

IN THE SUPREME COURT OF OHIO

DONALD C. HUTCHINS, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 COMPLIENT CORPORATION, )  
 )  
 Appellee. )

Case Number 2006-2190  
On Appeal from the Cuyahoga County  
Court of Appeals, Eighth Appellate District  
Court of Appeals  
Case No. 06087822

---

APPELLEE'S CORRECTED MEMORANDUM IN OPPOSITION TO JURISDICTION

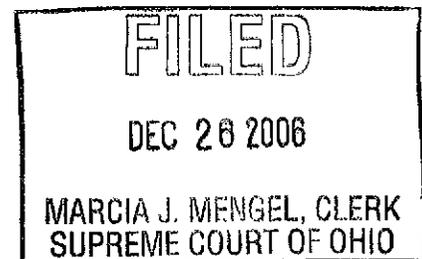
---

Donald C. Hutchins  
1047 Longmeadow Street  
Longmeadow, Massachusetts 01106  
(413) 567-0606  
(413) 739-4060 (fax)

*Pro Se*

William E. Coughlin (0010874)  
Colleen Moran O'Neil (0066576)  
Jeffrey J. Lauderdale (0074859)  
CALFEE, HALTER & GRISWOLD LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, Ohio 44114  
(216) 622-8200  
(216) 241-0816 (fax)  
wcoughlin@calfee.com  
coneil@calfee.com  
jlauderdale@calfee.com

Attorneys for Appellee



**I. LEAVE TO APPEAL SHOULD NOT BE GRANTED BECAUSE THIS CASE INVOLVES NEITHER A SUBSTANTIAL CONSTITUTIONAL QUESTION NOR ISSUES OF PUBLIC OR GREAT GENERAL INTEREST.**

This is the second time in seven months that Appellant has sought the jurisdiction of this Court over the same contractual dispute.<sup>1</sup> The Court declined jurisdiction over Appellant's claims in this case in August, 2006 and nothing has changed since that decision to warrant the jurisdiction of this Court.

For nearly six years, Appellant has engaged in repeated litigation with Appellee (and persons or entities associated with Appellee) regarding the same core issue: the respective obligations of the parties to a License Agreement entered into in June, 1994 by and among, Appellant, his company, CPR Prompt LLC, and an entity related to Appellee. Indeed, Appellee has been a party to six cases relating to this issue. The Ohio and Massachusetts Courts that have presided over these actions have repeatedly rejected Appellant's claims, yet Appellant persists in his unrelenting quest to find a court that will agree with his untenable positions.<sup>2</sup> This appeal is but another of such pursuits.

Appellant's Memorandum in Support of Jurisdiction (the "Memorandum") is replete with complaints about the Court of Appeals' alleged failures to address Appellant's complaints about the underlying judgment. Given that the Court of Appeals did not accept jurisdiction, it, of course, made no determination as to the substance (or lack thereof) of the myriad of issues he raises here. The Court of Appeals initially declined jurisdiction over the appeal because, at the time Appellant filed his Notice of Appeal to the Eighth District, this case was pending before the

---

<sup>1</sup> Appellant filed his first Notice of Appeal and Memorandum in Support of Jurisdiction arising out of the same underlying case on April 14, 2006. See Ohio Supreme Court Case No. 2006-0741. This Court denied jurisdiction over Appellant's first appeal on August 2, 2006.

<sup>2</sup> Appellant has even petitioned for a writ of certiorari to the United States Supreme Court.

United States District Court for the Northern District of Ohio due to an ill-conceived Notice of Removal filed by Appellant. As a result, the Eighth District Court of Appeals could not exercise jurisdiction over this case and dismissed the appeal. The Northern District of Ohio then, correctly, remanded the case, and Appellant filed a Motion for Reconsideration in the Eighth District. The Eighth District denied that Motion because Appellant's Notice of Appeal, filed on October 17, 2006, requested relief from a decision dated June 15, 2006 and, accordingly, was untimely.

The Court of Appeals correctly dismissed Appellant's Notice of Appeal on the grounds that, as explained above, it did not have jurisdiction over the case and because the Notice of Appeal was untimely. Specifically, on September 30, 2005, the trial court issued a final judgment on all claims as to Appellant's liability and awarded compensatory and punitive damages to Appellee. Appellant did not endeavor to appeal this judgment until nearly five months later. That appeal was dismissed. Subsequently, on June 15, 2006, the trial court issued an additional award of punitive damages upon Appellee's Motion for the attorneys' fees portion of the punitive damages award entered on September 30, 2005. Appellant did not file any Notice of Appeal of that judgment until October 17, 2006 -- approximately four months later. Accordingly, Appellants' Notice of Appeal was indisputably untimely pursuant to Rule 4 of the Ohio Rules of Appellate Procedure.

Appellant raises thirteen alleged issues in his Memorandum upon which he claims the jurisdiction of this Court is warranted. None of these issues, however, rises to the level of a "substantial constitutional question," or an issue of "great public or general interest." Instead, the issues Appellant raises amount to nothing more than dissatisfaction with the underlying judgment.

In the underlying Complaint, Appellee asserted claims against Appellant and his company, CPR Prompt, for declaratory judgment and against Appellant only for tortious interference with contract and abuse of process. Default judgment was entered against CPR Prompt Corporation on January 26, 2005. Appellant is the founder and president of CPR Prompt Corporation and, for the second time, he attempted to represent his corporation *pro se* in litigation before an Ohio Court. Despite being repeatedly advised of the potential ramifications under Ohio law of a corporation proceeding *pro se*, Appellant and CPR Prompt persisted in their refusal to retain counsel for the corporation and a declaratory judgment was entered. Thereafter, Appellee filed a Motion for Summary Judgment against Appellant; he opposed it; and summary judgment was entered in Appellee's favor on August 24, 2005. A damages trial was conducted by the Common Pleas Court on September 25, 2005, and, despite receiving notice of the trial, Appellant failed to appear, and the trial Court entered final judgment against him. Appellant did not appeal that decision until five months later. In June of 2006, upon Appellee's Motion, the trial Court, after an evidentiary hearing at which Appellant appeared and submitted evidence, the Court entered an award of attorneys' fees in favor of Appellee in keeping with the trial court's award of punitive damages entered on September 30, 2005.

Appellants' first two bases for invoking this Court's jurisdiction appear to be his efforts to convince this Court that "substantial constitutional questions" exist and that the Fifth and Fourteenth Amendments to the United States Constitution were somehow violated. Appellant claims, without any support whatsoever, that the Common Pleas Court "impose[d] its jurisdiction" over a case pending in the Massachusetts District Court in alleged violation of the due process clause. The Common Pleas Court took no such action. Appellant further inquires whether a state violates the Fifth Amendment where it "deprives" a citizen of another state of his

property “without due process of law.” Again, Appellant fails to provide any legal bases or analysis of this alleged issue and no such taking or deprivation of property occurred here. What transpired below is that Appellant and his company refused to follow Ohio law and Appellant was found to have engaged in tortious conduct with respect to Appellee. As a result, final judgments were entered against them. The fact that Appellant was found liable for engaging in tortious conduct does not constitute a “substantial constitutional question” that warrants this Court’s jurisdiction.

The remaining eleven issues which Appellant raises are, simply put, nothing more than disagreements with the Common Pleas Court’s application of Ohio law and the Court of Appeals’ decision to decline jurisdiction. While Appellee submits that there is absolutely no merit whatsoever to Appellant’s laundry list of issues, even if these issues were present here, they do not amount to issues of “great public or general interest.” For example, whether a party met its burden on summary judgment, whether one defendant is in privity with another, and joint and several damages do not rise to the level of interest to warrant this Court’s jurisdiction.

Given that Appellant’s claim of a constitutional question and issues of great public interest in this case are, in reality, yet another attempt to argue in opposition to Appellee’s Motion for Summary Judgment, the exercise of jurisdiction by this Court is not warranted. Accordingly, Appellee respectfully submits that this Court should decline jurisdiction of this appeal.

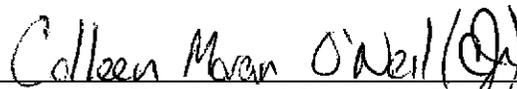
## **II. APPELLEES’ POSITION REGARDING APPELLANT’S PROPOSITIONS OF LAW.**

Appellant does not assert any Propositions of Law to which Appellee may respond.

### III. CONCLUSION

Given Appellant's failure to establish a constitutional question or issue of great public interest to warrant the jurisdiction of this Court, Appellee respectfully submits that the Court should decline to exercise jurisdiction in this case.

Respectfully submitted,



WILLIAM E. COUGHLIN (0010874)  
COLLEEN MORAN O'NEIL (0066756)  
JEFFREY J. LAUDERDALE (0074859)  
CALFEE, HALTER & GRISWOLD LLP  
1400 McDonald Investment Center  
800 Superior Avenue  
Cleveland, Ohio 44114  
(216) 622-8200  
(216) 241-0816  
wcoughlin@calfee.com  
coneil@calfee.com  
jlauderdale@calfee.com

Attorneys for Appellee, Compliant  
Corporation

**CERTIFICATE OF SERVICE**

A copy of the foregoing Appellees' Corrected Memorandum in Opposition to Jurisdiction was served on this 27<sup>th</sup> day of December, 2006 via U.S. Mail, postage prepaid, upon Donald C. Hutchins, 1047 Longmeadow Street, Longmeadow, Massachusetts 01106

Colleen Moran O'Neil (C)  
One of the Attorneys for Appellee