

ORIGINAL

IN THE SUPREME COURT OF OHIO

Case No. 10-2029

Original Action in Mandamus

State ex rel. Data Trace Information Services, LLC, et al.,

Relators,

v.

Recorder of Cuyahoga County, Ohio,

Respondent.

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SUPREME COURT OF OHIO

**Cuyahoga County Recorder's
Motion To Dismiss Relators Michael Carsella
And Michael Stutzman For Lack Of Standing**

David T. Movius (0070132)
Counsel of Record
Matthew J. Cavanagh (0079522)
MCDONALD HOPKINS LLC
600 Superior Avenue, E., Ste. 2100
Cleveland, Ohio 44114
T 216.348.5400
F 216.348.5474
dmovius@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com

*Counsel for Respondent
Cuyahoga County Recorder*

David L. Marburger (0025747)
Counsel of Record
Michael E. Mumford (0073931)
BAKER & HOSTETLER LLP
PNC Center
1900 East Ninth Street, Ste. 3200
Cleveland, Ohio 44114
T 216.621.0200
F 216.696.0740
dmarburger@bakerlaw.com
mmumford@bakerlaw.com

Counsel for Relators

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In accordance with Rules 10.5(A) and 14.4 of the Rules of Practice of the Supreme Court of Ohio and Rule 12(b)(1) of the Ohio Rules of Civil Procedure, respondent Cuyahoga County Recorder hereby moves to dismiss relators Michael Carsella and Michael Stutzman (the "Individuals"). The Court should dismiss the Individuals because neither is an "aggrieved" person under Ohio's Open Records Act. According to their own complaint, the Individuals acted at all times "on behalf" of their employers, and not in their personal capacity. Therefore, their employers – relators Data Trace Information Systems, LLC and Property Insight, LLC – are the only potentially "aggrieved" persons under R.C. 149.43(C)(1). Consequently, the Individuals lack standing to bring this mandamus action in their personal names and capacities, and the Court should dismiss them accordingly.

Respectfully submitted,



David T. Movius (0070132)
Matthew J. Cavanagh (0079522)
MCDONALD HOPKINS LLC
600 Superior Avenue, E., Ste. 2100
Cleveland, Ohio 44114
T 216.348.5400
F 216.348.5474
dmovius@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com

Counsel for Respondent
Cuyahoga County Recorder

Memorandum In Support

Relators Data Trace Information Systems, LLC and Property Insight, LLC (the “Businesses”) first sued the Cuyahoga County Recorder (“Recorder”) because they did not want to pay the \$2-per-page statutory fee that everyone must pay to obtain copies of real estate documents that third-parties have recorded with the Recorder’s Office. The Businesses sought to use the “at cost” price provision under Ohio’s Open Records Act as a legal loophole to avoid the modest \$2 statutory fee and thereby increase their profits. The Businesses, however, dismissed that case after the Recorder moved to dismiss based on their failure to register to do business in Ohio and to pay registration fees. *See State ex rel. Data Trace Information Systems, LLC v. Recorder of Cuyahoga County, Ohio*, Case No. 10-1823.

Having now registered and paid the fees they should have paid years ago – only after the Recorder pointed out their noncompliance – the Businesses re-filed and joined two of their employees as co-relators: Michael Stutzman and Michael Carsella (the “Individuals”). The Individuals allege only nominal involvement – Stutzman made a written public records request at issue in this case “on behalf” of his employer, Data Trace, while Carsella made a written public records request “on behalf” of his employer, Property Insight (Compl. Ex. 1, Ex. 2) – and the complaint does not allege, nor can it be inferred, that Carsella or Stutzman ever acted in their personal capacities.

Under the Open Records Act, only a person “allegedly aggrieved” by a public office’s failure to comply with the Act may bring a mandamus action. The Act states:

If a person allegedly is aggrieved by the failure of a public office . . . to comply with an obligation in accordance with division (B) of [the Open Records Act], the person allegedly aggrieved may commence a mandamus action

R.C. 149.43(C)(1). Because the Individuals do not allege that they themselves were “aggrieved,” neither has standing to maintain this mandamus action as individuals.

Here, the Individuals cannot commence and maintain this mandamus action because they allege only that their employers were aggrieved by the Recorder’s legal position. The two written public records requests, which are attached as Exhibits to the complaint, state unequivocally that Stutzman and Carsella requested the documents “on behalf” of their respective employers. (See Compl. Ex. 1, Ex. 2.) Stutzman’s letter began by stating, “On behalf of First American Data Tree LLC (“Data Tree”) and Data Trace Information Services LLC (“Data Trace”), I am writing to request,” (Compl., Ex. 1.) Carsella’s letter began in the same way: “On behalf of Property Insight LLC, I am writing to request,” (Compl., Ex. 2.) Moreover, the allegations in the complaint admit that each individual acted solely on behalf of his respective employer and that each asserts his employer’s rights in this action, not their own individual rights. (See Compl. ¶¶ 7, 9, 11, 20.)

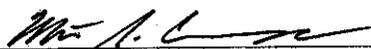
Because Businesses are the only parties allegedly aggrieved, the Individuals have no standing to maintain this action. Indeed, the Businesses appear to have named their employees as insurance in case they missed another law or statutory obligation that would deprive them of standing. But regardless of the reasons, the

Individuals lack standing, and allowing them to proceed would unnecessarily multiply the proceedings. If they remain parties, the Recorder will be forced to seek expensive and time-consuming discovery from both the Individuals and from the Businesses. Moreover, it would potentially subject the Recorder to four separate demands for attorneys' fees and statutory damages when only two records requests are at issue. In contrast, the Businesses – as the actual “allegedly aggrieved” persons – would not suffer any prejudice from dismissal of the Individuals. The Court, therefore, should streamline this case and promote judicial economy by dismissing the Individuals.

Conclusion

For the foregoing reasons, the Court should dismiss relators Michael Stutzman and Michael Carsella.

Respectfully submitted,



David T. Movius (0070132)
Matthew J. Cavanagh (0079522)
MCDONALD HOPKINS LLC
600 Superior Avenue, E., Ste. 2100
Cleveland, Ohio 44114
T 216.348.5400
F 216.348.5474
dmovius@mcdonaldhopkins.com
mcavanagh@mcdonaldhopkins.com

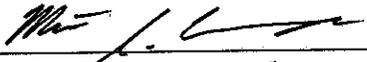
Counsel for Respondent
Cuyahoga County Recorder

Certificate of Service

In accordance with Rule 14.2 of the Rules of Practice of the Supreme Court of Ohio, I hereby certify that on December 22, 2010, I served a copy of the foregoing ***Cuyahoga County Recorder's Motion To Dismiss Relators Michael Carsella And Michael Stutzman For Lack Of Standing and Memorandum In Support*** by e-mail upon the following:

David L. Marburger (0025747)
Michael E. Mumford (0073931)
BAKER & HOSTETLER LLP
PNC Center
1900 East Ninth Street, Ste. 3200
Cleveland, Ohio 44114
T 216.621.0200
F 216.696.0740
dmarburger@bakerlaw.com
mmumford@bakerlaw.com

Counsel for Relators



Counsel for Respondent
Cuyahoga County Recorder