

IN THE SUPREME COURT OF OHIO

Case No. 10-1624

William F. Chinnock
8238 Sugarloaf Road
Boulder, Colorado 80302,
Relator

vs.

The Avon Lake Municipal Court, and
Judge Darrell A. Bilancini
32885 Walker Road
Avon Lake, Ohio 44012,
Respondents

FILED
SEP 16 2010
CLERK OF COURT
SUPREME COURT OF OHIO

VERIFIED COMPLAINT FOR WRIT OF MANDAMUS WITH
ATTACHED AFFIDAVIT IN SUPPORT OF ISSUANCE OF WRIT

Now Comes Relator William F. Chinnock ("Relator") and for his Verified Complaint for Writ of Mandamus against Respondents Avon Lake Municipal Court and Judge Darrell A. Bilancini (collectively "Respondents") says as follows:

1. Jurisdiction Confirmed Upon High Court by the Ohio Legislature and the Ohio Constitution: Jurisdiction for this Mandamus action is conferred upon this Ohio Supreme Court by the Ohio legislature [O.R.C. 2731.01, et seq] and the Ohio Constitution [Article IV, Section 1].

2. Venue of Case of Great Public Importance: This Mandamus action is venued in this honorable High Court instead of an inferior court because it is a case of great public importance with significant consequences to the administration of justice in Ohio.

Substantial adverse consequences will result to Relator, Lorain County, and Ohio's citizens if the Writ is not issued.

Purpose of Mandamus Action is for High Court to Command Inferior Court and Its Public Officer [Judge] to Perform Their Legal Duty to Exercise The Forcible Entry and Detainer Jurisdiction ("Forcible Detainer Jurisdiction) Conferred Upon Them by the Ohio Legislature, the Ohio Constitution, and the United States Constitution: The sole purpose

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CLERK OF COURT
SUPREME COURT OF OHIO

of this Mandamus action is for this High Court to command Respondents Municipal Court and its public officer [Judge] perform the legal duty to exercise the forcible detainer jurisdiction conferred upon them by the Ohio legislature, the Ohio Constitution, and the United States Constitution.

4. Public Interest Will be Served by Issuance of Writ, and Nature of Wrong Which Would Result from Denial of Writ: The Public Interest served by the issuance of a Writ of Mandamus is for this High Court to compel the inferior court and its Judge to exercise their forcible detainer jurisdiction as an alternative to violence between parties engaged in disputes over possession of private residential property, and to motivate property owners to resort to the law alone rather than seek to recover possession of their property by force.

The nature of the wrong which would result a denial to issue the Writ is that it would constitute a denial of the legislative and Constitution due process rights of the state and federal constitutions guaranteed to Relator and other citizens who are entitled to a summary and speedy determination as to the right of possession of their real property.

5. Relator is a Real Party in Interest: Relator is an individual and is now, and at all times mentioned in this Complaint was, the owner of his private residence located at 2861 Center Road, Avon, Ohio. Relator is a real party in interest because Respondents' refusals to exercise their forcible detainer jurisdiction adversely impact and deny to him his legislative and constitutional rights to possession of his private real property.
6. Relator's Legal Right to Have Respondents Perform Their Legal Duty; Respondents' Legal Duty to Perform Their Legal Duty; and No Plain, Speedy, and Adequate Remedy: Relator has a clear and certain legal right to have Respondents exercise their forcible detainer jurisdiction; Respondents have a clear and certain legal duty to exercise their forcible detainer jurisdiction; and there is no plain, speedy, and adequate remedy at law.
7. Clear and Present Legal Right of Relator to Have Respondents Perform Their Forcible Detainer Jurisdiction: Relator has a clear and present legal right to have Respondents perform their forcible detainer jurisdiction, and has twice made demand upon them to do so, but they have refused to do so in violation of multiple Ohio forcible detainer laws

conferred upon them by the Ohio legislature, the Ohio Constitution, and the United States Constitution.

8. Clear and Present Legal Duty of Respondents to Exercise Their Forcible Detainer Jurisdiction as an Alternative to Violence in Citizens' Disputes Over Possession of Private Property: Respondents are the Avon Lake, Ohio Municipal Court and its Judge, upon which the Ohio legislature has conferred the authority and duty to exercise forcible detainer jurisdiction as an alternative to violence between parties engaged in disputes over possession of private real property.
9. No Plain, Speedy, and Adequate Remedy: Relator does not have any plain, speedy, and adequate remedy in the ordinary course of law other than the issuance by this Court of a Writ of Mandamus.

Relator has filed an appeal from Respondents' refusals to exercise their jurisdiction and perform their duty, but the time for such an appeal to be determined is about a year or longer, which lengthy delay will adversely affect Relator because his private residence is in the possession of occupiers who have not made any monthly payment for possession for the months of June, July, August, and September 2010.

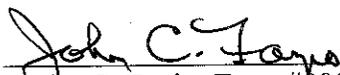
Such lengthy delay will also adversely affect other Ohio citizens who have a clear and present right to have their disputes regarding possession of their private property determined by "a summary, extraordinary, and speedy method . . . to serve as an expedited mechanism by which an aggrieved [property owner] may recover possession of real property."

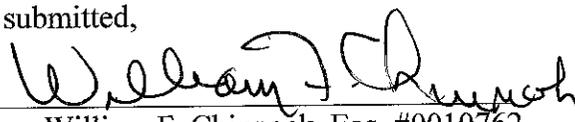
Such lengthy delay will also adversely affect Lorain County itself, because the risk of foreclosure due to the inability to pay the \$200,000+ mortgage on Relator's private property caused by the occupiers' non-payment, which is encouraged and condoned by Respondents' refusals to exercise their forcible detainer jurisdiction, will cause further economic depression to an Ohio community which is already severely economically depressed.

10. Affidavit in Support of Issuance of Writ and Memorandum of Law in Support of Issuance of Writ: Relator incorporates by reference into this Verified Complaint for Writ of Mandamus his attached Affidavit in Support of Issuance of Writ, and also incorporates by reference his separate Memorandum of Law in Support of Issuance of Writ.

WHEREFORE, Relator respectfully prays that this honorable Supreme Court of Ohio issue a Writ of Mandamus commanding Respondents to perform the public duties conferred upon them as public entities and public officials, to exercise the forcible entry and detainer jurisdiction conferred upon them by the Ohio legislature, the Ohio Constitution, and the United States Constitution, to hear Relator's dispute upon its merits and render a decision forthwith regarding the right to possession of his private residence, and to grant him such other and further relief as the Court deems proper.

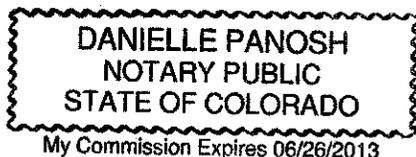
Respectfully submitted,

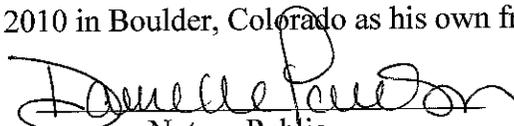

John C. Fazio, Esq. #0005746
843 N. Cleveland-Massillion Rd #UP-11A
Bath Township, Ohio 44333
440-463-2957
johncfazio@frontier.com


William F. Chinnock, Esq. #0010762
8238 Sugarloaf Road
Boulder, Colorado 80302
303-258-0511
judgewfc@aol.com

JURAT

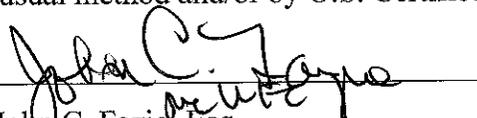
William F. Chinnock came before me, a Notary Public in and for the state of Colorado, and executed this Verified Complaint for Writ of Mandamus with Attached Affidavit in Support of Issuance of Writ on the 14th day of September, 2010 in Boulder, Colorado as his own free act and will




Notary Public

Certificate of Service

The Clerk of the Ohio Supreme Court is requested to serve copies of this document upon Respondents Avon Lake Municipal Court and Judge Darrell A. Bilancini separately at 32885 Walker Road, Avon Lake, Ohio 44012 by its usual method and/or by U.S. Certified Mail with return receipt requested.


John C. Fazio, Esq.

IN THE SUPREME COURT OF OHIO

Case Number _____

William F. Chinnock
8238 Sugarloaf Road
Boulder, Colorado 80302,
Relator

AFFIDAVIT IN SUPPORT OF ISSUANCE
OF WRIT OF MADAMUS

Avon Lake Municipal Court
and Its Judge Darrell A. Bilancini
32885 Walker Road
Avon Lake, Ohio 44012,
Respondents

NOW COMES Relator William F. Chinnock (“Relator”), being first duly sworn, and based upon his personal knowledge, setting forth facts admissible in evidence, and verifying that he is competent to testify to all the matters stated in this Affidavit, says as follows:

I. Jurisdiction and Venue

1. Jurisdiction is Conferred Upon Ohio Supreme Court by Ohio Constitution and Ohio Revised Code: Jurisdiction for this Mandamus Action is conferred upon this Court by Article IV, Section 1 of the Ohio Constitution, and by Ohio Revised Code 2731.01 et seq. [Mandamus].

Such jurisdiction includes the power and authority to order Respondents Avon Lake Municipal Court and Judge, who refuse to exercise their mandatory forcible entry and detainer jurisdiction (“forcible detainer jurisdiction”) conferred upon them by the Ohio legislature, the Ohio Constitution, and the United States Constitution, to exercise their jurisdiction.

2. Mandamus Action Venue Lies in Ohio Supreme Court Because It Is a Case of Great Public Importance: This Mandamus action is venued in this honorable High Court instead of an inferior court because it is a case of great public importance with significant consequences to Relator, the citizens of Lorain County and Ohio, and the administration of justice.

II. Forcible Detainer Jurisdiction is Based Upon Legislation
and Guarantees Under Ohio and United States Constitutions

3. Forcible Detainer Jurisdiction is Based Upon Legislation and Guarantees Under the Ohio Constitution and the United States Constitution: Forcible detainer jurisdiction is primarily based upon the Ohio legislature's enactments, but equally upon fundamental Constitutional Guarantees.

The foundation of Ohio's administration of justice, including the essential remedy of forcible detainer, which is an alternative to violence between citizens, is based upon (a) the Ohio and United States Constitutional Guarantees of the sacred and unalienable right to own, possess, and use private property; (b) the Constitutional Mandate that for every wrong there is a remedy; and (c) the Ohio and United States Due Process Guarantees that every man is entitled to his day in court.

These Ohio and United States Constitutional Guarantees will be fatally undermined if the Writ of Mandamus does not issue.

III. Purpose of Mandamus is to Command Court and Judge to Perform Their Legal Duties

4. Purpose of Mandamus Action is for this High Court to Command the Inferior Court and Its Judge to Perform the Legal Duty Conferred Upon Them by the Ohio Legislature and the State and Federal Constitutions to Exercise Their Forcible Detainer Jurisdiction: The sole purpose of this Mandamus action is for this Ohio Supreme Court to command Respondents Municipal Court and its elected public officer [Judge] to perform the legal duty conferred upon them by the Ohio legislature and the state and federal constitutions to exercise their forcible detainer jurisdiction.

5. Mandamus Will Lie to Compel Courts and Judges to Exercise Their Jurisdiction in a Case Properly Before Them: This Mandamus action is the appropriate remedy to compel governmental entities, including courts and judges, to comply with statutory and constitutional edicts by exercising their jurisdiction in a case properly before them.

The Writ of Mandamus, in compelling the exercise of jurisdiction, merely coerces the Court and Judge to do that which is required by law.

Mandamus lies to compel judges of inferior courts to perform acts to discharge their clear and present official duties as public officials, and will compel judges who refuse to act to act upon matters within their jurisdiction.

Mandamus strives to promote substantial justice, prevent unconstitutional conduct, and override serious public consequences which would attend denying the remedy.

Mandamus enforces public rights and acts.

IV. Public Interest Served by Issuance of Writ, and Nature of Wrong Which Would Result from Denial of Writ

6. Public Interest is Served by Issuance of the Writ: The Public Interest served by the issuance of a Writ of Mandamus is for this High Court to compel Respondents inferior court and judge to exercise their forcible detainer jurisdiction as an alternative to violence between parties engaged in disputes over possession of private real property, and to motivate owners to resort to the law alone rather than seek to recover possession of their property by force.

7. Nature of Wrong Which Would Result from Denial of Writ: The nature of the wrong which would result from a denial to issue the Writ of mandamus is that it would constitute a denial of the legislative and Constitutional due process rights of the state and federal constitutions guaranteed to Relator and other citizens who are entitled to a summary and speedy determination as to the right of possession of their private property.

V. Relator's Clear and Certain Right; Respondents' Clear and Certain Duty; and No Plain, Speedy, and Adequate Remedy

8. Relator Has a Clear and Certain Legal Right to Have Respondents Perform Their Duty; Respondents Have a Clear and Certain Legal Duty to Perform Their Duty; and There is No Plain, Speedy, and Adequate Remedy at Law: In this case, Relator has a clear and certain legal right to have Respondents exercise their forcible detainer jurisdiction; Respondents have a clear and certain duty to exercise their forcible detainer jurisdiction; and there is no plain, speedy, and adequate remedy at law.

VI. Parties

9. Relator is a Real Party in Interest Because Respondents' Refusals to Exercise Their Jurisdiction Adversely Impacts His Legislative and Constitutional Rights to Own, Possess, and Use His Private Property: Relator is an individual and is now, and at all times mentioned herein has been, the owner of his former residence ("residence") located in Lorain County, Ohio and is a real party in interest because his constitutional and legislative rights to his private property are affected by this proceeding.

Respondents' refusals to exercise their forcible detainer jurisdiction directly and adversely affect Relator's constitutional and legislative rights regarding his private property in the following respects: (a) such refusals condone and encourage the occupiers of his private property to continue to possess and use it without payment; and (b) such refusals place his ownership of his private residence at risk because without rental payments from occupiers there is an actual risk of foreclosure on his residence.

Respondents' refusals to exercise their jurisdiction also adversely impact the citizens of Lorain County, and the citizens of Ohio, who are entitled under law to have speedy judicial determinations as to the right of possession of their private property.

Respondents' refusals to exercise their jurisdiction also adversely impact the already deeply-distressed community of Lorain County because they promote foreclosures.

10. Respondents Avon Lake Municipal Court and Judge Have the Legal Duty to Exercise The Forcible Detainer Jurisdiction Conferred Upon Them by the Ohio Legislature, the Ohio Constitution, and the United States Constitution: Respondents have the legal duty to exercise their forcible detainer jurisdiction conferred upon them by the Ohio Legislature, the Ohio Constitution, and the United States Constitution.

VII. Relator's Demands for Respondents to Exercise Their Forcible Detainer Jurisdiction, and Respondents' Refusals to Exercise Such Jurisdiction

11. Relator Granted Possession of His Residence to Occupiers in December 2006 Under a Land Contract Which Provided for Monthly Payments of \$1,700 Upon Which They Defaulted by Non-Payments for the months of June, July, August, and September 2010: Relator purchased his residence located at 2861 Center Road, City of Avon, and County of Lorain, Ohio on June 6, 2001 and remains its sole owner. Exhibit "A" – Deed.

In December 2006, Relator granted peaceable possession of his residence to Joseph and Deborah Kokinda ("occupiers") under a land contract which provided for monthly payments of \$1,700 which they paid until they defaulted in payment for the months of June, July, August, and September 2010. Exhibit "B" – Land Contract.

12. Parties Agree that Land Contract Was in Effect for Less Than Five Years and that Less Than Twenty Per Cent of the Purchase Price Was Paid on the Purchase Price: Both parties to the land contract agree that it was in effect for less than five years and that less than twenty per cent was paid on the purchase price, which facts eliminate the foreclosure remedy of the land contract statute (Chapter 5313 of the Ohio Revised Code) – which is a mandatory remedy.

The remaining remedy under the statute is the forfeiture remedy – an elective remedy – which Relator choose not to elect.

Nevertheless, Respondents' second refusal to exercise their forcible detainer jurisdiction is based upon the mere existence of the elective forfeiture remedy in the land contract statute - even though it was not elected by Relator – which Respondents contend revokes the legislative mandates and the constitutional guarantees which impose a duty upon them to exercise their such jurisdiction.

And Respondents' first refusal to exercise their forcible detainer jurisdiction is based upon the mere existence of the Elective Forfeiture Remedy in the land contract itself -- even though it was not elected by Relator – which Respondents contend revokes the legislative mandates and the constitutional guarantees which impose a duty upon them to exercise their forcible detainer jurisdiction.

13. Relator by Filing a Forcible Detainer Action Against Occupiers of His Residence Made Several Demands Upon Respondents to Exercise Their Forcible Detainer Jurisdiction (a) Under Multiple Provisions of the Ohio Revised Code, and (b) Under Multiple Constitutional Guarantees of the United States Constitution and the Ohio Constitution: On July 5, 2010 Relator filed suit in the Avon Lake Municipal Court [case #CVG-1000368] upon the basis that occupiers had defaulted in payment since June 2010, praying for repossession of his residence under law.

Relator's demand invoked Respondents' forcible detainer jurisdiction under multiple statutory enactments of the Ohio legislature, and under multiple Constitutional Guarantees of the Ohio Constitution and the United States Constitution, which created the duty for Respondents to exercise their forcible detainer jurisdiction.

[Note: In the interests of simplicity, (a) the forcible detainer jurisdiction statutes enacted by the Ohio legislature [including O.R.C. 1901.18 (A) (8); 1923.01 (A); O.R.C. 1923.02 (A) (5); O.R.C. 1923.02 (A) (6); and O.R.C. 1923.02 (A) (7)], and (b) the Constitutional Guarantees under the United States Constitution and Ohio Constitution, are set forth in Relator's

Memorandum of Law].

14. Relator Made His First Demand Upon Respondents for Them to Exercise Their Forcible Detainer Jurisdiction, But They Refused to Do So Upon the Basis that the *Land Contract Itself* Offers an [elective] Remedy of Forfeiture: On July 22, 2010 Respondents refused for the first time to exercise their forcible detainer jurisdiction upon the basis that *the land contract* itself offers an [elective] forfeiture remedy -- that Relator upon default by occupiers “**may** give [occupiers] notice . . . [resulting in forfeiture].” [Emphasis added]

Respondents’ *entire* judgment entry refusing to exercise jurisdiction states:

“This matter comes before the Court on defendants’ motion to dismiss this FED action on the basis that relief may not be granted on this cause of action *because the parties’ controversy involves a land contract that provides (at page 2) for a forfeiture remedy in the event that the buyers fail to perform. Therefore, the land contract is not subject to this action for forcible entry and detainer. The case is therefore dismissed without prejudice. It is so ordered.*” Exhibit “C” – July 22, 2010 Order

*That is to say, Respondents ruled that because the land contract provides that Relator **MAY** elect to choose a forfeiture remedy, which he did NOT do, the mere existence of the elective remedy revokes the legislative enactments and constitutional guarantees mandating that Respondents perform their legal duty to exercise their forcible detainer jurisdiction.*

15. Relator Made His Second Demand Upon Respondents for Them to Exercise Their Forcible Detainer Jurisdiction, But They Again Refused to Do So, This Time Upon the Basis that the *Land Contract Statute* Provides an [Elective] Remedy of Forfeiture: Relator made his second demand upon Respondents to exercise their forcible detainer jurisdiction, pointing out that *both the land contract itself* [i.e., “may” elect forfeiture remedy] *and the land contract statute* (i.e., “may” elect forfeiture remedy “in addition to all other remedies”) speak in unequivocal *elective and not mandatory language*, and thus forfeiture under both the contract and the statute constitutes an *elective remedy* rather than a mandatory remedy.

On August 10, 2010 Respondents refused for a second time to exercise their forcible detainer jurisdiction, this time upon the basis that the land contract statute rather than the land contract itself provides an [elective] forfeiture remedy, offering that upon default by occupiers

“forfeiture of the interest [of occupiers] may be enforced . . .” O.R.C. 5313.06. “In addition to any other remedies provided by law . . . [forfeiture remedy may be sought]”. O.R.C. 5313.08. “The election of the vendor” *Exhibit “D” – August 10, 2010 Order.

Respondents’ *entire* judgment entry refusing to exercise jurisdiction states:

“This matter came before the court for hearing on plaintiff’s motion for reconsideration of the court’s order of 7/22/10 dismissing plaintiff’s complaint. Following oral argument on the motion, the court finds that in a default situation, plaintiff has two options to reclaim his property sold by him to defendants by land contract, (1) foreclosure or (2) forfeiture (but only if contract in effect less than 10 years and less than 20% of purchase price paid). *The statutory scheme does not provide for an FED action alone.* The motion is denied. It is so ordered.” (Emphasis added) *

[Note: Irrelevant but illuminating is the fact that the language specified in the Order regarding forfeiture (“less than 10 years”) is twice the amount of the unambiguous language of the statute]

That is to say, *Respondents ruled that because the land contract statute provides that Relator **MAY** elect to choose a forfeiture remedy, which he did NOT do, the mere existence of the elective remedy operates to revoke the legislative enactments and constitutional guarantees mandating that Respondents perform their legal duty to exercise their forcible detainer jurisdiction.*

VIII. No Plain, Speedy, and Adequate Remedy Exists Because an Appeal Lacks the Essential “Complete, Beneficial, and Speedy” Elements of a Plain, Speedy, and Adequate Remedy

16. Relator Files Appeal of Respondents’ Refusals to Exercise Their Forcible Detainer Jurisdiction, But an Appeal Does Not Meet the “Complete, Beneficial, and Speedy”

Requirements of a Plain, Speedy, and Adequate Remedy: On August 20, 2010 Relator filed an appeal of Respondents’ refusals to exercise their forcible detainer jurisdiction as a prerequisite to filing this Mandamus action.

But the remedy of appeal in this case does not constitute a plain, speedy, and adequate remedy because it is not a remedy with undue delay -- a typical appeal before the Ninth District Court of Appeals takes about a year or longer, and thus it does not meet the “complete, beneficial, and *speedy*” requirements of a plain, speedy, and adequate remedy.

17. An Appeal is Not a Plain, Speedy, and Adequate Remedy Because Relator Has Been Deprived of His Clear and Certain Legal Rights Granted to Him by the Ohio Legislature, and of His Fundamental Constitutional Due Process Guarantees including (a) His Sacred and Unalienable Right to Own, Possess, and Enjoy His Private Property; (b) that for Every Wrong There is a Remedy; and (c) Every Man is Entitled to His Day in Court: Depriving Relator of his clear and certain legal statutory rights granted to him by the Ohio legislature and his fundamental Constitutional Guarantees and due process rights granted to him by the Ohio and United States Constitutions for a year or longer does not constitute a “plain, speedy, and adequate remedy.”

Unquestionably, the remedy of appeal in this case is “not equally beneficial, convenient, and effective” as the Remedy of Mandamus.

18. An Appeal in this Case Does Not Meet the “Complete, Beneficial, and Speedy” Requirements of a Plain, Speedy, and Adequate Remedy Because It Delays Judgment for a Year or Longer and Continues to Perpetuate the Risk of Foreclosure on Relator’s Residence, Resulting (a) in Substantial Financial Loss to Relator, (b) Unjust Enrichment to Occupiers, and (c) Adverse Economic Consequences to the Citizens of an Already Economically Depressed Community: The appeal filed by Relator as a prerequisite to filing this Mandamus action does not constitute a “complete, beneficial, and speedy” remedy, and thus does not constitute a plain, speedy, and adequate remedy because it continues to perpetuate the risk of foreclosure by the mortgage holder on Relator’s residence, resulting in (a) grave financial loss to Relator, (b) unjust enrichment to the occupiers, and (c) adverse economic consequences to the citizens of Lorain County in an already economically depressed community.

Not granting the Writ of Mandamus would be detrimental to the public interest, and result in a denial of justice.

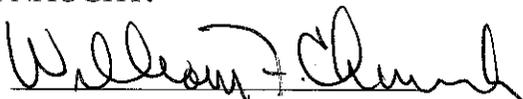
IX. Prayer

19. In Summary, Relator Has a Clear and Certain Legal Right to Have Respondents Perform Their Duty to Exercise Their Forcible Detainer Jurisdiction; Respondents Have a Clear and Certain Legal Duty to Perform Their Forcible Detainer Jurisdiction; and There is No Available Plain, Speedy, and Adequate Remedy: All essential elements of Mandamus are met in this case.

20. Relator Prays that the Ohio Supreme Court Issue a Writ of Mandamus Directed to Respondents for Them to Exercise Their Forcible Detainer Jurisdiction and Proceed to a Decision on the Merits: Relator prays that this honorable Court issue a Writ of Mandamus directed to the Avon Lake Municipal Court and Judge, to exercise their forcible detainer jurisdiction and proceed to a decision on the merits with all due haste.

Relator so prays. Let right be done.

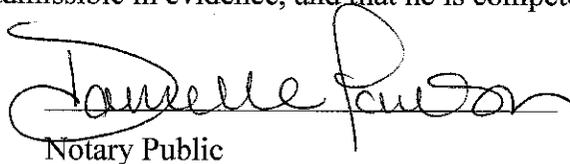
FURTHER AFFIANT SAYETH NAUGHT.



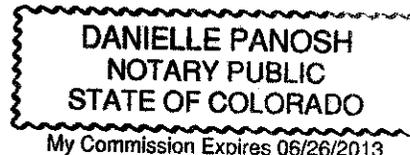
William F. Chinnock

Jurat

This Verified Complaint for Writ of Mandamus was sworn before me, a Notary Public in and for the State of Colorado, in Boulder, Colorado on the 14th day of September by William F. Chinnock, of his own free act and will, with him acknowledging that the facts contained in it are based upon his personal knowledge, are admissible in evidence, and that he is competent to so testify.

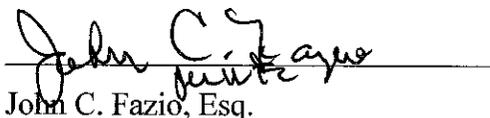


Notary Public



Certificate of Service

The Clerk of the Ohio Supreme Court is requested to serve copies of this document upon Respondents Avon Lake Municipal Court and Judge Darrell A. Bilancini separately at 32885 Walker Road, Avon Lake, Ohio 44012 by its usual method and/or by U.S. Certified Mail with return receipt requested.



John C. Fazio, Esq.

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS that **KENNETH HASICK**, divorced and not remarried, and **MAUREEN ELBRA HASICK**, divorced and not remarried, the Grantors, who claim title by and through, Volume, 1198, Page 364, Lorain County Records, for valuable consideration paid Grant with General Warranty Covenants to **WILLIAM F. CHINNOCK**, the Grantee, whose tax mailing address will be, 2861 Center Road, Avon, OH 44011, the following described Real Property:

Situated in the City of Avon, County of Lorain and State of Ohio; and being known as part of John Grittner's Plat, as recorded in Volume 11, Page 20, of Lorain County Record of Plats and being part of Section No. 14, Avon Township, now in Avon City and more definitely described as follows: Beginning at the intersection of the centerline of West Park Road and the centerline of the Avon Lake Wooster Road, sometimes known as Center Road, or State Route No. 76; thence South 3 degrees 08' East in the centerline of the Avon Lake - Wooster Road, a distance of 572.65 feet to a point. Said point is the principal place of beginning. Thence due East, a distance of 657.23 feet to a point in the center line of French Creek. Said line passes through an iron pin set 30.00 feet off the center line of the Avon Lake-Wooster Road. Thence South 13 degrees 26' 10" West, in the centerline of the French Creek, a distance of 90.00 feet to a point. Thence South 17 degrees 18' East in the centerline of French Creek, a distance of 49.36 feet to an iron pin; thence south 86 degrees 52' West, in the North side line of a 20.00 foot private drive, a distance of 692.63 feet to the center line of the Avon Lake-Wooster Road. Said line passes through an iron pin set 30.00 feet off the centerline of said road. Thence North 3 degrees 08' West in the center line of the Avon Lake Wooster Road, a distance of 168.04 feet to the principal place of beginning, enclosing a parcel of land containing 2.235 acres but subject to all legal highways, as surveyed by Ray E. Hollis, Registered Engineer and Surveyor, July 27, 1965.

Permanent Parcel No. 04-00-014-107-007

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto the said Grantee, Grantee's heirs and assigns forever free from all encumbrances whatsoever except restrictions of record and any conditions, reservations and easements created in conjunction with such restrictions, zoning ordinances, if any, and taxes and assessments, both general and special, for the current half of the taxable year and thereafter.

WITNESS our hands this 16 day of JUNE, in the year 2001.

Signed and acknowledged in the presence of:

[Signature]

Kenneth Hasick
Kenneth Hasick

[Signature]
ALYSIA K. WRIGHT

Gloria A. Elbra
GLORIA A. ELBRA

Maureen Elbra Hasick
Maureen Elbra Hasick

[Signature]

" "
A

State of Ohio)
) SS
County of Lorain)

BE IT REMEMBERED, that on the 16 day of JUNE, 2001, before me, a Notary Public in and for said County and State, personally appeared, **Kenneth Hasick**, the Grantor, who acknowledged that he did sign the foregoing instrument and that the same was his own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto Subscribed my name and affixed my Seal on the day and year last aforesaid.

[Signature]
NOTARY PUBLIC

RICHARD G. GENERAL
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires Nov. 14, 2004

State of Ohio)
) SS
County of Lorain)

BE IT REMEMBERED, that on the 18 day of JUNE, 2001, before me, a Notary Public in and for said County and State, personally appeared, **Maureen Elbra Hasick**, the Grantor, who acknowledged that she did sign the foregoing instrument and that the same was her own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto Subscribed my name and affixed my Seal on the day and year last aforesaid.

[Signature]
NOTARY PUBLIC

RICHARD G. GENERAL
Notary Public, State of Ohio, Cuy. Cty.
My Commission Expires Nov. 14, 2004

This Instrument prepared by:
Jon D. Clark, Attorney at Law
Baumgartner & O'Toole
A Legal Professional Association
674 Oberlin Road
Elyria, Ohio 44035
(440) 323-6272

Box: Lorain County Title Company

140095

MARY ANN JAMISON
LORAIN COUNTY
RECORDER

2001 JUN 27 P 3 06

RECEIVED FOR RECORD

TRANSFERRED
IN COMPLIANCE WITH SEC. 319-202
OHIC REV. CODE

JUN 27 2001

MARK R. STEWART
LORAIN COUNTY AUDITOR

Kept 800.00 from

003240

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14.00 BA

STATE OF OHIO (SSI, JUDITH M. NEDWICK, COUNTY RECORDER OF LORAIN, OHIO IN WHOSE COUNTY OF LORAIN) CUSTODY THE RECORDS OF SAID COUNTY ARE KEPT. SO HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF INSTRUMENT NUMBER: 140095 OF SAID COUNTY. Maureen IN TESTIMONY WHEREOF, I HAVE HEREINTO TO SUBSCRIBE MY NAME AND AFFIXED M OFFICIAL SEAL OF THE CITY OF ELYRIA, OHIO THIS 14th DAY OF JUNE 2001
JUDITH M. NEDWICK, LORAIN COUNTY RECORDER
[Signature]
BY DEPUTY RECORDER

LAND CONTRACT

This LAND CONTRACT is made and entered into on the dates indicated below.

BE IT KNOWN, this contract is entered into between the undersigned Joseph A Kokinda and Deborah S Kokinda (collectively "Buyer"), whose address is 2861 Center Road, and William F. Chinnock ("Seller"), whose address is 8238 Sugarloaf Road, Boulder, Colorado.

WITNESSETH, that in consideration of the mutual covenants to be performed between the respective parties hereto, it is agreed between the parties as follows:

The Seller hereby sells and agrees to convey unto the Buyer all of Seller's Right, Title, and interest in and to that certain parcel of land known as 2861 Center Road, Avon, Ohio 44011 ("premises"), together with all improvements and appurtenances now on the premises, and subject to all recorded easements, conditions, encumbrances and limitations, if any, affecting the premises, and further subject to the following conditions:

Buyer hereby purchases said premises of the Seller and agrees to pay the Seller the sum of \$250,000 in the following manner:

Earnest monies of \$10,000, with \$5,000 payable upon execution of this contract, and \$5,000 payable on or before March 1, 2007, with the balance secured by this contract and the premises, plus interest on the unpaid sum, at the rate of seven per cent per annum, payable as follows: (a) Monthly installments of \$1,500 or more per month, with interest to be adjusted on an annual basis, plus (b) monthly installments of \$215 for realty taxes and \$20 for homeowners insurance.

Seller shall pay the realty taxes and homeowners insurance with such funds. Seller shall keep, with the above-specified sums paid by Seller, any buildings on premises insured against loss by fire, windstorm, flood, or other casualty in the name of Seller, for the amount of the purchase price.

Seller shall provide Buyer with an annual statement showing the amount credited to principal and interest, with payments first applied to interest and then principal owing on the premises.

The first [prorated] monthly payment shall be due and payable upon execution of this contract, and the above-specified monthly sums shall be due and payable on the first day of each month thereafter, until the entire sum of principal and interest is paid in full, with the entire amount of principal and interest payable in full within thirty months from the date hereof. Buyer shall be liable in the sum of one hundred dollars for each late payment paid beyond the fourth day of the month. Buyer shall have the right to pay larger installments than above provided, and to pay the whole, or any part of the balance remaining unpaid on this contract, at any time before due and payable, without penalty. The date of payment, if sent by mail, shall be determined by the postmark on the envelope; or the date of actual delivery if hand delivered.

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If Buyer shall fail to perform any of the conditions contained in this contract for a period of ten (10) days after the date on which such performance is hereby required (default), Seller may give Buyer written notice specifying the default which has occurred and inform them in such notice that if such default continues for a period of thirty days after the date on which performance is required, Seller will immediately declare this contract void and forfeited. In such case, the buildings, improvements and all payments made on this contract shall be forfeited to Seller as rental for the use of the premises and as stipulated damages for failure to perform. In such event, Seller shall be entitled to immediate peaceable possession of the premises without notice, and may remove Buyer and all persons claiming under them, may consider Buyer as a tenant holding over without permission, and remove and evict them from the premises.

All written notices permitted or required by this contract to be given to the parties hereto shall be at their respective mailing locations listed hereinabove. Such notices shall be by U.S. first class mail. Failure of Seller to exercise his rights under this contract shall not be deemed as a waiver by him to exercise such rights at any time.

All buildings, trees or other improvements now on the premises, or hereafter made or placed thereon, shall be considered a part of the premises, and shall be security for the performance of this contract, and may not be removed therefrom, except as may be necessary to improve premises by constructing a driveway or building site. Buyer may effectuate a lot split with the proper authorities and construct a second house on the premises without the permission of the Seller, but the Seller does not warrant that such lot split can be effectuated. Seller will provide Buyer with his file relating to his initial inquiries to the authorities regarding a lot split, but Seller makes no representations whatsoever as to whether such lot split can be effectuated by Buyer. Buyer shall not commit, or suffer any other person to commit, any waste or damage to premises and shall keep premises in its new and/or improved condition. Buyer shall not allow the premises to go into disrepair, and Seller shall have the right upon 24 hours notice to enter the premises for the purpose of inspecting them.

If Buyer shall, in the time and manner above specified, make all the payments as herein provided, and shall observe and perform all conditions and agreements herein made, Seller shall thereupon, upon effectuation of the balloon payment thirty months after date of execution of this contract by good and sufficient warranty deed convey the premises to Buyer on the conditions herein agreed.

Possession of premises may be taken by Buyer on date of execution of this contract and retained for so long as no default is made by Buyer in any conditions hereof. Buyer accepts premises as-is, and agrees that no verbal promises have been made which do not appear in writing. Buyer assumes full responsibility as to suitability of premises for any particular purpose.

Seller reserves the right to convey his interest in the premises subject to this contract. Seller maintains a first mortgage with Huntington National Bank on the premises. Seller may place, continue, and renew a mortgage on the premises, which shall be a lien on the premises superior to the rights of Buyer. Priority of lien for same shall be secured by giving written notice to Buyer within fifteen days of the execution of all such new

mortgages and renewals containing the name and address of the mortgagee, the rate of interest of such mortgage, the amount and due date of payments and maturity of principal.

It is expressly understood and agreed by the parties hereto that time shall be deemed as of the very essence of this contract and all conditions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of their parties.

In the event that any provisions of this contract shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of it.

Buyer acknowledges that Seller has advised them to have legal counsel review this contract and that they have had the opportunity to have legal counsel review it before signing it.

[Signature]
Buyer Joseph A Kokinda

[Signature]
Witness Pamela A. Compton

[Signature]
Buyer Deborah S Kokinda

[Signature]
Witness Stephanie Hardwick

[Signature]
Seller William F. Chinnock

Witness

Verification

Joseph A. Kokinda and Deborah S. Kokinda came before me this 16th day of December 2006, and executed this document as their own free act and will.

[Signature]
PAMELA A COMPTON Notary Public
Notary Public, State of Ohio
My Commission Expires June 3, 2007
Verification

William F. Chinnock came before me this 28 day of December 2006, and executed this document as his own free act and will.

[Signature]
Notary Public



My Comm. Expires Oct 1, 2007

Amendment to Land Contract

This Amendment to Land Contract executed this 23 day of December 2006, constitutes an amendment to the land contract entered into between and among Joseph A. Kokinda and Deborah C. Kokinda (collectively "Buyer") and William F. Chinnock ("Seller") for the premises located 2881 Center Rd., Avon Ohio.

The Land Contract is amended by adding the following language thereto:

1. Within 20 days after the land contract and this amendment has been signed by both Buyer and Seller, the Seller shall record a copy as provided in ORC 5301.25 and deliver a copy to the county auditor.
2. The title insurance company of John McDermott shall conduct a title search regarding the premises within two business days of the execution of this amendment and Seller shall pay the sum of \$300 to the company for such service. If McDermott can not perform within such time, Seller shall hire Chicago Title to perform such title search. If any deficiencies are discovered during the title search, Seller shall have 30 days after execution of the land contract and amendment to cure such deficiency. Seller is paying the sum of \$2,548.94 for realty taxes to the Lorain County Auditor simultaneously with the execution of this amendment.
3. The sum of \$180 per month is substituted for the sum of \$215 per month in the land contract in regard to the realty taxes.
4. Upon execution of the land contract and this amendment, the Seller shall notify his homeowners insurance company to add the Buyers to the homeowners insurance policy as an additional insured for their respective interests in the premises.
5. Seller shall credit Buyer with \$1,100 for each \$1,000 they pay over and above the total of \$1,700 per month for the monthly installment on the contract, realty taxes, and homeowners insurance.
6. Evidence of title shall be provided to Buyer at Seller's expense from the title insurance company of John McDermott at the time of the balloon payment and the transfer of the premises by good and sufficient warranty deed from Seller to Buyer.

- 7. Legal description of the premises is attached hereto. Seller shall not hold a mortgage on the property in an amount greater than the balance due under the land contract. If the Seller defaults on any mortgage on the property, the Buyer can pay on the mortgage and receive credit on the land contract.
- 8. The land contract and amendment conform to the formalities required by law for the execution of deeds and mortgages, including two witnesses and a notary public.

Joseph A. Kokinda
 Buyer Joseph A. Kokinda
 # 434 771

Deborah C. Kokinda
 Buyer Deborah C. Kokinda
 53544620 OH

William F. Chinnock
 Seller William F. Chinnock

 Witness

 Witness

 Witness

Verification

Joseph A. Kokinda and Deborah C. Kokinda came before me this 23 day of December 2006, and executed this document as their own free act and will.

Raymond Rachid
 Notary Public *Raymond Rachid*
 12-14-2008

Verification

William F. Chinnock came before me this 28 day of December 2006, and executed this document as his own free act and will.

Hassie Larson
 Notary Public



My Comm. Expires Oct 1, 2007

FILED
JUL 22 2010

Case No. CVG 1000368

WILLIAM F. CHINNOCK Plaintiff

Attorney for Plaintiff

VS.

JOSEPH A. KOKINDA, et al Defendant Avon Lake Municipal Court

Attorney for Defendant

Date 7/22/10 J.E.

THIS MATTER COMES BEFORE THE COURT ON DEFENDANT'S MOTION TO DISMISS THIS
FED ACTION ON THE BASIS THAT RELIEF MAY NOT BE GRANTED ON THIS
CAUSE OF ACTION BECAUSE THE PARTIES' CONTROVERSY INVOLVES A
LAND CONTRACT THAT PROVIDES (AT PAGE 2) FOR A FORFEITURE REMEDY
IN THE EVENT THAT THE BUYERS FAIL TO PERFORM. THEREFORE,
THE LAND CONTRACT IS NOT SUBJECT TO THIS ACTION FOR FORCIBLE
ENTRY AND DETAINER. THE CASE IS THEREFORE DISMISSED WITHOUT
PREJUDICE. IT IS SO ORDERED.

Kelli Orman

Judge

D P/D

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C

AVON LAKE MUNICIPAL COURT

WILLIAM F. CHYMNOCK Plaintiff

JOSEPH A. KOKUDA, et al. Defendant

FILED
AUG 10 2010

Case No. CV6 1000368

Attorney for Plaintiff

Date 8/10/10 J.E.

AVON LAKE MUNICIPAL COURT

Attorney for Defendant

THIS MATTER CAME BEFORE THE COURT FOR HEARING ON PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER OF 7/22/10 DISMISSING PLAINTIFF'S COMPLAINT. FOLLOWING ORAL ARGUMENT ON THE MOTION, THE COURT FINDS THAT IN A DEFAULT/SITUATION PLAINTIFF HAS 2 OPTIONS TO RETAIN HIS PROPERTY SOLD TO DEFENDANTS BY LAND CONTRACT, (1) FORECLOSE OR (2) FORFEITURE (BUT ONLY IF CONTRACT IN EFFECT LESS THAN 5 YEARS AND LESS THAN 20% OF PURCHASE PRICE PAID) THE STANDARD SETTING DOES NOT PROVIDE FOR AN EJECT ACTION NONE. R.C. 5313.08 REQUIRES THAT PLAINTIFF INITIALLY PREFER UNDER R.C. 5313.05 AND 5313.06 BEFORE BRINGING A FORFEITURE ACTION AND ACTION FOR EJECTMENT UNDER ~~THE~~ ^{R.C. 5313.04} R.C. 5313.04. THE PLAINTIFF HAS NOT MET JURISDICTIONAL REQUIREMENTS FOR NOTICE UNDER R.C. 5313.04. THE MOTION IS DENIED. IT IS SO ORDERED.

William F. Chymnock Judge

903-258-0511

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Chymnock

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