

IN THE SUPREME COURT OF OHIO

CHARLES D. ABOOD, JUDGE, : **Case No. 2006-1913**
Appellant, : **On Appeal from the Lucas County**
-vs- : **Court of Appeals, Sixth Appellate**
 : **District**
A.J. BORKOWSKI, JR., :
Appellee. :

ANSWER MERIT BRIEF OF APPELLEE A.J. BORKOWSKI, JR.

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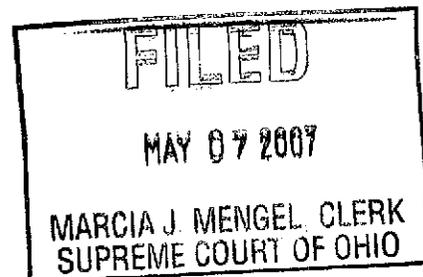


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STATEMENT OF FACTS

On December 5, 2001, the Plaintiffs in the ¹Fulton County Court of Common Pleas Case No. 01CV000274 filed a case to quiet title for designated real property.

Effective April 1, 2002, Fremont Investment and Loan sold or transferred its servicing rights of a first mortgage loan (#5000029429) to Fairbanks Capital Corp. and from on or after April 4, 2002 until August 23, 2005, it or their legal counsel has pursued a protracted pattern of frivolous conduct in violation of R.C. 2323.51 and other applicable legal provisions by preparing and filing of each pleading or motion that this Court and the underlying courts decided after April 1, 2002 and by preparing and filing of filings to either appeal or respond to matters on appeal from each of those decisions in order to solely harass the Appellee Borkowski. (Appx. P. 1-2). (See, appearance docket maintained at <http://mail.fultoncountyoh.com/pa/pa.urd/PAMW6530>).

On June 4, 2002, in the Fulton County Court of Common Pleas Case No. 01-CV000274, Appellee Borkowski filed an Amended Answer and Cross-Complaint against Plaintiffs in that action. (Appx. P. 70-85). On June 12, 2002, the Fulton County Court of Common Pleas filed a Pretrial Order in the Fulton County Court of Common Pleas Case No. 01CV-000274. (Appx. P. 86). On July 17, 2002, in the Fulton County Court of Common Pleas Case No. 01CV-000274, Appellee filed a Supplemental Answer, Counterclaims and Cross-Complaint against Co-Defendant Fremont Investment & Loan and an Affidavit in Support of Supplemental Answer and Cross-Complaint to Co-Defendant Fremont Investment & Loan. (Appx. P. 97-115). On August 2, 2002 Co-Defendant Fremont Investment & Loan filed a

¹ All documents which have been submitted with this merit brief to this Honorable Court are necessary to determine the questions presented herein by Appellant for review and are related to the issues raised herein by Appellant in his merit brief (see Appellant's merit brief of April 20, 2007 at pages 1-3 wherein he briefly discusses the cases set forth in this answer merit brief).

Motion to Strike/Dismiss Cross-Claim of A.J. Borkowski Against Fremont Investment and Loan not Plaintiffs. (Appx. P. 116-118). On March 3, 2003, in the Fulton County Court of Common Pleas Case No. 01CV000274, the Court issued a judgment entry and order on motions and among other things granted Fremont Investment & Loan's Motion to Strike/Dismiss Cross-Claim filed by Appellee on July 17, 2002, subsequently denied Fremont motion to strike Appellee's motion for leave to file Answer to cross-claim and granted Appellee A.J. Borkowski, Jr. Motion to vacate improper service by publication. (Appx. P. 119-120). This returns the case to day one the, therefor Appellee's Amended Answer and Cross-Complaint against Plaintiffs was lawfully filed.

At a Pretrial Conference on June 12, 2002, the Fulton County Court of Common Pleas addressed Appellee's June 4, 2002 Amended Answer and Cross-Complaint (Appx. P. 70-85) which was filed against Plaintiffs in that action. The Court made no determination about the merits of those claims, or whether to permit Appellee leave to file an amended answer and cross-complaint (Appx. P. 70-85). By agreement of the parties, the Court granted Plaintiffs and Co-Defendants two weeks time in which to review the Amended Answer and cross-complaint and file a response to it (Appx. P. 87-96) see pages 88 and 89. Neither Plaintiffs nor the Co-Defendants responded to Appellee's Amended Answer and Cross-Complaint within the two-week time period as agreed by the parties at the Pretrial Conference. *Id.*

As set forth below, on January 27, 2004, Appellee filed a motion for summary judgment on his valid cross-complaint (Appx. P. 16-17). As the Fulton County Court of Common Pleas ruled in its Pretrial Order for Case No. 01CV-000274, ordering a trial by jury, discovery, etc., to take place, Appellee submits that no further action has been taken on Appellee's requested actions in Case No. 01CV-000274 with regards to his Amended Answer

and Cross-Complaint by the underlying assigned judges. In fact, no judge ruled on the merits of the Amended Answer and Cross-Complaint before March 3, 2005, when the Chief Justice assigned Appellant Judge Abood to conduct any further proceedings for any cases including Fulton County Court of Common Pleas Case No. 01CV-000274 in which Appellee is a party. Id.

On December 4, 2003, Appellee Borkowski filed an Affidavit of Disqualification against Judge Robert C. Pollex, in the Ohio Supreme Court. On December 5, 2003, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Common Pleas Case No. 01-CV-000274, the Honorable Judge Robert C. Pollex, presiding by assignment as Visiting Judge, issued an Order on Pending Motions and Judgment Entry. (Appx. P. 3-7). On December 15, 2003, the Ohio Supreme Court issued an Entry in Supreme Court No. 03AP-111, denying Appellee affidavit of disqualification and permitted the case to proceed before Judge Pollex. (Appx. P. 8-9).

On January 7, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Common Pleas Case No. 01-CV-000274, the Honorable Judge Robert C. Pollex, presiding by assignment as Visiting Judge, issued an Order granting Appellee's Motion to Vacate the Order on Pending Motions and Judgment Entry of December 5, 2003. (Appx. P. 14-15). On January 27, 2004, Appellee Borkowski filed and served a copy of his Motion for Summary Judgment on his June 4, 2002 Cross-claim on all counsel of record including Attorney John S. Shaffer in the Fulton County Court of Common Case No. 01CV000274. (Appx. P. 16-17). Appellee asserted several claims in that complaint and "sought relief" against Attorney Shaffer's ethical misconduct made by him as a result of the July 22, 1999, fraudulent power of attorney. Id., also

see, *Disciplinary Counsel v. Shaffer*, 98 Ohio St. 3d 342, 2003-Ohio-1008, judgment for Disciplinary Counsel and costs assessed to Attorney Shaffer's.

On February 20, 2004, Fremont Investment and Loan sold or transferred its servicing rights of a first mortgage loan (#5000029429) to U.S. Bank that it had previously sold to Fairbanks Capital Corp. as set forth in paragraph one of this brief and from on or after April 4, 2002 until August 23, 2005, it or their legal counsel has pursued a protracted pattern of frivolous conduct in violation of R.C. 2323.51 and other applicable legal provisions by preparing and filing of each pleading or motion that this Court and the underlying courts decided after April 1, 2002 and by preparing and filing of filings to either appeal or respond to matters on appeal from each of those decisions in order to solely harass the Appellee Borkowski. (Appx. P. 1-2 & 18-21).

On February 27, 2004, the Honorable James E. Barber disqualified himself from the underlying cases and on or about March 28, 2004, Appellant Judge Abood was assigned to Case Nos. 03CV000330, 04CV0000018 & 04CV000091 (04JA1020). (Appx. P. 22-23).

On March 15, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Common Pleas Case No. 01-CV-000274, the Honorable Judge Robert C. Pollex, presiding by assignment as Visiting Judge, issued an Order on Pending Motions and Judgment Entry without re-writing the December 5, 2003 order that he had vacated on January 7, 2004. (Appx. P. 24-28).

In that Order, Judge Pollex asserts that "***Defendants, Jennifer Borkowski and Fremont Investment and Loan, each filed a motion to reinstate the judgment entry of December 5, 2003; that entry was vacated for lack of jurisdiction pending Mr. Borkowski's motion to disqualify filed with the Supreme Court of Ohio; following the denial of the motion to

disqualify and the restoration of this Court's jurisdiction, Mr. Borkowski filed a notice of appeal of the December 5, 2003 judgment entry; Mr. Borkowski's appeal was dismissed by the Court of Appeals; With authority to proceed, this Court finds the motions for reinstatement well taken and that they must be granted.***" Id.

On March 15, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Common Pleas Case No. 01-CV-000274, the Honorable Judge Robert C. Pollex, presiding by assignment as Visiting Judge, issued an Order on the Motions for Summary Judgment against, A.J. Borkowski, Jr., by Plaintiffs, and Defendants, Fremont Investment & Loan (whom lost their standing to challenge the validity of Borkowski's claims in the case in effective April 1, 2002/February of 2004 because it did not have first mortgage on the property located at 13613 State Route 66, Fayette, Ohio 43521 as Fremont sold the mortgage to Fairbanks Capital Corp. effective April 1, 2002 and later to U.S. Bank effective February 20, 2004 but did not transfer it to U.S. Bank until February 20, 2004) and Jennifer M. Borkowski (whom disclaimed her interest in the subject real property on March 14, 2007, in Fulton County Case Nos. 01CV000274, 03CV000330, & 04CV000018 before the Honorable Judge Richard Markus presiding by assignment of the Ohio Supreme Court), and on the basis of the Order and Judgment Entry filed on December 5, 2003 that was not re-written and had been vacated by previous order on January 7, 2004 by the Honorable Judge Pollex. (Appx. P. 29-33).

In that Order, Judge Pollex ordered and granted a party who did not retain standings in the case and as set forth above who had pursued a protracted pattern of frivolous conduct in violation of R.C. 2323.51 and other applicable legal provisions since April 1, 2002 "judgment in the amount of *** (\$450.00) against Defendant, A.J. Borkowski for sanctions *** that title

and possession of the Plaintiffs, William K. Humbert and Brenda Humbert, in and to the following described real estate be and the same is hereby quieted against A.J. Borkowski****.”

As set forth above, Fremont Investment and Loan sold or transferred its servicing rights of a first mortgage loan (#5000029429) to U.S. Bank on February 20, 2004 it or their legal counsel has pursued a protracted pattern of frivolous conduct in violation of R.C. 2323.51 and other applicable legal provisions by preparing and filing of each pleading or motion that this Court and the underlying courts decided after February 20, 2004 and by preparing and filing of filings to either appeal or respond to matters on appeal from each of those decisions in order to solely harass the Appellee Borkowski. (Appx. P. 1-2 & 18-21).

Consequently, U.S. Bank lacked standing to bring a foreclosure case on December 23, 2003 because Defendant Fremont fraudulently claimed to have a first mortgage on the property located at 13613 State Route 66, Fayette, Ohio 43521 at that time when indeed it had transfer or sold it to Fairbanks Capital Corp, effective April 1, 2002 and the judgment(s) that awarded title to the property to Jennifer Borkowski, the judgment that granted summary judgment in favor of U.S. Bank in the foreclosure case on March 3, 2005 and subsequent orders are void for the preceding reasons; and Borkowski has a clear legal right to pursue the issue of ownership of the real property pursuant to the Fulton County Court of Common Pleas Order of March 14, 2007, granting Borkowski leave to file documents for the probate of Bertha Borkowski Stewart’s estate as his interests in the subject real property or rights are legally protected by the Last Will and Testament executed in 1993, by Bertha Borkowski Stewart, which left most of her estate, including the parcel of real property located at 13613 State Route 66, Fayette, Ohio 43521 to Appellee Borkowski. (App. P. 1-2, 18-21 & 68).

On April 7, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Appeals Case No. F-04-012, the Honorable Judge Peter M. Handwork, the presiding judge, issued a Decision and Judgment Entry on Accelerated Calendar and Scheduling Order for the case (04JA0512-02-11-2004, Judge Abood assigned to sit for Judge Handwork), Appellee certifies that this represents a conflict of interests. (Appx. P. 34-35). Pursuant to that Order Borkowski attempted to file a timely brief and affidavit in support but was refused for filing by the Clerk of Courts due his vexatious status in Fulton County Court of Common Pleas only, which announced that “***This Court’s determination on the motion to declare a vexatious litigator will have no effect on the Final Judgment Entry ***.” (Appx. P. 36-39).

On April 29, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Common Pleas Case No. 01-CV-000274, the Honorable Judge Robert C. Pollex, presiding by assignment as Visiting Judge, issued an Order on “Defendant Jennifer Borkowski’s Motion to Have A.J. Borkowski declared a vexatious litigator.” (Appx. P. 36-39). In that Order among other things Judge Pollex announced that “***This Court’s determination on the motion to declare a vexatious litigator will have no effect on the Final Judgment Entry ***Mr. Borkowski is hereby prohibited from filing any motion, pleading, or legal document in this Court without first obtaining leave of Court***.” Id.

On May 13, 2004, Appellant Judge Abood issued an Order granting Appellee’s motions for leave to file his Motion for Removal based on Constitutional Law and Motion to Dismiss for Lack of Subject Matter Jurisdiction and directed that the Clerk of Court’s Office process them accordingly. (Appx. P. 40-41).

On May 17, 2004, contrary to Judge Pollex order of April 29, 2004 (Appx. P. 36-39) in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Appeals Case No. F-04-012, the

Sixth District Court of Appeals issued a Decision and Judgment Entry striking A.J. Borkowski, Jr., “Motion for Leave to File Attached Affidavit of A.J. Borkowski, Jr., and to File a Brief of Appellant A.J. Borkowski, Jr.,” due his vexatious status in Fulton County Court of Common Pleas only, which announced that “***This Court’s determination on the motion to declare a vexatious litigator will have no effect on the Final Judgment Entry ***.” (Appx. P. 42-44).

On May 24, 2004, in *Humbert, et al. v. Borkowski, et al.*, United States District Court Northern District of Ohio, Case No. 3:04CV7260, the Honorable David A. Katz issued a remand order remanding the matter to Fulton County Court of Common Pleas. (Appx. P. 45-46). In that remand order Judge Katz erred by determining that “On May 21, 2004, [sic] A.J. Borkowski filed a Notice of Removal of this Action, which was originally filed in the Fulton County Court of Common Pleas on December 8, 2001,” when in fact Appellee-Defendant on May 12, 2004, filed a Notice of Removal of the action, which was originally filed in the Fulton County Court of Common Pleas on January 26, 2004 and process served on or before February 24, 2004 and answered on or before March 23, 2004 in *Borkowski v. Borkowski*, Fulton County Court of Common Pleas Case No. 04CV000018. *Id.*

Title 28 U.S.C. §1441, provides that such removal may occur up to four years when a federal court has original jurisdiction of the matter and a defendant in that action seeks removal. Pursuant to Article III, Sections 1-2 of the United States Constitution, Judge Katz had original jurisdiction to consider Appellee’s constitutional law violation case which had arisen “under this Constitution, the Laws of the United States.” Appellee in *Borkowski v. Borkowski*, Fulton County Court of Common Pleas Case No. 04CV000018 was the defendant seeking that that action be removed from State Court to the Federal Court. *Id.* Consequently, Appellee had indeed met all the necessary requirements for a removal action from State to

federal Court and the U.S. District Court improperly remanded the matter to the Fulton County Court of Common Pleas on May 24, 2004 as he had authority to consider the same under the preceding U.S. Constitution provisions. *Id.*

On May 26, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Appeals Case No. F-04-012, the Sixth District Court of Appeals issued a Decision and Judgment Entry striking A.J. Borkowski, Jr., “Motion for Leave to File Copy of Notice of Removal Based on Constitutional Law and Supplemental,” due his vexatious status in Fulton County Court of Common Pleas only, which announced that “***This Court’s determination on the motion to declare a vexatious litigator will have no effect on the Final Judgment Entry ***.” (Appx. P. 36-39 & 47-49). Further, due to the fact that Borkowski urged the Court of Appeals that its decision May 17, 2004, decision was in direct conflict on another case and that it lacked jurisdiction to rule in the instant appeal because he had removed that action to the Federal District Court of Ohio on May 12, 2004 as evidenced by Borkowski’s “Notice of Removal Based on Constitutional Law and Supplemental,” filed in the Federal District Court of Ohio on May 12, 2004. (Appx. P. 40-41 & 45-46). Consequently, that appeal should have not proceeded before the Sixth District Court because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded.” *Id.* Therefore, the Sixth District Court of Appeals lacked subject matter jurisdiction to consider Borkowski’s appeal at that time and thus the Court of Appeals decision of May 17, 2004 is void. (Appx. P. 40-46).

On June 2, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Appeals Case No. F-04-012, the Sixth District Court of Appeals issued a Decision and Judgment Entry concluding that Borkowski “***has established reasonable grounds for the

continuance of these proceedings and his application for leave to proceed is denied***.” (Appx. P. 50-52). The Court of Appeals had erred to the prejudice of Borkowski because he had set forth reasonable grounds for the continuance of the proceedings because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded,” because of the preceding statement of facts. Id.

On July 14, 2004, in *Humbert, et al. v. Borkowski, et al.*, Fulton County Court of Appeals Case No. F-04-012, the Sixth District Court of Appeals issued a Decision and Judgment Entry finding that Borkowski’s “***motion for reconsideration is not well-taken and the same is hereby denied***.” (Appx. P. 53-54).

On October 27, 2004, in *Humbert, et al. v. Borkowski, et al.*, Ohio Supreme Court Case No. 04-1175, this Court issued an entry declining to accept jurisdiction to hear the case due to “the appeal as not involving any substantial question and denying the Appellee’s motion for stay of the Court of Appeals Judgment (Fulton County Court of Appeals; No. F04022). (Appx. P. 55-56).

On February 7, 2005, the Honorable Judge Robert C. Pollex disqualified himself from the underlying cases, without considering or ruling on the merits of the Appellee’s valid Cross-claim filed in that Court on June 4, 2002. (Appx. P. 57). On March 3, 2005, Appellant Judge Abood sitting by special assignment was assigned to Case No. 01-CV-000274 (05JA0478).

On May 6, 2005, in *Borkowski v. Borkowski*, Fulton County Court of Appeals Case No. F-04-020, unreported the Sixth District Court of Appeals issued a Decision and Judgment Entry reversing the judgment of the Fulton County Court of Common Pleas and remanded the case to Appellant Judge Abood for further proceedings consistent with its Decision because the

removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded,” so this Court must enforce it. (Appx. P. 40-46). As Borkowski had previously informed Judge Abood the Court of Appeals found that the removal Petition divested the trial court of jurisdiction from the time Borkowski filed it until approximately twelve days later when the Northern District of Ohio rejected it, thus, the trial court’s judgment entries issued during the period from the time the notice of removal was filed on May 12, 2004, until the case was remanded back to the trial court on May 24, 2004 were void. Consequently, the trial court’s and the court of appeals decisions which were issued during that period are void too. (Appx. P. 40-46 & 58-63).

On August 23, 2005, Appellee Borkowski filed a legally valid complaint against Judge Abood, in the Lucas County Court of Common Pleas. (Appx. P. 64-66). On February 28, 2006, Appellant Judge Abood was assigned to hear a case for trial judge Michael Kelbley of Seneca County (06JA0678) and on January 28, 2005 Appellant Judge Abood was assigned to hear a case for Justice Cupp of the 3rd Dist. Court of Appeals (05JA0338). On August 30, 2005, Judge Richard M. Markus was assigned to hear a case for Judge Wittenberg of the Lucas County Court of Common Pleas (05JA2068) and on September 19, 2005, Judge Richard M. Markus was assigned to hear a case for Judge Wittenberg (05JA2153) a judge who was initially assigned to Appellee’s case, in Lucas County Court of Common Pleas Case 05CV04894, which is currently under consideration by this Honorable Court. Appellee certifies that this constitutes a conflict of interests. On September 29, 2006, the Honorable Charles D. Abood disqualified himself from the underlying cases, without considering or ruling on the merits of the Appellee’s valid Cross-claim filed in that Court on June 4, 2002. (Appx. P. 68).

On December 4, 2006, the Honorable Judge Kelbley of the Lucas County Court of Common Pleas (05JA1831) stayed the proceedings in the underlying action (05CV04894) pending resolution in this Court and on January 8, 2007, the Honorable Judge Linda Jennings of that Court was assigned to that case due to the fact that Judge Kelbley assignment to the cases in that Court ended at the end of December, 2006.

On January 8, 2007, the Honorable Judge Richard M. Markus was assigned to hear Appellee's cases (07JA0467). No further actions were taken by Appellant Judge Abood or the Fulton County Court of Common Pleas consistent with the Court of Appeals Decision of May 6, 2005, until the Honorable Judge Richard M. Markus, presiding by assignment as Visiting Judge, issued a Status Conference Order(s) on February 27, 2007, which included making a determination on a cross-claim was *never* filed in Case No. 03CV000330, so it was clearly erroneous and unreasonable, granting Appellee's September 29, 2006, request to file a motion to vacate its Court order confirming the sheriff's sale, etc. and issued an Orders on March 14, 2007 denying leave to file reply to voluntary dismissal, to file pleading to remove fraudulent power of attorney, to vacate judgments entered on March 15, 2004 & April 29, 2004, denying applicant's request to file a new lawsuit against twenty-five Defendants, and granting Borkowski leave to file documents for the probate of Bertha Borkowski Stewart's estate, etc. See, *State ex rel. A.J. Borkowski, Jr., v. Judge Richard M. Markus, et al.* Case No. 2007-0564, Complaint at appended pages 15-59 as filed with this Court on 03-29-2007. (Appx. P. 69).

In the Complaint, Appellee sought a relief from Orders made by Judge Markus as a result of the March 14, 2007 Judgment Entries because *inter alia* they were not consistent with the Court of Appeals May 6, 2005 Decision findings that the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, "unless and until the

case [is] remanded,” (Appx. P. 58-63 & 69). Consequently, the trial court’s and the court of appeals’ decisions which were issued during the period of 05-12-2004 to 05-24-2004 are void for all the preceding reasons. Id. Therefore, Appellee respectfully requests that this Court find his Answer to Proposition of Law No. 1 well-taken and affirm the judgment of the Lucas County Court of Appeals of September 22, 2006 and reverse the Judgment that dismissed his complaint with prejudice finding that the complaint failed to state a claim upon which relief can be granted because Judge Abood was absolutely immune from liability for these judicial acts, which were effected within his jurisdiction for immunity purposes. Id. Accordingly, this Court should issue a judgment consistent the Court of Appeals with its Decisions of May 6, 2005 & September 22, 2006 because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded,” (Appx. P. 40-46 & 58-63).

On April 24, 2007, in *State ex rel. Borkowski v. Judge Markus, et al.* Case No. 2007-0564, this Court issued an Entry denying Relator-Appellee’s Motion for Stay of all Opinions and Orders issued by Judge Markus in the Fulton County Court of Common Pleas, granted Borkowski’s application for dismissal of all Respondents except for Respondent Attorney Shaffer and further found that the cause remains pending with respect to Respondent John Shaffer. (Appx. P. 69).

Lastly, Borkowski claims that the Court of Appeals denial of his appeal that announced that “****This Court’s determination on the motion to declare a vexatious litigator will have no effect on the Final Judgment Entry ***,” violated his right to due process since the trial court failed to consider his cross-claim of June 4, 2002 or to dismiss it, with or without prejudice he cannot file a new complaint and receive due process in that case. (Appx. P. 1-69). As such,

Borkowski claims that Appellant Judge Abood is liable for \$1,000,000.00 due to Judge Abood's "negligence, acting in bad faith, and acting in clear absence of all jurisdiction, and thus asks this Court to issue an order directing that Judge Abood to refrain from disposing of his assets and to grant any other appropriate relief that it deemed proper and just as demanded for in his August 23, 2005 Complaint filed in the Lucas County Court of Common Pleas against Appellant Judge Abood.. (Appx. P. 64-66).

Pursuant to the legal provisions of S. Ct. Prac. R. VI, Section 3(A), the Appellee is permitted to file an Answer Brief to Appellant's merit brief which was filed herein on April 20, 2007, within 30 days of its filing in this matter. As such, the Appellee now files his timely Answer Brief to Appellant's merit brief which was filed herein on April 20, 2007, or within 30 days of its filing in the above-captioned case as required by the preceding rule.

ARGUMENT

ANSWER TO PROPOSITION OF LAW NO. 1:

Judge Abood's challenged judicial actions-which occurred after Borkowski filed his Petition for Removal, but before it was ultimately rejected-were not protected by judicial immunity because Judge Abood lacked proper jurisdiction.

1. TRIAL COURT'S IMPROPER DISMISSAL ORDER

It is a fundamental principle of jurisprudence that a court must have subject matter jurisdiction in order to act. Any action taken by a court that lacks subject matter jurisdiction is void.

In Ohio, judicial power is vested in the several courts under Section 1, Article IV of the Ohio Constitution. That constitutional provision provides as follows:

"The judicial power of the State is vested in a supreme court, court of appeals, court of common pleas and divisions thereof, and such other courts inferior to the supreme court may from time to time be established by law." (Emphasis supplied.)

In like manner, Section 4, Article IV of the Ohio Constitution provides and limits the authority and power of a common pleas court to those “justifiable matters and such power of review of proceedings of administrative officers and agencies as may be provided by law.” (Emphasis supplied).

The General Assembly, the legislative body authorized by Article II of the Ohio Constitution, has the power to make the laws. Courts do not have the power to make laws. Certainly, this Court has no power to enact or make laws.

For all of the foregoing reasons set forth in the Statement of Facts and this argument, or answer brief the Appellee urges this Court that this Court should have not accepted to hear this case and should have dismissed the appeal as frivolous because it does not involve any substantial constitutional question or public or great general interest (Appellant’s Appx. P. 1-3). Accordingly, Appellee Borkowski respectfully requests that the complete record for Fulton County Court of Common Pleas Case Nos. 01CV000274, 03CV000330, 04CV0000018, 04CV000091, and 07MISC00006 be sent to this Court, so that this Court can determine whether the judges assigned to the above said cases by this Honorable Court has failed to perform any of their duties complained of in this matter.

Nevertheless, Appellee Borkowski will respond and submits that he reasonably believes that this Court should reverse the earlier decision that denied his Notice of *Lis Pendens* and dismissed his complaint with prejudice because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded.” *Id.* Appellee sought monetary relief of \$1,000,000.00 from the Appellant, Judge Abood due to Judge Abood’s “negligence, acting in bad faith, and acting in clear absence of all jurisdiction, and asked the trial court to issue an order directing that Judge Abood to refrain

from disposing of his assets and to grant any other appropriate relief that it deemed proper and just. (Appx. P. 40-46 & 64-66).

The trial court had lawful jurisdiction to consider the Appellee's case. *Id.* As a matter of law, the trial court should have determined that Appellant Judge Abood lacked subject matter jurisdiction in order to act in the eviction proceedings on May 13, 2004 (Appellant Supp. Appx. P. 1-20), and that any action taken by him from 05-12-2004 to May 24, 2004, when it lacked subject matter jurisdiction was void. (Appx. P. 40-46 & 58-63). Therefore, the Appellant's 09-12-2005 (Appellant's Supp. Appx. P. 21-27) motion to dismiss must be overruled; and the Appellee's 9-13-2005 (Appellant's Supp. Appx. P. 28-51) motion for summary judgment on his complaint and request for sanctions, and other motions pending before its 12-01-2005 (Appellant's Supp. Appx. P. 62-63) decision was rendered must be granted (Appellant's Appx. P. 12-13). *Id.*

The Lucas County Court of Common Pleas had subject matter jurisdiction over Appellee's claims for monetary damages, and could consider the Appellee's claims, the Appellant, Judge Abood is not entitled to immunity from civil claims for judicial actions taken in the clear absence of all jurisdiction. *Id.* Hence, the Appellant was not entitled to dismissal of Appellee's lawsuit because the action taken by him from 5-12-2004 to 5-24-2004 when he lacked subject matter jurisdiction was void and because there is not a complete and absolute defense to Appellee's valid claims. *Id.*

Appellee urges this Court that Judge Abood's attempt to appeal this case is barred by the doctrine of *res judicata* and that he is not entitled judicial immunity because he acted in the clear absence of all jurisdiction because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, "unless and until the case [is]

remanded,” and thus, he erred in continuing to rule after Borkowski filed that Petition for Removal. See, *Borkowski v. Borkowski*, (Decision of May 6, 2005), Fulton County Court of Appeals Case No. F-04-020, unreported. (Appx. P. 40-46 & 58-63). The parties to the eviction proceedings are the same, Judge Abood presided in that case without subject matter jurisdiction or continued to rule after Borkowski filed his Petition for Removal on May 12, 2004. Id. Therefore, Appellee respectfully requests that this Court find his Answer to Proposition of Law No. 1 well-taken and affirm the judgment of the Lucas County Court of Appeals of September 22, 2006 and reverse the Judgment (Appellant’s Supp. Appx. P. 64-67) that dismissed his complaint with prejudice finding that the complaint failed to state a claim upon which relief can be granted because Judge Abood was absolutely immune from liability for these judicial acts, which were effected within his jurisdiction for immunity purposes. Id. Therefore, this Court can determine whether the trial judge has failed to perform any of his duties in this matter. Id.

Accordingly, this Court should issue a judgment consistent the Court of Appeals with its Decisions of May 6, 2005 & September 22, 2006 because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded,” Id. (Appellant’s Appx. P. 4-11 & Supp. Appx. 6-11) However, this Court should determine that Judge Abood proceeded in the underlying eviction matter in the clear absence of all jurisdiction on May 13, 2004, because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded.” See, *Borkowski v. Borkowski*, (Decision of May 6, 2005), Fulton County Court of Appeals Case No. F-04-020, unreported and Appellant’s Supp. (Appx. P. 12-18). Id. Consequently, the Appellee asserts that these preceding assertions are proper for the

purposes of determining whether Judge Abood erred in continuing to rule after Borkowski filed that valid Petition for Removal and whether he has absolute judicial immunity when he has acted in the clear absence of all jurisdiction on May 13, 2004 and on May 21, 2004. Id. See, *Borkowski v. Borkowski*, (Decision of May 6, 2005), Fulton County Court of Appeals Case No. F-04-020, unreported. Id.

Therefore, Borkowski's claims to *res judicata* and Borkowski claims that Appellant Judge Abood is liable for \$1,000,000.00 due to Judge Abood's "negligence, acting in bad faith, and acting in clear absence of all jurisdiction, and request that this Court to issue an order directing that Judge Abood to refrain from disposing of his assets and further request to grant any other appropriate relief that it deemed proper and just as demanded for in his August 23, 2005 Complaint filed in the Lucas County Court of Common Pleas against Appellant Judge Abood is adequate and appropriate under these circumstances. See, R.C. 9.86, also see, (Appx. P. 40-46 & 58-63). The Sixth District Court of Appeals' May 6, 2005 & September 22, 2006, Opinions and Judgment Entries and Borkowski's 08-23-2005 Complaint without attachments are filed with this Answer Merit Brief as a dispositive to Appellant's Merit Brief previously filed in this case on April 20, 2007 (Appellant's Appx. 4-11 and Supp. Appx. P. 1-69) . Id.

Judge Abood acted in the clear absence of all jurisdiction on May 13, 2004 & May 21, 2004 and he has no immunity protection because the removal statute, 28 U.S.C. §1446, provides that a State court is not to proceed after a Petition for Removal, "unless and until the case [is] remanded," and he continued to preside on those dates before the case was actually remanded back to him. Id. Appellee submits that his interests in the subject real property or rights are legally protected by the Last Will and Testament executed in 1993, by Bertha Borkowski Stewart, which left most of her estate, including the parcel of real property located

at 13613 State Route 66, Fayette, Ohio 43521 to Appellee Borkowski. based upon the preceding reasons. (Appx. P. 69). Id.

Furthermore, Appellee submits that each and every one of the above case-laws all except the *Wilson v. Nue* (1984), 12 Ohio St. 3d 102, 103 and *Borkowski v. Borkowski*, (Decision of May 6, 2005), Fulton County Court of Appeals Case No. F-04-020, unreported, cases are inapplicable or otherwise invalid because they do apply to the civil context of this appeal as many of the cases that are cited by the Appellant or its legal counsel applies to the criminal expects/intent of the cases cited above and thus they do not involve even the meager portion of the circumstances involved in the instant appeal. This is a civil action and not a criminal action. The reason for this assertion is that the removal statute, 28 U.S.C. §1446, clearly provides that a State court is not to proceed after a Petition for Removal, “unless and until the case [is] remanded,” Id. To act contrary, to this clearly valid statutory provision would be acting beyond or above the law, in the absent of all jurisdiction and in violation of clear public policy or precedent cited in this answer brief. How can judges expect other individuals to follow the precepts or principles of the law, when they do not even follow other superior courts statutory provisions or the laws of this State or this Country? Do as I say do but do not do as I do, Appellee guess that this is the answer to this query. As previously stated by Senator Gillimore no one is above the law, certainly Judge Abood is not. Therefore, Judge Abood absolute immunity was lost and the Court of Appeals valid decisions must be permitted to stand on their own merits or precedent. Id.

This Court clearly held in *Wilson v. Nue* (1984), 12 Ohio St. 3d 102, 103, that a judge loses his judicial immunity in circumstances where he loses jurisdiction to proceed over a case. Id. This is exactly what has occurred in the underlying case. Id. Accordingly, the Appellate

Court's holding in *Borkowski v. Borkowski*, (Decision of May 6, 2005), Fulton County Court of Appeals Case No. F-04-020, unreported and this Court's definitive holding in, *Wilson v. Nue* (1984), 12 Ohio St. 3d 102, 103 were legally correct and to depart from the clear valid case-law or to act contrary to the statutory provisions set forth herein would be saying to every court in this State that it is okay not to comply with the legislative intent and to act contrary or above the law.

Finally, this Court should conduct a hearing in open court at which Fremont Investment and Loan and U.S. Bank or their legal counsel can show cause why this Court should not cite either or both of them for criminal contempt pursuant to R.C. 2705.02(A) and (B); and R.C. 2923.03.

At the same hearing, this Court should determine whether Fremont Investment and Loan and U.S. Bank or their legal counsel engaged in frivolous conduct in violation of R.C. 2323.51 or whether to refer such matter to Disciplinary Counsel for pursuing a protracted pattern of frivolous conduct in violation of R.C. 2323.51 and other applicable legal provisions by preparing and filing of each pleading or motion that this Court and the underlying courts decided after April 1, 2002/February 20, 2004 and by preparing and filing of filings to either appeal or respond to matters on appeal from each of those decisions in order to solely harass the Appellee Borkowski in which they knew that they had no standing to pursue. (Appx. P. 1-2 & 18-21). (See, appearance docket maintained at <http://mail.fultoncountyoh.com/pa/pa.urd/PAMW6530>).

Copies of the transfers from Fremont Investment and Loan and U.S. Bank or their legal counsel attests to the fact that neither of them had standing to pursue a protracted pattern of frivolous conduct in violation of R.C. 2323.51 and other applicable legal provisions by

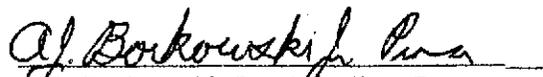
preparing and filing of each pleading or motion that this Court and the underlying courts decided after April 1, 2002/February 20, 2004 and by preparing and filing of filings to either appeal or respond to matters on appeal from each of those decisions in order to solely harass the Appellee Borkowski. (Appx. P. 1-2 & 18-21).

For the foregoing reasons, this Court has authority to hear Appellee's case. Therefore, Appellee's complaint must be sustained and the Sixth District Court of Appeals decision must be affirmed pursuant to S. Ct. Prac. R. VI, Sec. 3(A) and other applicable legal provisions. All other motions filed by Appellee must be granted. Costs must be borne by the Appellant.

CONCLUSION

For the foregoing reasons, this Court has authority to hear Appellee's case(s). Therefore, Appellee's complaint must be sustained and the Sixth District Court of Appeals decision must be affirmed pursuant to S. Ct. Prac. R. VI, Sec. 3(A) and other applicable legal provisions. All other motions filed by Appellee must be granted. Costs must be borne by the Appellant. Accordingly, Appellee respectfully requests that this Honorable Court grant any and all other relief that this Court shall deem proper

Respectfully submitted,



A.J. Borkowski, Jr., Appellee, Pro-se

PO. Box 703

Fayette, Ohio 43521

Tel: 419.237.7017

CERTIFICATE OF SERVICE

This is to certify that on May 3rd, 2007 a true copy of this Answer Merit Brief was served, by via U.S. Mail, upon George D. Jonson, Esq., Linda L. Woerber, Esq., Kimberly Vanover Riley, Esq., (Counsel of Record), MONTGOMERY, RENNIE & JONSON 36 East Seventh Street, Suite 2100, Cincinnati, Ohio 45202, Counsel for Appellant-Respondent the Honorable Judge Charles D. Abood.


A.J. Borkowski, Jr., Appellee, Pro-se
P.O. Box 703
Fayette, Ohio 43521



March 15, 2002

JENNIFER BORKOWSKI
13613 STATE ROUTE 66
FAYETTE OH 43521

Re: Loan Number: 5000029429
Property Address: 13613 STATE ROUTE 66
FAYETTE OH 43521

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your first mortgage loan, that is, the right to collect payments from you, has been assigned, sold, or transferred from Fremont Investment & Loan to Fairbanks Capital Corp., effective April 1, 2002.

The assignment, sale or transfer of the servicing of your first mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice no later than 15 days before the effective date of transfer or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present servicer is Fremont Investment & Loan. If you have any questions relating to the transfer of servicing from your present servicer, call the Customer Service Center between 8:30 a.m. and 5:00 p.m., PST, Monday through Friday. The number is (800) 776-7511. This is a toll free number.

Your new servicer is Fairbanks Capital Corp.
The business address for your new servicer is:
P.O. Box 1900, Hatboro, PA 19040.

The payment address for your new servicer is:
Remittance Processing
P.O. Box 79157, Phoenix, AZ 85062-9157

If you have any questions relating to the transfer of servicing to your new servicer, call the Fairbanks Capital Corp. Customer Service Department toll free at (800) 258-2602, between 7:00 a.m. to 8:00 p.m., EST, Monday through Friday and Saturday between 8:00 a.m. to 5:00 p.m.

(Over)



FREMONT

INVESTMENT & LOAN

(continued)

The date that your present servicer will stop accepting payments from you is March 30, 2002. The date your new servicer will start accepting payments from you is April 1, 2002. Send all payments due on or after that date to your new servicer. Any automatic drafting, ACH service will also be cancelled as of March 30, 2002. If you are interested in setting up this automatic draft/ACH method with your new servicer, please contact the Customer Service Department after the transfer date.

You should be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed upon you.

Section 6 of RESPA (12 U.S.C. 2605) gives certain consumer rights. If you send a "qualified written request" to your servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and the reason for the request.

Not later than 60 Business Days after receiving your request, your Servicer must make appropriate corrections to your account and must provide you with a written clarification regarding any dispute. During this 60 Business Day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of the Section. You should seek legal advice if you believe your rights have been violated.

Sincerely,

Fremont Investment & Loan

[GOODBYE2P/DOC819/9/Rev. 03/15/02]

I HEREBY CERTIFY THIS
INSTRUMENT IS A TRUE COPY OF
THE ORIGINAL *[Signature]*
DATED *3/11/03* CLERK OF COURTS

FILED
FULTON COUNTY
COMMON PLEAS COURT

03 DEC -5 AM 10:11

JOURNALIZED 12-5-03
VOL 41 PG 44

MARY GYPE
CLERK

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

William K. Humbert, et al.,

Case No. 01-CV-274

Plaintiffs,

Hon Robert C. Pollex
(By Assignment)

vs.

ORDER ON PENDING MOTIONS

Jennifer M. Borkowski, et al.,

JUDGMENT ENTRY

Defendants.

This matter is now before the Court on several motions filed by the parties. The Court notes that these motions are only the latest in a series of motions filed in this quiet title action. Consideration of the motions has been delayed due to service issues and A.J. Borkowski's filing of a notice of appeal which was subsequently dismissed for lack of a final appealable order.

On August 15, 2002, Plaintiffs filed a motion for summary judgment asking the Court to quiet title to the property in their name, subject to the interest of Defendant Jennifer Borkowski.

On August 15, 2002, Fremont Investment & Loan also filed a motion for summary judgment asking the Court to quiet title to the property in the name of Jennifer Borkowski; that A.J. Borkowski has no interest in the property; and that Fremont Savings and Loan has a valid first mortgage in the property.

Appx P. 3

On August 20, 2002, Jennifer Borkowski filed a motion for summary judgment on her counterclaim and cross-claim asking the Court that title to a portion of the real estate at issue be quieted in her name and that she be declared the mortgagee of the first mortgage on the property.

The three separate motions for summary judgment do not present conflicting issues or interests. All motions request a decree quieting title and respecting each other's interests. When reviewing motions for summary judgment, the Court must determine that: (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law and (3) after considering the evidence most strongly in favor of the non-moving party, reasonable minds could come but to one conclusion and that conclusion is adverse to the party against whom the summary judgment motion is made. Civ.R. 56(C).

The facts in this case are not in dispute. A.J. Borkowski conveyed the property and received the benefits of such conveyance. The Plaintiffs and Jennifer Borkowski were innocent bona fide purchasers of the properties described in the complaint. They paid fair market value for the parcels. Similarly, Fremont Investment & Loan acquired its mortgage in good faith and for value. Therefore, the equitable doctrines of estoppel, ratification, and after-acquired title defeat A.J. Borkowski's opposition to the motion for summary judgment. See, *Hampshire County Trust Co. v. Stevenson* (1926), 114 Ohio St. 1, 150 N.E. 726. Title should be quieted in Plaintiffs' names subject to the interests of Jennifer Borkowski and Fremont Investment & Loan.

On October 24, 2003, Defendant A.J. Borkowski filed a motion for summary judgment. On November 17, 2003, Defendant Fremont Investment & Loan filed a

motion to strike A. J. Borkowski's motion for summary judgment. The Court has set an explicit cut-off date for the filing of summary judgment motions. Defendant A.J. Borkowski filed his motion for summary judgment 14 months past the deadline. The Court will not consider A.J. Borkowski's motion for summary judgment.

On October 27, 2003, Defendant A. J. Borkowski filed a Civ.R. 60(B) motion to vacate the judgment entered against him on July 21, 2003. The Court does not find any grounds to vacate the judgment. There are no facts to support the allegation of newly discovered evidence. The transcript from a hearing on June 12, 2002 submitted by Defendant A.J. Borkowski does not constitute newly discovered evidence that would warrant setting aside this Court's judgment. Defendant A.J. Borkowski is not entitled to have the judgment against him vacated.

On October 29, 2003, Defendant A.J. Borkowski filed a motion for leave to amend his cross-complaint to include the claim of spoliation of evidence. The record reflects that A.J. Borkowski's cross-complaint was dismissed/stricken from the record by judgment entry dated March 3, 2003. There is no cross-complaint that may be amended. Therefore, the motion must be denied.

On November 10, 2003, Defendant A.J. Borkowski filed a motion for default judgment against Plaintiffs and Defendants on the cross-claim and claim for spoliation of evidence. The Court finds no legal basis to support this motion. The cross-claims were filed out of rule and were eventually dismissed and stricken from the record. There is no pending cross-claim or claim for spoliation of evidence on which default may be granted.

On November 21, 2003, Defendant A.J. Borkowski filed a motion for leave to amend his cross-claim to include as parties J.T. Stelzer, Esq. and John Shaffer, Esq. For

the reason that there is no pending cross-claim to amend, the Court finds this motion not well taken and that it should be denied.

On November 26, 2003, Defendant Fremont Investment & Loan filed a motion for sanctions against Defendant A.J. Borkowski for filing frivolous motions. Based on the plethora of motions filed by Defendant A.J. Borkowski lacking in legal justification, the Court finds that his actions have risen to the level of abuse as to merit sanctions. The one that deserves the most discussion is his motion for default judgment on his cross-claim. The cross-claim was filed without prior leave of Court and it was subsequently stricken from the record. After the Court's dismissal of the cross-claim, Defendant A.J. Borkowski still proceeded to file separate motions to amend the cross-claim and for default on the cross-claim. Not only does this act muddy the issues, it is almost akin to contempt of court. Moreover, counsel has been forced to incur additional fees. Therefore, imposition of sanctions is warranted.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiffs' motion for summary judgment on their claims to quiet title to the properties described in their complaint filed on December 5, 2001 is granted.
2. Defendant Fremont Investment & Loan's motion for summary judgment is granted.
3. Defendant Jennifer M. Borkowski's motion for summary judgment on her counterclaim and cross-claim is granted.
4. Defendant A.J. Borkowski's Civ.R. 60(B) motion to vacate this Court's July 21, 2003 judgment entry is denied.
5. Defendant A.J. Borkowski's motion to amend his cross-complaint is denied.

6. Defendant A.J. Borkowski's motion for default judgment against Plaintiffs and Defendants is denied.

7. Defendant Fremont Investment & Loan's motion to strike A.J. Borkowski's motion for summary judgment is granted. A.J. Borkowski's motion for summary judgment is stricken from the record.

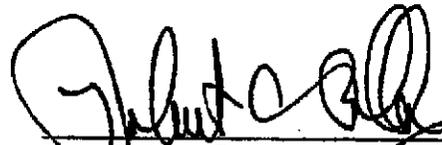
8. Defendant A.J. Borkowski's motion for leave to amend his cross-claim is denied.

9. Defendant Fremont Investment & Loan's motion for sanctions against defendant A.J. Borkowski is granted, and A. J. Borkowski is ordered to pay Fremont Investment & Loan's attorney fees in the amount of \$450.

Court costs are assessed against Defendant A.J. Borkowski.

A final judgment entry quieting title in the Plaintiffs, without prejudice to Jennifer Borkowski and Fremont Investment & Loan's interests, shall be entered on presentation of a formal written judgment by Plaintiffs' counsel and the approval and signature of the same by the Court.

IT IS SO ORDERED.



Hon. Robert C. Pollex, Judge
(By Assignment)

CERTIFICATION

This is to certify that on _____, 2003, the undersigned delivered or sent by fax or mail a copy of this Order to: A.J. Borkowski, 13613 State Route 66, Fayette, OH 43521; John T. Stelzer, Esq., 216 South Lynn St., Bryan, OH 43506; Kyle Silvers, Esq., 1776 Tremainsville Rd., Toledo, OH 43613; Bradley Toman, Esq., 1370 Ontario St., Suite 1700, Cleveland, OH 44113; Paul Kennedy, Esq., 123 Courthouse Plaza, Wauseon, OH 43567; Amber Borkowski, 13613 State Route 66, Fayette, OH 43521.

Copies Served 12/5/03
Mary Gype, Clerk
By CW *Appx. P. 7*

IN THE SUPREME COURT OF OHIO

WILLIAM K. HUMBERT, ET AL. : CASE NO. 01CV00274
PLAINTIFF : FULTON COUNTY
V. :
JENNIFER M. BORKOWSKI, ET AL. : S.C. NO. 03-AP-111
DEFENDANTS : ENTRY

This affidavit of disqualification was filed by A.J. Borkowski seeking the disqualification of Judge Robert Pollex from further proceedings in the above captioned case.

Affiant asserts that Judge Pollex should be disqualified from the underlying case because of his rulings in the underlying matter, his attempt to “gag” affiant by preventing him from discussing a disciplinary case that involved counsel for the plaintiffs, and alleged *ex parte* communications. In all respects, Judge Pollex denies any bias or prejudice toward affiant.

With regard to the alleged *ex parte* communication, I have held that the question, in affidavit of disqualification proceedings, is not whether the communication was contrary to the Code of Judicial Conduct, but whether the communications demonstrate a bias or prejudice on the part of the judge. To satisfy this test, the communications must have been initiated by the judge or address substantive matters in the case. *In re Disqualification of Reid* (November 30, 1995), 95-AP-156, unreported. Also see, *In re Disqualification of Aurelius* (1996), 77 Ohio St.3d 1254. Moreover, the allegations must be substantiated and consist of something more than hearsay. *In re Disqualification of Cacioppo* (1996), 77 Ohio St.3d 1245. Also see, *In re Disqualification of Bruening* (October 5, 1996), 96-AP-147, unreported, *In re Disqualification of*

Appx. P. 8

DeWeese (March 1, 2000), 00-AP-021, unreported, and *In re Disqualification of O'Farrell* (2001), 94 Ohio St.3d 1226.

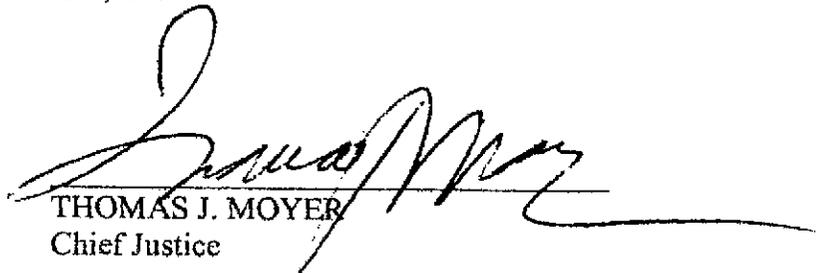
The materials submitted by affiant do not contain any specific allegations as to the nature of the alleged communications or reference to the date, time, and place that the alleged conversations were to have occurred. Without additional evidence and in view of the unqualified denial offered by Judge Pollex, I cannot conclude the allegations have merit.

The balance of affiant's claims consist of disagreement or dissatisfaction with the judge's rulings of law. These bare allegations do not establish the existence of bias or prejudice. See *In re Disqualification of Murphy* (1988), 36 Ohio St.3d 605.

For these reasons, the affidavit of disqualification is found not well-taken and denied.

The case shall proceed before Judge Pollex.

Dated this 15th day of December, 2003.


THOMAS J. MOYER
Chief Justice

Copies to: Marcia Mengel, Supreme Court Clerk
Honorable Robert Pollex
Mary Gype, Fulton County Clerk of Court
A.J. Borkowski
J. T. Stelzer, Esq.
Kyle A. Silvers, Esq.
Amber Borkowski
Paul Kennedy, Esq.
Bradley Toman, Esq.
John Shaffer, Esq.

JOURNALIZED 1/7/04
VOL. 7 PG. 589

FILED
FULTON COUNTY COURT OF APPEALS
JAN - 6, 2004
Sheryl L. ... CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

William K. Humbert, et al.

Court of Appeals No. F-03-029

Appellees

Trial Court No. 01-CV-274

v.

Jennifer M. Borkowski, et al.

DECISION AND JUDGMENT ENTRY

Defendants

Decided: **JAN 06 2004**

[A.J. Borkowski, Jr. - Appellant]

Defendant, A. J. Borkowski, has filed an appeal from a trial court decision which, inter alia, grants the motion for summary judgment of plaintiffs, William K. Humbert, et al. This document states:

"IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1.

Appx. P. 10

"1. Plaintiffs' motion for summary judgment on their claims to quiet title to the properties described in their complaint filed on December 5, 2001 is granted.

"2. Defendant Fremont Investment & Loan's motion for summary judgment is granted.

"3. Defendant Jennifer M. Borkowski's motion for summary judgment on her counterclaim and cross-claim is granted.

"4. Defendant A.J. Borkowski's Civ.R. 60(B) motion to vacate this Court's July 21, 2003 judgment entry is denied.

"5. Defendant A.J. Borkowski's motion to amend his cross-complaint is denied.

"6. Defendant A.J. Borkowski's motion for default judgment against Plaintiffs and Defendants is denied.

"7. Defendant Fremont Investment & Loan's motion to strike A.J. Borkowski's motion for summary judgment is granted. A.J. Borkowski's motion for summary judgment is stricken from the record.

"8. Defendant A.J. Borkowski's motion for leave to amend his cross-claim is denied.

"9. Defendant Fremont Investment & Loan's motion for sanctions against defendant A.J. Borkowski is granted, and A.J. Borkowski is ordered to pay Fremont Investment and Loan's attorney fees in the amount of \$450.

"Court costs are assessed against Defendant A.J. Borkowski.

"A final judgment entry quieting title in the Plaintiffs, without prejudice to Jennifer Borkowski and Fremont Investment & Loan's interests, shall be entered on presentation of a formal written judgment by Plaintiffs' counsel and the approval and signature of the same by the Court.

"IT IS SO ORDERED."

No such entry is contained in the record of this case. Therefore, there is not yet a final judgment. See *Brooks v. Orshoski* (1998), 129 Ohio App. 3d 386, discretionary appeal not allowed (1998), 84 Ohio St. 3d 1450, where the court states:

"The trial court's decision *** is not a final judgment. Where a court enters an order stating that *** [a] party should prepare a judgment entry in accordance with the court's order, [it] is an announcement of the court's decision and not the court's final judgment. *St. Vincent Charity Hosp. v. Mintz* (1987), 33 Ohio St.3d 121, 123, 515 N.E.2d 917; *Gibson v. Gibson* (1993), 87 Ohio App.3d 426, 433-434, 622 N.E.2d 425." Id. at 393.

This court only has jurisdiction to hear appeals from final orders. See Section 3(B)(2), Article IV of the Ohio Constitution.

"Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals ***."

Accordingly, the court dismisses this appeal at appellant's costs. It is so ordered.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist. Loc. App.R. 4, amended 1/1/98.

Richard W. Knepper, J.

Mark L. Pietrykowski, J.

Arlene Singer, J.

CONCUR.

Richard W. Knepper

JUDGE

Mark L. Pietrykowski

JUDGE

Arlene Singer

JUDGE

RECEIVED
DATE 1/19/04
Mary Gype

1-8-04
VOL 47 PG 360

FILED
FULTON COUNTY
COMMON PLEAS COURT
04 JAN -7 AM 11:18
MARY GYPE
CLERK

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

William K. Humbert, et al.,

Case No. 01-CV-274

Plaintiffs,

**ORDER GRANTING MOTION
TO VACATE ORDER OF
DECEMBER 5, 2003**

vs.

Jennifer M. Borkowski, et al.,

Judge Robert C. Pollex
(Sitting by Assignment)

Defendants.

This cause came before this Court on the Motion of Defendant A.J. Borkowski, Jr. requesting this Court vacate its Order of December 5, 2003, due to lack of jurisdiction pending Defendant's Motion to Disqualify filed with the Supreme Court of Ohio.

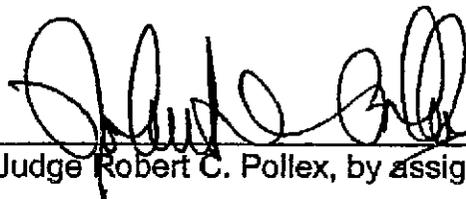
Oral arguments having been waived or found unnecessary, the Court reviewed all pleadings, affidavits and memoranda that have been filed in this cause.

The Court on due consideration finds the motion well taken and that it should be granted. The Court finds that the Judgment Entries may have "crossed" in the mail with the Motions to Recuse which would terminate the jurisdiction of this Court until the Motions were decided. Rather than have any question about the Court's Orders, the Court will grant the Motion to Vacate said Order and will not consider any other Motions

Appx. P. 14

or rulings until the Affidavits of Prejudice and Motion to Recuse are decided.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Defendant's Motion to Vacate the December 5, 2003, Order be, and hereby is, granted.



Judge Robert C. Pollex, by assignment

xc: A.J. Borkowski, Jr.
Bradley Toman,
J.T. Stelzer
Paul Kennedy
Kyle Silvers
Amber Borkowski
John Shaffer

FILED
FULTON COUNTY
COMMON PLEAS COURT
04 JAN 27 PM 2:15
MARY GYPE
CLERK

IN THE COURT OF COMMON PLEAS OF FULTON, COUNTY, OHIO

William K. Humbert, et al.,	:	Case No. 01-CV-274
	:	
Plaintiffs,	:	Judge Robert C. Pollex
	:	
vs.	:	<u>DEFENDANT A.J. BORKOWSKI</u>
	:	<u>JR. MOTION FOR SUMMARY</u>
Jennifer M. Borkowski, et al,	:	<u>JUDGMENT ON VALID</u>
	:	<u>CROSS-CLAIM</u>
Defendants.	:	

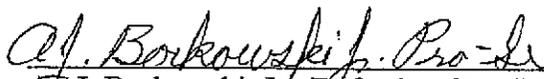
Defendant A.J. Borkowski Jr. moves the Court as Follows: That it enter pursuant to Rule 56 of the Ohio Rules of Civil Procedure a summary judgment in Defendant A.J. Borkowski Jr. Favor dismissing with prejudice the quiet title action on the grounds that there is no genuine issue as to any material Facts and that Defendant A.J. Borkowski Jr., is entitled to a judgment as matter of law.

On December 9, 2003, Defendant A.J. Borkowski Jr. filed a motion to vacate asking the Court quieting title to the property in the name of A.J. Borkowski and that any and all recordings of the said properties be expunged from the records and to vacate the Judgment Entry of December 5, 2003 as matter of law. (See, Cross-Claim listed as Exhibit A) Honorable Judge Pollex specifically stated in his order: "IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Defendant's Motion to Vacate the December 5, 2003 Order be, and hereby is, granted." (See, Judgment Entry of

01/07/2004 listed as Exhibit B) Accordingly, Defendant A.J. Borkowski's motion for Summary Judgment on his cross-claim (06/4/2002) to quiet title to the properties described in his cross-claim Filed June 4, 2002 must be Found well-taken and granted as matter of law.

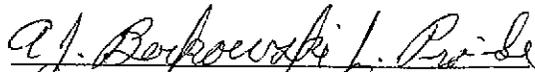
Wherefore, for all the foregoing reasons the Defendant demands that this Court grant the instant Motion for Summary Judgment pursuant to Civ. R. 56 (C).

Respectfully submitted,

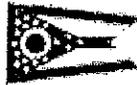

A. J. Borkowski, Jr., Defendant Pro-Se
13613 State Route 66
Fayette, Ohio 43521
Phone: 419. 237. 2397

CERTIFICATE OF SERVICE

This is to certify that a true copy of Defendant's Borkowski Jr. motion for summary judgment in the instant case was served on: Judge Robert C. Pollex, Wood at County Court House, One Court House Square, Bowling Green, Ohio, 43402; Bradley P. Toman, Esq., For Deft. Fremont Investment & Loan, 1370 Ontario Street, Suite 1700 Cleveland, Ohio, 44113; J. T. Stelzer, Esq., For Plaintiffs Humbert/Ebersole, 216 South Lynn Street, Bryan, Ohio, 43506., Paul H. Kennedy, Ass. Pros., For Deft. Dennis Hales, Treasurer, 123 Courthouse Plaza, Wauseon, Ohio, 43567; Kyle A. Silvers, Esq., For Def. Jennifer Borkowski, 1776 Tremainsville Road, Toledo, Ohio, 43613, Amber Borkowski, Deft., 13613 State Route 66, Fayette, Ohio, 43521, John Shaffer, Esq., 117 West Maple Street, Bryan, Ohio, 43506, via 1st class U.S. Mail this 27 day of January, 2004.


A.J. Borkowski, Jr., Defendant Pro Se

land
access.com



FULTON COUNTY, OHIO
SANDRA K BARBER, COUNTY
RECORDER

Tract Indexing:

- Name
- Subdiv/City/Village
- Condominium
- Townships
- Book/Page
- Instrument Number
- UCC Indexing:**
- Name
- File Number

Image	Inst Type	File Date	Time	Volume	Page	Inst No	Inst Date
	ASSIGN MTG	2/20/2004	10:37:00	0238	0143	2004 00144276	1/6/2004

= Preview = Printable Tiff Image (Multi-page)

Grantor(s)

BORKOWSKI JENNIFER M
FREMONT INVEST & LOAN

Grantee(s)

US BANK NA TRUSTEE CSFB

- Fulton County
- Ohio - County Map
- USA Map

Property

TOWNSHIP - GORHAM

Qtr: NE Section: 30 Town: 0009 Range: 0001 Lot: Acres:
RM1: ASSIGN VOL 172 PG 940

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Appx. P. 18

LSAR No.: 200323202
Loan No.: 0002537574

200400144276
Filed for Record in
FULTON COUNTY, OHIO
SANDRA BARBER
02-20-2004 At 10:37 am.
ASSIGN MTG 40.00
DR Book 238 Page 143 - 145

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, **FREMONT INVESTMENT AND LOAN**, whose address is 175 N. Riverview Drive, Anaheim, CA 92807, does hereby sell, assign, transfer and set over unto **U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF CSFB ABS TRUST SERIES 2001-BE4**, whose address is c/o Fairbanks Capital Corp., P.O. Box 1900, Hatboro, PA 19040, a certain mortgage from Jennifer M. Sorkowski, an unmarried woman to Fremont Investment and Loan, dated August 31, 2001, recorded September 10, 2001, in Official Records Book 172, Page 940, in the office of the Fulton County Recorder, together with the Promissory Note secured thereby and referred to therein; and all sums of money due and to become due thereon, and secured by the following real estate:

SEE ATTACHED LEGAL DESCRIPTION

IN WITNESS WHEREOF, Fremont Investment and Loan has set its hand this 6 day of January, 2004.

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

Fremont Investment and Loan

[Signature]
Print Name: Ralph Knight
(Witness)

by: [Signature]
Its

Madeline Ramos
Document Control Officer

SIGNED AND ACKNOWLEDGED
IN THE PRESENCE OF:

[Signature]
Print Name:
(Witness)

NOTARIAL SEAL
NIROLE SHELTON, Notary Public
Hatboro, PA, Montgomery County
My Commission Expires May 1, 2006



200400144276
LERNER, SANDSON & ROTHFUSS
ENV

Appx. P. 19

STATE OF Georgia
COUNTY OF Montgomery

SS.

Before me, a Notary Public in and for said County and State, personally appeared Madeline Brown, Deputy Controller of Fremont Investment and Loan, who acknowledged the signing thereof to be their free and voluntary act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my official seal on the day and year last aforesaid.

Notary Public **NOTARIAL SEAL**
NIKOLE SHELTON, Notary Public
Hatsboro Boro, Montgomery County
My Commission Expires May 1, 2006

This instrument was prepared by:
Allan J. Ullman
LEARNER, SAMPSON & ROTHFUSS
A Legal Professional Association
P.O. Box 5480
Cincinnati, OH 45201-5480



Appx. P. 20

Situated in the Township of Gorham, County of Fulton, State of Ohio:
A parcel of land being part of the Northeast one-quarter (1/4) of Section
Thirty (30), Township Nine (9) South, Range One (1) East, and being more
particularly described as follows:

Commencing at a P.K. nail found at the Southeast corner of the Northeast
one-quarter (1/4) of Section thirty (30);

Thence Northerly along the East line of the Northeast one-quarter (1/4) of
Section thirty (30), said line also being the center line of State Route #66,
having an assumed bearing of North one (1) degree, three (3) minutes, and
forty (40) seconds West, a distance of four hundred forty-one and thirty-three
hundredths (441.33) feet to the TRUE POINT OF BEGINNING,

Thence Westerly along a line being parallel with the North line of the South
one-half (1/2) of the South one-half (1/2) of the Northeast one-quarter (1/4)
of Section thirty (30), having a bearing of South eighty-nine (89) degrees,
forty-eight (48) minutes, and forty-one (41) seconds West, a distance of one
thousand seventeen and forty-five hundredths (1,017.45) feet to an iron pin
set;

Thence Northerly along a line being parallel with the West line of the
Northeast one-quarter (1/4) of Section thirty (30), having a bearing of North
one (1) degree, ten (10) minutes, and forty-nine (49) seconds West, a
distance of two hundred twenty-two and nine hundredths (222.09) feet to an
iron pin set on the North line of the South one-half (1/2) of the South one-
half (1/2) of the Northeast one-quarter (1/4) of Section thirty (30);

Thence Easterly along the previously described line, having a bearing of
North eighty-nine (89) degrees, forty-eight (48) minutes, and forty-one (41)
seconds East, a distance of one thousand seven and ninety-one hundredths
(1,071.91) feet to a point located on the East line of the Northeast one-
quarter (1/4) of Section thirty (30);

Thence Southerly along the previously described line, having a bearing of
South one (1) degree, three (3) minutes, and forty (40) seconds East, a

distance of two hundred twenty-two and nine hundredths (222.09) feet to
the TRUE POINT OF BEGINNING.

Also known as 13613 State Route 66, Fayette, Ohio 43521
P.P.N. 18-036320-00.000

FILED
FULTON COUNTY
COMMON PLEAS COURT
ON FEB 27 PM 2:25

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

U.S. Bank National Assoc. et al, *

Plaintiffs, *

-vs- *

Jennifer M. Borkowski, et al, *

Defendants. *

Case No. 03CV000330

MARY GYPE

RECUSAL OF

JUDGE BARBER

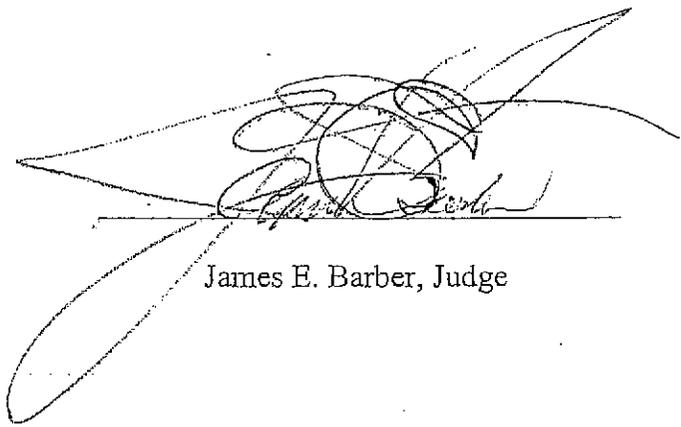
* * * * *

It appearing to the Court that Relator-Defendant A.J. Borkowski, Jr. has filed an Affidavit Requesting Disqualification of the Hon. James E. Barber from presiding in the within case; and

It appearing that the Hon. James E. Barber should and ought to recuse himself from presiding over proceedings in the within case; and

It appearing that the Chief Justice should assign a Jurist from outside the six County area of Fulton, Henry, Putnam, Paulding, Defiance and Williams Counties to preside over the within case; now therefore,

IT IS SO ORDERED.



James E. Barber, Judge

cc: Susana E. Lykins, Esq.
Kyle A. Silvers, Esq.
A.J. Borkowski, Jr.

Appx. P. 22

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

04 FEB 27 PM 2:25

Jennifer Borkowski,

*

Plaintiff,

*

Case No. 04CV000018

-vs-

*

RECUSAL OF

A.J. Borkowski,

*

JUDGE BARBER

Defendant.

*

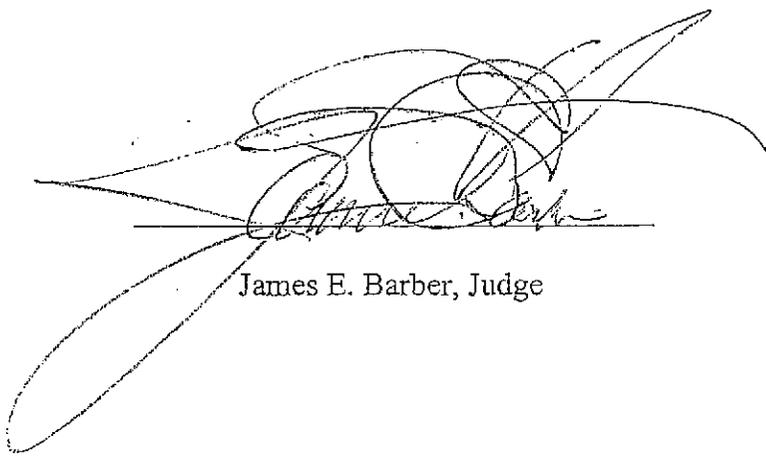
* * * * *

It appearing to the Court that Relator-Defendant A.J. Borkowski, Jr. has filed an Affidavit Requesting Disqualification of the Hon. James E. Barber from presiding in the within case; and

It appearing that the Hon. James E. Barber should and ought to recuse himself from presiding over proceedings in the within case; and

It appearing that the Chief Justice should assign a Jurist from outside the six County area of Fulton, Henry, Putnam, Paulding, Defiance and Williams Counties to preside over the within case; now therefore,

IT IS SO ORDERED.



James E. Barber, Judge

cc: Kyle A. Silvers, Esq.
A.J. Borkowski, Jr.

Appx. P. 23

JOURNALIZED 3/17/04
VOL 48 PG 325

FILED
FULTON COUNTY
COMMON PLEAS COURT
MARCH 15 2004
MARY G. WIFE
CLERK

IN THE COURT OF COMMON PLEAS OF
FULTON COUNTY, OHIO

William K. Humbert, et al.,

Case No. ⁰¹ CV 274

Plaintiffs,

HON. ROBERT C. POLLEX
(By Assignment)

vs.

ORDER ON PENDING MOTIONS

Jennifer M. Borkowski, et al.,

Defendants.

JUDGMENT ENTRY

This matter comes before the Court on a plethora of pending motions and following the most recent Decision and Judgment Entry by the Court of Appeals dismissing Defendant A.J. Borkowski Jr.'s ("Mr. Borkowski") appeal. There are 25 outstanding motions and counter-motions in this action to quiet title. Fourteen of the 25 motions were filed by Mr. Borkowski. Three of those 14 motions were filed in this Court while Mr. Borkowski's appeal was pending in the 6th District Court of Appeals.

Upon due consideration, the Court finds that all of Mr. Borkowski's motions are unfounded and must be denied. The motions, essentially attacking this Court's prior decisions in this case, are either repetitive, out of rule or without any logical or legal basis. The Court need not encumber this opinion by discussing procedural and

Appx. P. 24

substantive law on each and every motion. Mr. Borkowski appears to misunderstand and ignore the import of the Court's decisions.

Defendants, Jennifer Borkowski and Fremont Investment and Loan, each filed a motion to reinstate the judgment entry of December 5, 2003. That entry was vacated for lack of jurisdiction pending Mr. Borkowski's motion to disqualify filed with the Supreme Court of Ohio. Following the denial of the motion to disqualify and the restoration of this Court's jurisdiction, Mr. Borkowski filed a notice of appeal of the December 5, 2003 judgment entry. Mr. Borkowski's appeal was dismissed by the Court of Appeals. With authority to proceed, this Court finds the motions for reinstatement well taken and that they must be granted.

Included in the filings are several motions against Mr. Borkowski for Civil Rule 11 sanctions. Civil Rule 11 allows for the imposition of sanctions against a pro se individual who files a pleading or other document with the court, when the individual knew there were not good grounds to support the allegations or arguments in the document.

This quiet title action has a lengthy and complicated procedural history. The case file shows that Mr. Borkowski has filed numerous motions without good grounds. Defendants Jennifer Borkowski and Fremont Loan & Investment have been forced to incur additional attorney fees to respond to Mr. Borkowski's motions. The sheer number and frequency of Mr. Borkowski's filings indicate not a search for a meaningful resolution of the issues, but rather, an intent to delay the process. Mr. Borkowski's inexperience does not justify his repeated disregard for this Court's orders. The Court finds Mr. Borkowski's conduct a willful violation of Civil Rule 11 warranting sanctions.

ORDER

Upon consideration of the motions and memoranda submitted, IT IS HEREBY ORDERED AS FOLLOWS:

1. The two separate motions to Reinstate Judgment Entry of December 5, 2003 filed by Defendant Fremont Investment & Loan on January 27, 2004 and by Defendant Jennifer Borkowski on January 30, 2004 are hereby GRANTED. The judgment of this Court as entered on December 5, 2003 is hereby REINSTATED and made a part of this Order.

2. A. J. Borkowski's Motion for Contempt Against Judge Robert C. Pollex filed on December 30, 2003 is hereby DENIED.

3. A.J. Borkowski's Motion for Summary Judgment filed on January 13, 2004 is hereby DENIED.

4. A.J. Borkowski's Motion for Declaratory Judgment filed on January 20, 2004 is hereby DENIED.

5. A.J. Borkowski's Motion for Findings of Fact and Conclusions of Law filed on January 27, 2004 is hereby DENIED.

6. A.J. Borkowski's "Motion to Strike Fremont Investment & Loan's Motion to Reinstate December 5, 2003 Judgment Entry" filed on January 27, 2004 is hereby DENIED.

Appx. P. 26

7. A.J Borkowski's "Motion to Strike Fremont Investment & Loan's Brief in Opposition to AJ Borkowski's Motion for Summary Judgment" filed on January 27, 2004 is hereby DENIED.

8. A.J. Borkowski's Motion for Summary Judgment on Valid Cross-Claim filed on January 27, 2004 is hereby DENIED.

9. A.J. Borkowski's "Motion to Vacate Court's Orders and Judgment Entries of March 3, 2003 and July 21, 2003" filed on February 4, 2004 is hereby DENIED.

10. A.J. Borkowski's "Motion for Nunc Pro Tunc Order to Correct Court Record" filed on February 9, 2004 is hereby DENIED.

11. A.J. Borkowski's Motion to Rewrite the Pretrial Order and Reset the Trial by Jury Date filed on February 17, 2004 is hereby DENIED.

12. Jennifer Borkowski's three separate motions for sanctions against A.J. Borkowski for filing (a) motion for summary judgment, (b) motion for declaratory judgment, (c) motion to set aside are hereby GRANTED. Further, Fremont Investment and Loan's request for sanctions against A.J. Borkowski for filing Motion for Nunc Pro Tunc is GRANTED.

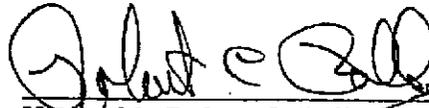
A.J. Borkowski is HEREBY ORDERED to pay Jennifer Borkowski the amount of \$600 representing attorney fees incurred as a result of Mr. Borkowski's Civil rule 11 violations. A.J. Borkowski is FURTHER ORDERED to pay Fremont Investment & Loan the amount of \$600, in addition to the \$450 awarded in the Final Judgment Entry, as sanctions for Civil 11 violation.

Appx. P. 27

IT IS FURTHER ORDERED that Defendant A. J. Borkowski pay the costs of the case for which sum judgment is rendered against said Defendant on behalf of Fulton County and for which execution is awarded.

The Final Judgment Entry quieting title as prayed for shall issue forthwith.

IT IS SO ORDERED.



Honorable Robert C. Pollex, Judge
(By Assignment)

**CLERK TO FURNISH TO ALL COUNSEL
OF RECORD AND UNREPRESENTED PARTIES
NOT IN DEFAULT FOR FAILURE TO APPEAR
WITH A COPY OF THIS ENTRY INCLUDING
THE DATE OF ENTRY ON THE JOURNAL**

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

FILED
RECEIVED
COMMON PLEAS COURT
FULTON COUNTY, OHIO
DEC 15 2003
MARY D'YPE

Case No. 01CV000274

William K. Humbert, et al.

Plaintiff,

-vs-

Jennifer M. Borkowski, et al.

Defendants.

JUDGMENT ENTRY

J. T. Stelzer - 0001954
Gallagher, Stelzer & Yosick, Ltd.
216 South Lynn Street
Bryan, OH 43506
(419) 636-3166
Fax: (419) 636-5743
Attorney for Plaintiffs

This matter came on for hearing upon several Motions for Summary Judgment against Defendant, A. J. Borkowski, by Plaintiffs, and Defendants, Fremont Investment & Loan and Jennifer M. Borkowski. By an Order and Judgment Entry filed on December 5, 2003, this Court finds said Motions for Summary Judgment to be well taken..

The Court further finds that the Plaintiffs are in possession of their respective parcels of real estate as set forth in the Complaint, have the legal estate in, and are entitled to the possession of said parcels of real estate.

The Court further finds that Defendant, Jennifer M. Borkowski, is in lawful possession of the parcel of real estate as set forth in her Counterclaim and Cross-Claim, subject only to the mortgage interest of Defendant, Fremont Investment & Loan recorded on September 10, 2001 in Official Record Vol. 172, Page 940.

The Court further finds that Defendant, Fremont Investment & Loan is entitled to judgment against Defendant. A. J. Borkowski, for sanctions.

The Court further finds that Defendant, A. J. Borkowski, has no estate nor is he entitled to the possession of said real estate as set forth in Plaintiffs' Complaint and Defendant, Jennifer M.

Appx. P. 29

Borkowski's Counterclaim and Cross-Claim, or any part thereof, and that Plaintiffs and Defendant, Jennifer J. Borkowski, ought to have title and possession quieted as against Defendant, A. J. Borkowski, and all other named Defendants, as prayed for in the Complaint, and in Defendant, Jennifer M. Borkowski's Counterclaim and Cross-Claim and that there is no reason for delay in granting a final order quieting title as prayed for.

It is therefore, ORDERED, ADJUDGED and DECREED that Defendant, Fremont Investment & Loan is granted judgment in the amount of Four Hundred Fifty and no/100 Dollars (\$450.00) against Defendant, A. J. Borkowski for sanctions.

It is therefore, ORDERED, ADJUDGED AND DECREED that the title and possession of the Plaintiffs, William K. Humbert and Brenda Humbert, in and to the following described real estate be and the same is hereby quieted against Defendant, A. J. Borkowski:

Situated in the County of Fulton, in the State of Ohio and in the Township of Gorham and bounded and described as follows: A parcel of land being part of the Northeast one-quarter (1/4) of Section Thirty (30), Township Nine (9) South, Range One (1) East, Gorham Township, Fulton County, Ohio and being more particularly described as follows: Commencing at a P.K. nail found at the Southeast corner of the Northeast one-quarter (1/4) of Section Thirty (30); thence Westerly along the South line of the Northeast one-quarter (1/4) of section Thirty (30), having an assumed bearing of South 89°44'54" West, a distance of one thousand sixteen and fifty-one hundredths (1,016.51) feet to an iron pin set at the TRUE POINT OF BEGINNING; thence continuing Westerly along the previously described line, a distance of one thousand six hundred thirty-six and sixty-six hundredths (1,636.66) feet to an iron pin set at the Southwest corner of the Northeast one-quarter (1/4) of Section Thirty (30); thence Northerly along the West line of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of North 1°10'49" West, a distance of six hundred sixty-six and thirty-seven hundredths (666.37) feet to an iron pin set at the North west corner of the South one-half (1/2) of the South one-half (1/2) of the Northeast one-quarter (1/4) of Section Thirty (30); thence Easterly along the North line of the South one-half (1/2) of the South one-half (1/2) of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of North 89°48'41" East, a distance of one thousand six hundred thirty-six and sixty-nine hundredths (1,636.69) feet to an iron pin set; thence Southerly along a line being parallel with the West line of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of South 1°10'49" East, a distance of six hundred sixty-four and fifty-seven hundredths (664.57) feet to the TRUE POINT OF BEGINNING. Containing 1,089,000 square feet, which is equal to twenty-five and zero thousandths (25.000) acres of land, more or less. Subject, however to all legal highways and easements of record.

This legal description dated November 19, 1998 was prepared by Nicholas F. Ronau, Ohio Registered Surveyor No. 6735, from a survey by T. R. Worline & Associates, Inc., under his direction in November of 1998.

Appx. P. 30

It is therefore, further ORDERED, ADJUDGED AND DECREED that the title and possession of the Plaintiff, Loyal Ebersole, in and to the following described real estate be and the same is hereby quieted against Defendant, A. J. Borkowski:

Situated in the County of Fulton, in the State of Ohio and in the Township of Gorham and bounded and described as follows: A parcel of land being part of the Northeast one-quarter (1/4) of Section Thirty (30), Township Nine (9) South, Range One (1) East, Gorham Township, Fulton County, Ohio and being more particularly described as follows: Commencing at a P.K. nail found at the Southeast corner of the Northeast one-quarter (1/4) of Section Thirty (30); said point also being the TRUE POINT OF BEGINNING; thence Westerly along the South line of the Northeast one-quarter (1/4) of Section Thirty (30), having an assumed bearing of South 89° 44' 54" West, a distance of 1,016.51 feet to an iron pin set; thence Northerly along a line bearing parallel with the West line of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of North 1° 10' 49" West, a distance of 442.47 feet to an iron pin set; thence Easterly along a line being parallel with the North line of the South one-half (1/2) of the South one-half (1/2) of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of North 89° 48' 41" East, a distance of 1,017.45 feet to a point located on the East line of the Northeast one-quarter (1/4) of Section Thirty (30); thence southerly along the previously described line, said line also being the center line of State Route #66, having a bearing of South 1° 03' 40" East, a distance of 441.33 feet to the TRUE POINT OF BEGINNING. Containing 449,348 square feet, which is equal to 10.316 acres of land, more or less. Subject, however, to all legal highways and easements of record.

This legal description dated November 23, 1998, was prepared by Nicholas F. Ronau, Ohio Registered Surveyor No. 6735, from a survey performed by T. R. Worline & Associates, Inc. under his direction in November of 1998.

It is therefore, further ORDERED, ADJUDGED AND DECREED that the title and possession of the Defendant, Jennifer M. Borkowski, in and to the following real estate be and the same is hereby quieted against Defendant, A. J. Borkowski, subject only to the mortgage interest of Defendant, Fremont Investment & Loan, recorded on September 10, 2001 in Official Record Vol. 172, Page 940:

ALSO, Situated in the County of Fulton, in the State of Ohio and in the Township of Gorham and bounded and described as follows: A parcel of land being part of the Northeast one-quarter (1/4) of Section Thirty (30), Township Nine (9) South, Range One (1) East, Gorham Township, Fulton County, Ohio and being more particularly described as follows: Commencing at a P.K. nail found at the Southeast corner of the Northeast one-quarter (1/4) of Section Thirty (30); thence Northerly along the East line of the Northeast one-quarter (1/4) of Section Thirty (30), said line also being the center line of State Route #66, having an assumed bearing of North 1° 03' 40" West, a distance of

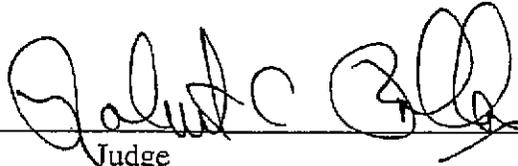
Appx. P. 31

441.33 feet to the TRUE POINT OF BEGINNING; thence Westerly along a line being parallel with the North line of the South one-half (1/2) of the South one-half (1/2) of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of South 89°48'41" West, a distance of 1,017.45 feet to an iron pin set; thence Northerly along a line being parallel with the West line of the Northeast one-quarter (1/4) of Section Thirty (30), having a bearing of North 1°10'49" West, a distance of 222.09 feet to an iron pin set on the North line of the South one-half (1/2) of the South one-half (1/2) of the Northeast one-quarter (1/4) of Section Thirty (30); thence Easterly along the previously described line, having a bearing of North 89°48'41" East, a distance of 1,017.91 feet to a point located on the East line of the Northeast one-quarter (1/4) of Section Thirty (30); thence Southerly along the previously described line, having a bearing of South 1°03'40" East, a distance of 222.09 feet to the TRUE POINT OF BEGINNING. Containing 225,990 square feet, which is equal to 5.188 acres of land, more or less. Subject, however, to all legal highways and easements of record.

This legal description dated November 23, 1998, was prepared by Nicholas F. Ronau, Ohio Registered Surveyor No. 6735, from a survey performed by T. R. Worline & Associates, Inc. under his direction in November of 1998.

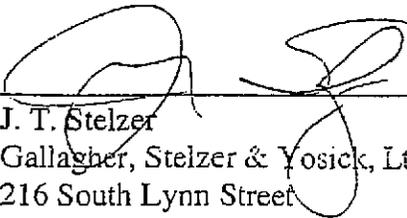
Defendant, A. J. Borkowski, is hereby forever enjoined from setting up any claim to said premises or any part thereof, adverse to the title and possession of the said Plaintiffs and Defendant, Jennifer M. Borkowski, their heirs or assigns thereto.

The Clerk shall cause to be recorded in the deed records in this County a certified copy of this Judgment Entry.



Judge

APPROVED BY:



J. T. Stelzer
Gallagher, Stelzer & Yosick, Ltd.
216 South Lynn Street
Bryan OH 43506
Attorney for Plaintiffs,
William K. Humbert, Brenda Humbert and
Loyal Ebersole

**CLERK TO FURNISH TO ALL COUNSEL
OF RECORD AND UNREPRESENTED PARTIES
NOT IN DEFAULT FOR FAILURE TO APPEAR
WITH A COPY OF THIS ENTRY INCLUDING
THE DATE OF ENTRY ON THE JOURNAL**

Appx. P. 32

PROOF OF SERVICE

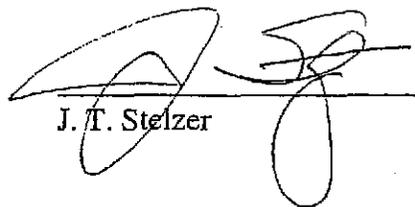
The undersigned hereby certifies that he mailed a copy of the foregoing Judgment Entry to the following named persons on this 16th day of December, 2003:

Kyle A. Silvers, Esq.
Calamunci, Joelson, Manore,
Farah & Silvers
1776 Tremainsville Rd
Toledo OH 43613
Attorney for Defendant,
Jennifer M. Borkowski

Paul H. Kennedy, Esq.
Assistant Prosecuting Attorney
123 Courthouse Plaza
Wauseon OH 43567
Attorney for Defendant, Treasurer

Bradley P. Toman, Esq.
1370 Ontario Street
Suite 1700
Cleveland OH 44114
Attorney for Defendant,
Fremont Investment

A. J. Borkowski, Jr.
13613 State Route 66
Fayette OH 43521



J. T. Stelzer

JOURNALIZED 4/7/04
VOL 8 PG 52

FILED
FULTON COUNTY COURT OF APPEALS
APR 07 2004
Mary Ryan CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

William K. Humbert, et al.

Appellees

Court of Appeals No. F-04-012

Trial Court No. 01-CV-274

v.

Jennifer M. Borkowski, et al.

Appellants

DECISION AND JUDGMENT ENTRY

Decided: APR 7 2004

ACCELERATED CALENDAR

SCHEDULING ORDER

It is the order of this court that this appeal be placed on the accelerated calendar, pursuant to 6th Dist.Loc.App.Rs. 3(C), 5 and 12.

It is ordered that ~~the record be filed on or before April 19, 2004.~~ Briefs shall be filed in accordance with App.R. 11.1 (C). No reply briefs shall be filed unless ordered by the court. See 6th Dist.Loc.App.R. 12(D). No extensions of time for filing briefs will be given except in extraordinary circumstances. See 6th Dist.Loc.App.R. 5.

1.

Appx. P. 34

JOURNALIZED _____

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No oral argument will be scheduled unless it is requested in writing within ten days after the date appellee's brief is due. See 6th Dist. Loc. App. R. 9(A).

Any party may file a motion requesting that this appeal be removed from the accelerated calendar and placed on the regular calendar. See 6th Dist. Loc. App. R. 12(B).

It is so ordered.

Peter M. Handwork, P.J. _____

Peter M. Handwork 7/1
JUDGE (sic)

To the Court of Appeals Clerk

Serve a copy of this Decision and Judgment Entry on all parties, or if represented by counsel, on said counsel. Also, provide a copy of this Decision and Judgment Entry to the trial court clerk, the trial court judge who signed the judgment entry appealed from and, if necessary, to the court reporter responsible for preparing the transcript of proceedings.

FILED
FULTON COUNTY
COMMON PLEAS COURT

APR 29 PM 12:18

MARY GYPE
CLERK

INDEXED 4-29-04
VOL 49 PG 93

I HEREBY CERTIFY THIS
INSTRUMENT IS A TRUE COPY OF
THE ORIGINAL *Mary Gype*
DATED *4/29/04* CLERK OF COURTS
cu

IN THE COURT OF COMMON PLEAS, FULTON COUNTY, OHIO

William K. Humbert, et al.,

Plaintiff,

v.

Jennifer M. Borkowski, et al.,

Defendants.

Case No. 01-CV-274

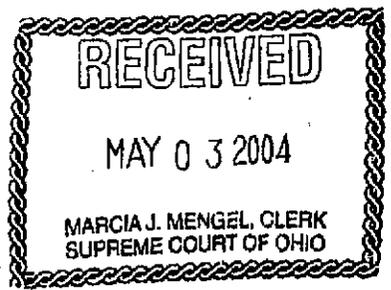
ORDER ON DEFENDANT
JENNIFER BORKOWSKI'S
MOTION TO HAVE
A.J. BORKOWSKI DECLARED
A VEXATIOUS LITIGATOR

JUDGMENT ENTRY

This cause is before the Court on the motion of Defendant Jennifer Borkowski to have A.J. Borkowski declared a vexatious litigator pursuant to R.C. 2323.52. A.J. Borkowski did not file a response to the motion. Upon due consideration of the statutory standard and the facts of this case, the Court finds Jennifer Borkowski's motion well taken and that it should be granted.

Facts and Procedural Background

This case was commenced on December 5, 2001 as a quiet title action against multiple defendants including A.J. Borkowski. Some defendants answered and some did not. Mr. Borkowski filed his answer pro se, with "questions to be answered". Following dismissal of some defendants and a finding of default on others, the remaining defendants were narrowed down to Jennifer Borkowski, Fremont Investment and Loan, and A.J. Borkowski.



Appx. P. 36

The facts relevant to the quiet title action were not in dispute. The Plaintiffs and Jennifer Borkowski were innocent bona fide purchasers of the properties described in the complaint. They paid fair market value for the parcels. Fremont Investment and Loan acquired its mortgage in good faith and for value. For a long time the case was ripe for summary judgment in favor of Plaintiffs, Jennifer Borkowski, Fremont Investment and Loans, and against A.J. Borkowski. The decision was delayed due to A.J. Borkowski's filing of a barrage of motions, objections to Court's decision, notices of appeal, and accusations of improprieties.

The Court will not enumerate all the documents filed by Mr. Borkowski, except to say that there were over 60 filings, including motions for disqualification of two judges and plaintiff's counsel; motions for default and summary judgment on claims that were not allowed to be filed; motions for stay; motions to vacate almost all judgment entries issued by this Court; notices of appeal; and a host of other motions filed without reasonable basis and without leave of court.

On March 17, 2004, the Final Judgment Entry in this case was issued. Two days later, A.J. Borkowski moved for Stay and for the Court to vacate the Final Judgment Entry. These motions were denied. On April 1, 2004, Jennifer Borkowski filed the motion to have Defendant A.J. Borkowski declared a vexatious litigator. On April 2, 2004, A.J. Borkowski filed a notice of appeal of the Final Judgment Entry. At this point, this Court may not do anything that might interfere with the Court of Appeals' jurisdiction to reverse, affirm, or modify the Final Judgment Entry. However, exercise of jurisdiction over Jennifer Borkowski's motion is not inconsistent with the Court of Appeals' jurisdiction. This Court's determination on the motion to declare a vexatious

Appx. P. 37

litigator will have no effect on the Final Judgment Entry. Therefore, the Court will proceed to consider the motion.

Law and Analysis

"[I]t is a public-policy imperative that [t]he courthouse door must be open to the people of Ohio. See *Chapman v. Adia Services, Inc.* (1997), 116 Ohio App.3d 534, 544, 688 N.E.2d 604. But there is a statutory exception. R.C. 2323.52, the vexatious litigator statute, provides the appropriate procedure whereby parties who persistently abuse the civil litigation process may be restricted in their access to the courts." *In re Bailey*, 1st Dist. App. Nos. C-010015 and C-010186, 2002-Ohio-3801, ¶13.

R.C. 2323.52(A)(3) states, in part, as follows: " 'Vexatious litigator' means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions."

"Vexatious conduct" is defined in R.C. 2323.52(A)(2) as meaning "conduct of a party in a civil action that satisfies any of the following:

- (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
- (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
- (c) The conduct is imposed solely for delay."

Jennifer Borkowski contends that A.J. Borkowski engaged in vexatious conduct by filing innumerable meritless and exceedingly frivolous motions in this case as well as in other cases that involve both parties. The Court agrees. In light of the history of this

case, the inescapable conclusion is that Mr. Borkowski filed unwarranted claims and pleadings. There were no reasonable grounds for the multiple motions. Moreover, he did so in a "habitual and persistent conduct." His arguments and legal theories, even though rejected by the Court, were repeatedly used as basis for the multiple filings.

In civil cases, the same rules, procedures, and standards apply to one who appears pro se as apply to those litigants who are represented by counsel. "Ignorance of the law is no excuse, and Ohio courts are under no duty to inform civil pro se litigants of the law. * * * " *Jones Concrete, Inc. v. Thomas*, (Dec. 22, 1999), Medina App. No. 2957-M. Despite this standard, The Court has made generous allowances for A.J. Borkowski who proceeded pro se in this case. Mr. Borkowski abused the judicial process.

ORDER

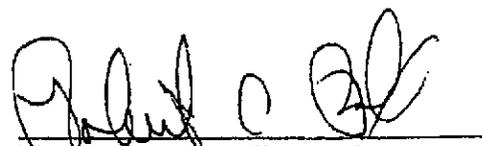
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Jennifer Borkowski's motion to have Defendant A.J. Borkowski declared a vexatious litigator be, and hereby is, granted. This Court finds that A.J. Borkowski's actions constitute sanctionable "vexatious conduct" and declares him a vexatious litigator pursuant to R.C. 2323.52.

Mr. Borkowski is hereby prohibited from filing any motion, pleading, or legal document in this Court without first obtaining leave of Court.

The Clerk of Court shall send a certified copy of this order to the Supreme Court.

Costs of this proceeding shall be assessed to Defendant A.J. Borkowski.

IT IS SO ORDERED.



Hon. Robert C. Pollex, Judge

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A.J.

JOURNALIZED 5-13-04
VOL 49 PG 181

FILED
FULTON COUNTY
COMMON PLEAS COURT
MAY 13 AM 9:52
MARY GYPSY
CLERK

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

Jennifer M. Borkowski,

*

Plaintiff,

*

Case No. 04CV000018

v.

*

A.J. Borkowski,

*

JUDGMENT ENTRY

Defendant.

*

* * * * *

Defendant A. J. Borkowski Jr, 's Motion for Leave to File Accompanying Motion filed May 13, 2004 is granted. The Clerk of Court's Office shall process the Motion for Removal Based on Constitutional Law accordingly.

IT IS SO ORDERED.



Charles D. Abood,
Judge By Assignment

Appx. P. 40

JOURNALIZED 5/13/04
VOL. 49 PG. 181

FILED
FULTON COUNTY
COMMON PLEAS COURT
MAY 13 AM 9:22
MARY GYPER
CLERK

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

Jennifer M. Borkowski,

*

Plaintiff,

*

Case No. 04CV000018

v.

*

A.J. Borkowski,

*

JUDGMENT ENTRY

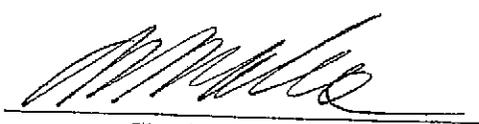
Defendant.

*

* * * * *

Defendant A. J. Borkowski Jr, 's Motion for Leave to File Accompanying Motion filed May 12, 2004 is granted. The Clerk of Court's Office shall process the Motion To Dismiss for Lack of Subject Matter Jurisdiction accordingly.

IT IS SO ORDERED.



Charles D. Abood,
Judge By Assignment

Appx. P. 41

FILED
FULTON COUNTY COURT OF APPEALS
MAY 17 2004
May 17 2004 CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

William K. Humbert, et al.

Court of Appeals No. F-04-012

Appellees

Trial Court No. 01-CV-274

v.

Jennifer M. Borkowski, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: MAY 17 2004

Appellant, A.J. Borkowski, was declared to be a vexatious litigator pursuant to R.C. 2323.52(D)(1) by Judge Robert C. Pollex of the Common Pleas Court of Fulton County on April 29, 2004. On May 5, 2004, Borkowski filed a "Motion for Leave to File Attached Affidavit of Appellant A.J. Borkowski, Jr." On May 6, 2004, Borkowski filed a "Motion for Leave to File Brief of Appellant, A.J. Borkowski."

R.C. 2323.52(D)(3) states:

"A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal

1.

Appx. P. 42

proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section."

R.C. 2323.52(F)(2) states:

"A person who is subject to an order entered pursuant to division (D)(I) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made."

Neither of Borkowski's motions is an application for leave to proceed. Thus, the aforesaid motions are stricken. The clerk of courts shall not accept from A.J. Borkowski any document for filing in the court of appeals except an application for leave to proceed. It is so ordered.

Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Arlene Singer, J.
CONCUR.

Peter M. Handwork

JUDGE

Mark L. Pietrykowski

JUDGE

Arlene Singer

JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

WILLIAM K. HUMBERT, et al.,	)	CASE NO. 3:04 CV 7260
)	
Plaintiff,	)	JUDGE DAVID A. KATZ
)	
v.)	
	)	<u>ORDER OF REMAND</u>
JENNIFER M. BORKOWSKI, et al.,)	
)	
Defendants.)	

On May 21, 2004, A.J. Borkowski filed a Notice of Removal of this action, which was originally filed in the Fulton County Court of Common Pleas on December 5, 2001. Borkowski alleges he was served with process on December 8, 2001.

Title 28 U.S.C. § 1441, which governs civil actions removable from state court generally, provides that such removal may only occur when a federal court has original jurisdiction of the matter and a defendant in the action seeks removal. Further, a notice of removal must be filed within 30 days after a defendant's receipt of a copy of the initial pleading or within 30 days after service of summons upon the defendant if the initial pleading has then been filed in court and is not required to be served on the defendant, whichever is shorter. 28 U.S.C. § 1446(b). There is simply no indication that these

Appx. P. 45

requirements have been met here.

-2-

Accordingly, this matter is remanded to the Fulton County Court of Common Pleas.

IT IS SO ORDERED.

S/ DAVID A. KATZ 5/24/04

DAVID A. KATZ
UNITED STATES DISTRICT JUDGE

JOURNALIZED 5/26/04

VOL. 8 PG. 89

FILED
FULTON COUNTY COURT OF APPEALS
MAY 26 2004
Macy Hagan CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

William K. Humbert, et al.

Court of Appeals No. F-04-012

Appellees

Trial Court No. 01-CV-274

v.

Jennifer M. Borkowski, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: **MAY 26 2004**

* * * * *

Appellant, A.J. Borkowski, was declared to be a vexatious litigator pursuant to R.C. 2323.52(D)(1) by Judge Robert C. Pollex of the Common Pleas Court of Fulton County on April 29, 2004. On May 17, 2004, Borkowski filed in this court a "Motion for Leave to File Copy of Notice of Removal Based on Constitutional Law and Supplemental [sic]."

R.C. 2323.52(D)(3) states:

"A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal

f.

Appx. P. 47

proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section."

R.C. 2323.52(F)(2) states:

"A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made."

Borkowski's motion filed on May 17, 2004 is not an application for leave to proceed. Thus, the motion is stricken. The clerk of courts shall not accept from A.J. Borkowski any document for filing in the court of appeals except an application for leave to proceed. It is so ordered.

Richard W. Knepper, J.

Richard W. Knepper
JUDGE

Mark L. Pietrykowski, J.

Mark L. Pietrykowski
JUDGE

Arlene Singer, J.

Arlene Singer
JUDGE

CONCUR:

JOURNALIZED _____

VOL. _____ PG. _____

FILED
 FULTON COUNTY COURT OF APPEALS
 JUN - 2 2004
Mary G. ... CLERK

IN THE COURT OF APPEALS OF OHIO
 SIXTH APPELLATE DISTRICT
 FULTON COUNTY

William K. Humbert, et al.

Court of Appeals No. F-04-012

Appellees

Trial Court No. 01-CV-274

v.

Jennifer M. Borkowski, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: JUN 2 2004

This matter is before the court on the application of appellant A.J. Borkowski for "Leave to Proceed with Brief and/or with Previously Submitted Affidavit in Support."

On April 29, 2004, Borkowski was declared to be a vexatious litigator pursuant to R.C. 2323.52(D)(1) by Judge Robert C. Pollex of the Common Pleas Court of Fulton County. He had previously appealed various orders of Judge Pollex to this court. On May 5, 2004, Borkowski filed a "Motion for Leave to File Attached Affidavit of Appellant A.J. Borkowski, Jr.," and on May 6, 2004, he filed a "Motion for Leave to File Brief of Appellant, A.J. Borkowski" with this court. In a decision and judgment entry of

Appx. P. 50

JOURNALIZED.....

VOL.....PG.....

May 17, 2004, we ordered stricken from the record Borkowski's motions as neither was an application for leave to proceed as is required by R.C. 2323.52(F)(2). Appellant has now filed an application for leave to proceed.

R.C. 2323.52(F)(2) provides in relevant part: "The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application."

Borkowski cites the following reasons in support of his contention that he has reasonable grounds to proceed. First, Borkowski asserts that due to his own excusable neglect he failed to file a motion for leave in the first instance. We find this to be irrelevant to the issues presently before the court. Second, Borkowski asserts that this court's decision of May 17, 2004, is in direct conflict with our decision in *State ex rel. Howard v. Lucas Cty. Court of Common Pleas* (2001), 142 Ohio App.3d 761. It is not. Third, Borkowski argues that this court lacked jurisdiction to rule in the instant appeal because he removed this action to the Federal District Court of Ohio on May 12, 2004. We have nothing before us that establishes any such removal. Moreover, if in fact this case were removed, Borkowski would have no standing to proceed before this court and his current application would be moot. Fourth, Borkowski asserts that we abused our discretion by striking his motions. This is not the type of "reasonable grounds" argument contemplated by R.C. 2323.52(F)(2). Finally, Borkowski argues that Judge Pollex'

JOURNALIZED _____

VOL. _____ PG. _____

decision of March 15, 2004¹, from which Borkowski filed a notice of appeal, is legally incorrect because the judge lacked jurisdiction to consider the merits of the case while that action was pending in the Supreme Court of Ohio on Borkowski's affidavit of disqualification. The trial court, however, did not rule on the pending motions until its jurisdiction was restored by the Ohio Supreme Court's denial of Borkowski's motion to disqualify.

Accordingly, we conclude that Borkowski has not established reasonable grounds for the continuance of these proceedings and his application for leave to proceed is denied. This appeal is dismissed at Borkowski's costs. All pending motions are moot and denied.

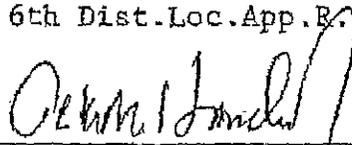
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, P.J.

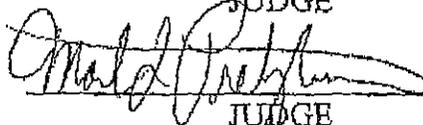
Mark L. Pietrykowski, J.

Judith Ann Lanzinger, J.

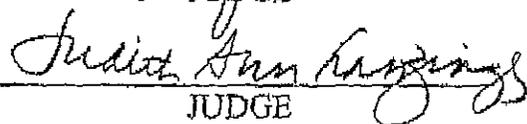
CONCUR.



JUDGE



JUDGE



JUDGE

¹The decision from which Borkowski filed a notice of appeal was dated March 15, 2004, but was journalized on March 17, 2004.

JOURNALIZED 7-15-04
VOL 8 PG 141

FILED
FULTON COUNTY COURT OF APPEALS
JUL 14 2004
Mayer CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

William K. Humbert, et al.

Court of Appeals No. F-04-012

Appellees

Trial Court No. 01-CV-274

v.

Jennifer M. Borkowski, et al.

DECISION AND JUDGMENT ENTRY

Appellants

Decided: **JUL 14 2004**

This matter is before the court on the motion of appellant A.J. Borkowski for reconsideration of our decision and judgment entry of June 2, 2004, and on the brief in opposition filed by appellee, Fremont Investment & Loan. In that decision, we dismissed Borkowski's appeal and denied his application for leave to proceed after concluding that he had not established reasonable grounds to continue the proceedings as set forth in R.C. 2323.52(F)(2).

As stated in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 140: "The test generally applied upon the filing of a motion for reconsideration in the court of appeals is

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JOURNALIZED _____

VOL 8 PG 142

whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.”

Although appellant is now represented by counsel, we find that the aforestated test has not been met. Accordingly, appellant’s motion for reconsideration is not well-taken and the same is hereby denied. All pending motions are moot and denied.

Peter M. Handwork, P.J.

Peter M. Handwork

JUDGE

Mark L. Pietrykowski, J.

Mark L. Pietrykowski

JUDGE

Judith Ann Lanzinger, J.
CONCUR.

Judith Ann Lanzinger

JUDGE

PAGE

The Supreme Court of Ohio

FILED

OCT 27 2004

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

William K. Humbert et al.,
Appellees,
v.
Jennifer M. Borkowski et al.,

Case No. 04-1175

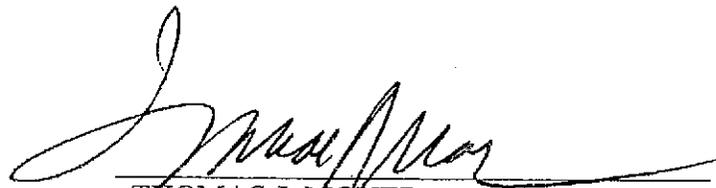
ENTRY

[A. J. Borkowski, Jr.,
Appellant.]

Upon consideration of the jurisdictional memoranda filed in this case the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

IT IS FURTHER ORDERED by the Court that appellant's motions to strike memorandums in response of Freemont Investment and Loan and Jennifer M. Borrowski, notice of appearance and notice of substitution of counsel, and motion for sanctions be, and hereby are denied as moot.

(Fulton County Court of Appeals; No. F04012)



THOMAS J. MEYER
Chief Justice

Appx P. 55

The Supreme Court of Ohio

FILED

OCT 27 2004

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

William K. Humbert et al.,
Appellees,
v.
Jenifer M. Borkowski et al.,
Appellees,
[A.J. Borkowski, Jr.,
Appellant.]

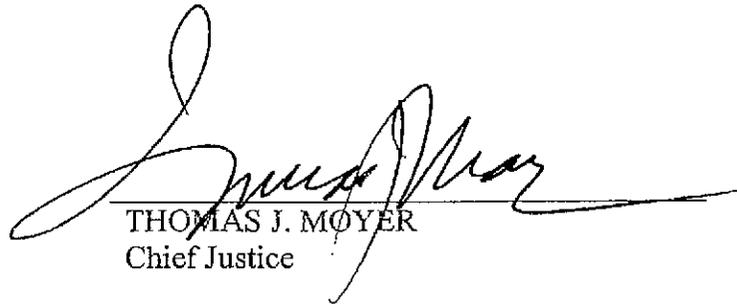
Case No. 04-1617

ENTRY

This cause is pending before the Court as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's motion for stay of court of appeals judgment,

IT IS ORDERED by the Court that the motion for stay of the court of appeals judgment be, and hereby is, denied.

(Fulton County Court of Appeals; No. F04022)



THOMAS J. MOYER
Chief Justice

Appx. P. 56

I HEREBY CERTIFY THIS INSTRUMENT IS A TRUE COPY OF THE ORIGINAL DATED 2/18/05 MARY GYPE CLERK OF COURTS

FILED
FULTON COUNTY
COMMON PLEAS COURT
05 FEB -7 AM 11:36
MARY GYPE
CLERK

JOURNALIZED 2/17/05
VOL 52 PG 510

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

A.J. Borkowski, Jr.,
Plaintiff,

Case No. 02-CV-114

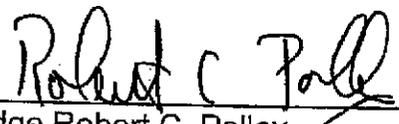
vs.

RECUSAL OF JUDGE

Loyal G. Ebersole,
Defendants.

Judge Robert C. Pollex

This matter comes on upon the Court's own motion as Judge Robert C. Pollex desires to withdraw as assigned Judge to this case and to recuse himself. The reason for this request is that due to the very numerous motions filed by Plaintiff A.J. Borkowski, Jr., and due to the scurrilous accusations contained therein, the Court does not feel that it can maintain its impartiality any further in this proceeding. In the interest of justice it is suggested that another Judge be assigned to this case.



Judge Robert C. Pollex

I HEREBY CERTIFY THIS
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THE ORIGINAL *Mary Lynn B*
DATED *5/12/05* CLERK OF COURTS

JOURNALIZED *5/16/05*
VOL *8* PG *474*

FILED
FULTON COUNTY COURT OF APPEALS
MAY - 6 2005
Mary Lynn B CLERK

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Jennifer Borkowski
Appellee

Court of Appeals No. F-04-020
Trial Court No. 04-CV-000018

v.

A.J. Borkowski, Jr.
Appellant

DECISION AND JUDGMENT ENTRY
Decided: MAY 06 2005

John G. Rust, for appellant.

PARISH, J.

This is an appeal from two judgments of the Fulton County Court of Common Pleas, in which the trial court granted a complaint for eviction filed by appellee, Jennifer Borkowski, and denied appellant, A.J. Borkowski's, Civ.R. 60(B) motion to vacate. Appellant sets forth the following two assignments of error on appeal:

1.

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"A. Because the trial judge was absolutely divested of jurisdiction to decide the merits of the complaint for possession of the property once the appellant's proper notice of removal to the U.S. District which was filed on May 12, 2004 until May 24, 2004, the trial judge committed a prejudicial error to the appellant because the trial judge unambiguously lacked jurisdiction to consider appellee's complaint for possession.

"B. Because A.J. Borkowski demonstrated the factors required by Civ.R. 60(B), his rule 60(B) motion should be granted."

The facts relevant to the issues raised in this appeal are as follows. Appellee, appellant's daughter, is the owner of a residence at 13613 State Route 66 in Fayette, Ohio ("the property").¹ In 2002, appellant and appellee executed a lease in which appellant agreed to pay rent in the amount of \$600 per month. Appellant stopped paying rent in August 2003. On January 26, 2004, appellee filed the complaint herein, in which she sought to evict appellant from the property. Appellant filed an answer on March 23, 2004.

On May 13, 2004, an evidentiary hearing was held. Before the start of the hearing, the trial court allowed appellant to file a document titled "Notice of Removal Based [on] Constitutional Law." The notice was file stamped by the United States District Court, Northern District of Ohio, on May 12, 2004.

¹The lengthy and litigious history of this case includes a separate dispute regarding ownership of the property, brought in the Fulton County Court of Common Pleas, case no. 01CV-0274.

At trial, appellee testified she is the owner of the property. Appellee also testified as to the terms of the lease and appellant's failure to pay rent. In lieu of testimony appellant, acting pro se, argued the trial court was divested of jurisdiction to consider the eviction complaint when the notice of removal was filed. In response, the trial court stated:

"Mr. Borkowski, you are showing me what is, I allowed to be filed in this case, Notice of Removal Based Constitutional Law, which appears to have been filed in the * * * United States District Court on May 12. This Court finds that that [sic] mere filing of that document does not remove jurisdiction of this case from this court. And that matter is now closed."

At the close of all the evidence, the trial court found appellee has legal possession of the property. The trial court further found appellant defaulted under the terms of the lease, and was subject to eviction proceedings. The trial court's judgment entry was journalized on May 17, 2004, and a writ of execution of the judgment was filed on May 21, 2004.

On May 24, 2004, the federal court dismissed appellant's petition for removal and remanded the proceedings back to the trial court. On June 4, 2004, appellant filed a motion pursuant to Civ.R. 60(B), in which he asked the trial court to vacate its May 17 and May 21, 2004 judgments, which the trial court summarily denied the same day. A notice of appeal was filed.

Appx. P. 60

The issue raised in appellant's first assignment of error is whether the trial court was divested of jurisdiction by the filing of the notice of removal. Procedure for the removal of an action from state to federal court is set forth in 28 U.S.C. §1446, which states, in relevant part:

"(a) A defendant or defendants desiring to remove a civil action * * * from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal * * * containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

* * *

"(d) Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect removal and the State court shall proceed no further unless and until the case is remanded."

Federal courts have consistently held "the state court loses all jurisdiction to proceed immediately upon the filing of the petition in the federal court and a copy in the state court." *South Carolina v. Moore* (C.A.4, 1970), 447 F.2d 1067, 1073 (other citations omitted). See also, *Howes v. Childers* (E.D.Ky. 1977), 426 F. Supp. 358 (Filing of a removal petition in the state court, along with written notice to the adverse parties, divests the state court of all jurisdiction to proceed from the time it receives notice of the removal. *Id.* at 360). Similarly, Ohio courts, interpreting federal law, have found the

mere filing of a proper removal petition in state court divests the court of jurisdiction and vests jurisdiction in the federal court. *Shunk v. Shunk Mfg. Co.* (1945), 75 Ohio App. 253, 256, interpreting former 28 U.S.C.S. §72. Accordingly, "any proceedings in the state court after the filing of the petition and prior to a federal remand order are absolutely void, despite subsequent determination that the removal petition was ineffective." *South Carolina v. Moore*, supra.

It is undisputed that appellant filed the notice of removal in both federal court and state court, as required by 28 U.S.C. §1446(d). The trial court undoubtedly recognized the ultimate futility of such a maneuver, and chose to resolve the parties' dispute on May 13, 2004, rather than wait for the federal court to remand the case. However, after reviewing the entire the record of proceedings below and the law, we are compelled to find the filing of appellant's removal petition divested the trial court of jurisdiction from the time notice of removal was filed on May 13, 2004, until the case was remanded back to the trial court on May 24, 2004. The trial court's judgment entries issued during that time period are void. Appellant's first assignment of error is well-taken.

Appellant asserts in his second assignment of error the trial court erred by denying his Civ.R. 60(B) motion to vacate the May 17 and May 21, 2004, judgments. Upon consideration of our determination as to appellant's first assignment of error, we find appellant's second assignment of error has become moot.

The judgment of the Fulton County Court of Common Pleas is hereby reversed. The case is remanded to the trial court for further proceedings consistent with this

Appx. P. 62

decision. Pursuant to App.R. 24, costs of these appellate proceedings are assessed to appellee.

JUDGMENT REVERSED.

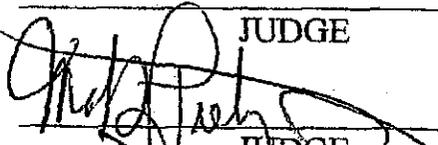
A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

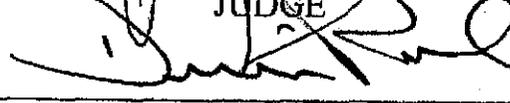
Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Dennis M. Parish, J.
CONCUR.



JUDGE


JUDGE


JUDGE

JURISDICTION

2. Jurisdiction of this Court arises under Ohio Revised Code Sections 2305.01, and 2307.01, and Section 4, Article IV of the Ohio Constitution.

PARTIES

3. Plaintiff A.J. Borkowski, Jr. is a natural person residing in Fayette, Ohio Fulton County, United States of America.

4. Defendant, Charles D. Abood, is a natural person residing in Toledo, Ohio Lucas County at 2 Ginger Hill Lane, United States of America; was a resident of Ohio during all relevant times of this action; is the presiding Judge of all cases associated with the Plaintiff, and faxed decisions from 419.472.3765 to the Court of Common Pleas, Fulton County, Ohio during all relevant times of this action.

FACTS

5. Defendant was negligent in not complying with the Ohio Revised Code and the Ohio Constitution.

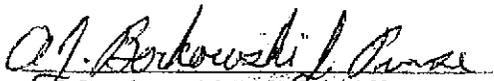
6. On May 6, 2005, the Court of Appeals of Ohio Sixth Appellate District Fulton County found that the filing of Plaintiff's "removal petition divested the trial court (Defendant herein) of jurisdiction from the time notice of removal was filed on May 13, 2004, until the case was remanded back to the trial court on May 24, 2004; the trial court's judgment entries issued during that time period are void." A copy of that order has been attached hereto as Exhibit 1. On or about May 21, 2004, Defendant illegally, acted in bad faith and negligently caused the Plaintiff harm or injury by evicting him from his property located at 13613 State Route 66, Fayette, Ohio, as indicated in his Judgment Entry issued on May 13, 2004. A copy of these voided decisions are attached hereto as Exhibit 2 as found in the Court of Appeals Judgment Entry issued May 6, 2005.

7. Overwhelmingly, Defendant has negligently acted in bad faith, and has acted in the clear absence of all jurisdiction from May 13, 2004 until May 24, 2004. As the Court of Appeals stated, "A judge can be held civilly liable for damages and those damages can be recovered against a judge when he or she has acted in a clear absence of all jurisdiction." See *Walk v. Ohio Supreme Court*, Franklin App. No. 03AP-205, 2003-Ohio-5543; *Reasoner v. City of Columbus*, Franklin App. No. 02AP-831, 2003-Ohio-670.

8. Defendant's misconduct can be for no other purpose than to harass or maliciously injure the Plaintiff and constitutes misconduct within the meaning of R.C. §2307.01.

WHEREFORE, Plaintiff A.J. Borkowski, Jr. requests that this Court:

- a. Find that Defendant Charles D. Abood is liable to him in the amount of \$1,000,000.00 for "negligence, acting in bad faith, and acting in a clear absence of all jurisdiction" within the meaning of R.C. §2307.01 and other applicable legal provisions;
- b. A trial by jury on all triable issues;
- c. Enter an order prohibiting Defendant from disposing of any and all of his assets, including title to real property which affects the instant action;
- d. Grant Plaintiff any and all other relief that might be appropriate, including an award of cost and reasonable expenses associated with this action.


A.J. Borkowski Jr., Plaintiff, Pro-Se
PO Box 703
Fayette, OH 43521
Telephone (419) 237-2397

Appx. P. 66

AFFIDAVIT IN SUPPORT OF COMPLAINT

STATE OF OHIO)
) SS: A.J. BORKOWSKI, JR.
COUNTY OF FULTON)

I A. J. Borkowski, Jr., being first duly cautioned and sworn according to law, do hereby
allege and states as follows:

- 1. I have personal knowledge of the facts attested to herein.
- 2. That the information or allegations as stated in the complaint are true and accurate as
he verily believes or to the best of his knowledge and belief.

FURTHER AFFIANT SAYTHE NAUGHT:

A.J. Borkowski, Jr.
A.J. Borkowski Jr., Plaintiff, Pro-Se
PO Box 703
Fayette, Ohio 43521
Telephone: (419) 237-2397

JURAT OF A NOTARY PUBLIC

Before me, a notary public in and for the state of Ohio, appeared the above-signed, A. J. Borkowski Jr., by me identified to be one and the same, who then subscribed his signature and made solemn affirmation that the facts alleged in his Affidavit in support of Complaint against Defendants were true and correct to the best of his knowledge, information, memory, and belief, and upon his information and belief, he believes the same to be true, that they are made in good faith, and are his voluntary acts and deeds.

Dated: 8-23-05

Jana S. Beaverson
Notary Public

JANA S. BEAVERSON
Notary Public, State of Ohio
My Commission Expires May 29, 2008

Appx. P. 67

JOURNALIZED 10/3/06
VOL 61 PG 788

FILED
FULTON COUNTY
COMMON PLEAS COURT
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MARY GYPE
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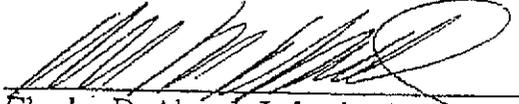
IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

Jennifer M. Borkowski *
Plaintiffs, *
v. * Case No. 04 CV 0018
A. J. Borkowski *
Defendants. * Judgment Entry

This court hereby disqualifies itself from further participation in this case and in all cases involving A.J. Borkowski. This case is referred to the Administrative Judge of this court for reassignment to another judge.

IT IS SO ORDERED.

Sept. 29, 2006


Charles D. Abood, Judge by Assignment

Copies Served 10/3/06
Mary Gype, Clerk
By 

Appx. P. 68

The Supreme Court of Ohio

FILED

APR 24 2007

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

State of Ohio ex rel. A. J. Borkowski, Jr.

Case No. 2007-0564

v.

IN MANDAMUS
AND PROCEDENDO

Judge Richard M. Markus et al.

ENTRY

This cause originated in this Court on the filing of a complaint for a writ of mandamus and procedendo. Upon consideration of relator's motion to stay all opinions and orders issued by Judge Markus in the Fulton County Court of Common Pleas,

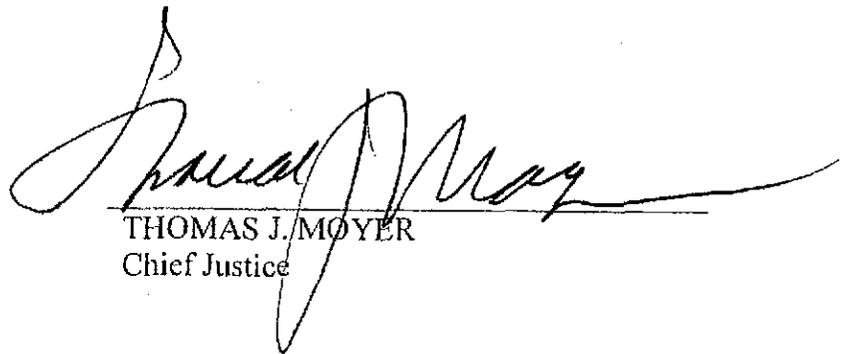
It is ordered by the Court that the motion is denied.

Upon consideration of relator's application for dismissal of respondents Fulton County Common Pleas Court, Fulton County Sheriff's Department, Judge Richard Markus, Sheriff Darrell Merillat, and the Sixth District Court of Appeals,

It is ordered by the Court that the application for dismissal is granted.

Accordingly, respondents Fulton County Common Pleas Court, Fulton County Sheriff's Department, Judge Richard Markus, Sheriff Darrell Merillat, and the Sixth District Court of Appeals are dismissed from this action.

This cause remains pending with respect to respondent John Shaffer.



THOMAS J. MOYER
Chief Justice

Appx. P. 69

FILED
FULTON COUNTY
COMMON PLEAS COURT

02 JUN -4 AM 8:39

MARY GYPE
CLERK

IN THE COMMON PLEAS COURT FOR FULTON COUNTY, OHIO

William K. Humbert, et al,

Plaintiffs,

vs.

Jennifer M. Borkowski, et al,

Defendants.

CASE NO: 01-CV-00274

JUDGE: ROBERT C. POLLEX

DEFENDANT'S AMENDED ANSWER AND CROSS-COMPLAINT

Now comes the Defendant, A. J. Borkowski, Jr., and Answers Plaintiff's Complaint to Quiet Title and states, avers, and contends as follows:

- 1) To the extent that the allegations set forth in Paragraphs 2, 3, 5, the first sentence in para. 6, the final two (2) sentences of para. 7, and the first sentence of para. 9, are matters of public record, Defendant Borkowski, Jr., admits those allegations, and denies all other allegations in paragraphs one (1) through eight (8) of Plaintiff's Complaint.
- 2) Defendant A. J. Borkowski, Jr., denies all other allegations in made in paragraphs one (1) through eight (8) that are not specifically admitted.
- 3) Defendant A. J. Borkowski, Jr., admits the allegations of fact in paragraph eleven (11) of Plaintiff's Complaint, with the sole denial that Probate proceedings are in preparation and should be filed in the near future.

- 4) Defendant A. J. Borkowski, Jr., specifically denies the allegations made in paragraph ten (10) of Plaintiff's Complaint and further says that their claim that "[e]ach of the Plaintiffs *and their predecessors* in title have been in open, adverse, notorious, continuous and exclusive possession of said premises claiming title thereto for more than twenty-one (21) years last past (sic) adverse and superior to all persons whomsoever and all of the defendants herein for more than forty years last past (sic)." is a willful, wanton, reckless and knowing materially false statement, made in bad faith by Plaintiffs, and their counsel, with the specific intent to mislead this court and prejudice these proceedings, and were also made in knowing violation of Ohio Civil Rule 11, the same being subject to sanctions, and further being knowing materially false written statements made to a government body in official proceedings, the same being a felony criminal violation under chapter 2921 of the Ohio Revised Code.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

- 5) Defendant Borkowski, Jr., specifically denies that Plaintiff's William and Brenda Humbert are the actual and true owners, with superior ownership and/or valid title to the property described in paragraph one (1), since the sale of said real estate was performed by and through the power of attorney drafted and executed by attorney Jack Gooding which specifically forbade the sale of real estate lawfully owned by the decedent, Bertha Borkowski-Stewart, by her sole majority heir, Defendant A. J. Borkowski, Jr.

SECOND AFFIRMATIVE DEFENSE

- 6) The power of attorney used to sell, transfer and convey the real estate to Plaintiff Ebersole, which attorney John S. Shaffer drafted and executed, and knew to be fraudulent and illegal, was actually executed out of Defendant A. J. Borkowski Jr.'s presence, and constitutes perpetration of fraud and breach of contract to Defendant.

THIRD AFFIRMATIVE DEFENSE

- 7) It is a fact that the same document, which was later officially recorded and used by attorney Shaffer under the pretense of being a valid power of attorney-in-fact to sell, transfer and convey real estate to the Plaintiff Ebersole, was blank the day he brought it to the decedent's nursing home room for Defendant Borkowski's signature, and was not represented by Mr. Shaffer to be a new power of attorney at all, but merely a "document needed to satisfy the legal requirements" of an unnamed "title company."

FOURTH AFFIRMATIVE DEFENSE

- 8) Defendant further states that attorney Shaffer knowingly committed and perpetrated fraud in, by and through the false and fraudulent power of attorney, and knowingly, willfully, wantonly and recklessly engaged in misconduct in violation of the Ohio Rules of Professional Responsibility, and violated other Ohio criminal laws, by backdating the same power of attorney, then inducing his own secretary, Shirley A. Crampton, to sign as a false witness as to the proper execution of the same, when, in fact, the decedent, Bertha Borkowski-Stewart was in a paralytic, comatose state in a nursing home on the alleged day of execution and could never have intelligently, knowingly, willfully and voluntarily signed the document as asserted and attested to by attorney John S. Shaffer, nor was Mrs.

Crampton present as attested by her witnessing signature to execution of the power of attorney. (See Defendant's Second and Third Counterclaims, *infra*.)

FIFTH AFFIRMATIVE DEFENSE

- 9) Attorney Shaffer further made numerous false representations to Defendant A. J. Borkowski, Jr., leading him to believe that all of Shaffer's actions were perfectly legal, and that by and through his actions he would be making a valid, lawful sale to Plaintiff Ebersole of the property in question as described in paragraph one (1) of Plaintiff's Complaint. Defendant Borkowski was entitled to rely on the representations of his attorney, that they were competent and lawful, since his attorney is a statutory officer of the Ohio courts, sworn to faithfully observe, honor and uphold all Ohio laws, which includes the Ohio Code of Professional Responsibility, its' Disciplinary Rules, and all the ethical considerations thereto.

SIXTH AFFIRMATIVE DEFENSE

- 10) Attorney John S. Shaffer knowingly and willfully perpetrated fraud on Defendant Borkowski, Jr., in that he led him to believe that the document signed at the nursing home where his grandmother, Mrs. Bertha Borkowski-Stewart, resided when its *partial* execution took place, was in fact, "just a document for the title company to cover the sale" and make the transaction and conveyance legal and proper in form and substance. Said false statement and misrepresentation by attorney Shaffer was willfully and wantonly false, misleading, and known by him to be so when made.

SEVENTH AFFIRMATIVE DEFENSE

- 11) As a proximate and/or direct result of the actions of attorney Jack Gooding, the sale, transfer and conveyance of the real estate to Plaintiff's William and Brenda

Humbert, as described in paragraph one (1) of Plaintiff's complaint, was done under knowingly false and illegal means, and is an absolute nullity and void, as if the sale had never actually occurred.

EIGHTH AFFIRMATIVE DEFENSE

- 12) Said title remains vested in and fully owned by Defendant A. J. Borkowski, Jr., as the sole majority heir of the estate of the decedent, Bertha Borkowski-Stewart, as is evinced by her Last Will and Testament, Plaintiff's Exhibit "F."

NINTH AFFIRMATIVE DEFENSE

- 13) Defendant A. J. Borkowski, Jr., realleges and incorporates the facts and allegations set forth in paragraphs three (3) through eleven (11) as though fully restated herein, and denies that Loyal Ebersole is the actual and true owner, with superior ownership and/or valid legal title to the property described in paragraph one (1), and that the sale, transfer and conveyance of the real estate to Loyal Ebersole, as described in paragraph four (4) of Plaintiff's Complaint, was done under knowingly false and illegal means, and is an absolute nullity and void, as if the sale had never actually occurred.

TENTH AFFIRMATIVE DEFENSE

- 14) Said title remains vested in and fully owned by Defendant A. J. Borkowski, Jr., as the sole majority heir of the estate of the decedent, Bertha Borkowski-Stewart.

ELEVENTH AFFIRMATIVE DEFENSE

- 15) As admitted by Plaintiff's and their counsel, as stated as fact in paragraph six (6) of Plaintiff's Complaint, the power of attorney was illegally and fraudulently drafted, executed and notarized by attorney John S. Shaffer, was falsely witnessed to by his

law firm secretary, Shirley A. Crampton -- outside of the presence of the real estate owner-decedent, Bertha Borkowski-Stewart, and Defendant A. J. Borkowski, Jr., -- and was, indeed, not merely "improperly executed and notarized" but was also fraudulently backdated so to give the impression that it originated before the decedent had her stroke in and about August, 1997; therefore it was and is an entirely invalid legal instrument of no genuine and binding legal validity, force or effect, and all action taken thereunder was and is an absolute nullity and void. See Plaintiff's Exhibit "D."

TWELFTH AFFIRMATIVE DEFENSE

- 16) As admitted and stated in the final sentence of paragraph seven (7) of Plaintiff's Complaint, "said deed could be voidable," that being the deed executed by Plaintiff Ebersole to sell, transfer and convey the real estate as described in paragraph seven (7) to Defendant Jennifer M. Borkowski; it is further averred and contended by Defendant A. J. Borkowski, Jr., that said deed is not merely "voidable" but is in fact entirely null and void without any legal validity, force or effect, and that the true legal ownership of the real estate described by Plaintiff Ebersole, due to the fraud and misrepresentations made by attorney John S. Shaffer, are fully vested in and wholly owned by the sole majority heir of the original true owner of the same, that being the decedent, Bertha Borkowski-Stewart, said inheritance being lawfully established by her Last Will and Testament. See Plaintiff's Exhibit "F," page three (3), "Item VII," to wit: "I give, devise and bequeath to my grandson, A. J. Borkowski, Jr., my [forty] 40 acre farm located in the Northeast quarter of Section 30, Gorham Township, Fulton County, Ohio."

- 17) Insofar as Plaintiff's Exhibit "D" is a knowingly and willfully created false and illegal instrument, purporting to be a valid power of attorney, the same is genuine and best evidence in support of Defendant A. J. Borkowski, Jr.'s, defenses herein.
- 18) On or about November 15th, 1999, Bertha Borkowski-Stewart died at age ninety-three (93) of multiple medical complications at the Heartland Nursing Home in Wauseon, Ohio.

THIRTEENTH AFFIRMATIVE DEFENSE

- 19) In both of the sales of the real estate described in Plaintiff's Complaint, each of the Plaintiffs, William and Brenda Humbert and Loyal G. Ebersole, specifically waived, refused and/or denied the need to have a formal title search performed by an independent title search company, or produced by Defendant A. J. Borkowski, Jr., prior to the sales, and each sale was completed through pro forma "purchase agreement" forms created and drafted by attorney John S. Shaffer and his law firm; and, furthermore, under paragraph five (5), entitled, "Title Evidence," it was expressly agreed to by the Plaintiffs that should the "seller," Defendant A. J. Borkowski, Jr., *not* furnish a certificate of marketable title that the purchase "agreement[s] shall be deemed void and [only the] Buyers' earnest (or deposit) money shall be returned." Defendant A. J. Borkowski, Jr., and the Plaintiff's were advised by attorney Shaffer and that all "title work would be taken care of" by him and/or his law firm. See Defendant's Exhibits A and B, attached ("Agreement[s] to Purchase").

FOURTEENTH AFFIRMATIVE DEFENSE

- 20) Because the Plaintiffs in each sale failed to demand or otherwise require production of any formal, certified titled search or any certificate of marketable title to the real

estate in dispute, either by Defendant A. J. Borkowski, Jr. and/or attorney John S. Shaffer, as expressly set forth in the real estate purchase agreement, said failure, refusal, denial, and/or express or constructive waiver for evidence of genuine marketable title, constitutes their own negligence, gross negligence and/or contributory negligence, deliberate bypass, and waiver of the purchase agreement contract requirements, and they are therefore barred under the doctrines of *estoppel*, and/or *collateral estoppel*, and *laches* from now raising any claim relating to the marketability or legal sufficiency of the title at the time of their purchases so as to now obtain this court's judgment to quiet title and/or remove any cloud thereon.

FIFTEENTH AFFIRMATIVE DEFENSE

- 20) Because the Plaintiffs knowingly and intelligently elected and chose not to hire their own legal counsel to represent and handle their interests in the purchase of the real estate from Defendant A. J. Borkowski, Jr., said failure and choice constitutes their own negligence, gross negligence and contributory negligence in the transaction; and even though they knew that attorney John S. Shaffer was in fact counsel for the Defendant, they knowingly permitted Shaffer to conduct the transaction when it was apparent to any reasonably-minded person that there could and would be a conflict between their own interests and those of the seller, Defendant A. J. Borkowski, Jr., therefore any claims of conflict of interest or such claims related thereto are also barred by the doctrines of *estoppel*, *collateral estoppel* and *laches*.

FIRST COUNTERCLAIM

- 21) Defendant A. J. Borkowski, Jr., was and is the victim of malpractice and fraud committed by attorney John S. Shaffer and his law firm, by virtue of his knowing, willful, wanton and reckless actions in disregard for the interests of and contract

with his client, the Ohio Code of Professional Responsibility, the Disciplinary Rules and Ethical Considerations thereto, as well as all other applicable Ohio laws relating to lawyer competency, fraud and real estate transactions.

SECOND COUNTERCLAIM

22) Because of the actions of attorney John S. Shaffer, Defendant A. J. Borkowski, Jr., was compelled to file a formal complaint with the Disciplinary Counsel of the Supreme Court of Ohio, Case No. 01-85. Because of that complaint, an investigation and hearings were conducted. It was found by the Disciplinary Counsel that attorney John S. Shaffer had violated four (4) separate Disciplinary Rules and engaged in "conduct involving dishonesty, fraud, deceit, misrepresentation; conduct prejudicial to the administration of justice; other conduct that adversely reflects on [attorney Shaffer's] fitness to practice law; and counsel[ing] and assist[ing] * * * in illegal or fraudulent conduct." The Disciplinary Counsel thereupon filed on October 1st, 2001, a certified complaint against attorney John S. Shaffer and submitted it to the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio. This complaint is now awaiting formal disciplinary action and punishment by the Board.

THIRD COUNTERCLAIM

23) In the course of the investigation before the above referenced Disciplinary Counsel, attorney John S. Shaffer admitted in a letter dated February 7th, 2001, in depositions on February 28th, 2002, and in an official court proceeding on March 8th, 2002, before the Tenth Judicial District Court of Appeals in Columbus, Ohio, that he had committed all of the rule violations he was finally charged with, and that he knew his actions were against the law and against the best interests of his client.

FOURTH COUNTERCLAIM

24) Defendant A. J. Borkowski, Jr., realleges and incorporates by reference all the facts and allegations set forth in paragraphs five (5) through twenty-three (23) as though fully restated herein, and further claims that, although the Plaintiffs were fully aware of the findings and pending actions of the Disciplinary Counsel of The Ohio Supreme Court, they have still have allowed and chosen attorney John S. Shaffer to conduct this legal action and prosecute their claims against Defendant Borkowski, Jr., both of his daughters, and the minority heirs named in the final Will of the decedent, Mrs. Bertha Borkowski-Stewart. Therefore Defendant Borkowski, Jr., claims that the actions of the Plaintiffs and attorney Shaffer constitute malicious prosecution, abuse of court process, frivolous litigation in violation of Ohio Revised Code § 2323.51, were made in bad faith in violation of Ohio Civil Rule 11, and is scandalous, indecent, vexatious, and designed to harass and annoy Defendant Borkowski, Jr., all of the same being contrary to and violative of extant Ohio laws, and perpetrated so as to inflict negligent, malicious and intentional emotional distress upon Defendant Borkowski, Jr., and all others; and as a proximate and/or direct result of the actions of attorney Shaffer and the Plaintiffs, Defendants and the estate of the afore-named decedent, have suffered injuries, losses and damages in an amount in excess of \$25,000.00.

FIFTH COUNTERCLAIM

25) Due to the negligence, gross negligence and contributory negligence of the Plaintiffs, and the continued illegal actions of attorney John S. Shaffer, and the express terms of the purchase agreements entered into by them with Defendant Borkowski, Jr., the Plaintiffs have no standing to bring this action as a matter of law. The real estate

in dispute was sold by attorney Shaffer in knowing violation of the Ohio Fraudulent Conveyance Act and other applicable Ohio laws.

RELIEF SOUGHT

- A) Defendant Borkowski, Jr., moves this Court to dismiss Plaintiff's Complaint to Quiet Title since they possess no valid legal title as a matter of law, and that the Court Order that the sales of said real estate be declared null and void, *ab initio*, and the title thereto be restored and reverted to the sole and exclusive possession of Defendant A. J. Borkowski, Jr., and the estate of Mrs. Bertha Borkowski-Stewart, and that the Plaintiffs be enjoined from any further use or sale of the same, and
- B) Demands a trial by jury on all issues triable, and
- C) Further prays for compensatory damages from Plaintiffs, each of them, jointly and severally, in an amount in excess of \$25,000.00, and
- D) Prays for punitive, hedonic, special, and future damages in an amount in excess of \$25,000.00, and
- E) For such other and further relief in equity and law which the Court deems just and proper.

Respectfully submitted,


Alfred J. Borkowski, Jr.
Defendant, In Propria Persona
13613 State Route 66
Fayette, Ohio 43521
Phone: 419. 237. 2397

MM:..ajb/kla
ss/:66722

CERTIFICATE OF SERVICE

This is to certify that a true copy of Defendant's Amended Answer and Counterclaims was served on all the parties shown below via 1st class U.S. Mail this 4 day of June, 2002.

John T. Stelzer, Esq.
For Plaintiffs Humbert/Ebersole
216 South Lynn Street
Bryan, OH 43506

Paul H. Kennedy, Ass. Pros.
For Deft. Dennis Hales, Treasurer
123 Courthouse Plaza
Wauseon, OH 43567

Kyle A. Silvers, Esq.
For Def. Jennifer Borkowski
1776 Tremainsville Road
Toledo, OH 43613

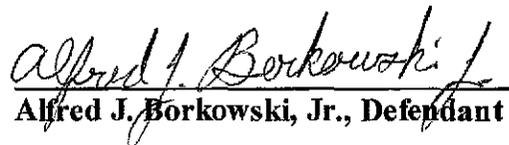
Bradley P. Toman, Esq.
For Def. Fermont Investment & Loan
1370 Ontario Street, Suite 1700
Cleveland, OH 44113

Amber Borkowski, Deft.
13623 State Route 66
Fayette, OH 43521

Rita Pattison, Deft.
103 Gardner Street
Fayette, OH 43521

Bruce Bishop, Deft.
201 South East
Belton, MO 64012

Our Lady of Mercy, Catholic Church, Deft.
409 East Main Street
Fayette, OH 43521


Alfred J. Borkowski, Jr., Defendant

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AGREEMENT TO PURCHASE

WHEREAS, Bertha Borkowski Stewart, an unmarried adult, by A.J. Borkowski, Jr., her attorney-in-fact, hereinafter referred to as the Seller(s), wish to sell and William K. Humbert, whose tax mailing address is 13149 State Route 66, Fayette, Ohio 43524, hereinafter referred to as the Buyer(s), wish to purchase certain real estate, it is agreed as follows:

1. Seller(s) agree to sell and Buyer(s) agree to buy certain real estate set forth on Exhibit A attached hereto and made a part hereof.

2. Purchase Price and Terms. The purchase price shall be Sixty-two thousand five hundred Dollars (\$62,500.00). Said amount to be paid as follows: \$12,500.00 upon the execution of this agreement, the receipt of which is hereby acknowledged, and the balance of \$50,000.00 shall be paid in cash upon closing, which shall occur on or before December 31, 1998. All payments made must be made in the form of cashier's check, bank or certified check, payable to Newcomer, Shaffer & Spangler IOTA Real Estate account.

3. Taxes and Assessments. Seller(s) shall assume and pay all taxes for the year 1998, due and payable in January and July 1999.

4. Possession. Possession of the real estate shall be delivered to Buyer(s) on or before December 31, 1998.

5. Title Evidence. Prior to closing Seller(s) shall furnish an Owner's Certificate of Title for the real estate, showing a marketable title in Seller(s) at the Seller's cost. Buyer(s) may have the Certificate examined by their attorney. Seller(s) will have a reasonable time to meet such requirements, if any, as may be necessary to render marketable his title to the real estate according to the Standards of Marketability of Abstracts of Title as adopted by the Williams County Ohio Bar Association. If for any reason marketable title cannot be furnished, this agreement shall be void and Buyer(s) earnest money shall be returned.

Exhibit

A

Appx. P. 82

6. Upon acceptance, this offer to purchase and any written modification thereof shall become an agreement binding upon the Buyer and Seller and their respective heirs, executors, administrators and assigns, and shall be deemed to contain all the terms and conditions agreed upon, it being agreed by Seller and Buyer that there are no outside conditions, representations, warranties or agreements.

7. The Seller(s) shall assume the risk of loss or damage to the real estate until the delivery of a Warranty deed. At closing upon payment of balance of purchase price, Seller(s) shall deliver to Buyer(s) a warranty deed to said premises, free and clear of any and all liens and encumbrances.

8. The Buyer(s) acknowledge that this constitutes the entire agreement between the parties and that they are purchasing the premises in an "as is" condition. They are relying upon their own inspection and judgment as to its condition, fitness and value. Buyer further acknowledges that execution of this agreement has not been procured by any statement of Seller not herein contained.

9. Seller shall provide to Buyer Ohio Disclosure Form as provided by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this the _____ day of _____, 1999.

Bertha Borkowski Stewart
Bertha Borkowski Stewart

By A.J. Borkowski, Jr. Attorney in fact
A.J. Borkowski, Jr. Attorney in fact
Sellers

Loyal Ebersole
Loyal Ebersole
Buyers

AGREEMENT TO PURCHASE

WHEREAS, Bertha Borkowski Stewart, an unmarried adult, by A.J. Borkowski, Jr., her attorney in fact, hereinafter referred to as the Seller(s), wish to sell and Loyal Ebersole, hereinafter referred to as the Buyer(s), wish to purchase certain real estate, it is agreed as follows:

1. Seller(s) agree to sell and Buyer(s) agree to buy certain real estate described in Exhibit A attached hereto and made a part hereof.

2. **Purchase Price and Terms**. The purchase price shall be Forty-six thousand five hundred and no/100 (\$46,500.00). Said amount to be paid as follows: \$6,000.00 has been paid by Buyer to Seller as a down payment, and Sellers acknowledge receipt of said amount. The balance of \$40,500.00 shall be paid in cash upon closing, which shall occur on or before July _____, 1999. All payments must be made in the form of cashier's check bank or certified check, payable to Newcomer, Shaffer & Spangler IOTA Real Estate account.

3. **Taxes and Assessments**. Seller shall assume and pay all taxes for the year 1999 due and payable in January and July 1999, and Buyer shall assume and pay all taxes thereafter.

4. **Improvements and Fixtures**. This offer includes all improvements and permanent fixtures used in connection with the real estate, including but not necessarily limited to electrical, gas, heating and plumbing fixtures, screens, screen doors, storm windows, shades, venetian blinds, all drapes, drapery hardware, awnings, attached carpeting, linoleum, trees, shrubs, flowers, fences, built in appliances, if any, now on the real estate and the same shall be fully paid for and free of all liens and encumbrances at the time of closing, unless otherwise specified and agreed by the Buyer(s).

5. **Title Evidence**. Prior to closing Seller(s) shall furnish a certificate of title for the real estate, showing a marketable title in Seller(s) at the Seller's cost. Buyer(s) will have the certificate examined by their attorney and will submit a legal opinion thereon without unreasonable delay. Seller(s) will have a reasonable time to meet such requirements, if any, as may be necessary to render marketable his title to the real estate according to the Standards of Marketability of Abstracts of Title as adopted by the Williams County Ohio Bar Association. If for any reason marketable title cannot be furnished, this agreement shall be void and Buyer(s) earnest money shall be returned.

Exhibit
B

Appx. P. 84

title cannot be furnished, this agreement shall be void and Buyer(s) earnest money shall be returned.

6. Upon acceptance, this offer to purchase and any written modification thereof shall become an agreement binding upon the Buyer(s) and Seller(s) and their respective heirs, executors, administrators and assigns, and shall be deemed to contain all the terms and conditions agreed upon, it being agreed by Seller(s) and Buyer(s) that there are no outside conditions, representations, warranties or agreements.

7. The buyer acknowledges that they have inspected the property herein described and in purchasing the property in its 'AS IS' condition, they are relying upon their own inspection and judgment as to its condition, fitness and value. Buyer further acknowledges that their execution of this agreement has not been procured by any statement of Seller not herein contained.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this the _____ day of December, 1998.

Bertha Borkowski Stewart
Bertha Borkowski Stewart

By A.J. Borkowski, Jr. Her Attorney-in-fact
A.J. Borkowski, Jr., Her
Attorney-in-fact
Seller(s)

William K. Humbert
William K. Humbert

Brenda Humbert
Brenda Humbert
Buyer(s)

FILED
FULTON COUNTY
COMMON PLEAS COURT

02 JUN 12 PM 2:07

Humbert

Case No. 01CV000274

Plaintiff

-vs-

Borkowski

PRETRIAL ORDER

Defendant

Pretrial conference had June 12, 2002. Pursuant to Ohio Rule of Civil Procedure 16, it is ORDERED that:

(Jury) ~~(Bench)~~ Trial date set for Nov. 6/7, 2002 2 days allowed.

Final pretrial set for Oct. 9, 2002 at 10:30 a.m.

Discovery to be completed by Aug. 16, 2002

Pretrial motions to be filed by Aug 16, Responses by Sept 6, Reply Sept 16

Hearing on pretrial motions and pretrial set for to be set upon request a.m.

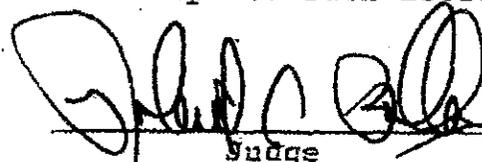
Trial briefs with proposed jury instruction to be filed by Nov. 1, 2002

Expert witnesses for trial shall be disclosed and their reports exchanged: Plaintiff's by: Oct 9 Defendant's by: Oct 9

A list of all exhibits to be offered at trial shall be provided the Court and all other counsel by Nov 1, 2002 All exhibits are to be marked prior to trial with Plaintiff's exhibits be numbered consecutively and Defendant's exhibits lettered consecutively.

Failure to comply with the requirements relating to completion of discovery, exhibits, and disclosure of experts and their reports may result in the exclusion of testimony or evidence at trial.

NOTE: Receipt of a Copy of this Pretrial Order shall constitute NOTICE of dates and times scheduled herein. Attorneys/Parties will NOT receive additional Notice hereof. Notation of an attorney's/party's name "CC" below shall constitute prima facie evidence of receipt of such notice.



Judge

Judge Pollex, by Assignment

cc: JT Stelzer, Esq.

Kyle Silvers, Esq.

Bradley Toman, Esq.

A.J. Borkowski, Pro Se

Amber Borkowski, Pro Se

Hon. Robert Pollex.

Date: 6/12/02

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FILED
FULTON COUNTY COURT OF APPEALS
OCT 14 2003
Mary Gype CLERK

FILED
FULTON COUNTY
COMMON PLEAS
03-2003
OCT 14 AM 9:39
MARY GYPE
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IN THE COURT OF COMMON PLEAS

FULTON COUNTY, OHIO

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William Humbert, et al,

Plaintiffs,

-vs-

Jennifer Borkowski, et al,

Defendants.

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*

Trial Court Case No. 01CV000274

Court of Appeals 03FU21

TRANSCRIPT OF PROCEEDINGS

HEARD:

June 12, 2002

BEFORE:

HON. ROBERT POLLEX

APPEARANCES:

On Behalf of Plaintiff:

Kirk Yosick, Esq.

On Behalf of Defendant:

Kyle Silvers, Esq., Bradley Toman, Esq., A.J. Borkowski, Defendant, Pro Se.

PREPARED BY:

Susan Behnfeldt, Court Reporter

Fulton County Courthouse, Wauseon, Ohio 43567

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1 THE COURT: You may be seated, please. All right
2 first of all we have Case Number 01CV00274, in the matter of William Humbert, et al, Plaintiffs
3 versus Jennifer Borkowski, et al, Defendants. This is a Complaint in Quiet Title that is set for a
4 pretrial conference at this time. And counsel and I have been discussing the pleadings that have
5 been filed and where we go from here in terms of setting further schedule for further motions,
6 pleadings, discovery and trial. The trial date has not been set yet. I would like to do that. We did
7 address in chambers just briefly, and I want to address on the record more formally the one issue
8 that we have before us, first of all is the Defendant A.J. Borkowski, Jr. has filed an Amended
9 Answer and Cross-Complaint and counsel had indicated that they would like to have time. That
10 was filed without leave, and outside of the time limit of provided for by the Civil Rules. So the
11 issue is, does the Court permit, grant leave to file this Amended Answer and Cross-Complaint or
12 not. And counsel indicated for the record or would like to indicate for the record apparently that
13 they would like to have time to respond to that. So let me address respective counsel, on behalf
14 of the Plaintiffs, Mr. Yosick how much time would you like to have in order to address the issue
15 of Leave to the Defendant filing an Amended Answer and Cross-Complaint?

16 MR. YOSICK: Your Honor, I believe two weeks as
17 far as Plaintiffs are concerned will be plenty of time to review that and file a response.

18 THE COURT: All right. And Ms. Silvers on behalf
19 of your client?

20 MS. SILVERS: Two weeks would be ample, Your
21 Honor.

22 THE COURT: All right. And Mr. Toman on behalf
23 of your client?

24 MR. TOMAN: That's fine, Your Honor.

25 THE COURT: Am I pronouncing that correctly?

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MR. TOMAN: Yes.

1
2 THE COURT: Okay. All right. So then I'll grant all
3 of you two weeks to file your either objection or acquiescence to the Court granting Leave to the
4 Defendant, Mr. Borkowski, to file his Amended Answer and Cross-Complaint.

5 Now next we have not set a completion for discovery. And we need to set a final pretrial.
6 we also need to establish time limits for Summary Judgments. And I'd like to hear from everyone
7 as to how much time they would like to see us set for those respective things. Let me start again
8 with counsel for the Plaintiffs, Mr. Yosick, what kind of time frame would like to see us put this
9 on?

10 MR. YOSICK: Your Honor, the Plaintiffs would
11 expect to file a Motion for Summary Judgment, and I believe we can certainly have that filed
12 within about sixty to ninety days. And we'll be prepared to follow that as a starting point.

13 THE COURT: Okay. And as to a trial date, how far
14 down the road would you like to see us set that?

15 MR. YOSICK: Well, I think--

16 THE COURT: I'm just going to ask for input and then
17 we're going to set some dates.

18 MR. YOSICK: Yea. I'm thinking, I don't see any
19 reason to set it down further than say six months, if the Court schedule permits that.

20 THE COURT: All right. Ms. Silvers, do you want
21 to be heard on that issue?

22 MS. SILVERS: I would agree with Mr. Yosick's time
23 line, Your Honor. I would like to resolve the issues as expeditiously as possible.

24 THE COURT: All right. And Mr. Toman on behalf
25 of the Fremont Investment and Loan?

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1 MR. TOMAN: Well, Your Honor, I'd actually like
2 a little more time for discovery, with time to do paper discovery, followed by a deposition if
3 necessary.

4 THE COURT: What time were you thinking in terms
5 of discovery being completed by?

6 MR. TOMAN: I was thinking ninety days for
7 discovery, 120 for Summary Judgment. Of course if we could do it sooner that, you know, it
8 doesn't say we have to use all that time to do so.

9 THE COURT: All right. Would you like also for the
10 pretrial motions, including summary judgment, to be filed ninety days or do you think that sixty
11 days is sufficient?

12 MR. TOMAN: I'm sorry, Your Honor?

13 THE COURT: For summary judgment? Did you say
14 ninety days on that as well?

15 MR. TOMAN: I was saying ninety days for discovery
16 and 120 for summary judgment.

17 THE COURT: I'm sorry. I didn't hear the latter part
18 of it. And Mr. Borkowski,--

19 MR. BORKOWSKI: I'll agree with Mr. Toman.

20 THE COURT: Pardon?

21 MR. BORKOWSKI: I'll agree with Mr. Toman,
22 discovery, then the depositions.

23 THE COURT: All right. Well, let's attempt to grab
24 a trial date while we have everyone here. I hope you have your calendars or at least we'll make a
25 stab at trying to set a trial date at this time. We can always review that. And let's look

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1 approximately six months down the road here and see what kind of a date we could have. By the
2 way, before we do that, is one or two days going to be enough? Do you want to suggest on how
3 many witnesses you anticipate calling?

4 MR. YOSICK: Your Honor, I think at this point as
5 long as this case manages to be limited to the Quiet Title issue, the other issues don't get caught
6 up in it, I would think one or two days would be plenty. Two days, I can't see it being more than
7 two days.

8 THE COURT: And Ms. Silvers?

9 MS. SILVERS: Agreed, Your Honor.

10 THE COURT: Mr. Toman?

11 MR. TOMAN: Agreed, Your Honor. If it's all kept
12 in check there.

13 THE COURT: All right. And Mr. Borkowski?

14 MR. BORKOWSKI: Agreed.

15 THE COURT: All right. Well, let's set it for two just
16 to be safe. And let's grab a date approximately six, seven months from now. What do you think
17 you've got there. Do you have any openings?

18 BAILIFF: The week of November 4th, we have a
19 whole week open, you can take any two days of that week.

20 THE COURT: I think that I'm not going to want the
21 first two days of that week, but Wednesday--starting Wednesday of that week we can probably do
22 it.

23 BAILIFF: November 6th and 7th.

24 THE COURT: Anyone have a problem with--

25 MR. TOMAN: That's fine for me, Your Honor.

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MS. SILVERS: Fine for me, Your Honor.

MR. YOSICK: That's also fine for me, Your Honor.

THE COURT: All right. Hearing no objection we'll set it for the trial November 6 and 7, 2002. Now I usually do a settlement pretrial or final pretrial approximately a month before that. Anyone have a problem with that? Or do you think sooner than that. This would be give us time to get the summary judgments out of the way and then talk one last effort at settling it before going to trial. That would mean we would be talking something like the first week or second week of October. Anyone have a problem with that?

MR. YOSICK: No objection with that, Your Honor.

MS. SILVERS: No, Your Honor.

MR. TOMAN: Sounds good.

MR. BORKOWSKI: No.

THE COURT: All right. Let's get a date for that.

THE BAILIFF: Wednesday, October 9th?

THE COURT: I would say ten or 10:30 would be--

THE BAILIFF: Okay, 10:30.

THE COURT: October 9th did you say?

THE BAILIFF: Yes.

THE COURT: Okay. All right. So we'll set the final pretrial for October 9th at 10:30 a.m. We can, if there are some problems that arise, we can readdress these, but let's at least have a time frame that we're all working towards today, and we can always--we can also always come down for another pretrial if you folks feel that would be helpful. Or obviously if you file your various motions, summary judgment or other motions and want hearings on those, please indicate it in your motions so we can do that, otherwise we may just rule on them with the motions and memorandums themselves. All right. Then let's say, better pick

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1 a date for summary judgment that's going to be--we're pushing up against it just a little bit with
2 summary judgment I understand that. Would it be too soon say August, middle of August for
3 summary judgments, I know that's pushing it a little bit. I know it's summertime.

4 MR. YOSICK: As far as us filing summary judgment,
5 Your Honor, I really don't think the issues are that complicated. The only thing that might hold
6 it up is the potential of the deposition, like Mr. Toman said. Other than that I think we should be
7 prepared--

8 THE COURT: I'm just worried that with reply time
9 and then if there's, I mean, a response and then a reply, I'm worried that we'll be bumping up
10 against the settlement pretrial in October if I do it much later than the middle of August for
11 summary judgments.

12 MR. TOMAN: That should be fine, Your Honor.

13 THE COURT: All right. Let's say, what is the 15th
14 of August, what kind of day of the week is that?

15 THE BAILIFF: Thursday.

16 THE COURT: Well, we might as well make it the
17 next day, the 16th. Let's say August 16 for pretrial motions, including summary judgment. I might
18 as well let discovery go right up until that date as well. So we got the trial date, November 6-7,
19 final pretrial October 9th, at 10:30 a.m., discovery to be completed and pretrial motions to be filed
20 by August 16 or before. I won't, at this time, set a hearing on the pretrial motions until you file
21 yours and we'll see whether you want to submit them on the memorandum without a hearing or
22 not.

23 MR. TOMAN: What is the time for filing a reply to
24 a brief in opposition to summary judgment? Maybe we could set those dates due the fact we have
25 a pro se litigant here.

1 THE COURT: That's true. Well, we've got the
2 motions due August 16th, so a response, what would three weeks later than that take us to?

3 THE BAILIFF: The first Friday in September, the 6th,
4 September 6th.

5 THE COURT: September 6, and then let's say ten
6 days to respond to that September 16 for replies. Does that seem like a reasonable--I know it is a
7 bit expedited, but I guess this is a--

8 MR. YOSICK: That's fine.

9 MS. SILVERS: That's fine, Your Honor.

10 THE COURT: --relatively researchable issues, I
11 think. All right then. So we'll set the motions, the original motions are due August 16, response
12 to those by September 6, and replies to responses are due September 16. Any other deadlines or
13 any other issues that any of you want to address at this time before I move to the other case?

14 MR. YOSICK: Nothing that I'm aware of, Your
15 Honor.

16 MR. TOMAN: I think you covered it.

17 THE COURT: All right. I apologize. Are you Mr.
18 Shaffer?

19 MIKE SHAFFER: I am Mike Shaffer, Your Honor.

20 THE COURT: I heard you were here and present.
21 You have not entered an appearance. Do you wish to enter an appearance?

22 MIKE SHAFFER: I don't think we have any stake
23 either as a party or representative yet, Your Honor.

24 THE COURT: All right.

25 MIKE SHAFFER: We are interested in the

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1 proceedings in as much as there are disciplinary proceeding against a member of our firm and it
2 was represented to disciplinary counsel that we would monitor the Quiet title and appraise them
3 of the situation.

4 THE COURT: Very well.

5 MIKE SHAFFER: So we do have some interest, but
6 I don't think--

7 THE COURT: I just didn't want to neglect you. I was
8 advised that you were here, and I didn't want to not give you an opportunity.

9 MIKE SHAFFER: No. We have a vested interest in
10 the outcome, but I don't think we're a party or an attorney in the proceedings.

11 THE COURT: All right. Well, since we already seem
12 to have enough folks involved in this let's keep it that way then. Very well, anything else from
13 anyone else on this one? All right. Thank you all for being here. I'm going to proceed on to a
14 Civil Protection Order case that involves a couple of the parties, but it's on an ex-parte basis at this
15 point. So any of you that, Mr. Borkowski has to remain, but anyone else is free to leave or remain
16 as you wish.

17 MR. YOSICK: Thank you.

18 MS. SILVERS: Thank you, Your Honor.

19 MR. TOMAN: Thank you, Your Honor.

20 [Hearing in recess]

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Appx. P. 95

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CERTIFICATE

STATE OF OHIO)
) ss.
COUNTY OF FULTON)

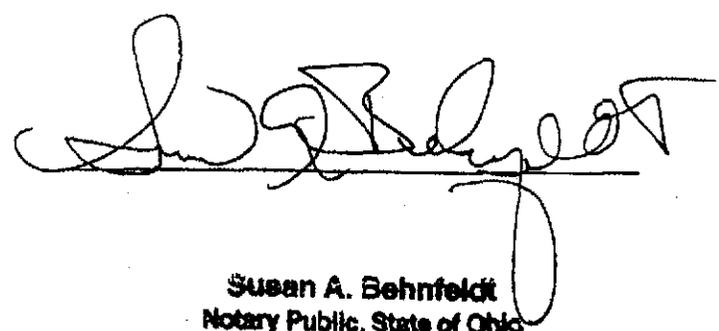
I, Susan Behnfeldt, Court Reporter in and for the County of Fulton, State of Ohio, do hereby certify and depose as follows:

That the foregoing proceeding was taken by electronic recording device at the said time and place, and recorded in due course of said proceeding;

That I am a Reporter for the Fulton County Court of Common Pleas, that the said proceeding was thereafter under my direction transcribed from electronic into printed transcription, that I have compared the foregoing transcript with the electronic transcription, and that the same constitutes a full, true, and accurate report of the proceedings which then and there took place;

I further say the above statements are true.

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 3rd day of Sept 2002.



Susan A. Behnfeldt
Notary Public, State of Ohio
My Commission Expires Sept. 1, 2004

Appx. P. 96

Shaffer, and therefore entirely null and void for the purposes of any real estate sale or transfer, under Ohio's laws and common law, because attorney John Shaffer knowingly, willfully, wantonly and recklessly deceived and led Defendant Borkowski to believe it was "perfectly legal" to sign his grandmother's name to the same, and that said attorney Shaffer knowingly, willfully, wantonly and recklessly deceived Defendant into believing that the pre-existing power of attorney, drawn by attorney Jack Gooding, specifically allowed him under the circumstances to execute the succeeding power of attorney, which was then knowingly, willfully, wantonly and recklessly used by attorney Shaffer to fraudulently sell, transfer and convey the real estate in dispute to Plaintiff Ebersole, and therefore the transfer is subject to rescission and reversion to Defendant under extant Ohio laws and common law.

- 5) Defendant Borkowski, Jr., specifically admits paragraph twelve (12) of Defendant Fremont's Cross-Claim, that his grandmother's Last Will and Testament made him the sole executor of her estate and the sole majority heir to the real estate in dispute; but denies that said transfer was fully and lawfully effected simply by her death on November 15th, 1999, in that the fraudulent acts by attorney John S. Shaffer were knowingly, willfully, wantonly and recklessly committed on June 19th, 1999, prior to her death which then preempted and prevented the lawful inheritance by operation of Ohio's probate and other applicable laws and common law.
- 6) Defendant Borkowski, Jr., admits the averment of paragraph thirteen (13) of Defendant Fremont's Cross-Claim that his grandmother, Mrs. Bertha Borkowski-Stewart is now deceased having died on or about November 15th, 1999.
- 7) Defendant Borkowski, Jr., denies paragraph fourteen (14) of Defendant Fremont's Cross-Claim in that he did not become fully and/or lawfully "vested" with title to the property in

dispute due to the knowing, willful, wanton and reckless perpetration of fraud, deceit, and misrepresentations of attorney Shaffer and, as well, the breach of the attorney-client contract with Mr. Shaffer, since said actions by Shaffer in effect "divested" Defendant of his rightful inheritance before he could secure the rightful inheritance by operation of Ohio's laws and common law.

- 8) Defendant Borkowski, Jr., specifically denies paragraph fifteen (15) of Defendant Fremont's Cross-Claim that his future, conditional, and unrealized rights of inheritance somehow "ratified" the pre-death conveyance of the disputed property to Plaintiff Ebersole, and further contends that such a claim is made by Defendant Fremont in bad faith and without any genuine basis in any existing Ohio laws or common law.
- 9) Defendant Borkowski, Jr., denies paragraph sixteen (16) of that he has no interest in the property situated at 13613 State Route 66, Fayette, Ohio 43521.

AFFIRMATIVE DEFENSES

- 10) Defendant Borkowski, Jr., incorporates and adopts by reference the facts, denials, allegations, and legal claims in paragraphs one (1) through nine (9) as if fully restated herein and further states that:
- 11) Defendant Borkowski, Jr., denies paragraph eight (8) of Defendant Fremont's Affirmative Defenses that it "holds a first mortgage on the property in dispute, free and clear of any interest of [*] Defendant [Borkowski, Jr.] pursuant to its mortgage filed with the Fulton County Recorder on or about September 10, 2001 in "OR Book 172, Page 940," since the mortgage has been "assigned, sold, or transferred from Fremont Investment and Loan to Fairbanks Capital Corporation, effective April 1, 2002, and therefore lacks standing to bring any complaint, cross-claims or affirmative defenses against Defendant unless and until it can establish by a contract document that it

expressly agreed with Fairbanks Capital Corporation to assume the liability attached to the mortgage prior to the assignment, sale or transfer to said corporation and agreed to further conduct and conclude the litigation pending at the time of said sale, assignment or transfer to Fairbanks Capital Corporation, and indemnify and hold harmless said receiving entity. See Defendant's Exhibit "E" attached to his Affidavit in Support of this Answer, Cross-Complaint and Cross-Claim.

- 12) Defendant admits paragraph nine (9) of Defendant Fremont's Affirmative Defenses that Plaintiff Ebersole transferred the disputed property by Warranty Deed to Co-Defendant Jennifer Borkowski, the daughter of Defendant A.J. Borkowski, Jr., but denies that it was for fair market value.
- 13) Defendant herein denies paragraphs ten (10) and eleven (11) of Defendant Fremont's Affirmative Defenses.

CROSS-COMPLAINT AND COUNTER-CLAIMS

- 14) Co-Defendant Fremont Investment and Loan (hereafter Fremont) willfully, wantonly and recklessly assumed a risk in granting a mortgage to Co-Defendant Jennifer Borkowski by failing and refusing to exercise ordinary prudence in that they failed to have performed a full and complete title report, abstract of title or certified title research conducted so to assure itself that the seller had genuine and valid title to the disputed property.
- 15) In assumption of the risk in such a willful, wanton and reckless manner, they were further negligent, contributorily negligent and grossly negligent, when they knew or should have known in the course of exercising ordinary care, prudence and foresight that without any proper title search being performed and certified, that such property may have been encumbered or otherwise ineligible for transfer due to the existence of a recorded power

of attorney that the standard checklist would and should have spotted as being subject to serious questions and further inquiry, or assume the risk of liability without the same.

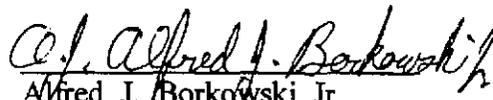
- 16) Due to the admissions of Mr. Christopher Brooks, an officer or employee of the First American Title Insurance Company of Cleveland, Ohio, to Defendant Borkowski, as set forth in his accompanying affidavit, Defendant Fremont knows or could have and/or should known by now that absolutely no title research was performed by the title company involved in the transfer from Plaintiff Ebersole to Co-Defendant Jennifer Borkowski, and therefore knows that liability for the failure to perform the title search lies fully against the title company that insured the transaction.
- 17) Therefore, Defendant Fremont's Answer, Counter-Claims and Cross-Claims are barred for fraud, illegality, laches, statute of frauds, waiver, deliberate bypass of valid claims, estoppel, and are further a sham, a pretense, and frivolous in violation of Ohio Revised Code § 2323.51, and are scandalous, indecent and designed to vex, harass and annoy Defendant Borkowski, Jr., by putting him through needless expenditure of time, energy and money, all of which are in violation of Ohio Civil Rule 11 and subject to immediate sanctions upon an evidentiary hearing where further evidence can be introduced after being obtained by discovery process.
- 18) Defendant Borkowski, Jr., reserves the right to further amend this Answer and Cross-Complaint and Counter-Claims, and add any additional facts or claims as they may be discovered should the evidence in Defendant Fremont's possession still exist and not been destroyed. Defendant Borkowski, Jr.'s call to Mr. Christopher Brooks will in the telephone records for the toll-free call placed as mentioned in his accompanying affidavit.
- 18) This court should immediately order a Warrant of Seizure of said telephone records upon the reading of this Answer, Cross-Complaint and Counter-Claims, or issue an order

compelling Defendant Fremont and First American Title Insurance Company of Cleveland, Ohio, to immediately divulge these phone records.

RELIEF SOUGHT

- A) Defendant Borkowski, Jr., moves this Court to dismiss Plaintiff's Complaint to Quiet Title since they possess no valid legal title as a matter of law, and that the Court Order that the sales of said real estate be declared null and void, *ab initio*, and the title thereto be restored and reverted to the sole and exclusive possession of Defendant A. J. Borkowski, Jr., and the estate of Mrs. Bertha Borkowski-Stewart, and that the Plaintiffs be enjoined from any further use or sale of the same, and
- B) Demands a trial by jury on all issues triable, and
- C) Further prays for compensatory damages from Plaintiffs, each of them, jointly and severally, in an amount in excess of \$25,000.00, and
- D) Prays for punitive, hedonic, special, EXEMPLARY and future damages in an amount in excess of \$25,000.00, and
- E) That all costs and expenses incurred by Defendant in defending this action be adjudged and taxed against the Plaintiffs, attorney John Shaffer, Co-Defendant Fremont Investment and Loan, and First American Title Insurance Company, and
- F) For such other and further relief in equity and law which the Court deems just and proper.

Respectfully submitted,


Alfred J. Borkowski, Jr.
Defendant, In Propria Persona
13613 State Route 66
Fayette, Ohio 43521
Phone: 419. 237. 2397

CERTIFICATE OF SERVICE

This is to certify that a true copy of Defendant's SUPPLEMENTAL ANSWER, COUNTERCLAIMS AND CROSS-COMPLAINT AGAINST CO-DEFENDANT FREMONT INVESTMENT AND LOAN was served on all the parties shown below via 1st class U.S. Mail this 17 day of July, 2002.

John T. Stelzer, Esq.
For Plaintiffs Humbert/Ebersole
216 South Lynn Street
Bryan, OH 43506

Paul H. Kennedy, Ass. Pros.
For Deft. Dennis Hales, Treasurer
123 Courthouse Plaza
Wauseon, OH 43567

Kyle A. Silvers, Esq.
For Deft. Jennifer Borkowski
1776 Tremainsville Road
Toledo, OH 43613

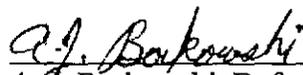
Bradley P. Toman, Esq.
For Deft. Fremont Investment & Loan
1370 Ontario Street, Suite 1700
Cleveland, OH 44113

Amber Borkowski, Deft.
13623 State Route 66
Fayette, OH 43521

Rita Pattison, Deft.
103 Gardner Street
Fayette, OH 43521

Bruce Bishop, Deft.
201 South East
Belton, MO 64012

Our Lady of Mercy, Catholic Church, Deft.
409 East Main Street
Fayette, OH 43521



A.J. Borkowski, Defendant, Pro Se

real estate because he learned that the property had had recently been transferred and conveyed to the new buyer.”

- 3) Mr. Brooks went to state, “We’ve been burned or stuck with cases like this before where the title researcher did not do any title research at all;” or didn’t do it according the process required by his company and the standards of the Ohio State Bar Association regarding title research, etc.
- 4) He went to add, “Your case was so sloppily prepared that I’ll get it thrown out of court.”
- 5) He also stated during the conversation that, “We recently had a case similar to this that went to the court of appeals and we lost it.”
- 6) Mr. Brooks also said that, “Your daughter, Jennifer, needs to get in touch with her title insurance company. They owe it to her to make legal representation for her because in this situation they could very well have to issue a check to her for the problem that’s occurred.” I took this to mean that this is what the title insurance was supposed to cover.
- 7) I thereafter wrote a letter to Mr. Brooks that is attached as my **Exhibit “B.”** It confirms my conversation with Mr. Brooks.
- 8) I also sent Mr. Brooks another letter on February 15, 2002, wherein I informed him that after speaking to Mr. Kevin Williams of the Office of the Ohio Supreme Court Disciplinary Counsel that Mr. Williams said it was “OK” for any of the attorneys involved with the title complaint to call him about anything they knew that could be helpful. The letter also advises Mr. Brooks that I was to meet with Mr. Williams on February 25, 2002, to prepare for depositions February 28, 2002, in the attorney misconduct complaint against Mr. John Shaffer. See Defendant’s **Exhibit “C”**, attached.

- 9) Thereafter, Mr. Brooks apparently referred the matter to attorney Bradley P. Toman, of the Law offices of McFadden & Associates Co., L.P.A., in Cleveland, Ohio.
- 10) Attached are letters I received from Mr. Toman regarding this matter which are dated March 12, 2002, and June 7, 2002, and are marked as Defendant's Exhibits "D".
- 11) I further add that I had spoken to a female employee of the Disciplinary Counsel's Office and she informed me in our conversation that, "Yes, it is true that there are about ten (10) mandatory points of examination that a title researchers must perform when doing their research on powers of attorney recorded relating to real estate sales and/or transfers."
- 12) Finally, I only received from my daughter and co-defendant in this matter the attached letter, marked as Defendant's Exhibit "E", which is from Defendant Fremont Investment and Loan that advises her that her mortgage has been "assigned, sold, or transferred from Fremont Investment & Loan to Fairbanks Capital Corp., effective April 1, 2002.

FURTHER AFFIANT-RELATOR SAYS NOTHING.

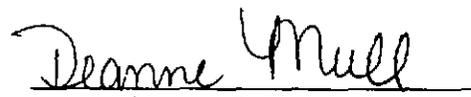
Respectfully submitted,


A.J. Borkowski, Jr., Pro Se
Defendant- Cross-Complainant

JURAT OF A NOTARY PUBLIC

Before me, a notary public in and for the state of Ohio, appeared the above-signed, A. J. Borkowski, by me identified to be one and the same, who then subscribed his signature and made solemn affirmation that the facts alleged in his Affidavit in Support of his Supplemental Answer and Cross-Complaint are true and correct to the best of his knowledge, information, memory, and belief, and upon his information and belief, he believes the same to be true, that they are made in good faith, and are his voluntary acts and deeds.

Dated: July 17, 2002


Deanne Mull
Notary Public

Expires July 8, 2007

Appx. P. 106

CERTIFICATE OF SERVICE

This is to certify that a true copy of Defendant's Affidavit in Support of his Supplemental Answer and Cross-complaint was served on all the parties shown below via 1st class U.S. Mail this 17th day of July, 2002.

John T. Stelzer, Esq.
For Plaintiffs Humbert/Ebersole
216 South Lynn Street
Bryan, OH 43506

Paul H. Kennedy, Ass. Pros.
For Deft. Dennis Hales, Treasurer
123 Courthouse Plaza
Wauseon, OH 43567

Kyle A. Silvers, Esq.
For Deft. Jennifer Borkowski
1776 Tremainsville Road
Toledo, OH 43613

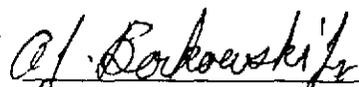
Bradley P. Toman, Esq.
For Deft. Fremont Investment & Loan
1370 Ontario Street, Suite 1700
Cleveland, OH 44113

Amber Borkowski, Deft.
13623 State Route 66
Fayette, OH 43521

Rita Pattison, Deft.
103 Gardner Street
Fayette, OH 43521

Bruce Bishop, Deft.
201 South East
Belton, MO 64012

Our Lady of Mercy, Catholic Church, Deft.
409 East Main Street
Fayette, OH 43521



A.J. Borkowski, Defendant, Pro Se

Appx. P. 107



1/11/02

First American Title Insurance Company

IMG CENTER • 1380 EAST 9TH STREET • CLEVELAND, OHIO • 44114-1720
(216) 802-3400 • (800) 346-OHIO • FAX (216) 802-3491

346-6446

January 11, 2002

Fulton County Court of Common Pleas
Clerk of Courts
203 Courthouse
210 S. Fulton Street
Wauseon, Ohio 43567

Re: Humbert, et al. vs. Borkowski, et al.
Case No. 01CV 274

TO THE CLERK OF COURTS:

Enclosed please find the original and one (1) copy of an agreed Stipulation of Extension of Time.

Please file the original and return a time-stamped copy of the document in the enclosed self-addressed stamped envelope provided.

Thank you for your assistance.

Very truly yours,

Christopher F. Brooks
Counsel

EX 3512

CFB/lts
Enclosures

cc: All Counsel/Parties of Record

EXHIBIT

A

APPX. P. 108

February 06, 2002

A.J. Borkowski
13613 StateRoute 66
Fayette, Ohio 43521
(419) 237-2329

Re: Fulton County Case No. 01CV274

Dear Christopher F. Brooks:

Thank you for the telephone conversation we had on 02-05-2002. Also enclosed are copies of the answer I filed so far, including mine, which you as an attorney will dislike. And a copy of J.T. Stelzer's other complaint filed. Look it over and you will see what we talked about. I gave Jennifer the information about Stewart Title Insurance and also about Mortgage Quest Inc., 226 S. Reynolds Rd. (419) 536-7650, and Ohio Title who originally handled the title work for Jennifer.

Let's keep between us what we talked about. I only told Jennifer "we talked." Also you're the only attorney that has suggested the same thing as been highly suggested. And Mr. Shafer's uncle, Mr. Wayne Shaffer, from same office, was at least a year ago the president of the local bar association. You have idea what I'm up against.

Looking forward to meeting you or the attorney that is going to handle this for the bank. Also, I'd like Referral to an attorney from that direction. I do not have any faith in attorneys in this area. I hope you understand. If I can further assist, please call me.

Very truly yours,

A. J. Borkowski Jr.

Exhibit

B

Appx. P. 109

February 15, 2002

A.J. Borkowski
13613 SR. 66
Fayette, OH. 43521
(419) 237-2397

Christopher F. Brooks
First American Title Insurance Company
IMG Center
1360 East 9TH Street
Cleveland, OH. 44114-3491

Re: Office of the Supreme Court Disciplinary Case

Dear Mr. Brooks:

Mr. Williams of the Office of the Disciplinary Counsel suggested that was OK for any of the attorneys involved with title complaint regarding Mr. Shaffer or Mr. Gooding to call him. I meet with him again on 02-25-02 for a deposition hearing in the near future.

Also exhibit F enclosed has no Probate Division Stamp.

Very truly yours,

A.J. Borkowski

*Exhibit
C*

Appx. P. 110

Law Offices of
McFadden
and Associates Co., L.P.A.

Tel: (216) 622-0850
Fax: (216) 622-0854

1370 Ontario Street
Suite 1700
Cleveland, OH 44113-1726
www.mcfaddenandassociates.com

Donald P. McFadden
Bradley P. Toman
David A. Freeburg
Amelia A. Bower

June 7, 2002

A. J. Borkowski
13613 State Route 66
Fayette, Ohio 4355

Re: Humbert v. Borkowski, Fremont Investment & Loan
Fulton Cty. No. 01CV00274
Claim No. 02M-01027-521

Dear Mr. Borkowski,

Enclosed again is a quit-claim deed transferring your interest in the 10487 County Road 4, Lot 27, Swanton, Ohio property to your daughter Jennifer Borkowski. The quit-claim deed should clear up any problem with Jennifer's title the property. Please execute the deed in the presence of a Notary Public and return the same to me so that we may conclude the portion of the case regarding Jennifer and the 10487 County Road 4 property.

Please call if you would like to further discuss this matter. Thank you.

Very truly yours,



Bradley P. Toman

cc: Chris Brooks

Exhibit

D

Appx. P. III

Law Offices of
McFadden & Associates Co., L.P.A.
1370 Ontario Street, Suite 1700
Cleveland, OH 44113-1726

Donald P. McFadden
Bradley P. Toman
David A. Freeburg
Amelia A. Bower

Tel: 216.622.0850
Fax: 216.622.0854

March 12, 2002

A. J. Borkowski
13613 State Route 66
Fayette, Ohio 4355

Re: Humbert v. Borkowski, Fremont Investment & Loan
Fulton Cty. No. 01CV00274
Claim No. 02M-01027-521

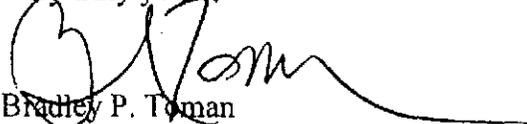
Dear Mr. Borkowski,

Pursuant to our telephone conversation, enclosed is a quit-claim deed transferring your interest in the 10487 County Road 4, Lot 27, Swanton, Ohio property to Jennifer Borkowski. I spoke with Jennifer's attorney who agreed that the quit claim deed should clear up Jennifer's title to the property. Please execute the deed in the presence of a Notary Public and return the same to me in the enclosed self addressed stamped envelope. Most banks will have a notary who can notarize your signature.

The deed lists your marital status as single. If you are married, please call my office with your Spouse's name so that I can send you a revised copy of the Deed as she will have to sign to Release Dower.

Please call if you would like to further discuss this matter. Thank you.

Very truly yours,


Bradley P. Toman

cc: Chris Brooks

Appx. P. 112



March 15, 2002

JENNIFER BORKOWSKI
13613 STATE ROUTE 66
FAYETTE OH 43521

Re: Loan Number: 5000029429
Property Address: 13613 STATE ROUTE 66
FAYETTE OH 43521

NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS

You are hereby notified that the servicing of your first mortgage loan, that is, the right to collect payments from you, has been assigned, sold, or transferred from Fremont Investment & Loan to Fairbanks Capital Corp., effective April 1, 2002.

The assignment, sale or transfer of the servicing of your first mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice no later than 15 days before the effective date of transfer or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing.

Your present servicer is Fremont Investment & Loan. If you have any questions relating to the transfer of servicing from your present servicer, call the Customer Service Center between 8:30 a.m. and 5:00 p.m., PST, Monday through Friday. The number is (800) 776-7511. This is a toll free number.

Your new servicer is Fairbanks Capital Corp.
The business address for your new servicer is:
P.O. Box 1900, Hatboro, PA 19040.

The payment address for your new servicer is:
Remittance Processing
P.O. Box 79157, Phoenix, AZ 85062-9157

If you have any questions relating to the transfer of servicing to your new servicer, call the Fairbanks Capital Corp. Customer Service Department toll free at (800) 258-2602, between 7:00 a.m. to 8:00 p.m., EST, Monday through Friday and Saturday between 8:00 a.m. to 5:00 p.m.

(Over)

113
Exhibit
E Appx. 113



FREMONT
INVESTMENT & LOAN

(continued)

The date that your present servicer will stop accepting payments from you is March 30, 2002. The date your new servicer will start accepting payments from you is April 1, 2002. Send all payments due on or after that date to your new servicer. Any automatic drafting, ACH service will also be cancelled as of March 30, 2002. If you are interested in setting up this automatic draft/ACH method with your new servicer, please contact the Customer Service Department after the transfer date.

You should be aware of the following information, which is set out in more detail in Section 6 of RESPA (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed upon you.

Section 6 of RESPA (12 U.S.C.2605) gives certain consumer rights. If you send a "qualified written request" to your servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 business days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and the reason for the request.

Not later than 60 Business Days after receiving your request, your Servicer must make appropriate corrections to your account and must provide you with a written clarification regarding any dispute. During this 60 Business Day period, your Servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the Servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of the Section. You should seek legal advice if you believe your rights have been violated.

Sincerely,

Fremont Investment & Loan

[GOODBYE2P/DOC819/9/Rev.03/15/02]

114

APPX P. 114



1/11/02

First American Title Insurance Company

IMG CENTER • 1360 EAST 9TH STREET • CLEVELAND, OHIO • 44114-1720
(216) 802-3400 • (800) 346-OHIO • FAX (216) 802-3491

America 346-6446

January 11, 2002

Fulton County Court of Common Pleas
Clerk of Courts
203 Courthouse
210 S. Fulton Street
Wauseon, Ohio 43567

Re: Humbert. et al. vs. Borkowski, et al.
Case No. 01CV 274

TO THE CLERK OF COURTS:

Enclosed please find the original and one (1) copy of an agreed Stipulation of Extension of Time.

Please file the original and return a time-stamped copy of the document in the enclosed self-addressed stamped envelope provided.

Thank you for your assistance.

Very truly yours,

Christopher F. Brooks
Counsel

EX 3512

CFB/lls
Enclosures

cc: All Counsel/Parties of Record

Exhibit F

Appx. P. 115

IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

WILLIAM K. HUMBERT, <i>et al.</i>	) Case No: 01CV274
)
Plaintiff	) JUDGE ROBERT C. POLLEX
)
vs.	) <u>DEFENDANT FREMONT INVESTMENT</u>
	) <u>AND LOAN MOTION TO</u>
JENNIFER M. BORKOWSKI, <i>et al.</i>	) <u>STRIKE/DISMISS CROSS-CLAIM OF</u>
	) <u>A.J. BORKOWSKI AGAINST</u>
Defendants	) <u>FREMONT INVESTMENT AND LOAN</u>
)
)

The Cross-claim of A.J. Borkowski should be dismissed. The Cross-claim in addition to setting forth no cognizable claim against Fremont Investment and Loan was filed out of rule and without leave of Court.

The Defendant Fremont Investment and Loan filed its Cross-claim against A.J. Borkowski on February 13, 2002. The Defendant Borkowski did not attempt to file his own Cross-claim against Fremont Investment and Loan until July 17, 2002. No Motion for Leave to file Cross-claim was filed. No reason was given for the failure to file the Cross-claim for over five months.

Appx. P. 116

WHEREFORE, the Cross-claim of A.J. Borkowski against Fremont Investment and Loan should be stricken from the record and/or dismissed. The Cross-claim was filed out of rule and without leave. The Cross-claim sets forth absolutely no cognizable claim against Fremont Investment and Loan.

Respectfully submitted,

McFADDEN & ASSOCIATES CO., L.P.A.



Bradley P. Toman (0042720)

1370 Ontario Street

Suite 1700

Cleveland, Ohio 44113

(216) 622-0850

Attorney for Defendant Fremont Investment

CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 10th day of August,

2002 by regular mail.

A.J. Borkowski, Jr.
13613 State Route 66
Fayette, Ohio 43521

Rita Pattison
103 Gardner Street
Fayette, Ohio 43521

John T. Stelzer
216 S. Lynn Street
Bryan, Ohio 43506

Dennis Hales, Treasurer
Fulton County
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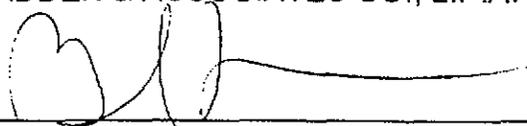
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Fayette, Ohio 43521

Kyle A. Silvers
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Toledo, Ohio 43613

Bruce Bishop
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Belton, MO 64012

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Fayette, Ohio 43521.

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Bradley P. Toman (0042720)

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FILED
FULTON COUNTY
COURT OF COMMON PLEAS
FEB 28 2003

Mary Anne
CLERK

IN THE COURT OF COMMON PLEAS OF FULTON COUNTY, OHIO

William K. Humbert, et al.,

Case No. 01-CV-274

Plaintiffs,

**JUDGMENT ENTRY AND
ORDER ON MOTIONS**

vs.

Jennifer M. Borkowski, et al.,

Judge Robert C. Pollex
(Sitting by Assignment)

Defendants.

This cause is before this Court on various motions filed by the parties. The Court has reviewed the motions, responses, reply briefs and the law, and hereby finds as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the Motions as set forth below are ruled as follows:

Defendant A.J. Borkowski's Motion to Vacate Judgment Entry of June 11, 2002, be, and hereby is, **GRANTED**, as service was not in a paper of general circulation.

Defendant Fremont Investment & Loan's Motion to Strike/Dismiss Cross-Claim filed by Defendant A.J. Borkowski be, and hereby is, **GRANTED**.

Defendant Fremont Investment & Loan's Motion to Strike document entitled Suggestion on How to End Case as filed by Defendant A.J. Borkowski be, and hereby is, **GRANTED**.

Defendant A.J. Borkowski's Motion to Dismiss Plaintiffs' Complaint be, and hereby is, **DENIED**.

Defendant A.J. Borkowski's Motion to Disqualify Plaintiffs' Counsel be, and hereby is, **DENIED**.

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Defendant Fremont Investment and Loan's Motion for Default Judgment on its Cross-Claim against Defendant A.J. Borkowski be, and hereby is, **DENIED.**

Defendant A.J. Borkowski's Motion for Temporary Restraining Order be, and hereby is, **DENIED.**

Defendant A.J. Borkowski's Motion for Protective Order be, and hereby is, **DENIED.**

Defendant A.J. Borkowski's Motion for Preliminary Injunction be, and hereby is, **DENIED.**

Defendant A.J. Borkowski's Verified Complaint for Temporary Restraining Order/Preliminary Injunction/Permanent Injunction be, and hereby is, **DISMISSED.**

Defendant A.J. Borkowski's Motion to Strike all Pleadings/Motions as filed by Defendant Fremont Investment & Loan be, and hereby is, **DENIED.**

Defendant A.J. Borkowski's Motion for Findings of Fact be, and hereby is, **DENIED.**

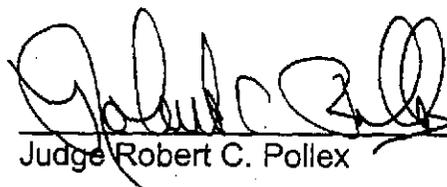
Defendant A.J. Borkowski's Supplemental Motion to Disqualify Plaintiffs' Counsel be, and hereby is, **DENIED.**

Defendant Jennifer Borkowski's Motion in Limine be, and hereby is, **DENIED.**

Plaintiffs' Motion to Strike Defendant A.J. Borkowski's Notice of Filing Transcript, be, and hereby is, **DENIED.**

Defendant Fremont Investment & Loan's Motion to Strike Defendant A.J. Borkowski's Motion for Leave to File Answer to Cross-Claim be, and hereby is, **DENIED.**

The Motions for Summary Judgment as filed by Plaintiffs, by Defendant Fremont Investment & Loan and by Defendant Jennifer Borkowski, are taken under advisement.



Judge Robert C. Pollex

xc: J.T. Stelzer, Esq./Kirk Yosick, Esq.
Kyle Silvers, Esq.
Paul Kennedy, Esq.

Bradley Toman, Esq.
A.J. Borkowski
Amber Borkowski

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Appx. P. 120

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HAINES v. KERNER ET AL.

No. 70-5025

SUPREME COURT OF THE UNITED STATES

404 U.S. 519; 92 S. Ct. 594; 30 L. Ed. 2d 652; 1972 U.S. LEXIS 99; 16 Fed. R. Serv. 2d (Callaghan) 1

December 6, 1971, Argued
January 13, 1972, Decided

PRIOR HISTORY:

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

DISPOSITION: 427 F.2d 71, reversed and remanded.

SUMMARY: An Illinois State Penitentiary inmate sued state officials pro se in the United States District Court for the Eastern District of Illinois, seeking damages for a deprivation of his civil rights and alleging (1) a denial of due process in the steps leading to his solitary confinement and (2) physical injuries suffered while in solitary confinement. The District Court dismissed the complaint for failure to state a claim upon which relief could be granted, and the United States Court of Appeals for the Seventh Circuit affirmed (427 F2d 71).

On certiorari, the United States Supreme Court reversed. In a per curiam opinion, expressing the unanimous views of the court, it was held that since it did not appear beyond doubt that the inmate could prove no set of facts in support of his claim which would entitle him to relief, he was entitled to an opportunity to offer proof.

Powell and Rehnquist, JJ., did not participate.

LAWYERS' EDITION HEADNOTES:

[**LEdHN1]
PLEADING §130
pro se complaint --
Headnote: [1]

The United States Supreme Court holds allegations of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers.

[**LEdHN2]
PLEADING §130
failure to state a claim --
Headnote: [2]

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

[**LEdHN3]

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RIGHTS §10
PLEADING §179
solitary confinement --
Headnote: [3]

In a suit under 42 USC 1983, which gives a right of action for the deprivation of civil rights under color of state law, a state penitentiary inmate is entitled to an opportunity to offer proof under his *pro se* allegations that he was denied due process in the steps leading to his solitary confinement and that in solitary confinement he was forced to sleep on the floor of a cell with only blankets, which aggravated a pre-existing foot injury and a circulatory ailment.

SYLLABUS: Prisoner's *pro se* complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement should not have been dismissed without affording him the opportunity to present evidence on his claims.

COUNSEL: Stanley A. Bass, by appointment of the Court, 401 U.S. 1008, argued the cause for petitioner. With him on the briefs were Jack Greenberg, James M. Nabrit III, William B. Turner, Alice Daniel, and Max Stern.

Warren K. Smoot, Assistant Attorney General of Illinois, argued the cause for respondents *pro hac vice*. With him on the brief were William J. Scott, Attorney General, Joel M. Flaum, First Assistant Attorney General, and James B. Zagel, Morton E. Friedman, and Jayne A. Carr, Assistant Attorneys General.

Briefs of *amici curiae* were filed by Charles H. Baron for Boston College Center for Corrections and the Law, and by Julian Tepper and Marshall J. Hartman for the National Law Office of the National Legal Aid and Defender Assn.

OPINION BY: PER CURIAM

OPINION: [*519] Petitioner, an inmate at the Illinois State Penitentiary, Menard, Illinois, commenced this action against the Governor of Illinois and other state officers and prison officials under the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. § 1983, and 28 U. S. C. § 1343 (3), seeking to recover damages for claimed injuries and deprivation of rights while incarcerated under a judgment not challenged here. [*520] Petitioner's *pro se* complaint was premised on alleged action of prison officials placing him in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal altercation. The assault by petitioner on another inmate is not denied. Petitioner's *pro se* complaint included general allegations of physical injuries suffered while in disciplinary confinement and denial of due process in the steps leading to that confinement. The claimed physical suffering was aggravation of a pre-existing foot injury and a circulatory ailment caused by forcing him to sleep on the floor of his cell with only blankets.

The District Court granted respondents' motion under Rule 12 (b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to state a claim upon which relief could be granted, suggesting that only under exceptional circumstances should courts inquire into the internal operations of state penitentiaries and concluding that petitioner had failed to show a deprivation of federally protected rights. The Court of Appeals affirmed, emphasizing that prison officials are vested with "wide discretion" in disciplinary matters. We granted certiorari and appointed [***654] counsel to represent petitioner. The only issue now before us is petitioner's contention that the District Court erred in dismissing his *pro se* complaint without allowing him to present evidence on his claims.

[***LEdHR1] [1] [***LEdHR2] [2] Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, [**596] however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears [*521] "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). See *Dioguardi v. Durning*, 139 F.2d 774 (CA2 1944).

[***LEdHR3] [3] Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith.

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Reversed and remanded.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

REFERENCES: [Return To Full Text Opinion](#)

21 Am Jur 2d, Criminal Law 615

US L Ed Digest, Civil Rights 10; Pleading 179

ALR Digests, Criminal Law 180

L Ed Index to Anno, Civil Rights; Pleading

ALR Quick Index, Complaint, Petition, or Declaration; Sentence and Punishment

Federal Quick Index, Civil Rights; Federal Rules of Civil Procedure

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