

IN THE SUPREME COURT OF OHIO

STATE EX REL. GERALD O.E.
NICKOLI AND ROBIN L.B. NICKOLI,
et al.,

Relators,

v.

ERIE METROPARKS, et al.,

Respondents.

Case No. 2009-0026

Original Action in Mandamus

RELATORS' MEMORANDUM IN OPPOSITION TO RESPONDENTS'
MOTION TO STRIKE

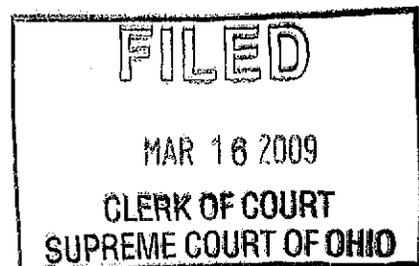
Bruce L. Ingram (0018008)
(Counsel of Record)
Joseph R. Miller (0068463)
Thomas H. Fusonie (0074201)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
Tel: (614) 464-6480
Fax: (614) 719-4775
blingram@vorys.com
jrmiller@vorys.com
thfusonie@vorys.com

Attorneys for Relators

Thomas A. Young (0023070)
(Counsel of Record)
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
Tel.: (614) 227-2137
Fax: (614) 227-2100
tyoung@porterwright.com

John D. Latchney (0046539)
Tomino & Latchney, LPA
803 East Washington Street, Suite 200
Medina, Ohio 44256
Tel.: (330) 723-4656
Fax: (330) 723-5445
jlatchney@brightdsl.net

*Attorneys for Respondents Erie MetroParks and
Board of Park Commissioners, Erie MetroParks*



INTRODUCTION

Respondents filed a Motion to Strike claiming to address “lies” by the undersigned in Relators’ response to the Motion for Judgment on the Pleadings. Not only is this Motion in flagrant disregard of this Court’s Rules of Practice prohibiting reply briefs, but the Motion’s strident tone of incivility cannot hide the fact that it is an impermissible collateral attack on this Court’s prior and unanimous decision in *State ex rel. Coles v. Granville* (“*Coles*”) and the Sixth District Court of Appeals’ decisions in *Key Trust*.

Respondents resort to invective by claiming Relators’ attorneys made false statements in the Relators’ Memorandum in Opposition to the Motion for Judgment on the Pleadings in two respects: (1) by stating that “Relators own Relators’ Claimed Real Estate pursuant to the 1904 dissolution of the Milan Canal Company,” and (2) by stating that “Key Trust rejected Respondents’ argument that it may be entitled to possession of certain portions of the Canal Corridor by adverse possession.” *Resps. Mot. to Strike*, at pg. 1. Both of these are correct statements of established fact out of the prior final judgments in *Coles* and *Key Trust*.

Respondents’ simply do not like these facts, established after a decade of litigation with the Relators (“*Nickoli* Relators”). The *fact* is that Respondents have no legal claim whatsoever to any part of the canal corridor formerly owned by the Milan Canal Company (“canal corridor”) – outside of the two small Merry and Townsend tracts. Simply put, Respondents are in denial and further rehashing of old and settled issues serves no purposes. The time has finally come for Respondents to pay for its illegal seizure of the *Nickoli* Relators’ property.

A. *Respondents’ Motion Is Baseless.*

First, this Court found that the relators in *Coles* (“*Coles* Relators”) had a clear legal right of ownership to their sections of the property adjacent to the Huron River formerly owned by the

Milan Canal Company (“canal corridor”). The *Coles* Relators obtained title from Key Trust, which obtained title through the 1904 dissolution of the Milan Canal Company (“canal company”). Obviously, this Court recognized that the 1904 dissolution (“Dissolution Action”) conveyed a valid ownership interest to Key Trust. In doing so, this Court held that as between Erie MetroParks, which has **no legal interest** in the canal corridor outside of the Merry and Townsend tracts, and the *Coles* Relators, who are direct successors to the canal company, the *Coles* Relators held valid title to the canal corridor through the 1904 sale to Key Trust. Respondents simply do not want to accept this judgment.

1. Judicial Precedent has established that *Nickoli* Relators own the canal corridor pursuant to the 1904 dissolution of the canal company.

That the ownership of the entire canal corridor was at issue in *Key Trust* is starkly admitted by Erie MetroParks in the complaints it filed in that case in which it claimed and sought ownership of the entire canal corridor. Indeed, Erie MetroParks filed an amended complaint against all landowners that acquired their interest in sections of the corridor from Key Trust, including *Nickoli* Relators. Then, claiming title to the entire corridor from these landowners, Erie MetroParks sought and obtained a restraining order against each of them from “interfering” with the recreational trail north of Mason Road – property that is indisputably outside of the Merry and Townsend tracts. Accordingly, this Court correctly concluded that *Key Trust* conclusively established that the *Key Trust* defendants (among them Relators herein) had a valid ownership interest in the canal corridor subject only to Erie MetroParks’ lease rights in the Merry and Townsend tracts.

2. The *Key Trust* Decision rejected Respondents' arguments that it is entitled to possession of certain portions of the Canal Corridor by adverse possession.

Respondents' second claim of "lying" is equally specious. In *Coles*, this Court conclusively rejected Erie MetroParks' claim that it owned any section of the canal corridor by adverse possession. Erie MetroParks raised that claim as an affirmative defense and it was rejected. Erie MetroParks then filed a Motion for Reconsideration, asking this Court to modify its decision so that it did not preclude Erie MetroParks from claiming ownership of portions of the canal corridor through adverse possession. This Court summarily rejected Erie MetroParks' Motion. In doing so, this Court followed its holding in *Coles* that the *Key Trust* litigation conclusively determined ownership of the canal corridor. Accordingly, it is immaterial whether Erie MetroParks' specifically claimed in *Key Trust* that it owned portions of the canal corridor through adverse possession. However, not only could Erie MetroParks have claimed adverse possession of the entire canal corridor in *Key Trust*, it did in fact so claim by seeking a restraining order preventing interference by the landowners with the entire recreational trail.

B. Respondents Concede That Privity Exists Between The Coles and Nickoli Relators.

Quite tellingly, Respondents do not claim that *Nickoli* Relators falsely stated the holdings of this Court in *Coles*. *Resps. Mot. to Strike, passim*. Nor do they claim that *Nickoli* Relators falsely assert privity with the *Coles* Relators. *Id.* If the *Coles* Relators had a clear legal right to mandamus because Respondents had involuntarily physically taken their private property, then the *Nickoli* Relators, who acquired their property in the same manner as the *Coles* Relators and have had such property taken by Respondents in the same manner and for the same purpose, are entitled to the same relief. Given that Respondents do not challenge either of those factual

points, as a matter of law and undisputed fact, this Court can and should grant the *Nickoli Relators* the requested peremptory writ.

“The doctrine of res judicata also embraces the policy that a party must make good his cause of action or establish his defenses ‘by all the proper means within his control, and if he fails in that respect, purposely or negligently, he will not afterward be permitted to deny the correctness of the determination, nor to relitigate the same matters between the same parties.’” *Johnson’s Island, Inc. v. Bd. of Township Trustees of Danbury Township* (1982), 69 Ohio St.2d 241, 244, 431 N.E.2d 672 (quoting *Covington & Cincinnati Bridge Co. v. Sargent* (1875), 27 Ohio St. 233, paragraph one of the syllabus). Because Respondents do not challenge the fact that the *Nickoli Relators* are in privity with the *Coles Relators* and because they acquired their interest in their section of the canal corridor by identical means as the *Coles Relators*, res judicata applies and warrants the granting of the requested peremptory writ.

There is no forum for collateral attack on this Court’s unanimous decision in *Coles*. This action is brought to enforce that judgment and obtain the *Nickoli Relators’* fundamental right to just compensation.

ARGUMENT

I. The Key Trust Defendants Acquired A Valid Ownership Interest In The Canal Corridor Through the 1904 Dissolution.

A. This Court Already Held In Coles That The Key Trust Defendants Obtained Ownership Interest Through The Dissolution Of The Canal Company.

In complete disregard of the fundamental principle of res judicata, Respondents impermissibly collaterally attack the decision in *Coles*. Seeking to undermine *Coles*, Respondents seek to negate the canal company’s Dissolution Action. As previously established and not disputed by Respondents, the Dissolution Action Journal Entry and Order of Sale were

evidence before this Court in *Coles. Relators' Memo Opp. to 12(C) Mot.*, at pgs. 18-19 & Ex. C. Nor do Respondents dispute that this Court concluded as a matter of fact that “[t]he canal company was dissolved in 1904, and its property interests devolved to the testamentary trust and its trustee, Key Trust Company of Ohio.” *Coles*, 116 Ohio St.3d 231, 2007-Ohio-6057, ¶ 3. Finally, Respondents do not dispute that these same property interests were transferred ultimately to Key Trust by deed. Contrary to this factual and legal finding, Respondents continue to argue that the Order of Sale and subsequent deed conveyed nothing except the Merry and Townsend tracts. This Court has rejected Respondents’ position repeatedly.

First, in the *Coles* decision, this Court held that the *Coles* Relators had a clear legal right of ownership to their sections of the canal corridor. 2007-Ohio-6057, ¶ 59. That clear legal right arose from acquisition of the canal corridor either directly from Key Trust or indirectly through Buffalo Prairie. Key Trust acquired *its* ownership interest from the 1904 dissolution. *Id.* at ¶ 3. This finding was not made in a vacuum. Volumes of evidence were admitted by this Court concerning respective claims of ownership to the canal corridor, including the 1904 Journal Entry and Order of Sale, which states that the Milan Canal Company’s property ran from the “southerly end of the canal basin” in the Village of Milan to the “mouth of the Huron River in the Village of Huron” as well as all the “Dry Dock and all of the said canal basin and all of the Upper and Lower Locks of said canal.” *Memo Opp to 12(C) Mot.*, at Ex. C. Based upon this evidence, including the 1904 Journal Entry and Order of Sale, this Court concluded: (a) Erie MetroParks’ only interest in the canal corridor was its lease rights in the Merry and Townsend tracts; (b) the Relators acquired a clear legal right of ownership in the canal corridor from Key Trust; and (c) because the Relators’ sections of the canal corridor lay outside the Merry and

Townsend tracts, Erie MetroParks' physical invasion of their sections constituted a taking. *Id.* at ¶¶ 19-20, 49, 55, 59.

Further proof that this Court in *Coles* fully considered and decided that the *Coles* Relators owned their sections of the canal corridor is this Court's detailed analysis of whether Edwin and Lisa Coles were real parties in interest. Erie MetroParks had argued to this Court that the Coleses' previous declaratory judgment action concerning their title to a section of the canal corridor barred the Coleses from relitigating their claimed ownership. *Id.* at ¶ 50. In that action, it was established that the Coleses' deed specifically exempted a "66 foot wide parcel ... now or formerly owned by" one of the successors in interest to the lessee of the 1881 Lease and, the trial court found that the Coleses were not real parties in interest because the deed specifically excepted the 66-foot wide parcel upon which Erie MetroParks intended to build its recreational trail. *Id.* at ¶¶ 4-5. Rejecting the contention that this prior action defeated the Coleses' ownership interest in the canal corridor, this Court held that the subsequent acquisition by the Coleses of the corridor from Key Trust (including the 66-foot-wide parcel) vested title in them to the property, and thus, they were real parties in interest. *Id.* at ¶¶ 51-52.

Nothing could be clearer from this holding than that this Court found that the 1904 Dissolution Action was the source of title and that the subsequent sale of the canal company corridor to Key Trust, and then to the *Coles* Relators, vested title in them to their respective sections of the canal corridor. In essence, this Court concluded that, as between Erie MetroParks, a party that the *Key Trust* litigation conclusively established had no interest in the canal corridor outside of the Merry and Townsend tracts, and the *Coles* Relators, who were direct successors to the canal company through the 1904 sale of the canal company's assets to Key Trust, the *Coles* Relators had the valid ownership interest in the canal corridor. *Id.* at ¶¶ 3,

49-54-55, 59. Consequently, the *Coles* Relators had a clear legal right to the property that required Erie MetroParks to compensate them for its physical taking. *Id.* at ¶ 59.

Second, in summarily denying Erie MetroParks' Motion for Reconsideration, this Court rejected again Erie MetroParks' claim that Key Trust did not acquire an interest in the canal corridor through the dissolution of the canal company. See *Mot. for Reconsideration*, at pgs. 3-6 (copy attached to *Memo Opp to 12(C) Mot.*, as Ex. A); Entry Denying Mot. for Reconsideration (copy attached hereto as Ex. A). Erie MetroParks argued that Key Trust conveyed "nothing" to Edwin and Lisa Coles in 1999 because Key Trust only obtained "what the canal company owned,...the Townsend and Merry properties...." *Mot. for Reconsideration*, at pgs. 3-4. Erie MetroParks also argued that Relator Otrusina received "nothing" from Key Trust. *Id.* at pg. 6. Based on these contentions, Erie MetroParks challenged the Court's finding that the Coleses and Otrusina had a clear legal right and instead asked the Court to "deny the writ relative to Relators Coles and/or Otrusina because neither has a 'clear' legal right to have Erie MetroParks commence an appropriation proceeding." *Id.* This Court rejected yet again this contention. Had this Court wrongly decided that the Coles and Otrusina had a clear legal right of ownership in their sections of the canal corridor, the opportunity to correct this was available and sought by Respondents. That this Court did not do so confirms that it correctly decided the issue on the evidence before it, including the documents related to the 1904 Dissolution Action.

Thirdly, in its Motion for Reconsideration in *Coles*, Erie MetroParks did *not* challenge this Court's holding that *Coles* Relators Robert Bickley or Warren Jones had a clear legal right of ownership in their respective canal corridors. *Mot. for Reconsideration, passim*. Both owned sections of the canal South of Mason Road, whereas the Coles and Otrusina property at issue was North of Mason Road. *Coles*, 2007-Ohio-6057, ¶ 54. Bickley and Jones obtained their title

through Buffalo Prairie and, thus, indirectly from Key Trust. *Id.* at ¶ 6. By confining its Motion for Reconsideration to the property North of Mason Road, Erie MetroParks conceded that the 1904 dissolution and subsequent sale included properties South of Mason Road, and outside the Merry and Townsend tracts. Many of the *Nickoli* Relators' properties are identically situated, South of Mason Road. On this concession, it is perplexing how Respondents claim that it is the *Nickoli* Relators who are "lying" about the legal consequences of the 1904 dissolution and subsequent sale of canal company property to Key Trust.

The claim of "lying" is nothing but a smokescreen for Respondents' collateral attack on this Court's decision in *Coles* that the Relators had a clear legal right of ownership to their sections of the canal corridor acquired either directly from Key Trust or from Key Trust through Buffalo Prairie. The goal of this tactic is simple – eviscerate this Court's decision in *Coles*, continue to litigate already decided issues, wear down the landowners through interminable arguments and proceedings, and continue to occupy the property they forcibly seized nine years ago. The fact that Respondents admit they have yet to commence appropriation actions against *any* of the *Coles* Relators is further proof that delay and further delay is modus operandi of Erie MetroParks. See *Ans.*, ¶¶ 28-29. This Court can put an end to this by correctly applying sound principles of *res judicata*.

B. Contrary To Respondents' Current Posturing, The Key Trust Litigation Determined The Ownership Of The Entire Canal Corridor.

Respondents continue to attempt to relitigate *Key Trust* even though this Court's decision that the *Coles* Relators had a clear legal right to their property is consistent with its correct finding that *Key Trust* preclusively determined the ownership of the entire canal corridor. Respondents now claim that, in *Key Trust*, Erie MetroParks did not plead that its lease rights extended to the entire canal corridor and that it did not plead that the canal company owned the

entire canal corridor in fee simple title. *Mot. to Strike*, at pg. 3. This is a mischaracterization of the record in *Key Trust*.

The fact is that Erie MetroParks amended its complaint in *Key Trust* to add as defendants every landowner that acquired a section of the canal corridor from Key Trust. See *Am. Compl.*, attached as Ex. 8 to *Resps' Answer*. If Erie MetroParks was claiming that the canal company owned less than the entire canal corridor and, therefore its own lease rights did not extend the entire corridor, it had no basis for adding all of the landowners. Equally telling is that Erie MetroParks specifically pled that the canal company owned the entire canal corridor in fee simple title and that interest had been transferred to Key Trust and subsequently to the various other *Key Trust* Defendants, including the *Coles* Relators and *Nickoli* Relators. *Id.* at ¶¶ 8-10.

Yet further evidence, if any more is necessary, that the Erie MetroParks was contending that the canal company owned the entire corridor is found in its Motion for a Temporary Restraining Order and Preliminary Injunction in *Key Trust* against all defendants. See Ex. B, *Erie MetroParks' Mot. for TRO in Key Trust*. The Motion for TRO sought the immediate and extraordinary relief of restraining all defendants from interfering with Erie MetroParks' use of the recreational trail for the property subject to the 1881 Lease. *Id.* This Motion was filed on the same day Erie MetroParks filed a motion for leave to amend its complaint *instanter* to add all of the landowners that acquired a fee simple interest in a section of the canal corridor from Key Trust either directly or through *Coles* Relator Buffalo Prairie. The Motion did not limit the subject property to south of Mason Road or to the Merry and Townsend tracts at all. In fact, the affidavit of the Park Ranger that accompanied the Memorandum in Support discusses what he observed on the park trail "adjacent" to Vincent Otrusina's property and the property adjacent to the premises owned by Edwin and Lisa Coles. *Id.* at *Affidavit of Robert J. Davis*, ¶ 3. Both

properties are *North of Mason Road*. *Coles*, 2007-Ohio-54. The very evidence Erie MetroParks presented to the trial court in *Key Trust* to get a restraining order against all property owners concerned property outside of the Merry and Townsend tracts. Obviously, when it served Erie MetroParks' purpose, it claimed broad and exclusive ownership of the entire canal corridor based on the 1881 Lease from the canal company.

This contention was accepted by the trial court when it immediately granted in its entirety Erie MetroParks' request for a temporary restraining order without limiting the property at issue to South of Mason Road or to the Merry and Townsend tracts. See Ex C, *Temporary Restraining Order*. Respondents cannot run from these judicial admissions – especially when those admissions lead to the trial court granting the extraordinary relief of a restraining order. Erie MetroParks is estopped from asserting that ownership of the entire canal corridor was not at issue in *Key Trust*. See *Shifflet v. Thomson Newspapers (Ohio), Inc.* (1982), 69 Ohio St.2d 179, 187, 431 N.E.2d 1014 (noting that where a party alleges a matter of fact in a pleading, that pleading is an admission); *Faxon Hills Construction Co. v. United Brotherhood of Carpenters and Joiners of America* (1958), 168 Ohio St. 8, 10, 151 N.E.2d 12 (“a distinct statement of fact which is material and competent and which is contained in a pleading constitutes a judicial admission”).

Equally important, Respondents are also estopped from claiming that *Nickoli* Relators did not obtain title from the canal company. Where a plaintiff and defendant claim title from a common source, the plaintiff cannot attack the validity of the common source's claim to title to show it is worthless in order to defeat the title claim by the defendant. *Monroe v. Doe* (1835), 7 Ohio 262, 1835 WL 51, at *2-3; *Robertson v. Pickrell* (U.S. 1883), 109 U.S. 608, 615-616. In *Key Trust*, Plaintiff Erie MetroParks claimed title to the whole canal through the canal company

and certainly used that claim of title to obtain a restraining order against *all* landowners who acquired sections of the corridor from Key Trust, including the *Nickoli* Relators. It cannot now attack the common source of title simply because its claim of ownership was limited to the Merry and Townsend tracts.

In addition, had Erie MetroParks believed that the canal company did not own the entire canal corridor, it should have either not named certain defendants or chosen to assert that the canal company did not own the canal and that the *Key Trust* defendants lacked title. Instead, because its claim to use of the entire canal corridor through the Lease was dependent upon the canal company's title, with its Amended Complaint and Motion for TRO, Erie MetroParks defended the canal company's title to the entire canal corridor. Accordingly, contrary to Respondents' repeated contention, the parties in *Key Trust* litigated the ownership interests as to the entire canal corridor. That is precisely why this Court correctly held that *Key Trust* preclusively established the ownership interests of the parties to that action. Indeed, this Court held that "the ultimate emphasis in that litigation [*Key Trust*] at both the trial and appellate courts on the interests of the board being limited to the Merry and Townsend parcels" and that the trial court in *Key Trust* "ultimately resolved this issue in favor of the defendants, including relators, by holding that the board had no property interest in the land north of Lock No. 1." 2007-Ohio-6057, ¶ 55.

As this Court held, *Key Trust* conclusively established the ownership interest of Erie MetroParks and the *Key Trust* defendants in the canal corridor. *Id.* at ¶¶ 34, 49, 55. This Court recognized that Erie MetroParks not only raised claims of ownership through the Railroad Lease, but had the ability and did raise claims of ownership through other sources, including by quitclaim deed from Oscar Meeker. *Id.* at ¶ 55. Thus, Erie MetroParks elected to proceed on the

allegation that its lease from the canal company covered the entire canal corridor. It is precluded from relitigating that issue. *Johnson's Island, Inc.*, 69 Ohio St.2d at 244 (holding that res judicata bars a party from relitigating the same matters when it failed to "make good his cause of action...by all the proper means within his control" even if he fails in that respect, "purposely or negligently").

Finally, Respondents' claim of after-acquired title to the canal corridor is meritless. First, Respondents never raised the claim of after-acquired title in either *Coles* or *Key Trust*. As this Court held in *Coles*, the issue of ownership of the canal corridor was preclusively determined in *Key Trust*, Respondents therefore purposefully or negligently waived this purported claim of title. *Johnson's Island*, 69 Ohio St.2d at 244. Moreover, Respondents misapply the after-acquired title doctrine. Respondents rely upon a principle of law that when a lessor enters into a lease, but only after-the-fact had the authority to do so, the lessor cannot use the lack of authority at the time the lease is made against the lessee. *Liberal Savs. & Loan Co. v. Frankel Realty Co.* (1940), 137 Ohio St. 489, 491-492, 497. That principle of law has no application in this case and is inapposite. The parties do not dispute that the canal company had the authority to enter into the 1881 Lease, but that point is irrelevant. In 1904, the entire canal corridor was deeded to Key Trust.

For this and all of the above reasons, Respondents' Motion is without merit. Since Respondents do not dispute the fact that privity exists between the *Coles* and *Nickoli* Relators, a peremptory writ should be issued based upon the doctrine of res judicata.

II. Respondents Do Not Have An Interest In Any Part Of The Canal Corridor Through Adverse Possession

A. *Coles* Conclusively Rejected Respondents' Claim Of Ownership Of Any Of The Canal Corridor Through Adverse Possession.

Respondents' second claim of "lying" is equally unfounded. *Coles* conclusively establishes that Respondents' resurrected claim to an interest in the canal corridor through adverse possession is frivolous. In its Answer in *Coles*, Erie MetroParks asserted the affirmative defense of adverse possession: "Some or all of the claims are barred by the doctrine of adverse possession." See Ex. D, *Answer of Respondents in Coles*, at pg. 5, ¶ 5. Erie MetroParks put directly at issue in *Coles* its claim of purported ownership of the canal corridor through adverse possession. Notwithstanding this assertion, this Court found that the *Coles* Relators had a clear legal right in their sections of the canal corridor, which Erie MetroParks improperly took without first providing just compensation. *Coles*, 2007-Ohio-6057, ¶ 59. Thus, this Court conclusively rejected Erie MetroParks' adverse possession claim. Because Respondents do not challenge that the *Nickoli* Relators are in privity with the *Coles* Relators, as a matter of law, this Court's finding that *Coles* Relators had a clear legal right of ownership in their sections of the canal corridor applies as res judicata to bar Respondents' claim of ownership through adverse possession. *Johnson's Island*, 69 Ohio St.2d at 244.

This Court's rejection in *Coles* of Erie MetroParks' Motion for Reconsideration further establishes the complete rejection of Erie MetroParks' claim of ownership through adverse possession. In that Motion, Erie MetroParks argued that the trial court in *Key Trust* never addressed the issue of adverse possession as to the sections of the canal corridor outside of Merry and Townsend tracts. Erie MetroParks told this Court that it "should modify its decision to expressly indicate that the Court's decision does not preclude the Erie MetroParks from

establishing title to portion of the rail corridor through adverse possession....” See Ex. A to *Memo Opp to 12(C) Mot.*, at pg. 9. This Court refused and thus rejected Erie MetroParks’ argument that adverse possession remained an open issue.

Indeed, this Court’s actions are consistent with the *Key Trust* trial court’s adverse possession finding. Respondents attack the integrity of counsel by claiming that Relators’ statement that *Key Trust* held that Respondents had no interest in any part of the canal corridor by adverse possession is “blatantly false.” *Resps.’ Mot. to Strike*, at pg. 8. That is a remarkable charge considering this Court rejected Erie MetroParks’ Motion for Reconsideration in *Coles*.

Moreover, this Court held that *Key Trust* preclusively established the ownership interest of the parties to *Key Trust* to the canal corridor. This Court did not find that *Key Trust* established that Erie MetroParks had a property interest in any of the canal corridor through adverse possession. Respondents do not dispute that Erie MetroParks raised adverse possession in *Key Trust*. Accordingly, it is Respondents’ claim that *Key Trust* did not preclusively establish the parties’ respective ownership interest in the canal corridor that is false. By claiming that adverse possession as to the sections of the canal corridor outside the Merry and Townsend tracts remains in dispute after *Key Trust*, Respondents yet again try to render the *Coles* decision meaningless.

B. The Key Trust Litigation Conclusively Determined That Respondents Do Not Own Any Of The Canal Corridor Through Adverse Possession.

The *Key Trust* trial court rejected Erie MetroParks’ claim of ownership through adverse possession as to the entire canal corridor. As established supra, with its Amended Complaint and Motion for a Temporary Restraining Order, Erie MetroParks claimed a lease interest in the entire canal corridor. It had no other basis for suing property owners with an interest in the canal corridor North of Mason Road, and it certainly had no basis for seeking a temporary restraining

order against all defendants from using the entire canal corridor or interfering with Erie MetroParks' use of the corridor for its recreational trail. Consequently, only because it believed it had a claim to the entire canal corridor did Erie MetroParks specifically plead that the canal company owned the entire canal corridor in fee simple title and that interest had been transferred to Key Trust and subsequently to the various other *Key Trust* Defendants, including the *Coles* Relators and *Nickoli* Relators. *Id.* at ¶¶ 8-10. Thus, Erie MetroParks placed ownership of the entire canal corridor at issue in *Key Trust*. Accordingly, in its 2000 decision, the trial court addressed Erie MetroParks' property interests in the entire canal corridor.

In its 2000 decision, the trial court noted that the case presented it with four issues. *Resps. Ans.*, at Ex. 11, at pg. 1. The third of those issues was “whether Plaintiff [Erie MetroParks] has gained any interest in the property at issue by adverse possession.” *Id.* The trial court held that “Plaintiff has not met its burden to establish any interest in the property at issue by adverse possession.” *Id.* at 5. Respondents now claim “property at issue” equates only to what the property that the trial court ultimately found to be under the Railroad lease, the Merry and Townsend tracts. However, the “ultimate emphasis of the litigation at both the trial and appellate courts [was] on the interests of the board being limited to the Merry and Townsend parcels....” *Coles*, 2007-Ohio-6057, ¶ 48. Finding that the trial court somehow kept open the issue of adverse possession, as Respondents now urge, is absolutely inconsistent both with this conclusion and Erie MetroParks' own claims in *Key Trust*.

In addition, the trial court also faced the issue of whether Erie MetroParks “acquired any ownership interest in the property at issue by virtue of a quitclaim deed from the Wheeling Railroad.” *Resps. Ans.*, at Ex. 11, at pg. 1. As this Court held in *Coles*, the trial court “ultimately resolved this issue in favor of the defendants, including relators, by holding that the

board had no property interest in the land north of Lock No. 1.” *Coles*, 2007-Ohio-6057, ¶ 55. That holding makes clear that the “property at issue” for the quitclaim deed issue was the entire canal corridor – not simply the Merry and Townsend tracts. Logically, this analysis also makes clear that the “property at issue” for the adverse possession issue was the entire canal corridor. This holding further reveals the startling nature of Respondents’ claim that *Nickoli* Relators made a “blatantly false” statement. Respondents are essentially claiming that this Court itself made a false representation about *Key Trust*.

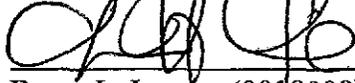
As the above establishes, far from a “blatantly false” statement, *Nickoli* Relators’ accurately recite the trial court’s decision in *Key Trust*. Further, because privity is conceded by Respondents, based upon a plain application of res judicata principles, the requested peremptory writ should be granted.

CONCLUSION

Faced with established rules of law warranting a peremptory writ, Respondents resort to filing what amounts to an impermissible Reply couched as a Motion to Strike. Respondents’ Motion is yet another example of its continuing refusal to recognize this Court’s mandate in *Coles*. Respondents rehash of arguments previously made and soundly rejected by this Court and the courts in *Key Trust* must cease. The *Nickoli* Relators’ long quest simply to obtain what is due them pursuant to established precedent and the Constitution warrants the requested peremptory writ.

For this reason and those above, Respondents’ Motion should be denied in its entirety and Relators’ requested peremptory writ should be granted.

Respectfully submitted



Bruce L. Ingram (0018008)

(Counsel of Record)

Joseph R. Miller (0068463)

Thomas H. Fusonie (0074201)

Vorys, Sater, Seymour & Pease LLP

52 East Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

Tel: (614) 464-6480

Fax: (614) 719-4775

blingram@vorys.com

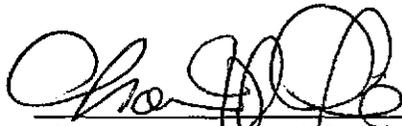
jrmiller@vorys.com

thfusonie@vorys.com

Attorneys for Relators

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served this 16th day of March, 2009 via regular U.S. mail, postage prepaid, upon Thomas A. Young, Porter, Wright, Morris & Arthur LLP, 41 South High Street, Columbus, Ohio 43215 and John D. Latchney, Tomino & Latchney, LPA, 803 East Washington Street, Suite 200, Medina, Ohio 44256, counsel for Respondents Erie MetroParks and Board of Park Commissioners, Erie MetroParks.



Thomas H. Fusonie (0074201)

Exhibit A

State of Ohio ex rel. Edwin M. Coles et al.

Case No. 2006-1259

v.

Jonathan Granville et al.

RECONSIDERATION ENTRY

IN MANDAMUS

It is ordered by the Court that the motion for reconsideration in this case is denied.

THOMAS J. MOYER
Chief Justice



Exhibit B

Order
out

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

FILED
ERIE COUNTY
CLERK
MAR 12 11 AM 11:35
BOARD OF COURTS

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS,

CASE NO. 99-CV-442

Plaintiff

JUDGE ANN B. MASCHARI

-vs-

PLAINTIFF'S COMBINED MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

KEY TRUST COMPANY OF OHIO, N.A.,
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERNA LOCKWOOD
WILLIAMS, et al.,

Defendants

Pursuant to Rule 65 of the Ohio Rules of Civil Procedure, Plaintiff, Board of Park Commissioners, Erie MetroParks, hereby respectfully moves for orders from this Court granting Plaintiff a Temporary Restraining Order and a Preliminary Injunction against the Defendants (including the Defendants to be added as new parties to this action by the Motion for Leave to File Amended Complaint *Instantly* being filed concurrently herewith), collectively, and each of them individually, enjoining Defendants (and anyone acting on their behalf, in association with them or in concert with them) from directly or indirectly: (1) damaging or altering any portion of the property (the "Property") that is covered or alleged to be covered by the lease that is the subject of this action or any improvements thereon; (2) posting, placing or maintaining signs, barriers, barricades, obstructions, equipment or personal property of any kind on the Property; (3) interfering with the use of the Property by Plaintiff or Plaintiff's employees or authorized representatives; (4) interfering with

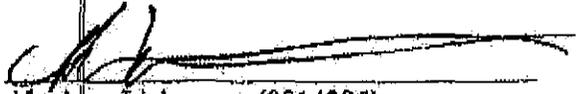
EXHIBIT
B

persons using those portions of the Property that Plaintiff opens or has opened to public use. Plaintiff also respectfully requests an Order from this Court requiring Defendants to immediately remove all signs, barriers, barricades, obstructions, equipment and personal property posted or placed upon the Property by Defendants or anyone acting on their behalf, in association with them or in concert with them.

The Temporary Restraining Order and a Preliminary Injunction are necessary to preserve the status quo among the parties pending a decision by this Court on the merits, in order to prevent damage to the Property, and in order to prevent injury to persons. The reasons for this Motion are more fully set forth in the Memorandum in Support of this Motion, which is being filed contemporaneously herewith and is expressly incorporated herein by this reference.

Respectfully submitted,

BAUMGARTNER & O'TOOLE
LEGAL PROFESSIONAL ASSOCIATION

By: 

Abraham Lieberman (0014295)
Dennis M. O'Toole (0003274)
Attorneys for Plaintiff, Board of Park
Commissioners, Erie MetroParks
582 North Leavitt Road
Amherst, Ohio 44001-1131
Ph. (440) 244-1212

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiff's Combined Motion for Temporary Restraining Order and Preliminary Injunction has been sent by ordinary U.S. mail, postage pre-paid, this 14th day of July, 2000, to Randal L. Strickler, Attorney for Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 16 West Church Street, P.O. Box 543, Milan, Ohio 44846; J. Anthony Logan, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., Wright & Logan Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017; and to D. Jeffery Rengel, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 421 Jackson Street, Sandusky, Ohio 44870.



Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

July 14, 2000
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IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS,

Plaintiff

-VS-

KEY TRUST COMPANY OF OHIO, N.A.,
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERNA LOCKWOOD
WILLIAMS, et al.,

Defendants

CASE NO. 99-CV-442

JUDGE ANN B. MASCHARI

PLAINTIFF'S MEMORANDUM
IN SUPPORT OF COMBINED
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

Plaintiff, Board of Park Commissioners, Erie MetroParks, submits this Memorandum in Support of its combined Motion for Temporary Restraining Order and Preliminary Injunction during the pendency of this action against Defendants Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, Buffalo Prairie, Ltd., the alleged assignee and real party in interest for Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, and the new party defendants sought to be added by the Motion for Leave to File Amended Complaint *Instante* being filed concurrently herewith: Vincent R. Otrusina, Dale A. Hohler, Ellen H. Hohler, Rita M. Beverick, Patricia A. Charville, Trustee U/A Patricia A. Charville Trust Dated September 28, 1994, Dorcas P. Gastler, Gerald O.E. Nickoli and Robin L. B. Nickoli, as custodians for Autumn M. Nickoli and Jared J.B. Nickoli under the Ohio Transfers to Minors Act, Douglas Hildenbrand, John F. Landoll and/or Virginia A. Landoll U/A Co-Trustees Landoll Family

Trust Dated July 24, 1998, Warren R. Jones, Robert C. Bickley, Theresa R. Johnston, Eliot F. Fischer, Kim Reid-Fischer, Gary R. Steiner, Virginia M. Steiner, Michael P. Meyer, Alice F. Fowler, Thomas S. Jordan, Marsha A. Jordan, John J. Joyce, Christine Joyce, Billy R. Rasnick, Donna J. Rasnick, Maria Sperling, Joseph Jirousek, Patricia Jirousek, Richard Rinella, Carol Rinella, Huron Lime Company, Edwin Coles and Lisa Coles.

I. STATEMENT OF THE CASE

The subject of this action is a lease dated July 12, 1881, for a term of ninety-nine (99) years, renewable forever (the "Lease"). The Lease covers at least portions of a strip of land formerly used for train transportation, and which is now in the process of being improved as a parkway for transportation by pedestrians and vehicular traffic and other park purposes (the portions which are subject to the Lease being hereinafter referred to as the "Property"). Plaintiff is the current holder of the tenant's rights under the Lease, and Defendants claim some right to the Property that is subject to the Lease.

Plaintiff filed a Complaint in this case seeking a declaration from this Court that, among other things, the Lease is in full force and effect and that Plaintiff is entitled to sole and exclusive occupancy of the Property.

Recently, some or all of the Defendants or persons acting at their direction and control have taken actions to interfere with the Park District's possession of the Property and the public's use of those portions of the Property that have been opened to the public. Recently, such actions have included posting "keep out" signs on the Property, erecting barriers, barricades and obstructions on the bike trail, interfering with Plaintiff's contractor working on the site, verbally assaulting trail users

and, on July 12, 2000, assaulting one of the Plaintiff's rangers who was in the process of patrolling the Property (Affidavit of Park Ranger Robert Davis, attached hereto).

As is evidenced from the Affidavit of Robert Davis, there is a real danger that, if this Court does not grant the Temporary Restraining Order and Preliminary Injunction sought, the Property may be damaged and/or the Park District's employees and members of the public may be injured.

II. ARGUMENT

A preliminary injunction is designed to preserve "the court's ability to grant effective, meaningful relief after a determination of the merits." *Gobel v. Laing* (1976), 12 Ohio App.2d 93, 94; *City of Cleveland v. Div. 268 of Amalgamated Assn. of Street Electric Railway & Motor Coach Employees of America* (1948), 84 Ohio App. 43, 46 (purpose of a preliminary and temporary injunction or restraining order is to preserve the status quo of the parties and their rights pending final adjudication of the cause upon the merits).

In the instant case, a temporary restraining order and a preliminary injunction are absolutely essential to preserve the status quo among the parties and to preserve the Court's ability to provide a meaningful remedy. Defendants have interfered with the rights of Plaintiff and the public to use the Property and have recently threatened violence (Affidavit of Ranger Robert Davis). There is every indication that the actions of the Defendants will escalate resulting in damage to the Property and/or injury to persons. Defendants, on the other hand, will sustain absolutely no harm or inconvenience by the granting of requested injunctive relief. If the Court determines that the Lease has terminated, Plaintiff will vacate the Leased Property or acquire it by appropriation.

Accordingly, the Temporary Restraining Order and Preliminary Injunction requested by Plaintiff's Motion are absolutely essential to preserve the status quo between the parties and to prevent irreparable harm.

Respectfully submitted,

BAUMGARTNER & O'TOOLE
LEGAL PROFESSIONAL ASSOCIATION

By: 

Abraham Lieberman (0014295)
Dennis M. O'Toole (0003274)
Attorneys for Plaintiff, Board of Park
Commissioners, Eric MetroParks
582 North Leavitt Road
Amherst, Ohio 44001-1131
Ph: (440) 244-1212

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Plaintiff's Memorandum of Law in Support of Combined Motion for Temporary Restraining Order and Preliminary Injunction has been sent by ordinary U.S. mail, postage pre-paid, this 14th day of July, 2000, to Randal L. Strickler, Attorney for Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 16 West Church Street, P.O. Box 543, Milan, Ohio 44846; J. Anthony Logan, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., Wright & Logan Co., L.P.A., 4266 Tuller Road, Suite 101, Dublin, Ohio 43017; and to D. Jeffery Rengel, Attorney for Buffalo Prairie, Ltd., assignee of Defendant, Key Trust Company of Ohio, N.A., Trustee, etc., 421 Jackson Street, Sandusky, Ohio 44870.



Abraham Lieberman
Attorney for Plaintiff, Board of Park
Commissioners, Erie MetroParks

July 14, 2000
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STATE OF OHIO)
)
COUNTY OF)

SS:

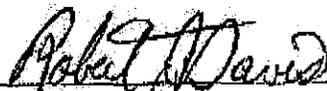
AFFIDAVIT OF ROBERT J. DAVIS

I, Robert J. Davis, the undersigned, being first duly sworn, depose and state as follows:

1. My name is Robert J. Davis and I am employed by Erie MetroParks as a Park Ranger.
2. On or about 10:10 p.m. on July 12, 2000 while closing gates on Erie MetroParks Huron River Greenways I saw no trespassing signs in the middle of the greenway near the Dupont March exit to the trail. At the entrance to the camp ground I saw more signs and 3 or 4 people with vehicles blocking the trail. As I exited my cruiser to close the gates the subjects began yelling and approached threatening to call the sheriff to evict me from the property. As I proceeded with my closing duties one female demanded I leave and wanted my identification card. She then grabbed at my duty belt in the area of the revolver and was pushed away. She then opened the passenger side door of the cruiser and grabbed items from the front seat and said she had the right to do anything she wanted. She was advised that was government property and to return it which she did reluctantly. I had to lock the cruiser with the keys in the ignition to keep her from re-entering, which cut off communication to the sheriff's office for help. Subjects then left after more threats of calling the sheriff. I advised them that they should call the sheriff's office to make them feel better about the situation. I then called Neil Hemringer from the camp ground nearby to bring keys to get in to cruiser. He arrived at approximately 10:48 p.m. I ~~locked~~ ^{unlocked} cruiser and left the scene.
3. On March 10, 2000, myself, accompanied by two other park rangers made an examination of part of the park trail adjacent to premises owned by Vincent Otrusina. In the center of the trail premises we observed that a large hole had been dug, approximately six feet deep and ten feet wide,

with the soil placed to the west, east and south which effectively blocked the trail so no vehicles could get through. We then viewed that part of the trail adjacent to premises owned by Edwin and Lisa Coles and observed a large backhoe parked in the center of the trail, which also made the trail impassible.

4. Further affiant sayeth naught.


Robert J. Davis

Sworn to before me and subscribed in my presence this 14th day of July, 2000.


Notary Public

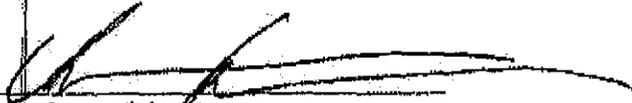
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ABRAHAM LIEBERMAN, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 R.C.

3. It is my understanding that D. Jeffery Rengel represents, not only Buffalo Prairie, Ltd., but also all of the additional Defendants, based upon complaints in forcible entry and detainer Mr. Rengel filed on their behalf with the Huron Municipal Court and the Erie County Court.

4. On July 14, 2000, at 11:35 a.m., I spoke by telephone with Randal Strickler, counsel to Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams. I informed Mr. Strickler that I intended to file a Motion for Temporary Restraining Order and Preliminary Injunction against Key Trust Company of Ohio, N.A., Trustee of the Testamentary Trust of Verna Lockwood Williams, Buffalo Prairie, Ltd. and various property owners.

5. Further Affiant sayeth naught.


Abraham Lieberman

Sworn to before me and subscribed in my presence this 14th day of July, 2000.


Notary Public

JANE E. HEBERLING
Notary Public, State of Ohio
My Commission Expires November 19, 2004

July 14, 2000
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Exhibit C

FILED IN COURT
COMMON PLEAS COURT
ERIE COUNTY, OHIO
00 JUL 14 PM 4:58
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
ERIE COUNTY, OHIO

BOARD OF PARK COMMISSIONERS,
ERIE METROPARKS,

Plaintiff

-vs-

KEY TRUST COMPANY OF OHIO, N.A.,
TRUSTEE OF THE TESTAMENTARY
TRUST OF VERA LOCKWOOD
WILLIAMS, et al.,

Defendants

CASE NO. 99-CV-442

JUDGE

TEMPORARY RESTRAINING ORDER

For good cause shown, Plaintiff's Motion for Temporary Restraining Order is hereby granted.
leave to file Amended Complaint for Declaratory Relief is hereby granted.

IT IS THEREFORE ORDERED that commencing with the filing hereof and for fourteen (14) days hereafter, or until further order of this Court, or by consent of the parties, Defendants and their agents, servants, employees, attorneys and those persons acting on their behalf, in association with them or in concert with them who receive actual notice of this Order, whether by personal service or otherwise, be and are hereby restrained and enjoined from directly or indirectly: (1) damaging or altering any portion of the property (the "Property") that is covered or alleged to be covered by the lease that is the subject of this action or any improvements thereon; (2) posting, placing or maintaining signs, barriers, barricades, obstructions, equipment or personal property of any kind on the Property; (3) interfering with the use of the Property by Plaintiff or Plaintiff's employees or

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authorized representatives; (4) interfering with persons using those portions of the Property that Plaintiff opens or has opened to public use.

IT IS FURTHER ORDERED that Defendants remove all signs, barriers, barricades, obstructions, equipment and personal property posted or placed upon the Property by Defendants or anyone acting on their behalf, in association with them or in concert with them.

IT IS FURTHER ORDERED that Plaintiff's Motion for a Preliminary Injunction is set for hearing at 9:00 o'clock a.m. on July 25, 2000.

Because Plaintiff is a political subdivision, no security is required.

IT IS FURTHER ORDERED that copies of this Order be immediately served upon Defendants by the Sheriff or by Plaintiff's counsel or his designee pursuant to the Rules of Civil Procedure, or by any other manner permitted by law. Plaintiffs are restrained from any use of the property until after July 25, 2000 at 9:00 a.m. *At which time Court shall conduct a hearing.
IT IS SO ORDERED.

Date: _____, 2000

Joseph E. Cirigliano
Judge
by Hon. B. Proctor

July 14, 2000
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*Provided, however, Plaintiff may continue to allow the public to use those portions of the property that have heretofore been opened to public use, such use to be in accordance with Park Regulations.

Exhibit D

ORIGINAL
ON COMPUTER - JJ

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.
EDWIN M. COLES, *et al.*

CASE NO. 06-1259

Relators

v.

JONATHAN GRANVILLE, *et al.*

Respondents

RESPONDENTS' ANSWER TO RELATORS' PETITION FOR A WRIT OF
MANDAMUS

John D. Latchney (0046539)
TOMINO & LATCHNEY, LLC LPA
803 East Washington Street, Suite 200
Medina, OH 44256
Tel. (330) 723-4656
Fax. (330) 723-5445
E-mail: jlatchney@brightdsl.net

Attorney for Respondents Jonathan Granville and
Board of Park Commissioners
Erie MetroParks

FILED
JUL 24 2006
MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

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ANSWER TO COMPLAINT FOR WRIT OF MANDAMUS

Now come Respondents Jonathan R. Granville and Board of Park Commissioners, Erie MetroParks, who for their Answer to the Petition for a Writ of Mandamus filed by Relators, state as follows:

1. Deny the allegations contained in Paragraph 1.
2. Deny the allegations contained in Paragraph 2.
3. Admit Relators Edwin and Lisa Coles, Buffalo Prairie, Ltd., Robert C. Bickley, and Warren (Bob) Jones are landowners who reside or have their principal place of business in Erie County, Ohio, and that Relator Linda Moir serves as executrix of the Estate of Vincent P. Otrusina, who resided in Erie County, Ohio before his death, but deny the remaining allegations contained in Paragraph 3.
4. Deny the allegations contained in Paragraph 4.
5. Deny for want of knowledge the allegations contained in Paragraph 5.
6. Deny for want of knowledge the allegations contained in Paragraph 6.
7. Admit the allegations contained in Paragraph 7.
8. Admit the allegations contained in Paragraph 8.
9. Deny the allegations contained in Paragraph 9.
10. Deny the allegations contained in Paragraph 10.
11. Admit that the Canal Company was chartered by the State of Ohio in 1827 to construct and operate a canal from Milan, Ohio, but deny the remaining allegations contained in Paragraph 11.

12. Admit that the Canal Company acquired portions of the canal corridor from Ebeneser Merry and Kneeland Townsend and that the Merry tract lies south of Mason Road, Milan Township, Erie County, Ohio, but deny the remaining allegations contained in Paragraph 12.

13. Admit the allegations contained in Paragraph 13.

14. Admit the allegations contained in Paragraph 14.

15. Admit the allegations contained in Paragraph 15.

16. Deny the allegations contained in Paragraph 16.

17. Denied for want of knowledge the allegations contained in Paragraph 17.

18. Deny for want of knowledge the allegations contained in Paragraph 18.

19. Admit the allegations contained in Paragraph 19.

20. Admit the allegations contained in Paragraph 20.

21. Admit the allegations contained in Paragraph 21.

22. Admit the allegations contained in Paragraph 22.

23. Deny the allegations contained in Paragraph 23.

24. Admit the allegations contained in Paragraph 24, except the commencement date relative to Key Trust, which was in 1999.

25. Deny the allegations contained in Paragraph 25.

26. Admit that on appeal, the Court of Appeals for the Sixth District in Ohio reversed some parts of the trial court judgment, but deny the remaining allegations contained in Paragraph 26.

27. Deny the allegations contained in Paragraph 27.

28. Deny the allegations contained in Paragraph 28.

29. Deny the allegations contained in Paragraph 29.
30. Deny the allegations contained in Paragraph 30.
31. Deny the allegations contained in Paragraph 31.
32. Deny the allegations contained in Paragraph 32.
33. Deny the allegations contained in Paragraph 33.
34. Deny the allegations contained in Paragraph 34.
35. Deny the allegations contained in Paragraph 35.
36. Deny the allegations contained in Paragraph 36.
37. Deny the allegations contained in Paragraph 37.
38. Deny the allegations contained in Paragraph 38.
39. Deny the allegations contained in Paragraph 39.
40. Deny the allegations contained in Paragraph 40.
41. Deny the allegations contained in Paragraph 41.
42. Deny the allegations contained in Paragraph 42.
43. Deny the allegations contained in Paragraph 43.

COMPLAINT IN THE ALTERNATIVE

1. Reaffirm their previous admissions and denials in response to Paragraph 1.
2. Deny the allegations contained in Paragraph 2.
3. Deny the allegations contained in Paragraph 3.
4. Deny the allegations contained in Paragraph 4.
5. Deny the allegations contained in Paragraph 5.

AFFIRMATIVE DEFENSES

1. The claims are barred by *res judicata*.
2. The claims are barred by claim preclusion and/or issue preclusion
3. The claims are barred by the doctrine of stare decisis.
4. There is neither a clear legal duty for Erie MetroParks to commence appropriation proceedings, nor a clear legal right of Petitioners to same.
5. Some or all of the claims are barred by the doctrine of adverse possession.
6. The claims are barred by the doctrines of waiver and/or estoppel and/or laches.
7. Some or all of Relators are not proper parties to this suit because they have no right, title or interest in or to the property which is the subject of this suit.
8. Some or all of Relators lack standing to pursue the claims set out in the Complaint.

Respectfully submitted,



by PML
0067031

John D. Latchney (0046539)
TOMINO & LATCHNEY, LLC, LPA
803 East Washington Street, Suite 200
Medina, Ohio 44256
Telephone: (330) 723-4656
Facsimile: (330) 723-5445
E-mail: jlatchney@brightdsl.net

Attorney for Respondents

CERTIFICATE OF SERVICE

A copy of the foregoing Answer to Complaint for a Writ of Mandamus was served via regular U.S. Mail on this 24th day of July, 2006 upon:

J. Anthony Logan
BROOKS & LOGAN CO., LPA
5025 Arlington Centre Blvd., Suite 350
Columbus, Ohio 43220

Nels Ackerson
ACKERSON KAUFFMAN FEX, PC
1250 H Street, NW, Suite 850
Washington, DC 20005

Attorneys for Relators

 *PM*
0067031
John D. Latchney (0046539)
TOMINO & LATCHNEY, LLC, LPA