

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

PAUL R. DULBERG, INDIVIDUALLY )  
AND THE PAUL R. DULBERG )  
REVOCABLE TRUST )

Plaintiffs, )

vs. )

KELLY N. BAUDIN A/K/A BAUDIN & )  
BAUDIN, BAUDIN & BAUDIN AN )  
ASSOCIATION OF ATTORNEYS, LAW )  
OFFICES OF BAUDIN & BAUDIN, )  
BAUDIN & BAUDIN LAW OFFICES, )  
WILLIAM RANDAL BAUDIN II A/K/A )  
BAUDIN & BAUDIN, BAUDIN & )  
BAUDIN AN ASSOCIATION OF )  
ATTORNEYS, LAW OFFICES OF )  
BAUDIN & BAUDIN, BAUDIN & )  
BAUDIN LAW OFFICES, KELRAN, INC )  
A/K/A THE BAUDIN LAW GROUP, Ltd., )  
JOSEPH DAVID OLSEN, A/K/A )  
YALDEN, OLSEN & WILLETTE LAW )  
OFFICES, CRAIG A WILLETTE, A/K/A )  
YALDEN, OLSEN & WILLETTE LAW )  
OFFICES, RAPHAEL E YALDEN II, )  
A/K/A YALDEN, OLSEN & WILLETTE )  
LAW OFFICES, ADR SYSTEMS OF )  
AMERICA, LLC., ASSUMED NAME )  
ADR COMMERCIAL SERVICES, )  
ALLSTATE PROPERTY AND CASULTY )  
INSURANCE COMPANY )

Defendants, )

CASE NO. 2022L010905

NOW COMES the Plaintiffs PAUL R. DULBERG AND THE PAUL R. DULBERG REVOCABLE TRUST by and through their attorney, Alphonse A. Talarico and for their RESPONSE TO DEFENDANTS KELLY N. BAUDIN A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, WILLIAM RANDAL BAUDIN II A/K/A BAUDIN & BAUDIN, BAUDIN & BAUDIN AN ASSOCIATION OF ATTORNEYS, LAW OFFICES OF BAUDIN & BAUDIN, BAUDIN & BAUDIN LAW OFFICES, KELRAN, INC A/K/A THE BAUDIN LAW GROUP, Ltd.'s SECTION 2-619.1 MOTION TO DISMISS states as follows:

**I. PLAINTIFFS' RESPONSE TO DEFENDANTS' (FIRST) ARGUMENT THAT PLAINTIFFS' CLAIMS AGAINST THE BAUDIN DEFENDANTS SHOULD BE DISMISSED PURSUANT TO 735 ILCS 5/2-619(A)(9) BECAUSE THE PLAINTIFFS COULD NOT HAVE SUSTAINED A PECUNIARY DAMAGE AS A PROXIMATE RESULT OF THE HANDLING OF THE PERSONAL INJURY CLAIM WHERE THE PERSONAL INJURY CLAIM WAS OWNED AND CONTROLLED BY THE BANKRUPTCY ESTATE, NOT THE PLAINTIFF.**

1. The Baudin Defendants stated, "When he (Dulberg) exchanged his prospective right to pursue the Personal Injury Claim for bankruptcy protection, Plaintiff lost the ability to control the prosecution of the Personal Injury claim, either individually or through counsel."<sup>1</sup> But at the same time an automatic stay went into effect on the Personal Injury case. "In addition to creating a bankruptcy estate, the filing of a bankruptcy petition operates to stay all actions, whether judicial or private, that seek to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." See 11 U.S.C. § 362(a)(3); *In re Enyedi*, 371 B.R. 327, 333 (N.D. Ill. 2007) The Baudin Defendants knew or should have known that Dulberg had no standing but signed a retainer with Dulberg on 9/22/2015 and represented Dulberg up to when they were first retained by the Trustee for the bankruptcy estate on 10/31/2016 in violation of the automatic stay. While doing this the Baudin Defendants repeatedly urged Dulberg to agree to Binding Mediation and helped craft a proposal of the Binding Mediation Agreement for Dulberg to sign, which Dulberg refused to do.<sup>2</sup>

2. The Baudin Defendants stated, "Because property of the estate in custodia legis by virtue of the bankruptcy filing, it is administered exclusively by a specifically designated fiduciary, a trustee. See, e.g., 11 U.S.C. §§ 323(a), 363, and 704." The Trustee administers the estate in the interests of the beneficiaries and Dulberg was a beneficiary of the bankruptcy estate. Yet Baudin Defendants entered into contract with Dulberg alone and in violation of the automatic stay.

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1. Defendants MTD Page 8  
2. Plaintiff Complaint #23-47

3. Baudin Defendants stated that “Once a debtor files for bankruptcy, any unliquidated lawsuits become part of the bankruptcy estate; regardless of whether such claims are scheduled, a debtor is divested of standing to pursue them upon filing his petition.”<sup>1</sup> Yet the Baudin Defendants, from 9/22/2015 to 10/31/2016, pursued Dulberg’s claim knowing he had no standing in court and repeatedly urged him to enter into binding mediation in violation of the automatic stay.

4. As stated *In re Enyedi*, 371 B.R. 327, 334 (N.D. Ill. 2007):

“It is well established in case law that acts taken in violation of the automatic stay imposed under section 362(a) of the Bankruptcy Code are deemed void ab initio and lack effect. See *Middle Tenn. News Co., Inc. v. Charnel of Cincinnati, Inc.*, 250 F.3d 1077, 1082 (7th Cir. 2001) (“Actions taken in violation of an automatic stay ordinarily are void.”); *York Ctr. Park Dist. v. Krilich*, 40 F.3d 205, 207 (7th Cir. 1994) (judgment issued against debtors without a modification of the automatic stay must be vacated); *Matthews v. Rosene*, 739 F.2d 249, 251 (7th Cir. 1984) (orders issued in violation of automatic stay provisions of Bankruptcy Code ordinarily are void); *In re Benalcazar*, 283 B.R. 514, (Bankr.N.D.Ill. 2002) (same); *Garcia v. Phoenix Bond Indem. Co. (In re Garcia)*, 109 B.R. 335, 340 (N.D.Ill. 1989) (“[T]he fundamental importance of the automatic stay to the purposes sought to be accomplished by the Bankruptcy Code requires that acts in violation of the automatic stay be void, rather than voidable. Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard of the law, provided it goes undiscovered for a sufficient period of time.”). See also *Hood v. Hall*, 321 Ill.App.3d 452, 254 Ill. Dec. 470, 747 N.E.2d 510, 512 (2001) (“There is no question that judgments entered in violation of the automatic stay in bankruptcy are void ab initio . . . and that void judgments may be attacked at any time.”); *Concrete Prod, Inc. v. Centex Homes*, 308 Ill.App.3d 957, 242 Ill.Dec. 523, 721 N.E.2d 802, 804 (1999) (“[A]cts in violation of the section 362(a) automatic stay are void ab initio.”)

5. The purpose of the Baudin Defendants representing Dulberg in court (even though they knew or should have known that Dulberg lacked standing and any furtherance of the personal injury case in violation of the automatic stay) appears and could have been to place an upper limit on the value of the case.

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1. Defendants MTD Page 9

6. Plaintiffs were damaged in an amount of at least \$261,000.00 based on PLAINTIFFS COMPLAINT EXHIBIT 10 as verified by certification pursuant to section 1-109 of the Code of Civil Procedure. It should be noted that the Baudin Defendants neither filed an answer denying the validity of Exhibit 10, which was also attached to the Baudin Defendants' Motion To Dismiss as Defendants' EXHIBIT A, nor did they attach any affidavits disputing the validity of the Binding Mediation Award.

7. A fact gleaned from the Binding Mediation Award was that the Honorable Judge James P. Etchingham, after hearing the case, determined that Plaintiff Paul R. Dulberg was entitled to an award of \$660,000.00 less 15% for comparative fault resulting in a net award of \$561,000.00.

8. The Binding Mediation Agreements in both unexplained configurations had a cap on Plaintiff Award of \$300,000.00.

9. Plaintiff was damaged in an amount equal to or greater than \$261,000.00.

10. The Baudin Defendants erroneously assert that if the control of the state litigation belonged to the Bankruptcy Estate any such loss was to the Estate and not directly to Plaintiff Dulberg.

11. That assertion is untrue for the following reasons:

- (a) From the very beginning Plaintiff's Bankruptcy was declared to be an "Asset" estate because his non-exempt assets were greater than what Plaintiff owed to his unsecured creditors;
- (b) Plaintiff's main assets were a house and the pending state court litigation, which was valued as \$660,000.00 by the Binding Mediation Judge and in the absence of Jury Verdict (the jury verdict research if the matter was taken before a jury, as Plaintiff desired ) was many times the Binding Mediation Judge's evaluation.
- (c) This Bankruptcy was a "positive" bankruptcy as Plaintiff lost no assets and all creditors were paid in full;
- (d) Plaintiff was paid in excess of \$117,000.00 by the Olsen Defendant in his role as Chapter 7 Bankruptcy Trustee.
- (e) Since every dollar lost by entering into a Binding Mediation Agreement with a cap of \$300,000.00 is factual evidence that Plaintiff Dulberg suffered actual damages, which amount of loss and consequentially more damages, but also more speculative, would be the additional

loss by forcing Plaintiff into Binding (capped) Mediation thus eliminating the promised and desired jury trial. (Jury verdicts for like injuries as Plaintiff suffered in McHenry County, Illinois in a like time frame were in multiples of millions of dollars which would maximized the Bankruptcy Estate to the benefit of the beneficiary, Plaintiff Dulberg.)

12. Whether Defendant Trustee Olsen had abandoned the Personal Injury Case is not needed in this positive asset bankruptcy. Although not necessary to refute the Baudin Defendants' first argument, it could be ascertained from Defendant Trustee Olsen's statement to the Bankruptcy Judge that he did not want to *micromanage* [emphasis added] the case and his refusal to sign the Binding Mediation Agreement after specifically requesting authority to enter into and *execute* [emphasis added] the Binding Mediation Agreement presented to the Bankruptcy Judge. (Please see Plaintiffs' Exhibit 4 Defendant Trustee Olsen's motion to Enter into a Binding Mediation Agreement found in Plaintiffs' verified Complaint and the Baudin Defendants' Exhibit A). Further evidence is found within the 10/31/2016 Transcript page 5 line 1-2 as Defendant Trustee Olsen stated to the Honorable Thomas M. Lynch that he did not want to micromanage his case and page 5 line 5-6 where the Honorable Thomas M. Lynch authorized the Trustee to enter into the Binding Mediation Agreement. Twice in the Transcript the Trustee misrepresents to the Honorable Thomas M. Lynch that Dulberg "wants it this way" and that Dulberg has no objections. The Trustee appears to be entering into the agreement by deferring to the advice of the Baudin Defendants even though the Baudin Defendants have been working for the last 13 months (and caused to be crafted the agreement) in violation of the automatic stay and the Baudin Defendants had not yet been retained by the Trustee. The Trustee admits to not knowing much about the agreement when he says, "But I don't do personal injury ~ Work at all, so I'm not sure how that all flows through to a jury, but he (Dulberg) didn't seem to want to go through a jury process. He liked this process, so ..." Dulberg did not tell the Trustee any of this so the Trustee must have heard this from the Baudin Defendants. The Trustee also appears not to know about the agreement when he said, "Well, I guess the mediators don't know there's a floor and a ceiling. I'm not sure where that comes from, but that's -- yeah." By misrepresenting Dulberg as "not wanting a jury trial" and "not making a good witness" to the judge and by telling the judge that the ADR is something that Dulberg wants while Dulberg

refused the Binding Mediation proposal, the transcript exchange and the lack of the Trustee's signature executing the Binding Mediation Agreement shows the Trustee did not "pursue" and "exercise control" over the claim as the Baudin Defendants assert, but rather appears to do what the Baudin Defendants advised him to do even before the Baudin Defendants were retained by the Trustee.<sup>1</sup>

**THEREFORE, THE BAUDIN DEFENDANTS' ARGUMENT I IS IN OPPOSITE TO THE UNCONTESTED FACTS HEREIN AND AS SUCH SHOULD BE DENIED.**

**II PLAINTIFFS' RESPONSE TO THE BAUDIN DEFENDANTS' (SECOND) ARGUMENT IS DISMISSAL OF COUNT I and II IS NOT WARRANTED PURSUANT TO 735 ILCS 5/2-619(a)(5) and 735 ILCS 5/13-214.3 BASED ON THE STATUTES OF LIMITATIONS AND REPOSE.**

13. On 10/25/2019 the Clinton Law office issued a subpoena to Olsen<sup>2</sup>

14. On 12/2/2019 Olsen responded to the Clinton subpoena and emailed documents<sup>3</sup>

15. On 2/10/2020 Clinton sent Dulberg Olsen's response to the subpoena. Dulberg noticed the following emails between Olsen and Randall Baudin:

On October 31, 2016 at 10:41 AM Olsen <jolsenlaw@comcast.net> wrote: Randy- The Court authorized your appointment this morning, as well as entry into that "Binding Mediation Agreement"; Do you want the debtor to /s/ the form, or me as trustee? Let me know, thanks.

On October 31, 2016 at 10:50 AM Randy Baudin II <randybaudin2@gmail.com> responded: "You can good ahead sign it. Thank you so much." (Exhibit 9 to Plaintiff's Complaint)

When Dulberg read Baudin tell Olsen to sign the proposed Binding Mediation Agreement, this seemed reasonable to Dulberg since Dulberg was told by the Baudin Defendants that it was the Bankruptcy Judge, who forced Dulberg's personal injury case into the Binding Mediation Agreement and it was Olsen who had standing and was approved to enter into Binding Mediation. Dulberg assumed Olsen signed the Binding Mediation Agreement from the conversation and the resulting Binding Mediation that took place on 12/8/2016 at ADR SYSTEMS OF AMERICA, LLC. However, this exchange shows something entirely different:

- a. Trustee Olsen is asking Baudin if Baudin wants the asset/claim to revert back to the DEBTOR or remain part of the ESTATE by asking "Do you want the debtor to /s/ the form, or me as trustee?"<sup>6,7</sup>

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1. Plaintiffs Exhibit 6a  
2. (Exhibit 1)  
3. (Exhibit 2)

b. Baudin's response is, "You can good ahead sign it."<sup>6,7</sup> meaning the ESTATE.

In fact:

- a) The executed Binding Mediation Agreement<sup>5</sup> does not have Trustee Olsen's signature.
- b) Trustee Olsen did not act and sign the proposed Binding Mediation Agreement<sup>6</sup> against the advice of "special counsel"<sup>1</sup>, the Baudin Defendants'.
- c) On 10/31/2016, The Baudin Defendants' were authorized "to pursue"<sup>1</sup> as "special counsel"<sup>1</sup> the personal injury litigation but the Baudin Defendants' were not authorized to "enter into"<sup>2</sup> the proposed Binding Mediation Agreement<sup>6</sup> and have been pursuing the personal injury litigation since 11/6/2015 and already had an agreement with Defendant Allstate to enter into Binding Mediation by 8/10/2016<sup>8</sup>, in violation of the automatic stay
- d) Trustee Olsen did not "enter into"<sup>2</sup> Binding Mediation.
- e) Trustee Olsen did not "pursue"<sup>3</sup> and "exercise control"<sup>3</sup> over the claim as the Baudin Defendants assert.
- f) The personal injury asset is abandoned by Trustee Olsen.
- g) Abandoned assets revert back to the DEBTOR.
- h) The DEBTOR was represented by attorney David Stretch<sup>4</sup> and not the Baudin Defendants.
- i) The Baudin Defendants were approved and hired as "Special Counsel"<sup>1</sup> for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.
- j) The only party with standing over abandoned assets is now the DEBTOR.
- k) The signature page on the executed Binding Mediation Agreement<sup>5</sup> does not belong to the other pages in the executed Binding Mediation Agreement<sup>5</sup> and is an exact match to the signature page in the proposed Binding Mediation Agreement<sup>6</sup>.
- l) ADR SYSTEMS OF AMERICA, LLC. facilitated fraud by failing to take the necessary steps to ensure the signers had standing.
- m) Trustee Olsen and the Baudins collected the monies paid out by Allstate after ABANDONING the ASSET that reverted back to the DEBTOR.

16. On 9/26/2022 Dulberg received the 10/31/2016 Bankruptcy Courts Report of Proceeding<sup>9</sup>.

Dulberg forwarded the report of proceeding<sup>9</sup> to his attorney Alphonse Talarico stating, "Lets talk

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1. Plaintiffs Complaint Exhibit 7  
2. Plaintiffs Complaint Exhibit 8  
3. Defendants MTD Page 8

4. Case 14-83578 Doc 1 Page 35  
5. Plaintiffs Complaint Exhibit 11  
6. Plaintiffs Complaint Exhibit 6B

7. Plaintiffs Complaint Exhibit 9  
8. Group Exhibit A  
9. Plaintiffs Complaint Exhibit 6A

after you digest what happened in this one.” Dulberg discovered that Trustee Olsen misled the Honorable Judge Thomas M. Lynch in the transcript.<sup>4,5,6</sup>

17. On 10/28/2022 Dulberg received a copy of the executed Binding Mediation Agreement<sup>2</sup> on file with ADR SYSTEMS OF AMERICA, LLC. expecting to see the Trustee Olsens’ signature. Instead Dulberg saw his own signature on the executed Binding Mediation Agreement<sup>2</sup> and he knew he never signed the Binding Mediation Agreement. This is when Dulberg first knew:

- a) Dulberg’s signature is on the executed Binding Mediation Agreement<sup>2</sup> on file with ADR SYSTEMS OF AMERICA, LLC. and Dulberg knew he refused to sign the contract and did not sign the contract. (Discovered on 10/28/2022)
- b) Trustee Olsen misled the bankruptcy Judge, “There may be some issues about the debtor being a good witness or not”<sup>1</sup>, “he didn’t seem to want to go through a jury process”<sup>1</sup>, “he liked this process”<sup>1</sup> basically that Dulberg was in agreement with the proposed Binding Mediation Agreement<sup>3</sup> (Discovered on 9/26/2022)

18. On 10/28/2022 Dulberg launched a full scale investigation into the signature’s found in the executed Binding Mediation Agreement<sup>2</sup> and quickly found that the signature page does not belong to the rest of the body of the executed Binding Mediation Agreement<sup>2</sup> but is an exact match to the proposed Binding Mediation Agreement<sup>3</sup> approved by the Bankruptcy court.

19. Dulberg believes this satisfies the ***Discovery Rule*** and this discovery on 10/28/2022 is when the statute of limitations should be tolled to. Dulberg first learned that (a) his signature was fraudulently placed on the executed Binding Mediation Agreement<sup>2</sup> (Discovered on 10/28/2022) and (b) the Bankruptcy Trustee misrepresented Dulberg’s consent to the Bankruptcy Judge<sup>1</sup> (discovered on 9/26/2022) and Dulberg believes the discovery of his signature on the executed Binding Mediation Agreement<sup>2</sup> is when the statute of limitations should be tolled to.

20. In order to understand the context of Dulberg’s 12/12/2016 statement “Yeah, you two did good, real good, and I thank both of you sincerely. I just can’t help it, what I see here is a gift of \$261,000 given to those responsible for my injuries.” it is important to know the history behind it.

- a. On 1/22/2014 When Dulberg was represented by Hans Mast and the Law Offices of Thomas J. Popovich P.C., the co-defendants (McGuire) in 12LA178 were inexplicably dismissed with

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1. Plaintiffs Complaint Exhibit 6A	4. (Exhibit 3)
2. Plaintiffs Complaint Exhibit 11	5. (Exhibit 4)
3. Plaintiffs Complaint Exhibit 6B	6. (Exhibit 5)



prejudice even though the McGuire's clearly employed their son/step-son Gagnon and were vicariously liable for anything Gagnon could not pay.

- b.** On 12/12/2016 When Dulberg learned of the Binding Mediation Award and how much he could not collect, his mind instantly went back to the dismissed defendants (McGuire's) that would have been vicariously liable for any monies Gagnon could not pay if they were still in the case. Dulberg realized the pecuniary injury the Popovich law firm caused. Dulberg talked with Randall Baudin II about the issue of the McGuire's release and Randall Baudin told Dulberg to call his office in the morning and his secretary Myrna would provide Dulberg with the contact of a Legal Malpractice Attorney the Baudins have used in the past and Dulberg could go see.
- c.** On 12/16/2016 Dulberg met with Thomas Gooch, the Legal Malpractice Attorney the Baudins recommended Dulberg see.
- d.** On 11/28/2017 Thomas Gooch filed suit (17LA377) against Hans Mast and the Law Offices of Thomas J. Popovich P.C for Legal Malpractice in 12LA178, specifically for the release of the McGuire defendants, that case is currently on appeal in the 2nd District Case No 2230072. Dulberg was clearly affixing the pecuniary injury of \$261,000.00 to the previous firm and the release of the McGuire defendants in his statement when making the 12/12/2016 statement.<sup>2,3</sup>

**21.** On 6/13/2016, in violation of the automatic stay, in the Circuit Court Allstate attorney Reddington stated that she and the Baudins are considering this case as a possible ADR candidate without Dulberg's knowledge or permission<sup>1</sup>. The Baudins were representing Dulberg in the Circuit Court without Dulberg having standing as plaintiff and the case under an automatic stay. Allstate attorney Reddington stated in the Circuit Court, "I have four motions up this morning. Plaintiff's attorney and I are working on the case to see if it's a possible ADR candidate. He asked that we get our motions entered and continued. They're for an IME." Allstate attorney Reddington also said, "And honestly, if I get a decision sooner, that -- well, I don't know if this is a case we -- we probably wouldn't be able to enter a dismissal order if we went to ADR until after the ADR was done."

(Group Exhibit A.1 Page 2 Lines 7-11 & Page 3 Lines 12-16)

**22.** On 7/20/2016 Plaintiff Dulberg sent a text message to Defendant W. Randall Baudin II stating, "...I will be moving forward with litigation at this time...I just cannot give up the protections of a

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1. (Group Exhibit A)

2. (Exhibit 6)

3. (Exhibit 7)

public trial with the possibility of review should something be handled wrongly...”

**23.** On 8/10/2016, in violation of the automatic stay, the Baudins and Reddington moved to enter into Binding Mediation on 8/10/2016, The date of the Binding Mediation hearing was already set for 12/8/2016 by the time the following exchange took place on 8/10/2016 in the Circuit Court:

“MS. REDDINGTON: Number one, Dulberg vs. Gagnon. Shoshan Reddington for the defendant. We have (indiscernible) scheduled for 12-8.

THE COURT: Okay.

MS. REDDINGTON: We’d like to have a status date after that date.

THE COURT: What date works for you? You said December 8?

MS. REDDINGTON: December 8.” (Group Exhibit A.4 Page 2 Lines 2-10)

**24.** On 8/10/2016, in violation of the automatic stay, Judge Meyer of the 22nd Circuit Court entered an ‘Agreed Order’ that stated “This case is continued on Motion of ‘by agreement’ to 12/12, 2016 at 9:00am for Status on binding Mediation.”. The order also stated “Defendants appear by attorney Reddington”. Reddington represented Allstate. The Baudins were not present. (Exhibit 9)

**25.** Allstate and the Baudins misrepresented Dulberg’s wishes to the Circuit Court and claimed they had an agreement to enter into binding mediation on 8/10/2016. Judge Meyer entered the order and pushed the next status date to 12/12/2016, which is 4 days after the scheduled binding mediation date of 12/8/2016. All this was done in violation of the automatic stay.

**26.** When on 12/12/2016 Dulberg told the Baudins, “Yeah, you two did good, real good, and I thank both of you sincerely. I just can’t help it, what I see here is a gift of \$261,000 given to those responsible for my injuries.”, he did not know about the fraudulent acts the Baudins were committing toward him. Dulberg did not know the following:

- (a) That Dulberg’s signature was fraudulently placed on the Executed Binding Mediation Agreement executed 4 days earlier on 12/8/2016.
- (b) That Trustee Olsen misrepresented Dulberg’s consent to the Bankruptcy Judge on 10/31/2016.
- (c) That Allstate, the Baudins and Trustee Olsen knew Dulberg had no standing to pursue the case 12LA178 while the case was under an automatic stay.
- (d) That Allstate, the Baudins and Trustee Olsen all knew the case 12LA178 proceeded in the

Circuit Court in violation of the automatic stay.

- (e) That the Baudins by agreement with Allstate, in violation of the automatic stay, before the Baudins were approved to be hired as special counsel under Trustee Olsen, misrepresented Dulberg as agreeing to Binding Mediation in Circuit Court on 8/10/2016 and asked Associate Judge Meyer to delay the next status hearing to 12/12/2016 after the Binding Mediation was to take place on 12/8/2016.
- (f) That the Baudins' and Allstate's acts in violation of the automatic stay, started laying the groundwork as early as 6/13/2016 and finally set the Binding Mediation date for 12/8/2016 on 8/10/2016 in the Circuit Court. This happened before Trustee Olsen was appointed to the position on 8/31/2016 and before Trustee Olsen received permission from the Honorable Judge Thomas M. Lynch, to hire the Baudins' as special counsel and permission to enter into the proposed capped Binding Mediation Agreement on 10/31/2016.
- (g) That the Baudins filed their APPEARANCE as REGULAR COUNSEL in 12LA178 on 11/6/2015 in violation of the automatic stay.
- (h) That there is no APPEARANCE filed by the Baudin Defendants that is not VOID in case 12LA178.
- (i) That the Baudin Defendants' failed to file an APPEARANCE to represent the bankruptcy estate in case 12LA178 after being hired as special counsel by Trustee Olsen.
- (j) That Trustee Olsen received permission from the Bankruptcy court to enter into the proposed Binding Mediation Agreement and later made a choice and Trustee Olsen did not act and sign on the advice of his special counsel the Baudins.
- (k) That Trustee Olsen did not "pursue" and "exercise control" over the claim/asset and in doing so abandoned the asset and it reverted back to the DEBTOR.
- (l) The Baudin Defendants were approved and hired as Special Counsel for the Estate and in such a capacity had no standing to execute a Binding Mediation Agreement for the DEBTOR.
- (m) The only party with standing over abandoned assets is the DEBTOR.
- (n) That there can be no agreement between Allstate and the Baudin Defendants acting as counsel for the bankruptcy estate to have the case dismissed with prejudice in the circuit court on

12/12/2016 since the Baudins failed to file any appearance anywhere that is not void and had no standing since they did not represent the DEBTOR.

- (o) Trustee Olsen and the Baudins collected the monies paid out by Allstate after abandoning the asset that then reverted back to the DEBTOR.

27. Dulberg did not know any of this fraud took place when awarded \$660,000 in the capped Binding Mediation but Allstate, Trustee Olsen and the Baudins knew<sup>1</sup>. At that time Dulberg believed that the Bankruptcy Judge forced the case into a capped Binding Mediation without Dulberg's consent because that is what the Baudins told Dulberg. Dulberg stating "Yeah, you two did good, real good, and I thank both of you sincerely. I just can't help it, what I see here is a gift of \$261,000 given to those responsible for my injuries." just after learning of the capped Binding Mediation Award and that cannot be interpreted as Dulberg knowing about the fraudulent concealment listed as (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o) at that time. He was unhappy about not being able to collect all that he was awarded, but that does not mean he knew or could have known about the fraudulent concealment listed as (a) through (o) (from paragraph 26).

28. The Olsen Defendants, the Baudin Defendants, and Allstate Defendants have been alleged to have committed fraudulent actions and the limitations periods do not begin until the fraud is discovered pursuant to the *discovery rule* [emphasis added] said fraudulent activities were discovered on 10/28/2022 when Defendant ADR SYSTEMS OF AMERICA, LLC. submitted its file copy of the Binding Mediation Agreement allegedly executed on 12/8/2016 and Plaintiff Dulberg found his signature on a document he never signed. Dulberg was told he had no standing to sign as the only person given authority to enter into the capped Binding Mediation Agreement by order of the Honorable Thomas M. Lynch was Bankruptcy Trustee Olsen on 10/31/2016.

29. The Statute of Limitations for fraud is 5 years as follows: (Exhibit 11)

30. The Baudin Defendants incorrectly claim that the relevant Statue of Limitation is 735 ILCS 5/13-214.3(b) but the relevant Statute is the Statute of Repose found at 735 ILCS 5/13-214.3(c) because the Plaintiffs' lawsuit was filed on 12/8/2022 which was within 6 years from the arbitration hearing date of 12/8/2016.

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1. Defendants MTD Exhibit B

**31.** In the recent decision of the Illinois Supreme Court in SUBURBAN REAL ESTATE SERVICES, INC., et. al, Appellees, v. WILLIAM ROGER CARLSON JR. et al, Appellants.2022 IL 126935 the Illinois Supreme Court made it clear (and therefore the Law of Illinois) that there is a requirement that pecuniary loss be suffered by Plaintiff (contrary to the current statute based upon what Plaintiffs knew or should have known) before the Statute begins to run when it stated:

“¶ 1 In this case, we consider whether a legal malpractice claim was barred by the two-year statute of limitations in section 13-214.3(b) of the Code of Civil Procedure (735ILCS 5/13-214.3(b) (West 2016)). The Cook County circuit court found that the limitations period on the claim had expired because plaintiffs’ payment of attorney fees to new counsel constituted an injury triggering the statute. The appellate court reversed, finding that no realized injury that would trigger the limitations period existed until there was an adverse judgment in the underlying action. 2020 IL App (1st) 191953. For the following reasons, we affirm the appellate court’s judgment.”

**32.** There are facts which remove this case from the 2 year statute of limitations period advanced by the Baudin Defendants, 735 ILCS 5/13-214.3(b) and into 735 ILCS 5/13-214.3(e) because Plaintiff Paul R. Dulberg was found permanently and fully disabled as of 6/28/2011, which is also his current status, by the Social Security Administration of the United States.<sup>1,2,3</sup>

### **DULBERG IS DISABLED**

**33.** Dulberg is permanently and fully disabled as of 6/28/2011 as a result of the accident as Administrative Law Judge Lovert F. Bassett of the SSA Office of Disability Adjudication and Review in Evanston, Illinois stated, “I found you disabled as of June 28, 2011 because your impairment or combination of impairments is so severe that you cannot perform any work existing in significant numbers in the national economy.” Dulberg received a life threatening injury on 6/28/2011 by being struck by a chainsaw on his dominant right arm. It was in seeking recovery for this injury that the Baudins were originally retained by Dulberg. The Judge erred in dismissing with prejudice when he could have asked for more proof.

**34.** On 4/4/2016 Dr Kujawa authored a letter addressed to Kelly Baudin in part stating:

“As a result of the accident Mr. Dulberg sustained on June 28, 2011, he has lost all fine and gross motor skills in his right hand. Indeed, it is still my opinion that due to the severing of muscles

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1. (Exhibit 12)

2. (Exhibit 15)

3. (Exhibit 16)

and nerves in this limb, he continues to be left with pain and involuntary muscle spasms”, “I have not changed my opinion from the original deposition in 2014 that Mr. Dulberg will continue to need medications to treat his neuropathic pain indefinitely. He will also continue to need periodic physical therapy sessions and we may also revisit both Botox injections in the future. Essentially, there has been no change in his examination due to the trauma in his right hand. There has been some improvement in his pain syndrome with gabapentin; however, his pain is by no means resolved with this agent”, “Since Mr. Dulberg’s injury is indeed permanent with almost a complete loss of gross and fine motor control of his right hand, his injuries will not allow any employment for the rest of his life”, “Your inquiry concerning increased risks or long-term affects of his condition is unclear. ... the psychologic and social impact of his inability to work certainly will permanently effect the quality for the rest of his life.”, “Concerning my prognosis with respect lo his injuries, it is very poor. His motor function in the right hand will not improve and he will be left with permanent pain in his right lower arm. Unfortunately, Mr. Dulberg is permanently disabled from any meaningful employment due to this tragic accident on June 28, 2011.”

(Exhibit 13)

35. Even though Baudin’s knowledge of Dulberg’s permanent disability is not needed, the 4/4/2016 Dr. Kujawa letter to Kelly Baudin is proof positive that the Baudins were informed that Dulberg was disabled as of 6/28/2011 and that that disability is permanent.

36. Plaintiff Paul R. Dulberg is also classified by the Illinois Secretary of State to have a class 2A disability as a result of the injuries that occurred on 6/28/2011. A class 2A disability is defined as follows: (Exhibit 14)

**THEREFORE, THE BAUDIN DEFENDANTS’ ARGUMENT 2 FAILS BECAUSE PLAINTIFFS DID NOT VIOLATE 735 ILCS 5/13-214.3 AND AS SUCH SHOULD BE DENIED.**

### **III THE BAUDIN DEFENDANTS’ (THIRD) ARGUMENT FOR MULTIPLE REASONS FAILS FOR THE FOLLOWING REASONS.**

37. Baudin Defendants state: “Plaintiff purports to have sued not only in his individual capacity, but on behalf of the Paul R. Dulberg Revocable Trust, Plaintiff makes no allegation as to how he has the power to act for the Trust, how the Baudin Defendants owed or breached any duty to the

Trust, any damages sustained by the Trust” This is false because:

- a. Plaintiff Paul R Dulberg and the PAUL R. DULBERG REVOCABLE TRUST are both taxed under the same social security number and are legally the same entity.<sup>1</sup>
- b. Paul R. Dulberg is one of two full trustees of the PAUL R. DULBERG REVOCABLE TRUST.<sup>1</sup>
- c. The instant case is an asset of both Plaintiff Paul R Dulberg and the PAUL R. DULBERG REVOCABLE TRUST.<sup>1</sup>

38. Baudin Defendants state: “Plaintiff improperly prays for relief in the form of, among other items, prejudgment interest and attorney’s fees.” This is false because:

- a. The underlying case 12LA178 is a personal injury case and any award does qualify for prejudgement interest, non statutory attorneys fees and costs under 735 ILCS 5/2-1303.

**THEREFORE, THE BAUDIN DEFENDANTS’ ARGUMENT III FAILS BECAUSE PLAINTIFFS’ ARE THE SAME ENTITY AND THE UNDERLYING CASE IS PERSONAL INJURY THAT PROPERLY FALLS WITHIN 735 ILCS 5/2-1303 DENIED.**

WHEREFORE, Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST prays that this Honorable Court deny the BAUDIN DEFENDANTS 735 ILCS 5/2-619.1 Motion in its entirety or to permit or require pleading over or amending pursuant to 735 ILCS 5/2-615(d).

Respectfully submitted, this 23rd day of June 2023 By: /s/ Alphonse A. Talarico

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Attorney for Plaintiffs: Plaintiffs PAUL R. DULBERG, INDIVIDUALLY AND THE PAUL R. DULBERG REVOCABLE TRUST

VERIFICATION BY CERTIFICATION PURSUANT TO SECTION 1-109

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Paul R. Dulberg  
Paul R. Dulberg

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1. (Group Exhibit B)