H.)	
OLSEN, aka STAN H. OLSEN, JESSIE)	
MERCAY, aka DR. JESSIE MERCAY,)	
CHANCELLOR OF THE AMERICAN)	
UNIVERSITY OF MAYONIC)	
SCIENCE AND TECHNOLOGY, et al.,)	
)	
Defendants.)	

**ORDER GRANTING AND DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

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CROWLEY FLECK PLLP

1
2 The Plaintiff (Estate) is seeking in this lawsuit to invalidate transfers of real
3 and personal property which Christine Ann Reeder (Christine) conveyed to the five
4 Defendant trusts prior to her death. The Second Amended Complaint alleges
5 multiple claims, including claims for declaratory judgment regarding the validity of
6 the property transfers, securities registration violations, securities fraud, common law
7 fraud, breach of the implied covenant of good faith and fair dealing, and deceit.
8 Aside from asking the Court to invalidate property transfers, the Estate is requesting
9 compensatory and punitive damages and attorney fees. On February 19, 2010, the
10 Estate filed a Motion for Summary Judgment, which is actually a partial summary
11 judgment motion. The motion has been fully briefed and is ripe for decision.

9 **UNDISPUTED FACTS**

10 Christine led a troubled life, haunted by abuse she claimed to have suffered as
11 a child at the hands of her older brother. Christine claimed that even into adulthood,
12 her brother continued to torment and threaten her, and she expressed fear that if
13 something were to happen to her, her brother would somehow manage to appropriate
14 her possessions for himself. Christine obsessed about her brother throughout her life,
15 claiming in letters she composed on her computer near the end of her life that her
16 brother had "ruined over 50 years of [my life]."

17 Among the people Christine turned to for help with her haunting childhood
18 memories was Jessie Mercay, who Christine met when she was living in Colorado.
19 Christine referred to Mercay as her psychiatrist, although Ms. Mercay is not a
20 psychiatrist and claims that she never represented herself as one. Mercay identifies
21 herself as the Chancellor of American University of Mayonic Science and
22 Technology, a new age philosophy which, according to one of its brochures, "derives
23 its history, philosophy, goals, objectives and teaching from the work of Mamuni
24 Mayan who was a scholar, scientist, artist and builder approximately 10,000 years ago
25 in the ancient past of the Kumari continent and South India."

26 Christine discussed with Mercay her alleged abuse by her brother and her
continuing concern that her brother would someday try to get his hands on Christine's
property.

1
2 Mercay referred Christine to Stan H. Olsen, who had previously prepared a
3 trust for Mercay. Olsen represented himself as an expert in trusts, although he is
4 neither an accountant nor an attorney. Christine and Olsen had an initial telephone
5 conversation in early 2007, while Christine was in Lincoln County and Olsen was in
6 Colorado. Olsen explained to Christine that with trusts he was capable of preparing,
7 Christine could be assured to protecting her assets from her brother and enjoy shelter
8 from taxes at the same time. Olsen's proposal apparently appealed to Christine, and
9 she agreed to pay Olsen \$10,000 for him to draft five trusts for her. In June or July,
10 2007, Christine traveled to Colorado to review the trusts with Olsen and sign the trust
11 documents, which she did, although the documents were all back-dated to January 1,
2006. The five trusts Olsen prepared for Christine are identified as: (1) Hammer
Holdings Trust; (2) Milovich Family Trust; (3) Revere Family Trust; (4) CAR
Holdings; and (5) Consolidated Creative Ventures, LTD. Each of the trust documents
consists of page after page of pseudo-legal gibberish. All of the trusts name Olsen as
"successor trustee."

12 In answers to interrogatories, the Defendants describe the trusts as "foreign
13 business trusts, one of which was designed to facilitate the operation of a business
14 and the rest of which were designed to hold assets." The Defendants admit that the
15 trusts have not complied with the filing requirements provided for in § 35-5-201,
16 MCA, and that the trusts are not licensed by the Secretary of State. The preamble to
17 each trust instrument identifies the trust as a "Pure, Private, Non-associated, Limited
18 Liability, Unincorporated, Common Law Declaration of Trust, also commonly known
19 as a 'Massachusetts Trust,' or as a 'Contract Trust,' 'Blind Trust,' 'Unincorporated
20 Business Organization,' or as a 'Pure Trust'" To the extent that the trust
21 instruments are decipherable, they all appear to have a similar structure. In Article
22 One of each of the trust instruments, Christine purports to exchange certain property
23 to the trust in exchange for \$21 and a "Certificate of One Hundred (100) Capital
24 Units." The trust documents contain a scheme for transferring the capital units
among individuals and other trusts. To rule on the validity of these trusts, it is not
necessary for the Court to attempt to untangle the arcane language and byzantine
maneuvers contained within the language of the trusts documents. The Estate
contends that ultimately the end result of these transfers is that Christine's property
would end up in the hands of Mercay and numerous of her relatives, and the
Defendants do not challenge that assertion in their answer brief.

1
2 In conjunction with signing the trust documents, Christine executed Warranty
3 Deeds conveying a parcel of property to the Hammer Holdings Trust, and another
4 parcel of property to the Revere Family Trust, (both deeds are also back-dated) and
5 she also placed her bank accounts and personal property in the ownership of the
6 purported trusts.

7 On January 3, 2007, Christine executed a Last Will and Testament, naming her
8 mother, Constance, as the Personal Representative of Christine's estate, and devising
9 to her the residue of Christine's estate.

10 In 2008, Christine's health was in decline, but she eschewed traditional
11 medicine, choosing instead to address her condition with self-medication and
12 nutrition. In November, 2008, "healers" flew from Oregon to Libby to comfort and
13 assist Christine. Christine's health continued to decline, however, and she died on
14 December 24, 2008.

15 ISSUES

- 16 1. Whether the five trusts are invalid under Montana law.
- 17 2. Whether the Estate is entitled to injunctive relief to prevent the trusts
18 from attempting to exercise control over the property formerly owned
19 by Christine or from attempting to register to do business in the State of
20 Montana.
- 21 3. Whether the Estate is entitled to summary judgment on its claim for
22 violation of the Montana Living Trust Act.
- 23 4. Whether the Estate is entitled to summary judgment on its claim for
24 securities registration violations.
- 25 5. Whether the Estate is entitled to summary judgment on its claim for
26 securities fraud.
6. Whether the Estate is entitled to summary judgment on its claim of
common law fraud.

1 7. Whether the Estate is entitled to summary judgment on its claim of
2 breach of the covenant of good faith and fair dealing.

3 8. Whether the Estate is entitled to summary judgment on the claim of
4 deceit.

5 9. Whether the Estate is entitled to summary judgment on its claim for
6 punitive damages.

7 **DISCUSSION**

8 I. SUMMARY JUDGMENT IS APPROPRIATE WHEN THERE ARE
9 NO GENUINE ISSUES OF MATERIAL FACT AND THE MOVING
10 PARTY IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

11 Rules 56(a) and (b) of the Montana Rules of Civil Procedure permit parties to
12 move for summary judgment, and subsection (c), provides that “[t]he judgment
13 sought shall be rendered forthwith if the pleadings, depositions, answers to
14 interrogatories, and admissions on file, together with the affidavits, if any, show that
15 there is no genuine issue as to any material fact and that the moving party is entitled
16 to a judgment as a matter of law.” The Montana Supreme Court has summarized this
17 rule as follows:

18 Summary judgment is properly granted when no issues of
19 material fact exist and the movant is entitled to judgment
20 as a matter of law. Rule 56, M.R.Civ.P.; *O'Bagy v. First*
21 *Interstate Bank* (1990), 241 Mont. 44, 46, 785 P.2d 190,
22 191. The movant has the initial burden of demonstrating
23 the absence of a genuine issue of fact. *O'Bagy*, 241
24 Mont. at 46, 785 P.2d at 191. Once the movant has met
25 its burden the opposing party must show the existence of
26 a genuine issue of fact without relying upon mere
speculation or conclusory statements. *First Sec. Bank of*
Bozeman v. Jones (1990), 243 Mont. 301, 303, 794 P.2d
679, 681.

Webster v. Geico Ins. Co. (2000), 302 Mont. 537, 12 P.3d 425.

ORDER GRANTING AND DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT/DV-09-16

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1 II. THE TRUSTS ARE INVALID AS A MATTER OF LAW.

2
3 Montana law recognizes two kinds of trusts: (1) business trusts, described in
4 chapter 5 of title 35 of the Montana Code Annotated, pertaining to corporations,
5 partnerships, and associations, and (2) estate planning trusts, described in the Trust
6 Code, chapters 33 through 36 of title 72, pertaining to estates, trusts, and fiduciary
7 relationships. The Montana Trust Code specifically excludes "business trusts
8 providing for certificates to be issued to beneficiaries" from the definition of what
9 constitutes a trust for purposes of estate planning. Specifically, the definition
10 provision of the Trust Code reads:

11
12 **72-33-108. Definitions.** As used in chapters 33 through
13 36, unless the context requires otherwise, the following
14 definitions apply:

15 ...
16
17 (4) "Trust", when not qualified by the word "resulting" or
18 "constructive", includes any express trust, private or
19 charitable, with additions thereto, wherever and however
20 created. It also includes a trust created or determined by
21 judgment or decree under which the trust is to be
22 administered in the manner of an express trust and, unless
23 otherwise provided in the trust instrument, a trust
24 established in connection with bonds issued under Title
25 90, chapters 4 through 7. The term does not include
26 conservatorships, personal representatives, custodial
arrangements pursuant to chapter 26 of this title, business
trusts providing for certificates to be issued to
beneficiaries, common trust funds, voting trusts, security
arrangements, liquidation trusts, and trusts for the primary
purpose of paying debts, dividends, interest, salaries,
wages, profits, pensions, or employee benefits of any kind
and any arrangement under which a person is nominee or
escrowee for another. (Emphasis added.)

1 Because the trusts created by Olsen provide for certificates issued to
2 beneficiaries, the trusts at issue in this lawsuit do not qualify as trusts under the Trust
3 Code found in chapters 33 through 36 of title 72.

4 The Defendants admit that the trusts created for Christine by Olsen are
5 business trusts, and their admission squares with the definition of business trusts set
6 forth in the business trusts chapter of title 35 of the Code:

7 an unincorporated association or trust of the type which at
8 common law was known as a "business trust" or
9 "Massachusetts trust", created by an instrument under
10 which property is held and managed by trustees for the
11 benefit and profit of such persons as are or may become
12 the holders of transferable certificates evidencing
13 beneficial interests in the trust estate.

14 Section 35-5-101, MCA.

15 As the Defendants point out, business trusts are a recognized form of
16 association for the conduct of business with this state. Section 35-5-104, MCA.
17 There are legal requirements that must be met, however, before the Secretary of State
18 can issue a license for a business trust to conduct business in the state of Montana.
19 This list of requirements is set forth in § 35-5-201, MCA, and the trusts at issue in
20 this case have complied with none of them. The Defendants further contend that
21 while the trusts are business trusts, they were not conducting business in the State of
22 Montana and are therefore not required to be licensed by the Secretary of State. If the
23 trusts are found to be transacting business in Montana, they urge the Court to give
24 them a grace period to apply for a license.

25 The Court disagrees that the business trusts created by Olsen are not required
26 to obtain a license to transact business in Montana before they are authorized to own
real property in the State of Montana, and this is particularly true in the situation here,
where one of the properties purportedly conveyed to one of the trusts by Christine is
income producing rental property. Section 35-1-115(4), (5), and (6), MCA, define
the following activities as falling under the definition of "carrying out business":

1 (4) to purchase, receive, lease, or otherwise acquire and to
2 own, hold, improve, use, and otherwise deal with real or
3 personal property or any legal or equitable interest in
4 property, wherever located;

5 (5) to sell, convey, mortgage, pledge, lease, exchange,
6 and otherwise dispose of all or any part of its property;

7 (6) to purchase, receive, subscribe for, or otherwise
8 acquire any other entity; to own, hold, vote, use, sell,
9 mortgage, lend, pledge, or otherwise dispose of any other
10 entity; and to deal in and with shares or other interests in,
11 or obligations of any other entity[.]

12 It appears that these trusts have engaged in all of these activities in one way or
13 another, and that being the case, they have illegally conducted business in the state.

14 The Court also rejects the idea that the transfers of Christine's property to the
15 invalid trusts can somehow be retroactively sanctioned by allowing the trust to apply
16 for a license to do business at this time, four years after the invalid transfers took
17 place, and a year and a half after Christine's death. The trusts are invalid under
18 Montana law, and the transfers of property to the invalid trusts are void. The property
19 purported to have been transferred by Christine to the trusts belongs to the Estate for
20 distribution under the terms of Christine's will.

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III. THE COURT'S DETERMINATION THAT THE TRANSFER OF
CHRISTINE'S PROPERTY TO THE INVALID TRUSTS ARE VOID
RENDERS THE REQUEST FOR INJUNCTIVE RELIEF MOOT.

20 Having ruled that the trusts to which Christine purported to transfer her
21 property are invalid, and the transfers are therefore void, there is no need for
22 injunctive relief. The trusts cannot retroactively validate themselves so as to
23 legitimize the invalid transfers that occurred nearly four years ago.
24
25
26

1 IV. ON THE CLAIM FOR VIOLATION OF THE LIVING TRUST ACT,
2 THE ESTATE IS ENTITLED TO RECOVER THE \$10,000 FEE
3 THAT CHRISTINE PAID TO Olsen TO PREPARE THE INVALID
4 TRUSTS.

5 The Montana Living Trust Act, found at §§ 30-10-901-915, MCA, has the
6 purpose “to regulate the marketing and sale of living trusts in Montana and to provide
7 civil remedies for fraudulent and deceptive sales practices.” § 30-10-902, MCA.

8 A “living trust” is defined in 30-10-903(1)(a), MCA, as “either an irrevocable
9 or revocable inter vivos trust.” Section 30-10-904, MCA, provides that, with certain
10 exceptions, a person may not offer or sell a living trust in this state unless the person
11 is a registered investment advisor or investment advisor representative or is otherwise
12 duly licensed by the state. Olsen is not a registered investment advisor nor an
13 investment advisor representative. He is not licensed by the state, and he does meet
14 any of the other exceptions recited in the statute.

15 The scope of the Montana Living Trust Act is set forth in § 30-10-906, MCA,
16 as follows:

17 **30-10-906. Scope.** This part applies to any person who
18 sells or offers to sell a living trust in this state or when an
19 offer to buy a living trust is made and accepted in this
20 state. An offer to sell or buy is made in this state,
21 whether or not either party is then present in this state, if
22 the offer either originates in this state or is directed by the
23 offeror to this state and is received at the place to which it
24 is directed or at any post office in this state in the case of
25 a mailed offer.

26 The Defendants do not dispute that Olsen was not qualified or licensed under
Montana law to sell the trusts to Christine or that the trusts meet the definition of
living trusts. They contend, however, that there is a genuine question of material fact
whether Olsen’s offer to prepare the trusts for Christine were directed to her and
received by her while she was in the State of Montana. Notes of Christine’s
telephone conversations with Olsen, and particularly one typed summary of a
conversation with Olsen, dated May 2, 2007, clearly indicate that while Christine was

1 in Montana, she engaged in a telephone conversation with Olsen, while he was
2 apparently in Colorado, wherein they discussed the details of the trusts and the price
3 that Olsen would charge Christine to prepare the trusts. It seems clear that Olsen
4 offered to sell living trusts to Christine in violation of the Montana Living Trust Act.

5 The penalty for violating the Montana Living Trust Act is the cost of the
6 consideration paid for purchasing the trusts, plus 10% interest from the date of
7 payment for the trusts.

8 V. THE ESTATE IS ENTITLED TO SUMMARY JUDGMENT ON ITS
9 CLAIM FOR SECURITIES REGISTRATION VIOLATION.

10 Section 30-10-202, MCA, makes it unlawful “to offer or sell any
11 [unregistered] security in this state,” except certain securities that are exempt. The
12 exemptions do not apply in this case. The term “security” is broadly defined by § 30-
13 10-103(22)(a), MCA, to include virtually any document evidencing an interest or
14 participation in an instrument that connotes value. That may not be an accurate
15 summary of the many types of instruments that would qualify as securities, but the
16 Defendants do not dispute that the “capital units” that Christine was purportedly
17 purchasing with her “investment” qualify as securities under the Act. Rather, they
18 claim, as they did in arguing against summary judgment on the claim for violation of
19 the Living Trust Act, that there is at least a genuine issue of material fact whether the
20 transaction took place in Montana.

21 The scope of the Securities Act of Montana, as recited in § 30-10-110, MCA,
22 is virtually the same as the scope of the Living Trust Act, in terms of what constitutes
23 selling or offering to sell unlicensed securities in Montana. For the same reason that
24 summary judgment is appropriate in the violation of the Living Trust Act, it is also
25 appropriate for the claim for violating the Securities Act of Montana. Olsen made an
26 offer to sell the trusts—securities—to Christine while she was consulting with him on
the telephone from Montana.

A person who prevails on a claim for violation of the Securities Act of
Montana is entitled to recover the amount paid to purchase the securities plus 10%
interest per year, plus attorney fees. Section 30-10-307(1), MCA.

1 VI. IT IS UNNECESSARY TO RULE ON THE CLAIMS FOR
2 SECURITIES FRAUD, COMMON LAW FRAUD, BREACH OF THE
3 IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING,
4 AND DECEIT, AS DAMAGES FOR THOSE CLAIMS WOULD
5 ONLY DUPLICATE DAMAGES THE ESTATE IS ENTITLED TO
6 RECOVER ON THE OTHER CLAIMS FOR WHICH SUMMARY
7 JUDGMENT HAS BEEN GRANTED.

8 Having ruled that the Estate is entitled to summary judgment on its claims for
9 violation of the Living Trust Act and the Securities Act of Montana, it is unnecessary
10 to rule on the separate claims for securities fraud, common law fraud, violation of the
11 implied covenant for good faith and fair dealing, and deceit, as any recovery on those
12 claims would not increase the Estate's recovery.

13 VII. IT IS NOT APPROPRIATE TO GRANT SUMMARY JUDGMENT
14 ON A CLAIM FOR PUNITIVE DAMAGES.

15 The Estate asks the Court to "send a message" to Olsen by awarding punitive
16 damages for his insistence upon selling invalid trusts to unsuspecting people after
17 having been put on notice that the trusts are invalid by multiple court decisions dating
18 back to at least 1995.

19 An award of punitive damages necessarily involves questions of motive and
20 intent, which the Court does not feel comfortable deciding strictly on the basis of
21 pleadings, exhibits, and affidavits. The Estate has not cited any authority which
22 affirms an award of punitive damages without a trial, and the Court is not aware of
23 any. The Court concludes that as to the punitive damage claim, there are genuine
24 issues of material fact that precludes the Court from making such a finding and
25 award.

26 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. The Estate's motion for partial summary judgment on its claim that the trusts prepared for Christine Reeder by Defendant Olsen are invalid is granted. Any transactions, including deeds, signature cards, or certificates of title by which Christine Reeder purported to convey real or personal property, including an interest in bank accounts, to the invalid trusts are declared to be null and void,

ORDER GRANTING AND DENYING PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT/DV-09-16

1 and said property is hereby declared to be the property of the Estate of
2 Christine Reeder, to be distributed according to the terms of Christine
3 Reeder's will. The Estate shall not dispose of or disburse any property
covered by this ruling, however, until further order of the Court.

4 2. The Estate's motion for partial summary judgment on its claim for violation of
5 the Living Trust Act is granted, and the Estate is entitled to recover the
6 \$10,000 that Christine Reeder paid to Defendant Olsen for preparation of the
7 invalid trusts, plus simple interest at the rate of 10% per year, accruing from
the date(s) that payment was made.

8 3. The Estate's motion for partial summary judgment on its claim of violation of
9 the Securities Act of Montana is granted, and the Estate is entitled to recover
10 its attorney fees in addition to the amount awarded above (there is no double
recovery).

11 4. The Estate's motion for partial summary judgment on its claim for punitive
12 damages is denied.

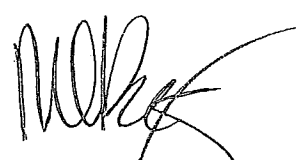
13 5. It is unnecessary for the Court to rule on the Estate's other claims, and it
14 therefore declines to do so.

15 6. Unless an extension is requested and granted, within 10 days of the entry of
16 this Order, the Estate shall file an Affidavit of Attorney Fees and Interest,
17 setting forth a detailed summary of attorney fees incurred in prevailing on the
18 claim for securities registration violation, and its calculation of interest owed
19 on the money paid by Christine for preparation of the trusts. Within 10 days
20 after the Affidavit of Attorney Fees and Interest is filed, if the Defendants
21 object to any portion of the amounts claimed, they shall file a written
22 objection, detailing the items to which they object and the basis for the
23 objection. If an affidavit is not timely filed, no attorney fees will be awarded.
24 If no objection is filed, the Court will award attorney fees on the basis of the
25 affidavit. After the affidavit and any objection are filed, the Court will
determine if a hearing is required. If a hearing is required and the Estate
prevails on its attorney fee claim, it may be entitled to "fees on fees" for any
additional fees incurred in justifying the attorney fee claim. *James Talcott
Const., Inc. v. P & D Land Enterprises* (2006), 333 Mont. 107, ¶ 65, 333
Mont. 107, 141 P.3d 1200.

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7. Judgment will be considered final in this case when all remaining claims and issues have been resolved.

Dated April 9, 2010.



MICHAEL C. PREZEAU
District Judge

pc: Grant S. Snell, Esq.
Karl K. Rudbach, Esq.
4-9-100R