

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND, : Case No. 09-0441
: :
Appellant, : Discretionary Appeal from the
: Cuyahoga County Court of Appeals,
v. : Eighth Appellate District
: (Court of Appeals Case No. 91379)
: :
WASHINGTON MUTUAL BANK, :
A DIVISION OF JPMORGAN :
CHASE N.A. :
: :
Appellee. :

MEMORANDUM OF APPELLEE WASHINGTON MUTUAL BANK, A DIVISION OF
JPMORGAN CHASE N.A., IN OPPOSITION TO JURISDICTION

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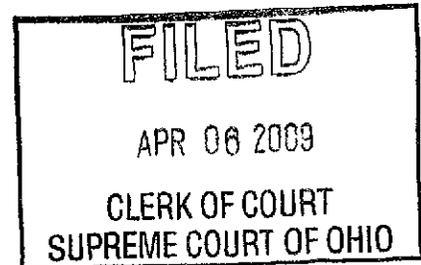


TABLE OF CONTENTS

Page

TABLE OF CONTENTS..... i

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION.....1

APPELLEE’S STATEMENT OF THE CASE AND FACTS4

ARGUMENT IN RESPONSE TO PROPOSITIONS OF LAW.....5

 Response to Proposition of Law No. I: A court of appeals need not convene en banc when it has determined that no intradistrict conflict exists5

 Response to Proposition of Law No. II: R.C. 2941.47 Does Not Apply To Prosecutions Initiated By Complaint or Authorize a Corporate Criminal Defendant To Be Tried In Absentia.....7

 A. No Statute or Criminal Rule Authorized a Trial In Absentia in This Case.8

 B. A Complaint Is Not The Functional Equivalent of an Indictment or Information.11

 Response to Proposition of Law No. III: Because R.C. 2941.47 Does Not Allow a Trial In Absentia, It is Appropriate to Consider R.C. 2938.12 and Crim.R. 43 To Determine Whether a Corporate Defendant Can Be Tried In Absentia for a Misdemeanor.....12

CONCLUSION.....14

CERTIFICATE OF SERVICE15

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION

Appellant City of Cleveland (“Cleveland” or the “City”) asks this Court to expend its time and effort to review a case in which the Eighth District Court of Appeals rightfully reversed a conviction against a criminal defendant who was tried in absentia. Cleveland wants this Court to accept this case and hold that Ohio’s municipalities may convict defendants like Appellee Washington Mutual Bank (“Washington Mutual”) in absentia because municipalities need to be able to do that to combat the “foreclosure crisis” in their communities. (Memo. In Support of Jurisdiction, at 3.) Cleveland’s use of these buzzwords does not, however, magically transform this case into one worthy of this Court’s jurisdiction. Cleveland is asking this Court to make law by judicial fiat, in contradiction to statutes governing criminal prosecutions.

In the Cleveland Municipal Court, Washington Mutual was convicted in absentia for misdemeanor building and housing code violations and fined \$100,000. In vacating Washington Mutual’s conviction, however, the court of appeals correctly found that R.C. 2941.47, the statute invoked by the City, did not apply and therefore did not allow Washington Mutual to be tried in absentia. *City of Cleveland v. Washington Mutual Bank N.A.* (Dec. 31, 2008), 8th Dist. App. No. 91379, 2008-Ohio-6956, at ¶¶ 7-8. Notably, the plain text of R.C. 2941.47 states that it applies only “[w]hen an indictment is returned or information filed against a corporation.” Because there was no “indictment” or “information” in this case—only a complaint and summons issued against Washington Mutual—there was no basis upon which the municipal court could have validly entered a plea on Washington Mutual’s behalf or proceeded to a trial in absentia. *Id.* at ¶¶ 8, 11. The court of appeals further found that no other criminal statute or rule authorized the court to conduct a trial in Washington Mutual’s absence. *Id.* at ¶¶ 9-11.

Despite the well reasoned decision of the court of appeals, the City begs for this Court to interpret R.C. 2941.47 to allow corporations to be tried in absentia because the “foreclosure crisis” somehow demands that the City have this type of hammer in its prosecutorial toolbox. In essence, Cleveland wants this Court to accept this case in order to give the City a power that no criminal statute or criminal rule gives it, all in the name of punishing corporations that it deems to be culpable for the “foreclosure crisis.” (See Memo. In Support of Jurisdiction, at pp. 3-4.) Though it may be fashionable in the current climate to blame corporations generally—and financial institutions in particular—for the foreclosure problems that are at the forefront of the nation’s collective consciousness, the City’s appeal poses no question of public or great general interest to Ohio jurisprudence. When the City’s “foreclosure crisis” gloss is removed, this case is about nothing more than the unremarkable proposition that R.C. 2941.47 means exactly what it says. And this is not a question of public or great general interest, as Ohio’s jurisprudence is replete with cases that stand for the proposition that the unambiguous language of a statute controls its meaning. See, e.g., *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, at ¶ 9 (noting that “We apply a statute as it is written when its meaning is unambiguous and definite,” and citing cases standing for same rule).

Nor does Cleveland’s argument for “en banc” review create a question that demands this Court’s attention. Cleveland complains that the court of appeals’ decision in this case created an “intradistrict conflict” with *City of Cleveland v. Destiny Ventures LLC* (Sept. 11, 2008), 8th Dist. No. 91018, 2008-Ohio-4587, discretionary appeal allowed, 2009-Ohio-805. But as Cleveland’s jurisdictional memorandum recognizes, this Court has recently decided that en banc review is a constitutional and necessary appellate procedure. *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914. In fact, this Court has decided *twice in the past three years* that en

banc proceedings are necessary when an appeals court finds its decision in conflict with another decision within the same district. See *id.* and *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, paragraph two of the syllabus. Thus, Cleveland is basically asking this Court to re-state what it said in *McFadden* and *In re J.J.* and apply those decisions to command en banc review. At its core, Cleveland's "en banc" proposition of law is nothing more than a plea for error correction—Cleveland wants this Court to rule that the Eighth District Court of Appeals, in *this* case, should have exercised en banc review. This does not present a matter of public or great general interest.

What's more, Cleveland's "en banc" proposition is a loser on the merits. The court of appeals considered and rejected the City's argument that its decision conflicted with *Destiny Ventures*, observing that *Destiny Ventures* did not decide the purported "conflict" issue of whether R.C. 2941.47 applied to misdemeanor prosecutions initiated by complaint. See Journal Entry Denying Appellant's Motion For Reconsideration, Jan. 22, 2009 (copy attached to Cleveland's jurisdictional memorandum). Absent an actual conflict in the decisions, the court of appeals had no duty to convene en banc to decide this case.

Finally, this case does not involve a "substantial constitutional question" over which this Court should grant review. Notably, the City's Notice of Appeal did not invoke this Court's jurisdiction over claimed appeals of right involving a "substantial constitutional question": the City only invoked this Court's discretionary appeal jurisdiction over cases "of public or great general interest." (See City of Cleveland's Notice of Appeal, filed Mar. 6, 2009.) And the City's jurisdictional memorandum does not cite any constitutional provision that is at issue in this appeal, much less argue the presence of a "substantial" constitutional question.

This case presents no question worthy of this Court's time and effort. This Court should therefore decline to accept jurisdiction over Cleveland's discretionary appeal.

APPELLEE'S STATEMENT OF THE CASE AND FACTS

Cleveland's statement of facts casts Washington Mutual in an unfavorable light, implying that Washington Mutual ignored service of summons on a criminal complaint for more than a year before the municipal court allowed the case to proceed to a trial in absentia. As set forth in the court of appeals' opinion, however, this characterization is not accurate. In particular, there is some doubt as to whether Washington Mutual was properly served with a summons for the date upon which the trial court allowed a trial in absentia.

The misdemeanor complaint filed against Washington Mutual alleged a failure to comply with a 2006 notice of housing code violation. The municipal court issued a summons on February 7, 2007, which was more than six months after Washington Mutual had sold the property in question. The record contains a United States Postal Service return receipt indicating that the summons was received "by Deanne Kessler at Washington Mutual, c/o CSC-Lawyers Inc. Ser [sic], 50 Broad Street, Suite # 1800, Columbus, Ohio 43215." 2008-Ohio-6956, at ¶2. There is no indication in the record, however, that Washington Mutual actually has a statutory agent at that address; indeed, in the court of appeals briefing, Washington Mutual disputed the adequacy of service, arguing that it did not have a statutory agent at that address at the time the summons was issued.

After Washington Mutual did not appear through a representative or counsel, the trial court ordered the clerk of the municipal court to appear at a scheduled hearing date and enter a plea of "not guilty" on behalf of Washington Mutual. See *id.* at ¶ 3. At a later proceeding, an attorney appeared on behalf of Washington Mutual, but was later allowed to withdraw as counsel upon her request. *Id.* at ¶ 4. Following counsel's withdrawal, the trial court issued another summons, addressed to "Washington Mutual Corp. Service, 50 Broad St. Suite #1800 Columbus, OH 43215." *Id.* This was the same address that Washington Mutual disputes having a statutory

agent. When Washington Mutual failed to appear on the court-ordered hearing date of March 3, 2008, the trial court issued a *capias* and set the matter for trial on April 7, 2008. *Id.* at ¶¶ 4-5.

When Washington Mutual did not appear on April 7, 2008, the trial court entered another “not guilty” plea on its behalf and proceeded with a trial in absentia. Washington Mutual was convicted of the alleged housing code violations and was fined \$100,000. On appeal, the Eighth District Court of Appeals unanimously vacated the conviction, finding that there was no statutory authority for the trial court to enter a plea on Washington Mutual’s behalf or to proceed with a trial in absentia. *Id.* at ¶¶ 7-11.

ARGUMENT IN RESPONSE TO PROPOSITIONS OF LAW

Response to Proposition of Law No. I: A court of appeals need not convene en banc when it has determined that no intradistrict conflict exists.

Cleveland’s first proposition of law sounds in error correction, arguing that the court of appeals should have convened en banc to resolve a purported conflict between its decision in this case and its decision in *Destiny Ventures*, a case upon which this Court has since granted discretionary review. Despite decrying the failure of the Eighth District Court of Appeals to convene en banc to resolve an alleged conflict between this case and *Destiny Ventures*, Cleveland fails to mention that it did not ask for en banc review from the Eighth District. This is particularly significant here because the Eighth District has a formal rule governing en banc review. See Article 8(b) of Eighth District Court of Appeals Standing Resolution of the Rules for the Conducting of Court Work, cited in *In re J.J.* at ¶ 20 and *McFadden* at ¶ 20; see, also, Appendix C to Local Rules of the Eighth District Court of Appeal. Having failed to seek en banc review at the Court of Appeals, Cleveland has waived that issue here. See, e.g., *State ex rel. Chagrin Falls v. Cuyahoga Cty. Bd. of Commrs.*, 96 Ohio St.3d 400, 2002-Ohio-4906, at ¶ 15 (arguments not raised in the court of appeals are deemed waived on appeal to this Court).

In any event, Cleveland's "en banc" proposition is unworthy of attention on the merits because there is no actual conflict between the court of appeals' decision in this case and its decision in *Destiny Ventures*. In this case, the court of appeals vacated Washington Mutual's conviction on the ground that the plain language of R.C. 2941.47 did *not* authorize a trial in absentia for prosecutions initiated by complaint. See 2008-Ohio-6956, at ¶¶ 7-8. In contrast, a close reading of *Destiny Ventures* reveals that the issue of whether R.C. 2941.47 applied to prosecutions initiated by complaint was *not* before the court of appeals. As the court of appeals observed in this case, the *Destiny Ventures* decision "assumed, without deciding, that R.C. 2941.47 applied to a misdemeanor prosecution by complaint." See Journal Entry Denying Appellant's Motion For Reconsideration, Jan. 22, 2009 (copy attached to Cleveland's jurisdictional memorandum). Accordingly, Cleveland cannot establish that the court of appeals abused its discretion in failing to convene en banc when it did not find an actual conflict between the two decisions. See *McFadden* at ¶ 19 (holding that courts of appeals have discretion to determine whether an intradistrict conflict exists).

In the face of the court of appeals' sound reasoning, the City contends that the "assumption" in *Destiny Ventures*, combined with the result in this case, means the existence of "two decisions with completely different meanings." (Memo. In Support of Jurisdiction, at 6.) This argument ignores the reality that the cases decided completely different issues. Whereas the court of appeals in this case decided that R.C. 2941.47 does *not* apply to misdemeanor prosecutions commenced by complaint, *Destiny Ventures* stands (at most) for the proposition that a trial in absentia does not violate the corporate defendant's right to confrontation. See

Destiny Ventures at ¶ 17.¹ Thus, *Destiny Ventures* is properly read to mean that a corporate defendant may be tried in absentia without violating its constitutional rights, *assuming* that R.C. 2941.47 were applicable to the case. *Destiny Ventures* cannot possibly stand for the proposition that R.C. 2941.47 applies to misdemeanor prosecutions initiated by complaint when that issue was not decided there.

The City's first proposition of law presents no issue worthy of this Court's review.

Response to Proposition of Law No. II: R.C. 2941.47 Does Not Apply To Prosecutions Initiated By Complaint or Authorize a Corporate Criminal Defendant To Be Tried In Absentia.

In its second proposition of law, the City contends that R.C. 2941.35 "and the rules of statutory construction" compel a conclusion that trying a corporate criminal defendant in absentia for a misdemeanor is permitted by operation of R.C. 2941.47. (Memo. In Support of Jurisdiction, at 6.) The court of appeals found no such authority in the criminal statutes or Ohio's criminal rules and further found that R.C. 2941.47 does not apply anyway because the City prosecuted Washington Mutual by complaint and the statute plainly applied only to prosecutions initiated by indictment or information.

The City attacks the court of appeals' decision by emphasizing the principle that the processes governing felony prosecutions apply equally to misdemeanor prosecutions. Based upon that premise, the City contends that the court of appeals unduly limited R.C. 2941.47's reach. The City's proposition of law lacks firm legal foundation, however, as its argument rests on flawed interpretations of the statutes and rules upon which it is based.

¹ Indeed, this Court accepted a discretionary appeal in *Destiny Ventures* only on Appellant Destiny Ventures LLC's Proposition of Law No. I, which challenges the constitutionality of its conviction based the Sixth Amendment rights to counsel, to confrontation of witnesses, and to be present at trial. See Appellant's Memorandum In Support of Appeal in *City of Cleveland v. Destiny Ventures LLC*, Case No. 2008-2230; see, also, 2009-Ohio-805 (accepting *Destiny Ventures* on Proposition of Law No. I only).

A. No Statute or Criminal Rule Authorized a Trial In Absentia in This Case.

R.C. 2941.47 states:

When an indictment is returned or information filed against a corporation, a summons commanding the sheriff to notify the accused thereof, returnable on the seventh day after its date, shall issue on praecipe of the prosecuting attorney. Such summons with a copy of the indictment shall be served and returned in the manner provided for service of summons upon corporations in civil actions. If the service cannot be made in the county where the prosecution began, the sheriff may make service in any other county of the state, upon the president, secretary, superintendent, clerk, treasurer, cashier, managing agent, or other chief officer thereof, or by leaving a copy at a general or branch office or usual place of doing business of such corporation, with the person having charge thereof. Such corporation shall appear by one of its officers or by counsel on or before the return day of the summons served and answer to the indictment or information by motion, demurrer, or plea, and upon failure to make such appearance and answer, the clerk of the court of common pleas shall enter a plea of "not guilty." Upon such appearance being made or plea entered, the corporation is before the court until the case is finally disposed of. On said indictment or information no warrant of arrest may issue except for individuals who may be included in such indictment or information. (Emphasis added.)

R.C. 2941.47 plainly applies only to prosecutions commenced by indictment or information. The court of appeals therefore concluded that R.C. 2941.47 did not apply in this case because Washington Mutual “was not charged by indictment or information (a procedure reserved for felony prosecutions, see Crim.R. 7). It was charged by complaint.” 2008-Ohio-6956, at ¶ 8. Accordingly, the trial court had no authority to enter a plea on behalf of Washington Mutual or to allow Washington Mutual to be tried in absentia.

The City attacks the court of appeals’ rationale by locking in on the reference to “felony prosecutions” in the above-quoted parenthetical citation to Crim.R. 7. Cleveland characterizes this parenthetical as a misstatement of the law because Crim.R. 7 expressly says that *misdemeanors* may also be prosecuted by indictment or information. See Crim.R. 7(A). The City then takes it a step further, arguing that R.C. 2941.47 applies to prosecutions initiated by complaint, notwithstanding the statute’s express application only to cases prosecuted by

indictment or information, because R.C. 2941.35 applies methods of instituting felony prosecution to prosecutions of misdemeanors. The City's argument falls flat on multiple levels.

First, the City overstates the significance of the court of appeals' reference to "felony prosecutions" in the above-quoted parenthetical. Even if the court of appeals overlooked Crim.R. 7(A)'s recognition of misdemeanor prosecutions by indictment or information, this oversight does not undermine its basic holding. The court of appeals did not base its decision on a belief that only felonies may be prosecuted by indictment or information. Rather, the court of appeals correctly observed that R.C. 2941.47 could not apply in this case because the prosecution was initiated by complaint and not by indictment or information. At best, the court of appeals' parenthetical reference to "felony prosecutions" was dicta that formed no part of the ruling below.

Second, the City's argument also overstates the significance of R.C. 2941.35. This statute speaks only to the method of *instituting* prosecution, allowing prosecution of misdemeanor offenses to be "instituted by a prosecuting attorney by affidavit or such other method as is provided by law." Though R.C. 2941.35 would presumably allow institution of a misdemeanor prosecution via a criminal complaint, the statute does not inform the very different issue of the court's authority to enter a plea on behalf of a defendant or to proceed to trial in absentia upon a defendant's non-appearance for trial. Thus, even if the Court accepts the City's premise that it could *institute* a criminal action by complaint, Washington Mutual's *conviction* in this case cannot be valid unless there was some statute or rule that authorized a trial in Washington Mutual's absence. As the court of appeals aptly noted, there was no such authority. See 2008-Ohio-6956, at ¶¶ 9-11 (observing that R.C. 2938.12, R.C. 2945.12, and Crim.R. 43 allow trials in the accused absence only under certain circumstances not present in this case).

Nonetheless, Cleveland's jurisdictional memorandum clings to the belief that "the procedures detailed in O.R.C. § 2941.47 . . . authorize trials without the presence of a physical representative of the corporation." (Memo. In Support of Jurisdiction, at 7.) Even putting aside for a moment R.C. 2941.47's textual limitation to prosecutions by indictment or information, a reading of R.C. 2941.47 belies the meaning that the City gives it. Nowhere in its text does the statute state that a corporation may be tried in absentia. The statute only states that a "clerk of the common pleas court" shall enter a plea of "not guilty" upon a corporation's failure to appear and that, upon that plea, the corporation is "before the court until the case is finally disposed of."

Without any explanation, much less authority, the City interprets "finally disposed of" to be synonymous with an authorization of a trial in absentia. But if the legislature had truly wanted to authorize corporations to be tried in absentia under R.C. 2941.47, it could have easily said so expressly. Indeed, in other statutes, the General Assembly has specifically detailed the circumstances and process under which an accused may be tried in his absence. See R.C. 2945.12 (stating that an accused may be tried in his absence upon request in writing or when accused escapes or forfeits recognizance); R.C. 2938.12 (describing similar circumstances under which an accused may be tried "in his absence" for a misdemeanor in courts inferior to the common pleas court). For purposes of statutory construction, the General Assembly is presumed to be aware of previously enacted statutes. See *State v. Conyers*, 87 Ohio St.3d 246, 250, 1999-Ohio-60, citing *Henrich v. Hoffman* (1947), 148 Ohio St. 23, 27. Accordingly, the absence of language in R.C. 2941.47 to specifically allow a court to hold a criminal trial in the accused's absence is conclusive evidence that R.C. 2941.47 provides no such authority.

What's more, the City's proposition of law suffers from its reliance on the flawed premise that "the service and pleading requirements of R.C. 2941.47 have been met" in this case.

(See Memo. In Support of Jurisdiction, at 6.) As chronicled previously, there is considerable doubt as to whether Washington Mutual was adequately served with a complaint and summons in accordance with R.C. 2941.47. Apart from that problem, however, the City overlooks the fact that the trial court lacked the authority to enter a plea on behalf of Washington Mutual. R.C. 2941.47 authorizes *only* the “clerk of the *court of common pleas*” to enter a plea on an accused corporation’s behalf. (Emphasis added.) Accordingly, the “pleading requirements” of R.C. 2941.47 were not met in this case. The statute does not contemplate a municipal court, as in this case, entering a plea on a corporation’s behalf and then convening a misdemeanor trial in its absence.

B. A Complaint Is Not The Functional Equivalent of an Indictment or Information.

The City also pleads for this Court to grant jurisdiction because it contends that a misdemeanor complaint should be treated as the functional equivalent of an “indictment” or “information” for purposes of R.C. 2941.47. Cleveland contends that the distinctions between these charging instruments are “minimal at best,” and goes so far as to say that “there is no observable policy reason to limit application of O.R.C. 2941.47 to indictments and informations.” (Memo. In Support of Jurisdiction, at 8-9.) This argument provides no legitimate issue worthy of jurisdiction, as it asks nothing more than for this Court to substitute the City’s policy preference for that of the General Assembly.

The City’s claim that there is “no observable policy reason” to limit application of R.C. 2941.47 to prosecutions by indictment or information overlooks the proverbial elephant in the room. Simply put, the *language of the statute* itself limits its scope to prosecutions initiated by indictment or information. There is no more readily “observable policy reason” than that. The General Assembly has made the policy choice to limit the procedure described in R.C. 2941.47

to cases that have the imprimatur of a grand jury (i.e., indictment) or the prosecuting attorney (i.e., information).² If the General Assembly had meant to include prosecutions initiated by complaint in the municipal court to be within the scope of R.C. 2941.47, it could have easily done so by enacting the appropriate language. The City offers no reason why this Court should ignore the plain statutory language and substitute an alternative public policy view under the guise of statutory interpretation. See *In re Weiland*, 89 Ohio St.3d 535, 538, 2000-Ohio-233 (refusing to engage in the “subterfuge” of judicially crafting public policy “under the guise of statutory interpretation”).

Cleveland’s second proposition of law is not worthy of this Court’s review.

Response to Proposition of Law No. III: Because R.C. 2941.47 Does Not Allow a Trial In Absentia, It is Appropriate to Consider R.C. 2938.12 and Crim.R. 43 To Determine Whether a Corporate Defendant Can Be Tried In Absentia for a Misdemeanor.

Cleveland’s third proposition reads more like an assignment of error, solidifying the reality that Cleveland is more interested in perceived “error correction” than in this Court’s resolution of a question of public or great general interest. And as if that were not reason enough to deny jurisdiction over the third proposition of law, the City’s argument misses the mark on its merits.

Finding R.C. 2941.47 inapplicable by its express terms, the court of appeals turned to other criminal statutes and rules to determine whether the municipal court properly convicted Washington Mutual in absentia. The court first looked at R.C. 2938.12, which allows misdemeanor trials in absentia in only two circumstances—(1) upon request of the “person being tried for a misdemeanor” or (2) when the “person being tried escapes or departs without leave”

² See R.C. 2941.021 (stating that “[a]ny criminal offense not punishable by death or life imprisonment may be prosecuted by information filed in the common pleas court by the prosecuting attorney”).

after trial begins.³ See, also, R.C. 2945.12 (prescribing similar terms for misdemeanors prosecuted by indictment). It then considered Crim.R. 43, which mandates the defendant's physical presence (which, for a corporation, may be through counsel for all purposes) "at every stage of the criminal proceeding" unless (1) the defendant waives the right to be present or (2) the defendant engaged in disruptive conduct at the trial. See Crim.R. 43(A)(1), (A)(3), and (B). See 2008-Ohio-6956, at ¶¶ 9-11. Based on these provisions, the court of appeals reached the inescapable conclusion that none of them allowed the municipal court clerk to enter a plea on Washington Mutual's behalf or the trial court to proceed with a trial without Washington Mutual being present.

Despite this well reasoned conclusion based on the applicable criminal statute and rule, the City contends that the trial court erred in considering R.C. 2938.12 and Crim.R. 43 *at all*. Cleveland argues that the court of appeals should have looked only to R.C. 2941.47 as "determinative" on the issue of whether and when a corporation may be criminally tried in absentia.

It is a well-established rule of construction that specific statutory provisions prevail over general provisions when there is a conflict between them. *Village Condominium Owners Assn v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 223, 2005-Ohio-4631, at ¶ 10. Cleveland uses this principle as its hook, arguing that R.C. 2941.47 is the "specific" statute governing criminal prosecutions of corporations, whereas R.C. 2938.12 and Crim.R. 43 are merely general provisions that do not specifically refer to corporations. (Memo. In Support of Jurisdiction, at 10.) The City's proposition of law is flawed, however, as it relies on the incorrect premise that R.C. 2941.47 allows—much less mandates—a trial in the accused corporation's absence. As

³ The term "person" includes a corporation. See R.C. 1.59.

illustrated above, R.C. 2941.47 does *not* authorize a trial in the accused's absence. Moreover, the statute applies, by its plain terms, only to a prosecution initiated by indictment or information and, even then, only to actions prosecuted in a court of common pleas—circumstances that are decidedly absent in the present case. See R.C. 2941.47.

Because R.C. 2941.47 does not speak to the issue of a trial in absentia, it cannot possibly be a “specific” statute that conflicts with R.C. 2938.12 and Crim.R. 43, both of which speak specifically to the circumstances under which *any* defendant may be tried in absentia. Ironically, the City's third proposition of law attempts to have it both ways. On the one hand, the City contends that R.C. 2938.12 and Crim.R. 43 are “not relevant” because neither provision specifically speaks to the prosecution of corporate defendants in misdemeanor cases, whereas R.C. 2941.47 does. Yet it contends on the other hand that R.C. 2941.47 should apply in this case, even though its language does *not* specifically cover prosecutions of corporations initiated via a complaint in municipal court. This Court should not accept this case to indulge the City's dubious statutory interpretation.

CONCLUSION

The court of appeals simply applied the plain language of R.C. 2941.47 to vacate a misdemeanor conviction following a trial that never should have occurred without the defendant's presence. Not liking the result, the City of Cleveland is asking this Court to accept jurisdiction and deem R.C. 2941.47 to mean something it does not say. Cleveland's desire to prosecute misdemeanors against corporate defendants in a manner that is not authorized by statute does not pose a question of public or great general interest. This Court should therefore decline jurisdiction over this cause.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, *Memorandum Of Appellee Washington Mutual Bank, A Division Of JP Morgan Chase NA, In Opposition To Jurisdiction*, was served by regular United States Mail, postage prepaid, on April 6, 2009, upon the following:

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