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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DEC 22 2010
CLERK OF COURT
SUPREME COURT OF OHIO

Cuyahoga County Recorder's Answer To Complaint

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In accordance with Rule 10.5 of the Rules of Practice of the Supreme Court of Ohio, and subject to and without waiving its motion to dismiss being filed herewith, respondent Cuyahoga County Recorder ("Recorder") responds to relators' ("Relators") complaint for alternative and peremptory writs of mandamus as follows:

1. Recorder denies the averments in paragraph 1 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

2. Recorder denies the averments in paragraph 2 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

3. Recorder denies the averments in paragraph 3 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

4. Recorder denies the averments in paragraph 4 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

5. Recorder denies the averments in paragraph 5 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

6. Subject to and without waiving its motion to dismiss, Recorder admits that it received the letter, dated October 5, 2010, that is attached as Exhibit 1 to the

complaint and otherwise denies the averments in paragraph 6 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

7. Subject to and without waiving its motion to dismiss, Recorder denies the averments in paragraph 7 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

8. Subject to and without waiving its motion to dismiss, Recorder admits that it received the letter, dated October 5, 2010, that is attached as Exhibit 2 to the complaint and otherwise denies the averments in paragraph 8 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

9. Subject to and without waiving its motion to dismiss, Recorder denies the averments in paragraph 9 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

10. Subject to and without waiving its motion to dismiss, Recorder states that which statutes prescribe its current duties constitutes a legal conclusion to which no response is required, denies that the documents requested by Relators are "public records" under R.C. 149.43, and otherwise admits the averments in paragraph 9 of the complaint.

As to "Demand & default:
<u>the October 5, 2010 request of Date Trace & Stutzman"</u>

Recorder denies any implication by this section title that it defaulted.

11. Recorder admits that it received the letter, dated October 5, 2010, that is attached as Exhibit 1 to the complaint, which speaks for itself, and otherwise denies the averments in paragraph 11 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

12. Recorder answers that Exhibit 1 speaks for itself, and otherwise denies the averments in paragraph 12 of the complaint.

13. Recorder answers that Exhibit 1 speaks for itself, and otherwise denies the averments in paragraph 13 of the complaint.

14. Recorder answers that Exhibit 1 speaks for itself, and otherwise denies the averments in paragraph 14 of the complaint.

15. Recorder answers that Exhibit 1 speaks for itself, and otherwise denies the averments in paragraph 15 of the complaint.

16. Recorder denies the averments in paragraph 16 of the complaint because it states hypotheticals for which it is without knowledge or information sufficient to assess their truth.

17. Recorder answers that Exhibit 1 speaks for itself, and otherwise denies the averments in paragraph 17 of the complaint.

18. Recorder answers that Exhibit 1 speaks for itself, and otherwise denies the averments in paragraph 18 of the complaint.

19. Recorder denies the averments in paragraph 19 of the complaint.

As to "Demand & default:
<u>the October 5, 2010 request of Property Insight & Carsella"</u>

Recorder denies any implication by this section title that it defaulted.

20. Recorder admits that it received the letter, dated October 5, 2010, that is attached as Exhibit 2 to the complaint, which speaks for itself, and otherwise denies the averments in paragraph 20 of the complaint because it is without knowledge or information sufficient to form a belief as to their truth.

21. Recorder denies the averments in paragraph 21 of the complaint.

As to "Count 1:
Obtaining the requested electronic copies"

Recorder denies any implication by this section title that Relators are unable to obtain the requested documents.

22. Recorder admits that it presently stores certain documents electronically and that it is capable of electronically copying those electronically-stored documents onto a CD, and otherwise denies the averments of paragraph 22 of the complaint.

23. Recorder denies the averments in paragraph 23 of the complaint.

24. Recorder denies the averments in paragraph 24 of the complaint.

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

Recorder denies any implication by this section title that Recorder's present practice does not comply with Ohio law.

25. Recorder admits that it presently stores certain documents electronically and that it is capable of electronically copying those electronically-stored documents onto a CD, and otherwise denies the averments of paragraph 25 of the complaint.

26. Recorder denies the averments in paragraph 26 of the complaint.

27. Recorder denies the averments in paragraph 27 of the complaint.

28. Recorder denies the averments in paragraph 28 of the complaint.

As to "Relator's are 'aggrieved' persons"

Recorder denies that the Relators are "aggrieved."

29. Recorder denies the averments in paragraph 29 of the complaint.

30. Recorder denies the averments in paragraph 30 of the complaint.

As to Relators' Prayer for Relief

31. Recorder denies that Relators are entitled to any of the relief requested in the complaint.

Affirmative Defense

32. Relators' complaint fails to state a claim upon which relief can be granted.

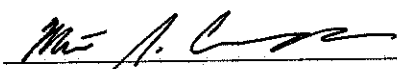
33. Putative relator Michael Stutzman lacks the standing necessary to maintain this action in mandamus because he is not an "aggrieved" person under R.C. 149.43(C)(1), as set forth in Recorder's motion to dismiss.

34. Putative relator Michael Carsella lacks the standing necessary to maintain this action in mandamus because he is not an "aggrieved" person under R.C. 149.43(C)(1), as set forth in Recorder's motion to dismiss.

35. Recorder specifically reserves its right to assert any additional defenses which it might discover during the pendency of this action.

WHEREFORE, Recorder prays that the Court dismiss Relators' complaint and grant such further relief as may be just and proper. In the event the Court does not dismiss the complaint with prejudice, Recorder requests that the Court issue an alternative writ that provides the parties with sufficient time to gather evidence and submit briefing on the merits.

Respectfully submitted,



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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 Answer To Complaint*** by e-mail upon the following:

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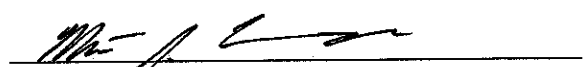

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