

IN THE SUPREME COURT OF OHIO

THE CHEAP ESCAPE COMPANY,  
INC.

Plaintiff-Appellant

vs.

HADDOX, LLC, et al.

Defendant-Appellee

CASE NO.: 2007 1870

ON DISCRETIONARY APPEAL  
FROM THE COURT OF APPEALS,  
TENTH APPELLATE DISTRICT  
FRANKLIN COUNTY, OHIO CASE  
NO. 2006-AP-1107

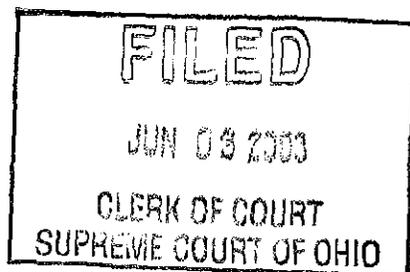
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MERIT BRIEF OF APPELLEE JEFFREY TESSMAN

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## INTRODUCTION

At issue before this Court is whether or not the General Assembly intended to destroy the traditional notion that municipal and county courts are statutorily created courts of limited territorial jurisdiction when it amended Chapter 1901 of the Ohio Revised Code, as part of the legislative response to the Ohio Supreme Court's decision in *State ex rel Ohio Academy of Trial Lawyers v. Sheward* (1999) 86 Ohio St. 3d 451. Specifically, the issue before this Court is whether or not the language contained within 1901.18(A) that "...a municipal court has original jurisdiction within its territory..." (emphasis added) was intended to maintain the municipal courts as territorial courts as defined in the Municipal Court Act of 1951, as amended, or was intended as mere surplusage.

## **STATEMENT OF THE FACTS**

### **A. The Negotiations and Contract**

The Cheap Escape Company dba JB Dollar Stretcher (JB Dollar) provides advertising services from its corporate offices located in Summit County, Ohio. Haddox LLC ("Haddox") was a small construction firm with offices in Summit County. Jeffrey Tessman, a resident of Portage County, ("Tessman") was a salesman employed by Haddox, Inc. Tessman was never a principal of Haddox.

In September and November 2004, a representative from JB Dollar made sales calls to Haddox's office in Summit County, Ohio. Tessman, on behalf of Haddox, executed advertising agreements with JB Dollar. (Supp. pp. 3,4) The advertisements were to run in the Summit County edition of JB Dollar Stretcher Magazine. JB Dollar required Tessman to sign as a guarantor of Haddox's obligation. (Supp. pp. 3,4) The agreement contained a forum selection clause stating, "Purchaser and Publisher both agree that in the event either party is in non-compliance with any provision of Agreement, the proper venue for litigation purposes will be in the Franklin County Municipal Court or Franklin County Common Pleas." (Supp. pp. 3,4) JB Dollar asserts that Haddox, which discontinued business operations prior to suit being filed, defaulted under the terms of the agreement.

### **B. Procedural Facts**

JB Dollar commenced a breach of contract action in Franklin County Municipal Court against Haddox and Tessman seeking \$1,984.00, plus interest (Supp. p.1). JB Dollar obtained a default judgment against Haddox LLC and Tessman for the outstanding balance claimed due. (Supp. p. 29; Apx. P. 23). Neither the Defendant, the Plaintiff nor the

transaction had any connection whatsoever with Franklin County. The sole connection with Franklin County is the fact that JB Dollar's law firm, a Cleveland based collection firm, has offices in Franklin County. Tessman filed a motion to vacate the default judgment, arguing that the judgment was void *ab initio* because the trial court lacked subject matter (territorial) jurisdiction over the case. On September 26, 2006, Tessman's motion to vacate the judgment was denied by the trial court. (Supp. p. 8; Apx. P.24.) Tessman appealed from the trial court's decision on October 27, 2006. (Supp. p. 10).

In *Cheap Escape Co. Inc. v. Haddox LLC*, 10<sup>th</sup> Dist. No. 06 AP 1107, 2007-Ohio-4410, the Tenth Appellate District reversed the trial court's decision denying the motion to vacate and held that the Franklin County Municipal Court lacked subject-matter (territorial) jurisdiction over a dispute between Summit County businesses that arose entirely within Summit County. (Supp. p. 28; Apx. P. 22). In its 2-1 decision, the Tenth Appellate District held *RC 1901.18* expressly limits a municipal court's civil subject matter jurisdiction to described actions occurring "within its territory". (Apx. P. 17).

- (A) Except as otherwise provided in this division or section 1901.181 of the Revised Code, subject to the monetary jurisdiction of municipal courts as set forth in section 1901.17 of the Revised Code, a municipal court has original jurisdiction within its territory in all of the following actions proceedings and to perform all of the following functions:

*RC 1901.18(A)*  
*(emphasis added)*

Based upon the fact that neither the parties nor the actions giving rise to the breach of contract claim had any relationship whatsoever with the territorial limitations set forth in *RC 1901.18*, the Tenth Appellate District found that the Franklin County Municipal Court lacked subject matter jurisdiction over the action.

With that language, the General Assembly limited a municipal court's criminal subject matter jurisdiction, specifying the crime must be committed "within the limits of its territory." We cannot conclude the legislature intended for a municipal court's civil subject matter jurisdiction to be statewide, while limiting its criminal subject matter jurisdiction to its territory, especially when the legislature included the same phrase, "within its territory," in defining civil subject matter jurisdiction. Instead, the difference in wording between the sections specifying a municipal court's criminal and civil subject matter jurisdictions appear to be related to the actions to be described: a municipal court's civil subject matter jurisdiction required a list of statutorily enumerated causes of action, while the criminal actions could be generally referred to as misdemeanors.

Because a municipal court's subject matter jurisdiction is expressly limited to those actions occurring within its territory, defendant's contention that the Franklin County Municipal Court lacked territorial jurisdiction is in fact a challenge to the court's subject matter jurisdiction, and neither stipulation nor agreement waived it. One the particular facts of this case, not one event giving rise to JB Dollar's breach of contract claim occurred within the territorial jurisdiction of the Franklin County Municipal Court, leaving that court without subject matter jurisdiction over the action.

(Apx. P. 17)

It was uncontroverted that none of the events giving rise to JB Dollar's breach of contract claim occurred within the geographic limits of the Franklin County Municipal Court. *Id.* The Tenth District Court of Appeals determined that although a forum selection clause may circumvent the minimum contacts the court needs to establish personal jurisdiction, it does not circumvent the lack of contacts needed to establish subject matter jurisdiction in a municipal court. *Id.* Relying on the rule that subject matter jurisdiction

can not be waived, it determined that the judgment rendered by the Franklin County Municipal Court in favor of JB Dollar was void. *Id.*

This Court has accepted jurisdiction over JB Dollar's discretionary appeal from the decision of the Tenth Appellate District. *Cheap Escape Co. Inc. v. Haddox LLC*, 2008-Ohio-153. At specific issue is whether or not the language contained within RC 1901.18 that "a municipal court *has jurisdiction within its territory in all of the following actions* or proceedings and to perform all of the following functions:" and the 23, plus, additional references to territory and/or territorial limitations contained within *Chapter 1901* are intended to limit the territorial jurisdiction of the Municipal Courts in Ohio to their statutorily established territorial boundaries or, whether the territorial references were inserted by the legislature as mere surplusage.

## ARGUMENT CONTRAC TO PROPSED PROPOSITION OF LAW

**Proposition of Law No. I:** An Ohio municipal court's subject matter jurisdiction, as defined by *RC 1901.18*, extends to any contract dispute where the monetary relief sought does not exceed \$15,000, regardless of whether the negotiations leading to the contract formation, the events giving rise to its performance or alleged breach, or any of the contracting parties are within the municipal court's geographic territory.

Appellant has offered the citation that "jurisdiction is a word of many, too many, meanings." *Steel Co. v. Citizens for Better Environment*, (1998) 523 US 83, 90. The quotation offered by Appellants, although offered out of context, is not entirely incorrect. Appellee would tend to agree that the distinction between the terms of "jurisdiction" and "venue" has become blurred over the years. One contributing factor to the confusion appears to be certain language contained within this court's decision in *Morrison v. Steiner* (1972) 32 Ohio St. 2d 88 that has been misinterpreted by several Ohio courts over the years as equating jurisdiction with venue. From a close reading of *Morrison* it is clear that this Court never intended to use the terms "jurisdiction" and "venue" interchangeably. Nevertheless, the confusion does, or did, exist in the minds of some.

It appears that the confusion came about when the Ohio Supreme Court offered that for purposes of *RC 1901.18(C)*, which provided for actions based in contract, and the monetary limitations set forth in *RC 1901.17* any municipal court in Ohio would have jurisdiction.

Clearly, the draftsmen of the Ohio Rules of Civil Procedure were mindful of the territorial limitations placed upon municipal and county courts as they specifically addressed the issue in *Civ. R. 3(B)*.

"Any action may be venued, commenced and decided in any court in any county, when applied to county and municipal courts 'county' as used in this rule shall be construed where appropriate, as the territorial limits of those courts."

*Civ. R. 3(B)*

Contained within the Staff Notes (1970) to Civ. R. 3(B) is the following discussion that clearly illustrates that *Rule 3(B)* of the Ohio Rules of Civil Procedure was not intended to create the present conundrum, anymore than the Civil Rules were intended to invade the exclusive constitutional province of the General Assembly to establish the jurisdictional limitations of the municipal courts in Ohio.

Since the Rules of Civil Procedure apply to county and municipal courts, Rule 3(B) defines "county" for venue purposes as the territorial limits of county and municipal courts with less than county-wide jurisdiction. For example, if the suit is brought in a county court under Rule 3(B)(1), it would be brought in the county court serving the area where defendant resides. Therefore, present jurisdictional limits are not affected.

*Staff Notes 1970 Civ. R. 3(B)*  
*(emphasis added)*

The solution to the problem; "jurisdiction is a word of many, too many meanings," is not the adoption of Appellant's proposition of law. The adoption of Appellant's proposed proposition of law would only serve to foster confusion and further blur the distinction between the terms jurisdiction and venue. Rather, the appropriate remedy is a forceful statement from this Court that the municipal courts in Ohio remain courts of limited territorial jurisdiction.

The municipal court systems and the municipal courts in Ohio were created by the Municipal Court Act of 1951. As such, the municipal courts are strictly creatures of statute and do not have any inherent powers or jurisdiction. Municipal courts only have those powers specifically conferred upon them by the Ohio General Assembly. Indeed, this court determined over 50 years ago that the municipal courts have no authority outside of

the territorial limits or geographic boundaries conferred upon them by statute. Gibson v. Summers Construction Co. (1954) 163 Ohio St. 220.

Although there have been some changes to the Municipal Courts Act since 1951 and various municipal courts have had aspects of their authority specifically increased and/or decreased over the years, there have been no modifications to Chapter 1901 of the *Ohio Revised Code* that would change the basic proposition that municipal courts are territorial courts that may only exercise the jurisdiction specifically conferred upon them by statute and therefore may only exercise that jurisdiction within their territorial limits.

A municipal court has subject-matter jurisdiction of an action when it has monetary, territorial, and categorical jurisdiction over the controversy.

*23 OJur 3d Courts and Judges*  
*§ 299 Subject-Matter*  
*Jurisdiction.*

While the Appellants attempt to make reference to a “burning controversy” that has “vexed the Ohio courts for years” concerning the territorial limitations of municipal courts, no such controversy truly exists in the legal community. Indeed, the website of the Ohio Bar Association section “law facts”, designed for layman, correctly describes the nature of the municipal courts in Ohio and their jurisdictional limitations.

### **What do municipal and county courts do?**

Municipal and county courts have limited jurisdiction and can only hear civil cases that fall within that courts territorial area, and only if the claim does not exceed \$15,000.00. (Note: *jurisdiction* refers to the power and authority of a court to hear a case. *Venue* refers to the geographical area where a case is tried.) In criminal cases, these courts are limited to hearing only misdemeanor offenses. The municipal and county courts are created by state statute. Some municipal courts may have geographical jurisdiction only within their corporate limits; others have jurisdiction outside their corporate limits, but not county wide; still others have county wide

jurisdiction. In those counties where a municipal court does not have county wide jurisdiction there are county courts.

*HTTP://www.ohioabar.org/pub/  
lawfacts/index.asp?articleid=5*

It is noteworthy that Chapter 1901 of the *Ohio Revised Code* contains no less than 23 separate references in its individual statutes to the territorial limitations of municipal courts in Ohio. *RC §1901.01* establishes municipal courts in several municipal corporations, including the City of Columbus, Ohio. *RC §1901.02(A)* provides that each of the municipal courts are courts of record and have jurisdiction only within their respective municipal corporations. *RC §1901.02(A)(5)* provides that “the municipal court established in Columbus shall be styled and known as the “Franklin County Municipal Court”;... .” *RC §1901.02(B)* provides that “the Franklin County Municipal Court has jurisdiction within Franklin County.”

Surely, had the legislature intended that the municipal courts have a state-wide jurisdiction, as Appellants propose; they could have easily conferred that jurisdiction upon the municipal courts. Had the General Assembly not intended that municipal courts be courts of limited territorial jurisdiction, there would be absolutely no rational reason for the inclusion of more than a score of specific references to the territorial jurisdictional limitations of the municipal courts within Chapter 1901. As the Tenth District Court of Appeals so aptly observed, it would be illogical to conclude that the General Assembly intended the municipal courts have statewide jurisdiction in civil matters, but nevertheless limit the municipal courts’ criminal jurisdiction to the limits of their territory.

With that language, the General Assembly limited a municipal court’s criminal subject matter jurisdiction, specifying the crime must be committed “within the limits of its territory.” We cannot conclude the

legislature intended for a municipal court's civil subject matter jurisdiction to be statewide, while limiting its criminal subject matter jurisdiction to its territory, especially when the legislature included the same phrase, "within its territory," in defining civil subject matter jurisdiction. Instead, the difference in wording between the sections specifying a municipal court's criminal and civil subject matter jurisdictions appear to be related to the actions to be described: a municipal court's civil subject matter jurisdiction required a list of statutorily enumerated causes of action, while the criminal actions could be generally referred to as misdemeanors.

Cheap Escape P. 13

The point is further illustrated by, *RC §1901.14* which confers certain additional powers upon municipal court judges. One of the additional powers conferred upon municipal court judges is the ability of a municipal court judge to "perform marriage ceremonies anywhere in the State of Ohio." R.C. §1901.14 (A)(1). Surely, if the other sections of Chapter 1901 that refer to territorial limitations were not intended as jurisdictional limitations, there would be no need for the legislature to specifically extend the authority of municipal court judges to perform marriages to statewide jurisdiction. If municipal courts were courts having state-wide jurisdiction, then there would be no need or reason to extend the authority of municipal judges to "perform marriage ceremonies anywhere in the State of Ohio" as they already would enjoy state-wide jurisdiction in any event.

The Appellants herein have misread this Court's holding in *Morrison v. Steiner* as conveying statewide jurisdiction upon the municipal courts. As stated by Judge David L. Rice of the Findlay Municipal Court the confusion is the result of "an unfortunate use of language by the court,..".

The plaintiff cited the Supreme Court case of *Morrison v. Steiner* (1972) 32 *Ohio St. 2d* 88. Although there was an unfortunate use of language by the

court, the court distinctly stated the courts authority is subject to the territorial limits of the court. The holding in this case was that the court had territorial jurisdiction for the location where the contract was performed properly heard the case.

Snyder v. Rice Findlay Mun.  
Ct docket August 17, 2007

From a clear reading of Morrison v. Steiner it is apparent that Judge Rice's analysis is correct. This court did state in Morrison v. Steiner that "subject-matter jurisdiction of the Ohio municipal courts is created and defined by RC §1901.18, which provides, inter alia, that "a municipal court has original jurisdiction within its territory. ..." The true lesson contained within Morrison v. Steiner is that although venue was once the private domain of the General Assembly, when venue and other procedural issues fell within the exclusive province of the Supreme Court under §5(B) Article IV of the Constitution of Ohio, it became necessary to read the Ohio Rules of Civil Procedure so that they were not in conflict with Ohio Revised Code Chapter 1901. Hence, the holding in Morrison v. Steiner is, and always has been, that when the venue provisions contained within the Civ. R. 3(B) are applied to municipal courts, they shall be construed as being, where appropriate, the territorial limits of municipal courts as defined by the General Assembly.

Venue is a procedural matter. Although once the private domain of the General Assembly, it is now properly within the rule-making power of the Supreme Court under Section 5(B), Article IV of the Constitution of Ohio. Civ. R. 3(B), enacted pursuant to that power and providing where venue is proper within this state reads:

Any action may be venued, commenced and decided in any court and in any court. When applied to county and municipal courts "county" as used in this rule shall be construed where appropriate as "the territorial limits of those courts". Proper venue lies when any one or more of the following counties: ...

(3) a county in which the defendant conducted activity which gave rise to the relief; ...

(6) the county in which all or part of the claim for relief arose...”

In the case at bar, the promissory note, for nonpayment of which this claim for relief arose, was made by appellant at the residence of Appellees in Oregon and was made payable there also. Thus, Oregon was where the defendant conducted activity which “gave rise to the claim and where all or part of the claim arose”. See Gastaldo v. Parker Appliance Co. (1962), 173 Ohio St. 181, 183, 180 NE 2d 589.

Accordingly, under Civ. R. 3(B) or 3(B)(6), the Oregon Municipal Court was a proper forum for purposes of venue, and is vested with subject matter jurisdiction under R.C. 1901.18(C).

Morrison v. Steiner (1972) 32  
Ohio St. 2d 88-9.

As if there was any real doubt that the holding in Morrison was nothing more than instruction on how to read the newly drafted civil rules in conjunction with Chapter 1901.18, one merely need refer to the decision of Gastaldo v. Parker Appliance Co. (1962) 173 Ohio St. 181, that this court elected to cite in Morrison. In Gastaldo, the Court held that a municipal court has territorial jurisdiction over a claim for injury arising from an accident that occurred within the courts territorial jurisdiction, irregardless of the fact that the defendant may not reside in said jurisdiction.

RC 1901.19 entitled Jurisdictional Powers is further evidence of the fact that the General Assembly still intended the subject matter jurisdiction of the municipal courts in Ohio be limited by territory after the statute was amended in 1999. RC 1901.19(A) provides as follows:

Subject to the monetary jurisdiction of the municipal courts as set forth in 1901.17 of the revised code and the subject matter jurisdiction of municipal courts set forth in 1901.18 of the revised code a municipal court and a housing and environmental division of a municipal court have jurisdiction within its territory to perform all the following functions: ...

RC 1901.19(A)

Clearly, *1901.19(A)* is still intended to limit the subject matter jurisdiction and this fact is evidenced most clearly by *RC 1901.19(B)* that provides as follows:

Subject to the limitations set forth in this division, a municipal court or a housing or environmental of a municipal court has jurisdiction outside its territory in a proceeding in aid of execution to subject to the payment of the judgment, the interest and the personal property of a judgment debtor under a judgment rendered by the court or division. The jurisdiction provided in this division includes the county or counties in which the territory of the court or division in question is situated and county that is contiguous to that in which the court or division is located. A court or division that has jurisdiction under this division outside its territory in a proceeding in aid of execution has the same powers, duties, and functions relative to the proceeding that it has relative to proceeding in aid of execution over which it has jurisdiction other than under this division.

*RC 1901.19(B)*

Surely, if the legislature intended, as the Appellants suggest, for municipal courts to have state-wide jurisdiction, there would be absolutely no purpose in the enactment of *1901.19(B)* extending the territorial jurisdiction of municipal courts for the limited purpose of proceedings in aid of execution.

Had the General Assembly intended the territorial limitations contained within *RC 1901.18* as a venue provision then they, would have used the term "venue" rather than the term "jurisdiction". Surely, the General Assembly is aware that the terms venue and jurisdiction are not synonyms.

*RC 1901.18* is entitled "Jurisdiction of subject matter," and, as noted, states that a "municipal court has original jurisdiction within its territory [i]n any action at law based on contract." *RC 1901.18(A)(3)*. While we are aware that chapter headings are not part of the law of a statute pursuant to *RC 1.01*, the heading or title the General Assembly gives to a statute "must be accorded consideration, as long as it is not employed to alter the meaning of language that is unambiguous." *Dade v. Bay Village Bd. Of Zoning Appeals, Cuyahoga App. No. 87728, 2006-Ohio-6416, at ¶28.*

When we consider the title to RC 1901.18, the legislative intent is more apparent. If “jurisdiction” as used in the body of RC 1901.18 incorporates the statute’s heading and is more fully read as “jurisdiction of subject matter,” the statute then states that “a municipal court has original jurisdiction of subject matter within its territory” over “any action at law based on contract.” The statutory language thus limits the court’s subject matter jurisdiction to those enumerated events occurring within the court’s geographical boundary defined under RC 1901.02.

Further supporting such an interpretation of RC 1901.18, RC 1901.02, 1901.03(A), 1901.18 and 1901.19 each explicitly use the word “jurisdiction” and not “venue”. To ignore the common usage of the word “jurisdiction” and replace it with an alternative word and meaning would offend a basic principal of statutory interpretation under RC 1.42. Interpreting a municipal court’s statutorily defined territorial jurisdiction to mean venue also would offend the Supreme Court of Ohio’s procedural rulemaking authority under Section 5(B), Article IV of the constitution of Ohio pursuant to which the Supreme Court enacted a venue provision under Civ. R. 3(B).

Lastly, in interpreting a given statute with two possible interpretations, we must afford full force and effect to all words and phrases, not striking or reading anything out of a statute. *Wachendorf v. Shaver (1948), 149 Ohio St. 231, 237*. To accept plaintiff’s argument would ignore, or not give effect to, the phrase “within its territory” that the legislature made part of the statute. By defining the court’s subject matter jurisdiction with an express limitation to the court’s territory, the General Assembly provided that the court’s geographical boundary limits the scope of the court’s subject matter jurisdiction.

*Cheap Escape pp 10-11.*

Moreover, to read *RC 1901.18* as a statute defining venue limitations upon municipal courts is to read the statute as constitutionally infirm as it would be in conflict with the rule making authority exclusively vested in the Ohio Supreme Court under *Section 5(B) Article IV of the Constitution of Ohio*. While the legislature has the exclusive authority to define the subject-matter jurisdiction of the municipal courts, the authority to define the rules of court on subjects such as venue is within the exclusive authority of the Supreme Court.

It should also be noted that to construe *RC 1901.19(A)(4)* as a venue provision would also cause a constitutional problem, as it is quite clear that the delineation of proper venue is a procedural matter and is within the rulemaking power of the Ohio Supreme Court. *Morrison v. Steiner, supra*. If *RC 1901.19(A)(4)* were held to be a venue provision, said provision would be an enactment of the legislature relating to procedure in an area in which the Ohio Supreme Court has already promulgated a rule, being *Civ. R. (3)*. The statute would have to be held unconstitutional and in violation of the procedural rulemaking authority of the Ohio Supreme Court under *Section 5(B), Article IV of the Constitution of Ohio*. *State ex rel. Silcott v. Spahr (1990), 50 Ohio St. 3d 110, 552 N.E. 2d 926*.

*Thomas v. Holiday Inn of Lima (1992)*  
*Marion M.C.) 62 Ohio Misc. 2d 487,*  
*491.*

Further, the Tenth District's discussion of the "housekeeping" nature of the legislature's amendments to *RC 1901.19* is especially well reasoned and compelling.

Lastly, in interpreting a given statute with two possible interpretations, we must afford full force and effect to all words and phrases, not striking or reading anything out of a statute. *Wachendorf v. Shaver (1948), 149 Ohio St. 231, 237*. To accept plaintiff's argument would ignore, or not give effect to, the phrase "within its territory" that the legislature made part of the statute. By defining the court's subject matter jurisdiction with an express limitation to the court's territory, the General Assembly provided that the court's geographical boundary limits the scope of the court's subject matter jurisdiction.

Such an interpretation is consistent with the line of cases on which defendant relied. While we recognize the legislature eliminated former *RC 1901.19(A)(4)*, a review of the other changes to that piece of legislation suggest the legislation was not designed to overrule those cases.

The provision amending former *RC 1901.19* was part of a much larger bill that brought about significant change to some sections of *RC Chapter 1901*. Other parts of the legislation, however, were more in the nature of "housekeeping." The legislature's change to former *RC 1901.19(A)(4)* reasonably may be viewed to be "housekeeping" for two reasons. Initially, *RC 1901.18* lists the types of actions to be heard in the municipal court, while *RC 1901.19* speaks more to the powers of the municipal court, such as the ability to compel attendance of witnesses or to issue executions. As such, the language addressing contract actions more readily fit within *RC 1901.18*. Secondly, at the time of the amendment, *RC 1901.18* already

provided the municipal courts had jurisdiction over contract actions, thus permitting the legislature to conclude RC 1901.19(A)(4) not only was misplaced, but redundant.

Plaintiff would suggest “jurisdiction within its territory” is a reference to the court’s situs. The legislature, however, addressed that aspect of municipal courts in a different section, RC 1901.021(A). In it, the legislature explicitly provides where a judge may sit, stating that “[t]he judge or judges of any municipal court established under division (A) of section 1901.01 of the Revised Code having territorial jurisdiction outside the corporate limits of the municipal corporation in which it is located may sit outside the corporate limits of the municipal corporation within the area of its territorial jurisdiction.

*Cheap Escape, pp 10-11.*

Appellants make reference to *Cheap Escape Company, Inc. v. Tri-State Construction, LLC* (Franklin Co. 2007) 173 Ohio App. 3d 683, 2007-Ohio-6185, a subsequently decided case, as evidence of Tenth Appellate District engaging in “legal gymnastics” in a tortured attempt to distinguish *Tri-State* from the instant matter. However, the case in *Tri-State* was clearly distinguishable on its facts. In *Tri-State*, the parties both had offices in Franklin County and they actively negotiated the subject contract in Franklin County for advertisements that were to run in a Franklin County edition of Cheap Escape’s advertising circular.

Finally, Appellants assert that:

Based on *Haddox*, potentially thousands of judgments rendered by municipal courts across the state could be subject to invalidation. See, *Rose* at\*12. To overcome challenges to these judgments, courts will have to engage in legal gymnastics to establish subject matter jurisdiction rather than relying on the clear language of R.C. 1901.18. For this reason, *Haddox*, cannot stand.

Appellant’s Brief at p.22

Appellee is unaware of "thousands of judgments rendered by municipal court across the state" potentially subject to invalidation and Appellant does not believe that municipal courts will "engage in legal gymnastics to establish subject matter jurisdiction" when subject-matter jurisdiction is lacking. Appellee is unfortunately aware of hundreds of default judgments rendered on behalf of Appellant by the Franklin County Municipal Court for small amounts of money against small businesses from Northeastern Ohio wherein neither the dispute nor the defendant(s) have any connection whatsoever with Franklin County, Ohio. Indeed, it would appear that the Appellant and the law firm that represented them before the Tenth District Court of Appeals and the Franklin County Municipal Court have been guilty of the same pattern of distant forum abuse that has been decried by other courts and found to be a violation of the Consumer Sales Practices Act in non-commercial cases.

What the plaintiffs, and the Attorney General, have described in their complaint is the "distant forum abuse." This alarming practice consists of suing persons on small alleged consumer debts in a forum far from the consumer's home and far from the place where the claim arose, with the result that default judgments are easily obtained. This abuse has been described and condemned in other courts, Barquis v. Merchants Collection Association, 496 P.2d 817, 101 Cal.Rep. 745 (Sup.Ct.Cal. 1972), All-State Credit Corporation v. Riess, 306 N.Y.Supp.2d 596, 61 N.Y.Misc.2d 677 (Sup.Ct.,App.Term, 1970), and by the Federal Trade Commission, *In re Spiegels*, § 20985 CCH trade Regulation Reports p. 208035.

This Court feels an intuitive repugnance at the practice of filing collection lawsuits in counties unconnected with the subject of the suit and far from the alleged debtor's residence. Such a practice in effect denies the consumer a day in court to contest the claim -- a right that is the basis of our legal system. Due to the distance of the forum from the consumer's residence and the expense of defending, the creditor easily obtains default judgments, and the consumer is prevented from raising defenses or contesting the claim.

The practice as alleged by plaintiffs and the Attorney General of regularly suing consumers in a distant forum is unconscionable. It takes oppressive advantage of the consumer and forces the consumer into a one-sided

situation where the odds are unconscionably stacked against him. It abuses the legal system in order to deny Ohio consumers a meaningful opportunity to be heard, and offends traditional notions of fair play and substantial justice. Barquis v. Merchants Collection Association, supra; In re Spiegels, supra. In reaching this conclusion, the court give particular weight to the decision in In re Spiegels, supra, where the Federal Trade Commission held that nearly identical practice on the part of a retailer was an "unfair or deceptive act or practice in or affecting commerce" under § 5 of the FTC statute, 15 U.S.C. § 45. Where a practice has been declared unfair by the commission charged with enforcing national standards in consumer transactions, this Court has no difficulty finding that it also violates the Ohio Consumer Sales Practices Act.

Santiago v. S.S. Kresge Co., (Cuyahoga C. P. 1976) 2 Ohio Op. 3d 54

Although, the instant case deals with commercial case, the fact pattern is equally as troubling as the consumer violations described in Santiago, as in both instances, the collection law firm and the creditor are abusing the legal process by instituting claims in courts that lack subject matter jurisdiction, obtaining default judgments, and attempting to collect on those judgments, notwithstanding the fact the judgments are void *ab initio*. Really, it makes no difference, if the impact of this case is on the one void judgment currently at issue or the thousands of void judgments to which Appellants make reference. Indeed, by arguing that "thousands of cases are potentially subject to invalidation," Appellants are arguing that somehow abuse of process becomes more tolerable as it becomes more widespread.

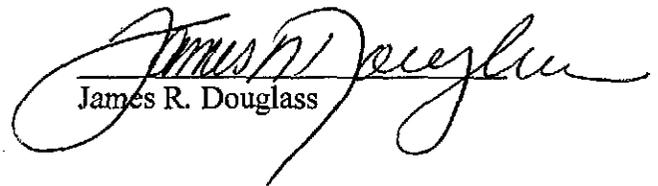
However, if the impact is on one void judgment or thousands, the issue remains the same; whether or not a municipal court's subject-matter jurisdiction is limited "to those enumerated events occurring within the court's geographical boundary defined by R.C. §1901.02." Tri-State infra at p. 690 or whether the multiple references to jurisdictional

limitations set forth in Chapter 19 of the Ohio Revised Code will be stricken by judicial fiat.

**CONCLUSION**

WHEREFORE, Appellee, Jeffrey Tessman, respectfully requests that this Court reject Appellant's proposed proposition of law and hold that municipal courts are courts of statutorily defined limited jurisdiction and may only hear civil cases that fall within the particular court's territorial area, and only if the claim does not exceed \$15, 000.00 and is one of the claims enumerated in R.C. §1901.18.

Respectfully submitted,

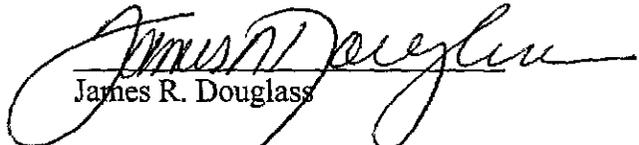
  
James R. Douglass

CERTIFICATE OF SERVICE

A copy of the foregoing has been served by ordinary U. S. Mail on this 3 day of

June, 2008 upon the following:

Timothy J. Fitzgerald  
Colleen A. Mountcastle  
GALLAGHER SHARP  
Bulkley Building, Sixth Floor  
1501 Euclid Avenue  
Cleveland, Ohio 44115

  
James R. Douglass

**1901.14****Statutes and Session Law****TITLE [19] XIX COURTS -- MUNICIPAL -- MAYOR'S -- COUNTY****CHAPTER 1901: MUNICIPAL COURT****1901.14 Additional powers of judges - fees - rules - annual report.****1901.14 Additional powers of judges - fees - rules - annual report.**

(A) Municipal judges have the following powers and duties:

(1) To perform marriage ceremonies anywhere in this state, take acknowledgment of deeds and other instruments, administer oaths, and perform any other duties that are conferred upon judges of county courts.

All fees, including marriage fees, collected by a municipal judge when not connected with any cause or proceeding pending in the municipal court, shall be paid over to the clerk of the municipal court to be paid to the city treasury, except that, in a county-operated municipal court, the fees shall be paid to the treasury of the county in which the court is located.

(2) To adopt, publish, and revise rules for the regulation of the practice and procedure of their respective courts, and for the selection and manner of summoning persons to serve as jurors in the court;

(3) To adopt, publish, and revise rules relating to the administration of the court;

(4) On or before the last day of March of each year, the court shall render a complete report of its operation during the preceding calendar year to the legislative authority and to the board of county commissioners of each county within its territory. The report shall show the work performed by the court, a statement of receipts and expenditures of the civil and criminal branches, respectively, the number of cases heard, decided, and settled, and any other data that the supreme court, the secretary of state, the legislative authority, and the board of county commissioners requires.

(B) Any rule adopted pursuant to division (A)(2) or (3) of this section does not apply to the housing or environmental division of the municipal court if the judge of the housing or environmental division has adopted rules pursuant to division (C) of this section, unless the rules adopted pursuant to division (C) of this section do not regulate the subject regulated by the rule adopted pursuant to division (A)(2) or (3) of this section.

(C) Judges of the housing or environmental division of a municipal court, other than the judge of the environmental division of the Franklin county municipal court, may adopt, publish, and revise rules for the regulation of the practice and procedure of the division, for the selection and manner of summoning persons to serve as jurors in the division, and for the administration of the division.

Effective Date: 10-31-1996

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APPELLEESAPX.01

Close Window

## Findlay Municipal Court · Docket Entry

Entry Date	Short Entry	Full Entry
	Free Form Judgment	
8/17/2007	Notice issued to DAVID L RICE	Free Form Judgment Notice issued to DAVID L RICE
	Free Form Judgment	
8/17/2007	Notice issued to DANIEL M SNYDER	Free Form Judgment Notice issued to DANIEL M SNYDER

Judgment This Day,  
8/17/2007 August 17, 2007 This  
matter came on for h

Judgment This Day, August 17, 2007 This matter came on for hearing. It is the order, judgment and decree of this court that PLAINTIFF'S MOTION TO VACATE IS OVERRULED. THE PLAINTIFF MOVED THE COURT TO VACATE THE JUDGMENT DISMISSING THE CASE FOR LACK OF JURISDICTION. A HEARING WAS HELD ON THE ISSUE AND BRIEFS WERE FILED AND FULLY CONSIDERED BY THE COURT. THE COURT PREVIOUSLY RULED THAT A MUNICIPAL COURT ONLY HAS SUBJECT MATTER JURISDICTION FOR CAUSES OF ACTION ARISING WITHIN ITS TERRITORIAL LIMIT OR PERSONAL JURISDICTION OVER DEFENDANTS THAT HAVE SUBJECTED THEMSELVES TO THE JURISDICTION OF THE COURT. THE PLAINTIFF CITED THE SUPREME COURT CASE OF MORRISON V. STEINER (1972) 32 OHIO ST. 2ND 88. ALTHOUGH THERE WAS AN UNFORTUNATE USE OF LANGUAGE BY THE COURT, THE COURT DISTINCTLY STATED THE COURT'S AUTHORITY IS SUBJECT TO THE TERRITORIAL LIMITS OF THE COURT. THE HOLDING IN THIS CASE WAS THAT THE COURT THAT HAD TERRITORIAL JURISDICTION FOR THE LOCATION WHERE THE CONTRACT WAS FORMED PROPERLY HEARD THE CASE. THE PLAINTIFF FURTHER CITED MCDONALD V. ANTHONY CIC. THE MAJORITY IN THIS CASE NEVER ADDRESSED THE JURISDICTION ISSUE. THE DISSENTING OPINION, WHICH IS FOUND TO BE PUSUASIVE AND WELL WRITTEN, CLEARLY STATED THAT A MUNICIPAL COURT'S JURISDICTION IS LIMITED TO THOSE CAUSE OF ACTIONS THAT AROSE WITHIN THE TERRITORIAL JURISDICTION OF THE COURT. THE PLAINTIFF ARGUED THAT IT WOULD BE A 'MISTAKE AND TRAGEDY' TO RE-TRY THIS CASE. PERHAPS OVERLY EMOTIONAL, BUT IT WOULD BE A DISSERVICE TO THE PARTIES FOR THE COURT TO OVERREACH ITS AUTHORITY AND SUBJECT THE PARTIES TO RE-TRIAL AFTER APPEAL. THE MISTAKE WAS MADE NOT BY THE COURT, BUT BY THE PLAINTIFF BY FILING THIS CASE IN THE

WRONG JURISDICTION. KEVIN C SMITH Judge

8/15/2007 PLTFS SUPPLEMENTAL MEMORANDUM REGARDING MUNICIPAL COURT JURI  
 PLTFS SUPPLEMENTAL MEMORANDUM REGARDING MUNICIPAL COURT JURISDICTION FILED BY ATTY SNYDER

8/3/2007 HELD HEARING ON MOTION TO VACATE JUDGMENT. PLTF REQUESTED 2  
 HELD HEARING ON MOTION TO VACATE JUDGMENT. PLTF REQUESTED 2 WEEKS TO SUBMIT MATERIAL ON WAIVER OF OBJECTION TO JURISDICTION. DEF WAS NOT PRESENT. PLTF SHALL HAVE UNTIL 8/17/07 TO SUBMIT ADDITIONAL MATERIAL FOR CONSIDERATION. S/KCS, JUDGE

8/2/2007 PLTFS MEMORANDUM IN SUPPORT OF JURISDICTION AND VENUE FILED  
 PLTFS MEMORANDUM IN SUPPORT OF JURISDICTION AND VENUE FILED BY ATTY SNYDER

7/19/2007 Free Form Judgment Notice issued to DAVID L RICE  
 Free Form Judgment Notice issued to DAVID L RICE

7/19/2007 Free Form Judgment Notice issued to DANIEL M SNYDER  
 Free Form Judgment Notice issued to DANIEL M SNYDER

7/19/2007 Judgment This Day, July 19, 2007 This matter came on for hearing. It is the order, judgment and decree of this court that DEFENDANT'S MOTION TO VACATE THE HEARING ON PLAINTIFF'S MOTION TO VACATE JUDGMENT IS OVERRULED. THE PURPOSE OF THE HEARING IS TO ALLOW THE PARTIES TO PRESENT EVIDENCE AND ARGUMENTS RELATING TO THE ISSUE OF JURISDICTION. THE PARTIES ARE NOT REQUIRED TO ATTEND OR FILE ANYTHING WITH THE COURT. ANYTHING PRESENTED BY THE PARTIES WILL HOWEVER BE CONSIDERED BY THE COURT. KEVIN C SMITH Judge

7/17/2007 MEMORANDUM IN OPPOSITION filed by DAVE HALL/Defendant on 07/17/2007 /by attorney (RICE/MEMORANDUM IN OPPOSITION TO PLTF'S MOTION TO VACATE 6/8/07 JUDGMENT AND MOTION TO ADJOURN 8/3/07 HRG)

7/5/2007 Assignment Notice - Civil Notice issued to DAVID L RICE  
 Assignment Notice - Civil Notice issued to DAVID L RICE

7/5/2007 Assignment Notice - Civil Notice issued to DANIEL M SNYDER  
 Assignment Notice - Civil Notice issued to DANIEL M SNYDER

7/5/2007 Motion to Vacate Judgment set for 08/03/2007 at 01:30 PM  
 Motion to Vacate Judgment set for 08/03/2007 at 01:30 PM in room 1 by Judge KEVIN C SMITH APPELLEESAPX.03

in  
 RECVD MOTION TO  
 6/25/2007 VACATE RECVD MOTION TO VACATE DISMISSAL . SET FOR  
 DISMISSAL . SET FOR HEARING. S/KCS JUDGE  
 HEARING. S/KCS JU  
 6/25/2007 Paid \$32.00 for Cost/501 CLERK & BAILIFF FEES receipt#  
 BAILIFF FEES receipt# 2007 2007364800 by DANIEL M SNYDER CK 13627. Payment  
 2007 credited to DARYL DAUGHERTY.  
 6/25/2007 Paid \$2.00 for Cost/540 MUNI CT IMPROVEMENT FUND receipt# 2  
 Paid \$2.00 for Cost/540 MUNI CT IMPROVEMENT FUND receipt# 2007364800 by DANIEL M SNYDER CK 13627.  
 Payment credited to DARYL DAUGHERTY.  
 6/25/2007 Paid \$1.00 for Cost/541 COURT COMPUTERIZATION FU receipt# 2  
 Paid \$1.00 for Cost/541 COURT COMPUTERIZATION FU receipt# 2007364800 by DANIEL M SNYDER CK 13627.  
 Payment credited to DARYL DAUGHERTY.  
 6/25/2007 Motion to Vacate Judgment filed by DARYL DAUGHERTY/Plaintiff  
 Motion to Vacate Judgment filed by DARYL DAUGHERTY/Plaintiff on 06/22/2007  
 6/8/2007 Judgment Entry Notice issued to DAVID L RICE  
 Judgment Entry Notice issued to DAVID L RICE  
 6/8/2007 Judgment Entry Notice issued to DARYL DAUGHERTY  
 Judgment Entry Notice issued to DARYL DAUGHERTY  
 6/8/2007 Judgment Entry Notice issued to DANIEL M SNYDER  
 Judgment Entry Notice issued to DANIEL M SNYDER  
 6/8/2007 Judgment: DISMISS LACK OF JURISIDICION WITHOUT PREJUDICE f  
 Judgment: DISMISS LACK OF JURISIDICION WITHOUT PREJUDICE for DARYL DAUGHERTY rendered.  
 6/8/2007 Envelope Notice issued to DARYL DAUGHERTY  
 Envelope Notice issued to DARYL DAUGHERTY  
 6/8/2007 Envelope Notice issued to DAVE HALL  
 Envelope Notice issued to DAVE HALL  
 6/8/2007 Envelope Notice issued to DAVID L RICE  
 Envelope Notice issued to DAVID L RICE

This matter comes to be heard upon defendant's objections to the Magistrates Decision. The objections were broken down to two issues. The first objection claimed improper venue, and the second claimed that the decision was not correct in fact and law. The defendant had raised the venue issue by written motion filed prior to the Small Claims hearing and this issue was addressed by the Magistrate prior to accepting

6/8/2007 This matter comes to be heard upon defendant's objections to

evidence on the claim. As the facts later established, the plaintiff's cause of action was for breach of contract. The plaintiff contracted with the defendant in Toledo, Ohio to create graphics on parts of his motorcycle. The parts were delivered to defendant in Toledo and the work was performed in Toledo. The defendant resides in Michigan and the plaintiff resides in Hancock County. The party's arguments focused on Rule 3(B) of the Ohio Civil Rules of Procedure dealing with the proper venue for a case to be heard. In addressing this issue the Magistrate properly explained that where jurisdiction is statewide, venue becomes an issue as to the proper Court within the State to hear the case. Findlay Municipal Court does not, however, have statewide jurisdiction. Findlay Municipal Court has, limited subject matter and personal jurisdiction as defined by Section 1901.02 of the Ohio Revised Code. According to Ohio Revised Code 1901.18, this Court only has subject matter jurisdiction over causes of action that arise within the territorial jurisdiction of the Court. As stated in *Goody v. Scott* (1995) 1995 Ohio App. LEXIS 5984, a municipal court can only exercise jurisdiction if the subject matter arose within the Court's territorial limit, or a defendant resides or has been served within the Court's territorial limit. Furthermore, a municipal court only has personal jurisdiction over persons that have subjected themselves to the Courts jurisdiction with at least minimum contacts within the territorial jurisdiction of the Court to satisfy constitutional due process requirements. In the present case the contract in question was formed in Toledo, Ohio. The contract was performed and the alleged breach occurred in Toledo, Ohio. The only contact with Hancock County was after the breach occurred. Although there was evidence of the alleged breach in Hancock County, the location of the testimony or evidence is not determinative of jurisdiction. Without question, the cause of action is based entirely on activities in Toledo, Ohio. The plaintiff's argument, again relating to venue, was that the parts were subsequently located in Hancock County. If this were proper criteria of jurisdiction, then a party could easily move or store property in any jurisdiction in the State of Ohio for a matter of convenience or forum shopping. This argument may make sense in dealing with real estate or personal property that cannot be easily relocated; but not the kind of property in this case. Likewise, the Court lacks personal jurisdiction over the defendant in this action in that defendant did not subject himself to the jurisdiction of the Court by the required minimum contacts within this Court's jurisdiction. There was no evidence that the defendant solicited business in Hancock County or performed business activities within the county. Therefore, Findlay Municipal Court lacks subject matter and personal jurisdiction to render a judgment in this case. The Court will not address the remainder of defendant's objections because the Court is

without authority to do so. It is therefore ORDERED, ADJUDGED AND DECREED that this matter be dismissed, without prejudice at plaintiff's costs. S/KCS JUDGE

- 5/30/2007 Objection to Magistrate's Report filed by DAVE HALL/Defendan

Objection to Magistrate's Report filed by DAVE HALL/Defendant on 05/30/2007
- 5/24/2007 Envelope Notice issued to DAVE HALL

Envelope Notice issued to DAVE HALL
- 5/17/2007 Magistrate Report Notice issued to DAVID L RICE

Magistrate Report Notice issued to DAVID L RICE
- 5/17/2007 Magistrate Report Notice issued to DANIEL M SNYDER

Magistrate Report Notice issued to DANIEL M SNYDER
- 5/17/2007 Magistrate's Report: This cause came for Hearing this day May 17, 2007 . DARYL DAUGHERTY APPEARED. DAVE HALL APPEARED. SERVICE MADE. Upon consideration of the evidence, the Magistrate renders the following decision: JUDGMENT FOR PLAINTIFF in favor of DARYL DAUGHERTY and against DAVE HALL in the sum of \$2326.03, together with interest at the rate of 6.00%, commencing from 09/01/2006 and costs. Magistrate's Notes : DEFENDANT'S MOTION FOR CHANGE OF VENUE IS OVER RULED. J BRUCE BRIMLEY, Magistrate
- 5/8/2007 Magistrate Report Notice issued to DAVID L RICE

Magistrate Report Notice issued to DAVID L RICE
- 5/8/2007 Magistrate Report Notice issued to DANIEL M SNYDER

Magistrate Report Notice issued to DANIEL M SNYDER
- 5/8/2007 Small Claims continued to 05/08/2007 at 08:00 AM Continuance

Small Claims continued to 05/08/2007 at 08:00 AM Continuance Requested by Magistrate for UNDER ADVISEMENT
- 5/8/2007 JE: This cause came for Hearing this day May 08, 2007 . DA

JE: This cause came for Hearing this day May 08, 2007 . DARYL DAUGHERTY APPEARED. DAVE HALL APPEARED. SERVICE MADE. Upon consideration of the evidence, the Magistrate renders the following decision: That the case be continued until 05/08/2007 BASIS: UNDER ADVISEMENT
- 5/4/2007 PLTFS RESPONSE TO DEFTSMOTION TO DISMISS AND/OR TRANSFER FIL

PLTFS RESPONSE TO DEFTSMOTION TO DISMISS AND/OR TRANSFER FILED BY ATTY SNYDER
- 4/13/2007 RECD MOTION TO TRANSFER/DISMISS CASE. THIS MOTION IS REFERRE

RECD MOTION TO TRANSFER/DISMISS CASE. THIS MOTION IS REFERRED TO SMALL CLAIMS MAGISTRATE FOR HEARING ON DATE/TIME OF SMALL CLAIMS HEARING. S/KCS JUDGE
- MOTION TO DISMISS MOTION TO DISMISS filed by DAVE HALL/Defendant on

4/12/2007	filed by DAVE HALL/Defendant on 04/12/2007	04/12/2007 /by attorney (RICE-DISMISS OR TRANSFER TO TOLEDO MUNICIPAL COURT)
4/3/2007	Service for Summons - Small Claims to DAVE HALL sent via Cer	Service for Summons - Small Claims to DAVE HALL sent via Certified Mail was Perfected Summons on 04/02/2007 Answer Due Date : 04/30/2007 Signed by DAVE HALL Receipt Number 71555474410021296681
3/30/2007	Paid \$21.00 for Cost/501 CLERK & BAILIFF FEES receipt# 2007	Paid \$21.00 for Cost/501 CLERK & BAILIFF FEES receipt# 2007357561 by DANIEL M SNYDER CK 2848. Payment credited to DARYL DAUGHERTY.
3/30/2007	Paid \$2.00 for Cost/540 MUNI CT IMPROVEMENT FUND receipt# 2	Paid \$2.00 for Cost/540 MUNI CT IMPROVEMENT FUND receipt# 2007357561 by DANIEL M SNYDER CK 2848. Payment credited to DARYL DAUGHERTY.
3/30/2007	Paid \$10.89 for Cost/511 CIVIL STATE ADDITION FEE receipt#	Paid \$10.89 for Cost/511 CIVIL STATE ADDITION FEE receipt# 2007357561 by DANIEL M SNYDER CK 2848. Payment credited to DARYL DAUGHERTY.
3/30/2007	Paid \$1.00 for Cost/541 COURT COMPUTERIZATION FU receipt# 2	Paid \$1.00 for Cost/541 COURT COMPUTERIZATION FU receipt# 2007357561 by DANIEL M SNYDER CK 2848. Payment credited to DARYL DAUGHERTY.
3/30/2007	Paid \$0.11 for Cost/590 CIV ST ADDITION FEE (1%) receipt# 2	Paid \$0.11 for Cost/590 CIV ST ADDITION FEE (1%) receipt# 2007357561 by DANIEL M SNYDER CK 2848. Payment credited to DARYL DAUGHERTY.
3/30/2007	Summons - PLT Small Claims notice issued to DARYL DAUGHERTY	Summons - PLT Small Claims notice issued to DARYL DAUGHERTY via Personal Service
3/30/2007	Summons - Small Claims notice issued to DAVE HALL via Certif	Summons - Small Claims notice issued to DAVE HALL via Certified Mail 71555474410021296681
3/30/2007	Original Claim \$2326.03 Filed, DARYL DAUGHERTY	Original Claim \$2326.03 Filed, DARYL DAUGHERTY
3/30/2007	Small Claims set for 05/08/2007 at 05:00 PM	Small Claims set for 05/08/2007 at 05:00 PM