

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OHIO  
COLUMBUS, OHIO

VALENTINE SCHUROWLIEW  
1276 W. 3<sup>rd</sup> St. #411  
Cleveland, Ohio 44113

Relator,

vs.

JUDGE LANCE MASON  
Cuyahoga County Court of Common Pleas  
1200 Ontario St., Courtroom 16C  
Cleveland, Ohio 44113,

and

JUDGE LAURA GALLAGHER  
Cuyahoga Probate Court, Courtroom 2  
1 Lakeside Ave.  
Cleveland, Ohio 44113,

Respondents.

CASE NO: 10-0712

COMPLAINT FOR AN  
EXTRAORDINARY WRIT

FILED  
APR 26 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

Now comes Relator Valentine G. Schurowliew (hereinafter "Relator") and, by and through undersigned counsel, and pursuant to Rule X Section 4 of the Rules of Practice of the Supreme Court of Ohio, respectfully requests the Supreme Court of Ohio to grant a Writ of Prohibition ordering the Cuyahoga Common Pleas Court

1. To dismiss the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Estate of Sofija Schurowliew in Cuyahoga Common Pleas case # CV 09 684581 due to the lack of standing on the part of the Plaintiffs and for the reason that the Probate Court has exclusive jurisdiction over matters relating to the administration of estates: Fraud, Conversion; Negligence; and Breach of Fiduciary Duty;

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2. To transfer the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Sofija Schurowliew Income Trust in Common Pleas case # CV 684581 to the plenary jurisdiction of the Probate Court due to the fact that the Probate Court possesses exclusive jurisdiction to direct and control the conduct of fiduciaries and to settle their accounts: Fraud; Conversion; Negligence; and Breach of Fiduciary Duty;
3. To dismiss the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Estate of Sofija Schurowliew and the Sofija Schurowliew Income Trust in Common Pleas Case CV 09 684581 for lack of ripeness: Tortious Interference with Rights of Inheritance and Unjust Enrichment;
4. To dismiss Plaintiffs' prayers for compensatory and punitive damages against Defendant Relator in Common Pleas case # CV 09 684581 for lack of ripeness, having been premature; AND
5. As the six counts in Common Pleas case # CV 09 684581 comprise all of the causes of action in that case – to dismiss Plaintiffs' prayer for attorneys fees and costs against Defendant Relator, as well as their prayer for other just and equitable relief.

DEFENDANT RELATOR PRAYS THAT THE SUPREME COURT OF OHIO ORDER BOTH THE CUYAHOGA COMMON PLEAS COURT AND THE CUYAHOGA PROBATE COURT STAY THEIR PROCEEDINGS PENDING A RULING ON THE WRIT.

*Alternatively, the Relator respectfully requests the Supreme Court to grant a Writ of Prohibition ordering the Cuyahoga Common Pleas Court*

1. To dismiss the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Estate of Sofija Schurowliew in Common Pleas case # CV 684581 due to lack of standing on the part of Plaintiffs and for the reason that the Probate Court has exclusive jurisdiction over matters relating to the administration of Estates: Fraud, Negligence, Breach of Fiduciary Duty, and Conversion;

AND

2. To dismiss the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Estate of Sofija Schurowliew in Common Pleas Case CV 09 684581 for lack of ripeness: Tortious Interference with Rights of Inheritance and Unjust Enrichment;

DEFENDANT RELATOR ASKS THE SUPREME COURT TO ORDER THE CUYAHOGA COMMON PLEAS COURT TO STAY TRIAL (IF IT IS FOUND THAT A TRIAL IS REQUIRED) UNTIL AFTER THE PROBATE COURT TRIAL IN ORDER TO PREVENT CONCURRENT TRIALS AND INCONSISTENT VERDICTS.

DEFENDANT RELATOR ASKS THE SUPREME COURT TO EITHER ORDER THE CUYAHOGA COMMON PLEAS COURT TO STAY ITS PROCEEDINGS, OR IF THE SUPREME COURT SEES FIT, TO ORDER BOTH THE PROBATE AND COMMON PLEAS COURTS TO STAY THEIR PROCEEDINGS PENDING A RULING ON THE WRIT.

**FACTS:**

On 2/11/1990, decedent Sofija Schurowliew created the Sofija Schurowliew Income Trust, an irrevocable Grantor Trust which named her three children Valentine Schurowliew (Relator), and Vera and Alex Schurowliew (Plaintiffs in Cuyahoga Probate Cases 2008 ADV 136931, 2009 ADV 144867, and Cuyahoga Common Pleas Case CV 09684581) as co-trustees. The Trust provided that all Income earned by Trust Assets was to be personal income to Sofija Schurowliew, while the Trust assets were to be divided into 3 equal shares upon Sofija Schurowliew's passing. The Income from the Trust assets was to pass into a Dollar Bank, FSB, passbook ("Income Account") originally in the sole name of Sofija Schurowliew. The Trust was funded on 3/16/1990 with 2 Dollar Bank Certificates of Deposit totaling \$112,000 in the names of the 3 co-Trustees. On January 25, 1993, Valentine Schurowliew was added as joint owner of the Income Account with rights of survivorship by Sofija Schurowliew. The Trust assets were never withdrawn during Sofija Schurowliew's lifetime.

As time passed, Sofija Schurowliew proceeded to add Valentine Schurowliew to her various assets as either payable upon death beneficiary or joint owner with rights of survivorship. In some cases Valentine Schurowliew was named sole owner. The assets in question were Sofija Schurowliew's Certificates of Deposit at Charter One Bank, a Legacy Treasury Direct Account (Treasury Bills), and the personal residence of Sofija Schurowliew at 4323 Leading Ave. Cleveland, Ohio 44109. In addition, Valentine Schurowliew was made beneficiary payable upon death of Sofija Schurowliew's Thrift Plan at the Federal Reserve Bank of Cleveland and her Individual Retirement Account at Dollar Bank. He was also joint owner with rights of survivorship of her money market account at Charter One Bank since 1989. The Legacy Treasury Direct Assets were never touched, the residence was never sold or mortgaged, and the Individual Retirement Account and the Thrift Plan were never disturbed. The Charter One Bank Certificates of Deposit remained completely intact with the exception of two: one to pay for Sofija Schurowliew's funeral and the other to cover Sofija Schurowliew's legal bills in the Guardianship Suit.

In 2005, Sofija Schurowliew executed a Power of Attorney for Health Care naming her son Valentine Schurowliew (Relator) as attorney in fact. On May 4, 2007, Sofija Schurowliew executed a financial power or attorney naming her son Valentine Schurowliew as attorney in fact for financial purposes. Sofija Schurowliew passed away on 5/30/2008 at the age of 88.

Prior to Sofija Schurowliew's passing on November 13, 2007, Plaintiff Vera Schurowliew filed Guardianship Proceedings in Cuyahoga County Probate Court against her mother, alleging that the latter was mentally incompetent and unable to manage her own affairs. Sofija Schurowliew passed away before the Guardianship Action could be concluded. Sofija Schurowliew was found to be competent by Dr. Raymond Scheetz and Dr. Theodore Suh of the Cleveland Clinic Foundation and, in fact, Magistrate Charles Brown of the Cuyahoga Probate Court recommended dismissal of the Guardianship Action on the basis that Sofija Schurowliew was not mentally incompetent and was able to manage her own affairs.

A. Cuyahoga Probate Court case 2008 ADV 136931:

On May 23, 2008, Plaintiffs Vera and Alex Schurowliew, 4080 Park Fulton Oval #1034 Cleveland, Ohio 44144, filed a Complaint for Trust Accounting and Other Equitable Relief against Defendants Valentine Schurowliew (Relator), Charter One Bank, FSB, 50 W. Broad St. #1800 Columbus, Ohio 43215, and Dollar Bank, 3 Gateway Center- 401 Liberty Ave. Pittsburgh, PA 15222. The Complaint for Trust Accounting and Other Equitable Relief concerned the Sofija Schurowliew Income Trust, an Intervivos Grantor Trust created on 2/11/1990, and funded on 3/16/1990 by Sofija Schurowliew, the mother of the Plaintiffs and the Defendant (Relator). The Complaint for Trust Accounting was filed in the Cuyahoga Probate Court as case # 2008 ADV 136931.

On August 13, 2008, an Amended Complaint was filed in the Cuyahoga County Probate Court under case # 2008 ADV 136931 for a Trust Accounting, Removal of Fiduciary, Concealment and Embezzlement, Fraud, Conversion, Breach of Fiduciary Duty, Negligence, and Tortious Interference with Rights of Inheritance. The Amended Complaint concerned both the Sofija

Schurowliew Income Trust of the original Complaint for Trust Accounting and the Estate of the now deceased (as of 5/30/2008) Sofija Schurowliew, mother of the Relator and the two Plaintiffs.

On 12/29/2008, Plaintiffs filed notice of dismissal of Defendant Charter One Bank and on 1/5/2009, Plaintiffs filed notice of dismissal of Defendant Dollar Bank. On 1/26/2009, the Probate Court dismissed the Conversion, Fraud, Tortious Interference with Rights of Inheritance, and Negligence Counts of the Amended Complaint for lack of subject matter jurisdiction. It also dismissed the Concealment and Embezzlement of Assets claim as not being properly before the Court pursuant to ORC 2109.50. On 3/13/2009, the Plaintiffs dismissed the Breach of Fiduciary Duty count of the Amended Complaint. Plaintiffs filed a Second Amended Complaint on 3/24/2009 to include the newly appointed Administrator of the Estate of Sofija Schurowliew, Joseph Bancsi, as a Defendant. On 4/10/2009, Plaintiffs filed a Notice of Dismissal of the Second Amended Complaint of 2008 ADV 136931, which at that point only contained the Complaint for a Trust Accounting and request for Removal of Fiduciary.

B. Cuyahoga Probate Court case 2009 ADV 144867:

On 2/26/2009, the Plaintiffs filed a Complaint for Concealment of Assets in the Probate Court, pursuant to the Probate Court's instructions on 1/26/2009 that the Concealment Complaint comply with ORC 2109.50. This Concealment Complaint was filed under case # 2009 ADV 144867. The Concealment Complaint was amended on 3/24/2009 to include the newly appointed Administrator of the Estate of Sofija Schurowliew as a Defendant. The new Concealment Complaint concerned the Estate of Sofija Schurowliew and the Sofija Schurowliew Income Trust. In the Amended Complaint for Concealment of Assets, Plaintiffs requested, in addition to the 10% penalty called for in ORC 2109.50, attorney fees, costs, and other just and equitable relief.

C. Cuyahoga Common Pleas Court case CV 09 684581:

On 2/11/2009, the Plaintiffs filed a Complaint in Cuyahoga Court of Common Pleas under case # CV 09 684581. The Complaint in Common Pleas concerned the same Sofija Schurowliew Income Trust and the Estate of Sofija Schurowliew. The Complaint included the Counts of Negligence/Breach of Fiduciary Duty, Fraud, Conversion, Interference with Expectancy of Inheritance, and Unjust Enrichment, and asked that:

1. A permanent injunction be issued, enjoining Defendant from taking any actions related to or affecting the Sofija Schurowliew Income Trust without the unanimous consent of the Plaintiffs;
2. A permanent injunction be issued, enjoining Defendant from taking any actions to or affecting the property, funds, assets, things, and or moneys either related to this action , owned by Sofija Schurowliew, the Sofija Schurowliew Income Trust, and/or which Plaintiffs own/owned, or had/have and interest;
3. the Court award Plaintiffs sole title and ownership to all real and personal property which "Defendant improperly obtained, withdrew, concealed, embezzled, conveyed away, impermissibly possessed, disposed, and/ or made personal use of (or in the alternative order that said property be provided, returned, or restored to Sofija's Estate)."
4. the Court award Plaintiffs compensatory and punitive damages, in excess of \$250,000, to be paid by Defendant;
5. the Court award Plaintiffs attorney fees and costs;
6. the Court remove Defendant as Trustee and fiduciary;
7. the Court grant other relief as just and necessary.

On 2/24/09 Defendant Valentine Schurowliew (Relator) filed an Answer and a Counterclaim for Defamation, Malicious Prosecution, Intentional Infliction of Emotional Distress, and Abuse of Process against Plaintiffs in CV 09 684581, asking for attorney fees and monetary damages for the above causes of action as they related to the multiple lawsuits filed by Plaintiffs. On 4/2/2009, Defendant (Relator) filed a Notice of Partial Dismissal of his Counterclaim (Malicious Prosecution count). On 4/6/2009, Plaintiffs filed an Amended Complaint including Estate

Administrator Joseph Bancsi as Defendant. On 4/9/2010, the Court of Common Pleas dismissed Defendant (Relator's) Counterclaim for Abuse of Process, Defamation, and Intentional Infliction of Emotional Distress with prejudice (but not without delay).

**WHEREAS,**

Both the Case in Probate (2009 ADV 144867) and the Common Pleas Case (CV 09-684581) concern the same Sofija Schurowliew Income Trust created on 2/11/1990 and the Estate of the now deceased Sofija Schurowliew;

The Probate Court has exclusive jurisdiction by ORC 2104.24( C ) to direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates and, by ORC 2104.24(M), to *direct and control the conduct of fiduciaries and to settle their accounts;*

The Probate Court has plenary power in law and equity under ORC 2104.24 to fully and completely dispose of any matter properly before the Court, unless the power is expressly otherwise limited or denied by statute; and

Recent case law in the Ohio Supreme Court, the Eighth District Court of Appeals and in other Appellate Districts, has expanded the reach of the plenary power of the Probate Court to dispose fully and completely of all matters before it;

**THE RELATOR PRAYS THAT THE SUPREME COURT OF OHIO GRANT A WRIT OF PROHIBITION TO PREVENT THE CUYAHOGA COURT OF COMMON PLEAS FROM EXERCISING JURISDICTION IN CV 09 684581 BY ORDERING THE CUYAHOGA COMMON PLEAS COURT**

1. To dismiss the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Estate of Sofija Schurowliw in Common Pleas case # CV 684581 due to the lack of standing on the part of the Plaintiffs and for the reason that the Probate Court has exclusive jurisdiction over matters relating to the administration of estates: Fraud, Conversion, Negligence, and Breach of Fiduciary Duty;
2. To transfer the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Sofija Schurowliw Income Trust from Common Pleas Case CV 09 684581 to the plenary jurisdiction of the Probate Court due to the fact that the Probate Court possesses exclusive jurisdiction to direct and control the conduct of fiduciaries and to settle their accounts: Fraud; Conversion; Negligence; and Breach of Fiduciary Duty;
3. To dismiss the following causes of action against Defendant Relator with respect to (and as these causes of action apply to) the Estate of Sofija Schurowliw and the Sofija Schurowliw Income Trust in Common Pleas Case CV 09 684581 for lack of ripeness: Tortious Interference with Rights of Inheritance and Unjust Enrichment;
4. To dismiss Plaintiffs' prayers for compensatory and punitive damages against Defendant Relator in Common Pleas case # CV 09 684581 for lack of ripeness;

**AND**

5. As the six counts in Common Pleas case # CV 09 684581 comprise all of the causes of action in that case – to dismiss Plaintiffs' prayer for attorneys fees and costs against Defendant Relator, as well as their prayer for other just and equitable relief.

**DEFENDANT RELATOR PRAYS THAT THE SUPREME COURT OF OHIO ORDER BOTH THE CUYAHOGA COMMON PLEAS COURT AND THE CUYAHOGA PROBATE COURT STAY THEIR PROCEEDINGS PENDING A RULING ON THE WRIT.**

*Alternatively, the Relator respectfully requests the Supreme Court to grant a Writ of Prohibition ordering the Cuyahoga Common Pleas Court*

- 1. To dismiss the following causes of action against Relator Valentine Schurowliew with respect to (and as the causes of action apply to) the *Estate of Sofija Schurowliew* in Common Pleas case # CV 09 684581 due to the Plaintiffs' lack of standing and the fact that the Probate Court has exclusive jurisdiction over the administration of estates: Fraud, Conversion, Negligence, and Breach of Fiduciary Duty;**

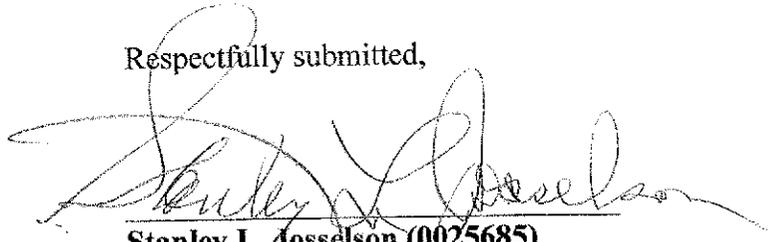
**AND**

- 2. To dismiss the following causes of action against Defendant Relator with respect to (and as the causes of action apply to) the *Estate of Sofija Schurowliew* in Case CV 09 684581 for lack of ripeness: Tortious Interference with Rights of Inheritance and Unjust Enrichment;**

**DEFENDANT RELATOR ASKS THE SUPREME COURT TO ORDER THE CUYAHOGA COMMON PLEAS COURT TO STAY TRIAL (IF IT IS FOUND THAT A TRIAL IS REQUIRED) UNTIL AFTER THE PROBATE COURT TRIAL IN ORDER TO PREVENT CONCURRENT TRIALS AND TO PREVENT INCONSISTENT VERDICTS.**

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley L. Josselson", written over a horizontal line.

**Stanley L. Josselson (0025685)**

The Marion Building

1276 West 3<sup>rd</sup> Street, Suite #411

Cleveland, Ohio, 44113

(216) 696-8070

[JosselsonLaw@gmail.com](mailto:JosselsonLaw@gmail.com)

*Attorney for Relator Valentine Schurowliew*

IN THE SUPREME COURT OF THE STATE OF OHIO  
COLUMBUS, OHIO

VALENTINE SCHUROWLIEW )  
1276 W. 3<sup>rd</sup> St. #411 ) CASE NO:  
Cleveland, Ohio 44113 )  
Relator, )  
vs. ) AFFIDAVIT OF RELATOR  
JUDGE LANCE MASON )  
Cuyahoga County Court of Common Pleas )  
1200 Ontario St., Courtroom 16C )  
Cleveland, Ohio 44113, )  
and )  
JUDGE LAURA GALLAGHER )  
Cuyahoga County Probate Court )  
1 Lakeside Ave., Courtroom 2 )  
Cleveland, Ohio 44113, )  
Respondents. )

Now comes Relator Valentine Schurowliew, being of the age of majority, sworn and deposed, states the following facts of which he has personal knowledge:

On 2/11/1990, decedent Sofija Schurowliew created the Sofija Schurowliew Income Trust, an irrevocable Grantor Trust which named her three children Valentine Schurowliew (Relator), and Vera and Alex Schurowliew (Plaintiffs in Cuyahoga Probate Cases 2008 ADV 136931, 2009 ADV 144867, and Cuyahoga Common Pleas Case CV 09684581) as co-trustees. The Trust provided that all Income earned by Trust Assets was to be personal income to Sofija Schurowliew, while the Trust assets were to be divided into 3 equal shares upon Sofija Schurowliew's passing. The Income from the Trust assets was to pass into a Dollar Bank, FSB, passbook ("Income Account") originally in the sole name of Sofija Schurowliew. The Trust was funded on 3/16/1990 with 2 Dollar Bank Certificates of Deposit totaling \$112,000 in the names of the 3 co-Trustees. On January 25, 1993, Valentine Schurowliew was added as joint owner

with rights of survivorship of the Income Account by Sofija Schurowliew. The Trust assets were never withdrawn during Sofija Schurowliew's lifetime.

As time passed, Sofija Schurowliew proceeded to add Valentine Schurowliew to her various assets as either payable upon death beneficiary or joint owner with rights of survivorship. In some cases Valentine Schurowliew was named sole owner. The assets in question were Sofija Schurowliew's Certificates of Deposit at Charter One Bank, a Legacy Treasury Direct Account (Treasury Bills), and the personal residence of Sofija Schurowliew at 4323 Leading Ave. Cleveland, Ohio 44109. In addition, Valentine Schurowliew was made beneficiary payable upon death of Sofija Schurowliew's Thrift Plan at the Federal Reserve Bank of Cleveland and her Individual Retirement Account at Dollar Bank. He was also joint owner with rights of survivorship of her money market account at Charter One Bank since 1989. The Legacy Treasury Direct Assets were never touched, the residence was never sold or mortgaged, and the Individual Retirement Account and the Thrift Plan were never disturbed. The Charter One Bank Certificates of Deposit remained completely intact with the exception of two: one to pay for Sofija Schurowliew's funeral and the other to cover Sofija Schurowliew's legal bills in the Guardianship Suit.

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to be competent and, in fact, Magistrate Charles Brown of the Cuyahoga Probate Court recommended dismissal of the Guardianship Action on the basis that Sofija Schurowliew was not mentally incompetent and was able to manage her own affairs.

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as a Defendant. On 4/10/2009, Plaintiffs filed a Notice of Dismissal of the Second Amended Complaint of 2008 ADV 136931, which at that point only contained the complaint for a Trust Accounting and a request for Removal of Fiduciary.

On 2/26/2009, the Plaintiffs filed a Complaint for Concealment of Assets in the Probate Court, pursuant to that Court's instructions on 1/26/2009 that the Concealment Complaint comply with ORC 2109.50. This Concealment Complaint was filed under case # 2009 ADV 144867. The Concealment Complaint was amended on 3/24/2009 to include the newly appointed Administrator of the Estate of Sofija Schurowliew as a Defendant. The new Concealment Complaint in Probate Court concerned the Estate of Sofija Schurowliew and the Sofija Schurowliew Income Trust. In addition to the 10% penalty called for in ORC 2109.50, Plaintiffs asked for attorney fees, costs, and other just and equitable relief.

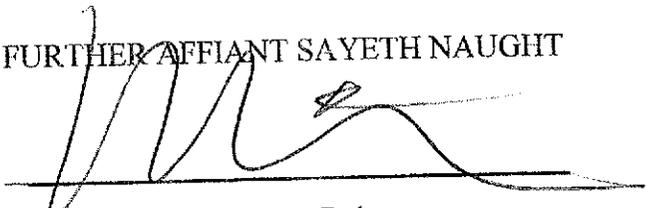
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1. A permanent injunction be issued, enjoining Defendant from taking any actions related to or affecting the Sofija Schurowliew Income Trust without the unanimous consent of the Plaintiffs;
2. A permanent injunction be issued, enjoining Defendant from taking any actions to or affecting the property, funds, assets, things, and or moneys either related to this action , owned by Sofija Schurowliew, the Sofija Schurowliew Income Trust, and/or which Plaintiffs own/owned, or had/have and interest;
3. the Court award Plaintiffs sole title and ownership to all real and personal property which "Defendant improperly obtained, withdrew, concealed, embezzled, conveyed away, impermissibly possessed, disposed, and/ or made personal use of (or in the alternative order that said property be provided, returned, or *restored to Sofija's Estate*)."

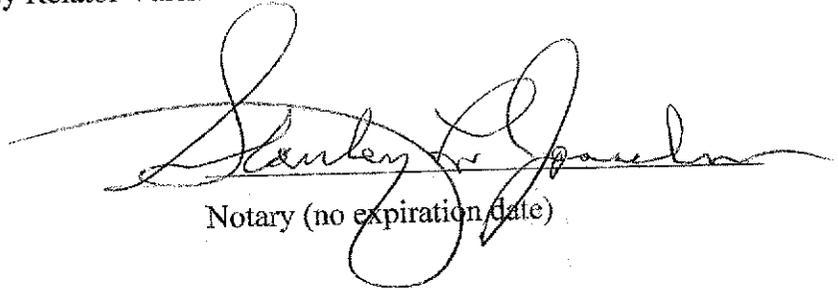
4. the Court award Plaintiffs compensatory and punitive damages, in excess of \$250,000, to be paid by Defendant;
5. the Court award Plaintiffs attorney fees and costs;
6. the Court remove Defendant as Trustee and fiduciary;
7. the Court grant other relief as just and necessary.

On 2/24/09 Defendant Valentine Schurowliew (Relator) filed an Answer and a Counterclaim for Defamation, Malicious Prosecution, Intentional Infliction of Emotional Distress, and Abuse of Process against Plaintiffs in CV 09 684581 related to the multiple lawsuits they had filed against him. On 4/2/09, Defendant (Relator) filed a Notice of Partial Dismissal of his Counterclaim (Malicious Prosecution count). On 4/6/2009, Plaintiffs filed an Amended Complaint including Estate Administrator Joseph Bancsi as Defendant. On 4/9/2010, the Court of Common Pleas dismissed Defendant Relator's Counterclaim for Abuse of Process, Defamation, and Intentional Infliction of Emotional Distress with prejudice (but not without delay).

FURTHER AFFIANT SAYETH NAUGHT

  
Valentine Schurowliew, Relator

Sworn and subscribed before me and in my presence on 4/21, 2010, in the County of Cuyahoga, Ohio, by Relator Valentine Schurowliew.

  
Notary (no expiration date)