

ORIGINAL

IN THE SUPREME COURT OF OHIO

original action in mandamus – case no. **10-2029**

STATE ex rel.:

DATA TRACE INFORMATION SERVICES, LLC
1500 W. Third Street, Suite 501
Cleveland, Ohio 44113-1467

and

MICHAEL STUTZMAN
7340 Shadeland Station, Suite 125
Indianapolis, Indiana 46256

and

PROPERTY INSIGHT, LLC
1367 East Sixth Street, Suite 500
Cleveland, Ohio 44114

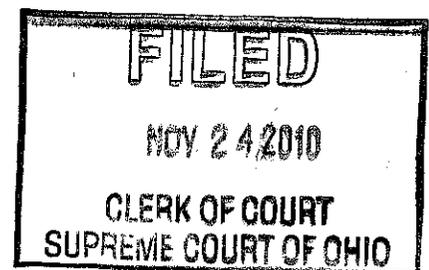
and

MICHAEL CARSELLA
505 E. North Avenue, Suite 200
Carol Stream, Illinois 60188

-v-

RECORDER OF CUYAHOGA COUNTY, OHIO
1219 Ontario Street
Cleveland, Ohio 44113

Complaint for alternative and peremptory writs of mandamus



David Marburger (0025747)
Michael E. Mumford (0073931)
BAKER & HOSTETLER LLP
1900 E.9th St.; 3200 PNC Center;
Cleveland, Ohio 44114-3485
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mmumford@bakerlaw.com

Attys for relators

1. Relator Data Trace Information Services, LLC is a limited liability company that maintains an office in Cleveland, Ohio, at 1500 W.3rd Street, Suite 501. Data Trace Information Services is organized under the laws of Delaware and registered with the Ohio Secretary of State to do business in Ohio.

2. Relator Property Insight, LLC, is a limited liability company that maintains an office in Cleveland, Ohio, at 1367 E.6th Street, Suite 500. It is organized under the laws of California and registered with the Ohio Secretary of State to do business in Ohio.

3. The relator companies are independent of each other; neither owns or controls the other, and the relator companies do not share the same owner.

4. Among other functions, each relator company independently:

- a. stores and indexes electronic images of public records that county recorders have recorded and keep;

- b. maintains electronic databases of information gleaned from those electronic images of public records that county recorders have recorded and keep;

- c. allows title insurers to use the electronic images and electronic databases to assist title insurers in evaluating the quality of title of real estate and encumbrances on real estate;

d. allows title insurers to use the electronic images and electronic databases to assist persons who may buy real estate, fund the purchase of real estate by others, or guarantee the payment of the purchase price of real estate. Those persons use the information from relators to evaluate the quality of title of real estate and encumbrances on real estate.

5. The relator companies do not sell or transfer the electronic images of county recorder records in bulk, except to affiliates that use them to carry out the same purposes described in the immediately preceding paragraph.

6. Relator Michael Stutzman personally made one of the requests upon which this suit is based. A copy of that request, dated October 5, is attached as Exhibit 1.

7. Relator Data Trace employs relator Stutzman as operations manager. His responsibilities include ensuring that Data Trace acquires accurate copies of such public records stored by the Cuyahoga County Recorder that help people to evaluate the quality of title to real estate in Cuyahoga County and to evaluate the quality and existence of encumbrances on that real estate. Deeds to real estate typify those kinds of records. Stutzman performs his responsibilities in Data Trace's Cleveland, Ohio office as well as in Data Trace's Indianapolis office and other offices.

8. Relator Michael Carsella personally made the other request upon which this suit is based. A copy of that request is attached as Exhibit 2.

9. Relator Property Insight employs Carsella as Vice President of Midwest Plant Operations. His responsibilities and duties include ensuring that Property Insight acquires accurate copies of such public records stored by the Cuyahoga County Recorder that help people to evaluate the quality of title to real estate in Cuyahoga County and to evaluate the quality and existence of encumbrances on that real estate. Carsella performs his responsibilities in Property Insight's Cleveland, Ohio office as well as in other offices of Property Insight.

10. Respondent Recorder of Cuyahoga County, Ohio is a public office. Chapters 317 and 149 of the Ohio Revised Code prescribe the current duties of the Office of County Recorder, as do certain other provisions of the Ohio Revised Code. Cuyahoga County's new charter form of government takes effect January 1, 2011. Under the charter, the Fiscal Officer will assume the powers and duties of the current Cuyahoga County Recorder.

Demand & default: the October 5, 2010 request of Data Trace & Stutzman

11. On October 5, 2010, relator Stutzman transmitted the written request, a copy of which is Exhibit 1, to respondent Recorder via overnight delivery service (Federal Express). Stutzman made the request on Data Trace's behalf to facilitate Stutzman's performance of his responsibilities and duties as Data Trace's operations manager.

12. The request asked for:

- electronic copies of all documents publicly recorded in the months of July and August 2010, and already kept in electronic form;
- alternatively, “if it would be less work for you,” electronic copies of only the first 100 documents publicly recorded each day of July and August, 2010.

13. The request asked the respondent to electronically copy the electronically-stored records onto a compact disk (CD), not by photocopying paper records.

14. The request asked for the electronic copies in a format that does not modify the record as originally recorded, and without a watermark image.

15. The request also recited that the respondent Recorder had adopted a practice or policy of charging \$2.00 for each electronically-copied page, *e.g.*, \$2.00 for the electronic image of the first page of a single deed.

16. At that rate, the Recorder would charge as much as \$5,000 for each day’s volume of the requested electronic copies. The fee for the entire two months of requested electronic copies could rise to \$200,000.

17. Relators Stutzman and Data Trace demanded that respondent Recorder “immediately amend its fee policy to comply with Ohio law,” which places an “at cost” maximum on the chargeable fee. *See* R.C. 149.43(B)(1).

18. Relators' request also recited accurately that, under a predecessor administration of the Recorder's Office, the Recorder had provided electronic copies for a day's volume of electronically-stored public records on a single CD, and charged a fee of \$50 for each day's CD. Relators do not object to paying \$50 for each day's volume of the requested electronic copies, even if it exceeds the maximum fee that Ohio law allows.

19. Since the date of the October 5 request (Exhibit 1), Respondent has neither complied with nor refused to comply with Stutzman's and Data Trace's October 5 request.

Demand & default: the October 5, 2010 request of Property Insight & Carsella

20. Relator Carsella directed an identically-worded written request to Respondent, also dated October 5, 2010 (Exhibit 2), and also sent via overnight delivery service (Federal Express). Carsella made the request on Property Insight's behalf to facilitate Carsella's performance of his responsibilities and duties as Property Insight's Vice President of Midwest Plant Operations.

21. Since the date of the October 5 request (Exhibit 2), Respondent has neither complied with nor refused to comply with Carsella's and Property Insight's request.

Count 1: Obtaining the requested electronic copies

22. The records that relators requested are public records under R.C. 149.43, and respondent stores those records electronically. As an integral part of its normal operations, respondent Recorder reasonably can electronically copy those electronically-stored public records onto the electronic medium of a CD.

23. Therefore, relators have a clear legal right under R.C. 149.43 to receive the requested copies of those public records on the electronic medium of a CD, and respondent has a clear legal duty to provide the requested copies of those public records on that electronic medium.

24. Relators have no adequate alternative remedy in the ordinary course of the law.

Count 2: Amending Respondent's practice, policy to reduce the Recorder's fee to comply with Ohio law

25. Respondent's "cost" of making the requested electronic copies of the electronically-stored public records is far below \$2.00 per electronically-copied page of those records, and Ohio law neither requires nor authorizes Respondent to exact a fee as high as \$2.00 per electronically-copied electronic page of those records.

26. Respondent, therefore, has a clear legal duty to amend its policy and practice of charging \$2.00 per electronically-copied page of its

electronically-stored public records to conform with Ohio law, which limits the fee to the “cost” of electronically copying those electronically-stored records. See R.C. 149.43(B)(1).

27. Relators and all other members of the public have a clear legal right to receive electronic copies at a fee that does not exceed respondent’s “cost” of electronically copying those public records. See R.C. 149.43(B)(1).

28. Relators have no adequate alternative remedy in the ordinary course of the law.

Relators are “aggrieved” persons

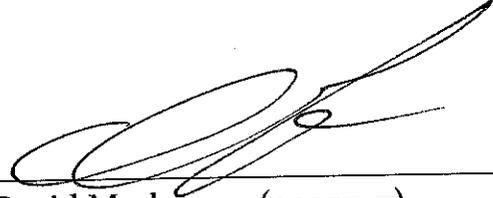
29. The respondent’s non-compliance with Stutzman’s October 5 request adversely affects his ability to satisfy fully his responsibilities as Data Trace’s operations manager. Relator Stutzman therefore is an “aggrieved” person under R.C. 149.43(C)(1), as is Data Trace.

30. The respondent’s non-compliance with Carsella’s October 5 request adversely affects his ability to satisfy fully his responsibilities as Property Insight’s Vice President of Midwest Plant Operations. Relator Carsella therefore is an “aggrieved” person under R.C. 149.43(C)(1), as is Property Insight.

WHEREFORE, each relator prays for the following relief:

- an alternative writ of mandamus that establishes a schedule for submitting evidence and briefs on the merits;

- a peremptory writ of mandamus that compels Respondent to provide the requested copies on one or more compact disks as each relator has requested, or on such other electronic medium that is acceptable to all parties;
- a peremptory writ of mandamus that compels Respondent to amend its policy and practice of charging a fee for electronic copies of electronically-stored public records to conform with Ohio law, and to provide the requested electronic copies at a fee no greater than Ohio law allows – at “cost” exclusive of employee time;
- a peremptory writ of mandamus that awards court costs and attorneys’ fees;
- such other relief as permitted by law.



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mmumford@bakerlaw.com

Attorneys for Relators



*First American
Data Tree*



October 5, 2010

VIA FEDERAL EXPRESS

Lillian J. Greene, Cuyahoga County Recorder
Cuyahoga County Recorder's Office
1219 Ontario Street
Cleveland, Ohio 44113

Re: *Public Records Act Request*

Dear Ms. Greene:

On behalf of First American Data Tree LLC ("Data Tree") and Data Trace Information Services LLC ("Data Trace"), I am writing to request, under the Ohio Open Records Act, R.C. 149.43, electronic copies of all documents publicly recorded in the Cuyahoga County Recorder's Office in the months of July and August 2010. I understand that these documents are currently maintained by your office in electronic form. Data Tree and Data Trace do not object to you not producing military discharges recorded during those two months.

Alternatively, if it would be less work for you to provide us with electronic copies of only the first 100 documents publicly recorded on each day of July and August, 2010, we are willing to accept electronic copies of only those documents in lieu of electronic copies of every document publicly recorded in July and August, 2010.

Under R.C. 149.43(B)(6), please provide copies in electronic form on a compact disc (CD). Please produce the electronic copies in a format that does not modify the original document, and without any type of watermark image.

Your office has a policy or practice of imposing a charge for all copies of recorded documents, whether imaged or paper, of \$2.00 per page or image. This policy is contrary to Ohio law. Ohio Revised Code § 317.32(l) provides that only *photocopies*, i.e., *paper* copies of recorded documents, are subject to the \$2.00 per page copy fee. Conversely, electronic images and other *nonpaper* copies of recorded documents are subject to the general "at cost" standard under R.C. 149.43(B)(1).

Before adopting its current non-conforming policy, your office had provided electronic copies each day. Your office provided them on CD for a copying charge of \$50 per CD. Although that fee exceeds the maximum allowed under the Public Records Act, Data Tree and Data Trace are willing to resume paying it.

4 First American Way, Santa Ana, California 92707

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Lillian J. Greene, Cuyahoga County Recorder
October 5, 2010
Page 2

If your office seeks to impose a higher fee, we will insist that your office charge no more than the actual cost to your office of producing the requested electronic images. Accordingly, please consider this letter a formal demand that your office immediately amend its public record fee policy and practice to comply with Ohio law.

Finally, if you deny any part of this request, under R.C. 149.43(B)(3), please provide me with a written explanation, including legal authority, justifying your denial.

Sincerely,



Michael Stutzman

Operations Manager

7340 Shadeland Station Suite #125

Indianapolis, Indiana 46256

Telephone (317) 863-2453 Cell (216) 780-4949

Fax (317) 598-8521

Email mstutzman@edatatrace.com



505 East North Avenue, Suite 200 • Carol Stream, IL 60188 • Telephone 630-510-4190 • Facsimile 630-488-4896

October 5, 2010

VIA FEDERAL EXPRESS

Lillian J. Greene, Cuyahoga County Recorder
Cuyahoga County Recorder's Office
1219 Ontario Street
Cleveland, Ohio 44113

Re: *Public Records Act Request*

Dear Ms. Greene:

On behalf of Property Insight LLC, I am writing to request, under the Ohio Open Records Act, R.C. 149.43, electronic copies of all documents publicly recorded in the Cuyahoga County Recorder's Office in the months of July and August 2010. I understand that these documents are currently maintained by your office in electronic form. Property Insight does not object to you not producing military discharges recorded during those two months.

Alternatively, if it would be less work for you to provide us with electronic copies of only the first 100 documents publicly recorded on each day of July and August, 2010, we are willing to accept electronic copies of only those documents in lieu of electronic copies of every document publicly recorded in July and August, 2010.

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Lillian J. Greene, Cuyahoga County Recorder
October 5, 2010
Page 2

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If your office seeks to impose a higher fee, we will insist that your office charge no more than the actual cost to your office of producing the requested electronic images. Accordingly, please consider this letter a formal demand that your office immediately amend its public record fee policy and practice to comply with Ohio law.

Finally, if you deny any part of this request, under R.C. 149.43(B)(3), please provide me with a written explanation, including legal authority, justifying your denial.

Sincerely,

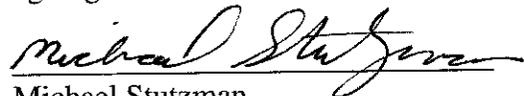
A handwritten signature in black ink, appearing to read "Mike Carsella", written in a cursive style.

Mike Carsella
Property Insight
505 East North Ave.
Suite 200
Carol Stream, IL 60188-4848
(630) 510-4190
Mike.Carsella@propertyinsight.biz

VERIFICATION

I, Michael Stutzman, being duly sworn, state as follows based upon my personal knowledge. I am the Operations Manager for Data Trace Information Services, LLC, a party to this action, and am authorized to make this verification for and on its behalf. I have read the foregoing complaint for alternative and peremptory writs of mandamus and have personal knowledge of the averments of fact set forth therein. To the best of my knowledge, the averments of fact in the complaint are true.

I declare under penalty of perjury that the foregoing is true and correct.


Michael Stutzman

SWORN TO AND SUBSCRIBED to before me on this 22^d day of November 2010.

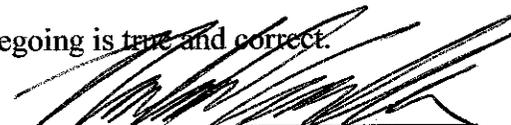

Notary Public

DAVID L. WENZEL, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 R. C.

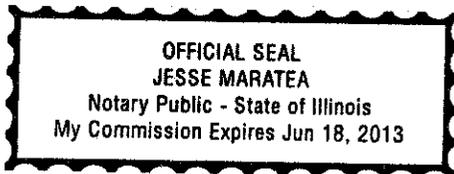
VERIFICATION

I, Michael Carsella, being duly sworn, state as follows based upon my personal knowledge. I am the Operations Manager for Property Insight, LLC, a party to this action, and am authorized to make this verification for and on its behalf. I have read the foregoing complaint for alternative and peremptory writs of mandamus and have personal knowledge of the averments of fact set forth therein. To the best of my knowledge, the averments of fact in the complaint are true.

I declare under penalty of perjury that the foregoing is true and correct.


Michael Carsella

SWORN TO AND SUBSCRIBED to before me on this 22 day of November 2010.




Notary Public