

ORIGINAL

ON COMPUTER-ALM

IN THE SUPREME COURT OF OHIO

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

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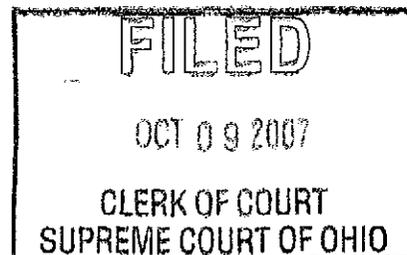
MOTION FOR LEAVE TO READ AND/OR SUBMIT ARGUMENT IN WRITTEN  
FORM FOR THE OCTOBER 9, 2007, ORAL ARGUMENT OF THE APPELLEE A.J.  
BORKOWSKI, JR.

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the Honorable Judge Charles D. Abood

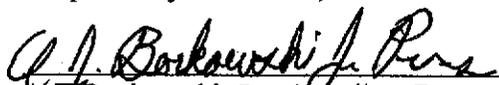
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Pro-se Plaintiff, Appellee-Relator



**MOTION**

Now comes Appellee A.J. Borkowski, Jr., and move this Court for leave to read and/or submit argument in written form for the October 9, 2007, oral argument pursuant to Ohio's Fourteenth Amendment due process of law and equal protection of the law and S. Ct. Prac. R. XIV, Section 4. A memorandum in support is attached and incorporated by reference.

Respectfully submitted,



A.J. Borkowski, Jr., Appellee, Pro-se  
PO. Box 703  
Fayette, Ohio 43521  
Tel: 419. 237. 7017

**MEMORANDUM IN SUPPORT**

**FACTS**

This appeal and complaint arose out of an eviction proceeding in which Appellee was a Defendant and over which Appellant Judge Abood presided. An evidentiary hearing was held in the matter on May 13, 2004 in the Fulton County Court of Common Pleas. Just before the start of the hearing, the Appellant allowed Appellee to file a notice of removal to federal court. (The notice had already been filed-stamped by the United States District Court, Northern District of Ohio).

At the hearing, the Plaintiff testified that she was the owner of the property in question. She also provided testimony as to the terms purportedly of the lease between herself and Appellee and Appellee's failure to pay rent. Appellee, for his part, offered no evidence. Instead, acting pro-se, he argued that the trial court was divested of all jurisdiction to consider the eviction complaint when the notice of removal was filed. The Court found that the filing of the notice of removal did not remove the court's jurisdiction, then proceeded to hear evidence

in the case. At the close of the evidence, the trial court found that Appellee had defaulted under the terms of the lease and, therefore, was subject to eviction proceedings. The trial court's judgment was journalized on May 17, 2004, and a writ of execution of the judgment was filed on May 21, 2004. On appeal the Court of Appeals found that the case was removed to the federal court from May 13, 2004 to May 24, 2004 and remanded the case for further proceedings. Appellant failed to proceed with the Fulton County case as instructed by the Court of Appeals even after the Appellee filed leave to proceed for him to proceed in the underlying action.

Appellee filed a complaint against Appellant, a judge of the Fulton County Court of Common Pleas, for alleged violations of the Ohio Revised Code and the Ohio Constitution, including negligence, acting in bad faith, and acting in a clear absence of all jurisdiction in the Lucas County Court of Common Pleas. Together with the complaint, Appellee filed a Notice of Lis Pendens stating that the action involves real property owned by Appellant. Appellant filed a motion to dismiss Appellee's meritorious claims and a motion to declare Appellee's Notice of Lis Pendens void. The Lucas County Court of Common Pleas, found that Appellant was entitled to absolute judicial immunity, granted both of Appellant's motions in a journal entry filed on December 1, 2005.

Appellee timely appealed the judgments set forth in the December 1, 2005 journal entry. On appeal the Court of Appeals found that Appellant acted in the clear absence of all jurisdiction, rather than in excess of his jurisdiction, and therefore, lost his judicial immunity in the case. As a result, found Appellee's first assignment of error well-taken. The Court of Appeals further found that Appellee had alleged that the Appellant acted with bad faith and that the trial court made no determination with respect to that allegation, as a result, reversed

the trial court's decision and remanded the matter for further proceedings consistent with its decision of September 22, 2006. Appellant made no motion for reconsideration prior to filing his notice of appeal in this action.

Appellee is seeking \$1 million in damages from the Appellant and other relief. Because the Appellant acted in the clear absence of all jurisdiction, rather than in excess of his jurisdiction, therefore, he lost judicial immunity in the case and as a result, he is obligated to pay \$1 million in damages because of his asserted, bad faith, acting in the absent of all jurisdiction, and conspiracy against the Appellee. This memorandum addresses only the frivolous appeal/motions or filings Appellant has filed against the Appellee and Appellant's appeal should be overruled.

#### **LAW AND ARGUMENT FOR (ORAL ARGUMENT)**

Appellee Borkowski urges this Court that the Plaintiff in the eviction proceedings was not the owner of the property in question because there was no title to pass pursuant to a quiet title action due to Attorney John Shaffer's involvement or fraudulent misconduct. See, *Disciplinary Counsel v. Shaffer*, 98 Ohio St. 3d 342, 2003-Ohio-1008. That he did not owe Plaintiff any rent because he was the owner by legal title of the property in question, the Appellant in this case not only unlawfully acted in the clear absence of all jurisdiction but also through the Appellee off his property in question. That the Plaintiff in that case has since the eviction proceedings evidentiary hearing disclaimed any interest in the property in question in all cases. See Appellee's 3<sup>rd</sup> Motion to Dismiss at Exhibit 1. Appellee further urges this Court that he was the owner of the property in question. As set forth in Exhibit B attached to his 3<sup>rd</sup> Motion to Dismiss, Appellee's grandmother gave the property in question to him. (The Last

Will and Testament had already been file-stamped by the Fulton County Common Pleas Probate Division in 2000).

Appellee further urges this Court that he informed the Appellant and counsel of record for the Plaintiff that he was divested of all jurisdiction to consider the eviction complaint when the notice of removal was filed pursuant to 28 U.S.C. §1446. However, at the hearing the Appellant and counsel of record determined that the filing of the notice of the removal did not remove the court's jurisdiction, he then proceeded to hear evidence in the case. He was wrong. At close of the evidence, the Appellant improperly found that Appellee had defaulted under the terms of the lease and, therefore, was subject to eviction proceedings. The Appellant's judgment entry was journalized on May 17, 2004 and a writ of execution of the judgment was filed on May 21, 2004. Appellee urges this Court that Appellant was divested of all jurisdiction from the time the notice of removal was filed, on May 12, 2004, pursuant to 28 U.S.C. 1446(b) until May 24, 2004, when the case was remanded back to the trial court and that the Appellant's entries issued during that period is patently void.

Further Appellee asserts as before that Appellant violated the Ohio Revised Code and the Ohio Constitution, acted in bad faith, and acted in the clear absence of all jurisdiction, when he proceeded to hear evidence in the case and when he issued entries during the period of May 12, 2004 through May 24, 2004 or otherwise violated the Appellee's civil rights pursuant to R.C. 2921.45. Appellee submits that had the Appellant, and counsel of record, not conspired with each other and not held an unlawful eviction hearing, he would have had the opportunity to present evidence that he was the owner of the property in question by way of a counterclaim, would have not been subject to eviction proceedings and would be still residing in the property in question or otherwise due to the Appellant's bad faith actions including acting in clear

absence of all jurisdiction this Appellee lost his real property in question. Therefore, there was a federal question jurisdiction conferring original jurisdiction upon the Federal District Court based upon the Fourteenth Amendment of the United States Constitution pursuant to 28 U.S.C. §1331 and Article III of the United States Constitution. Accordingly, Appellant Judge Abood lacked adequate and proper jurisdiction for the purposes of absolute immunity, therefore, the Appellant acted in the clear absence of all jurisdiction, rather than in excess of his jurisdiction, thus, he was not absolutely immune for his extra-judicial acts.

Appellee further urges this Court as set forth in his merit brief and incorporated by reference herein, that the Court of Appeals was correct in its ruling in reversing the trial court's journal entry filed December 1, 2004 and that Appellant is not protected under R.C. 9.86 or the United States Constitution because he in fact had acted in bad faith, or in a wanton or reckless manner and that the trial court made no determination with respect to the assertion, as a result, this Court should like the Court of Appeals reverse the trial court's judgment, or otherwise affirm the Court of Appeals decision and remand the entire matter for further proceedings consistent with the Court of Appeals decision or enter its own decision consistent with the Court of Appeals decision.

In short, Appellant's appeal, like his gross misconduct in the eviction proceedings has no basis in law or fact and must be overruled. Further, with respect to the Fulton County Common Pleas Court Case No. 01cv-274, the case which the Court declared Appellee to be a vexatious litigator, let be known to this Court it is restricted to the Fulton Court of Common Pleas only, Appellee asserts that the Court made no determination as to his lawful cross-claim filed on June 4, 2002, that he would have prevailed in that case on the evidence presented herein and that its entries during the time the lawful cross-complaint was pending or filed until

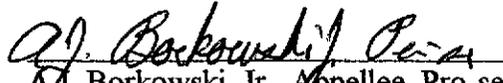
present are void *ab initio* (See Merit Brief at p. 2). For this reason, the Appellee respectfully asks this Court to remove his vexatious litigator restriction, which is currently restricted to the Fulton Court of Common Pleas only.

Because the Appellee has articulated or argued the necessary elements of bad faith under R.C. 9.86 and argued the necessary elements of acting in the clear absence of all jurisdiction pursuant to *Reasoner v. City of Columbus*, 10<sup>th</sup> Dist. 02AP-831, 2003-Ohio-670, at ¶15. Therefore, Appellee is legally entitled to the requested relief asked for herein. A pro-se Appellee bears responsibility for actively pursuing his case or responding to legally insufficient briefs or motions filed by Appellant and must obtain any essential discovery, file all necessary pleadings and motions, comply with all scheduling orders, and prepare the case for oral argument as he has done the best he can do due to fall harvest which is at hand. As Appellee fundamentally has carried his burden of proof with respect to the standards set forth herein, this Court should affirm the Court of Appeals decision.

### CONCLUSION

Based on the foregoing, Appellee A.J. Borkowski, Jr., respectfully move this Honorable Court for an order granting monetary relief of \$1,000,000.00 against Appellant Judge Abood due to his negligence, acting in bad faith, and acting in clear absence of all jurisdiction and further move this Court for an order directing that Appellant Judge Abood to refrain from disposing of his assets and to grant any other relief deemed necessary and just by this Court.

Respectfully submitted,

  
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PO. Box 703  
Fayette, Ohio 43521  
Tel: 419. 237. 7017

**CERTIFICATE OF SERVICE**

This is to certify that on October 9<sup>th</sup>, 2007 a true copy of the foregoing was served, by via U.S. Mail, or hand-delivered to or upon George D. Jonson, Esq., Linda L. Woeber, 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.

  
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