

ORIGINAL

11-0354

IN THE SUPREME COURT OF OHIO

State ex rel. Reggie D. Huff  
856 Youngstown-Kingsville Rd. NE  
Vienna, Ohio 44473

CASE NO. 2010-1296

Relator,

v.

ORIGINAL ACTION IN MANDAMUS

Thomas R. Wright, Successor Judge  
to Colleen Mary O'Toole

Diane V. Grendell, Judge

Cynthia Westcott Rice, Judge

Judges for the Eleventh District  
Court of Appeals, Trumbull County  
Ohio

106 High St. N.W.  
Warren, Ohio 44481

Respondents.



PETITION FOR WRIT OF MANDAMUS  
R.C. § 2731.04

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ORAL ARGUMENT REQUESTED

PETITION FOR FOR WRIT OF MANDAMUS  
R.C. § 2731.04

1. This Petition for Writ of Mandamus is being brought pursuant to R.C. § 2731.04 and is sometimes styled as a "Complaint for Writ of Mandamus". See 3 Ohio Civ. Prac. Forms § 87.03.

PROCEDURAL BACKGROUND

2. Relator initially filed an original and related action in Case No. 10-1296 (hereinafter referred to as "Huff Writ No. 1" on July 23, 2010). Respondents subsequently moved for dismissal for failure to state a claim on August 19, 2011. **Alternatively, Respondents moved for an order regarding Relator to "Refile a complaint that conforms with Civ. R. 10(B)".** Relator responded with a Motion for Leave to Amend. This Court then ordered Huff Writ No. 1 to mediation on 09/15/10. Respondents refused to mediate and therefore this Court granted Relator's Motion for Leave to Amend and simultaneously granted Respondent's Motion to Dismiss on 12/01/10. Relator then moved for clarification and/or reconsideration. On 12/27/10 this Court denied Relator's motion without further comment, effectively affirming the grant of leave to amend. The practical effect therefore being a dismissal without prejudice.

3. In the intervening time Relator attempted to negotiate a settlement with the Third-Party Defendant-Appellee, Commonwealth Suburban Title Agency, Inc., who refused to attempt any settlement negotiation for settlement. These events facilitated the necessity to refile this Petition in mandamus on this day (hereinafter referred to as "Huff Writ No. 2").

#### MANDAMUS ISSUE

4. Respondents have failed to take judicial notice of the Law of the Case as it applies to Case No. 2009-T-0044 and vacate and correct a mandate in order that it may adhere to the Law of the Case. Therefore, Relator respectfully seeks an alternative writ and order compelling respondents to take such judicial notice, and vacate its prior Order and mandate and issue an order that conforms to the Law of the Case as is required by law.

#### LEGAL STANDARD

5. This Petition seeks to enforce the Law of the Case upon an appellate proceeding. The Supreme Court has recently held that a writ of mandamus under this Court's original jurisdiction is the proper remedy to enforce the Law of the Case upon any proceeding subject to the law of the case. See State ex rel Sharif v. McDonnell, Judge 91 Ohio St.3d 46 (2001), 741 N.E.2d 127, 2001-Ohio-240. In Sharif, supra, even the fact that the original Complaint requesting relief based on the Law of the Case was "untimely" had no bearing on a judge's requirement to adhere to the Law of the Case.

6. In the case of S/O ex rel., Mason v. Gaul Ohio App. 8 Dist., 2004-Ohio-2343, the court held "a prosecutor sought a writ of mandamus. The appellate court held, "...The respondent judge's final argument is that mandamus is the wrong remedy because the prosecutor had an adequate remedy at law through appeal. This is a strong argument. In State ex rel. Davis v. Cleary (1991), 77 Ohio App.3d 494, 602 N.E.2d 1183, this Court, noting how often Ohio courts have addressed and enforced the Law of the Case doctrine

through appeal, declined to issue the writ of mandamus in the mandamus in that case because, inter alia, appeal was a adequate remedy. Nevertheless, the Supreme Court of Ohio has repeatedly ruled that mandamus is a proper remedy to enforce the Law of the Case doctrine. "...Following the rules of the Supreme Court, this Court finds that mandamus is the appropriate remedy in this case. Alternatively, the Court in the exercise of its discretion will issue the writ of mandamus to resolve this matter expeditiously."

7. This Court has also fully adopted the principle governing the Law of the Case doctrine that states that the Law of the Case applies equally to "all legal questions and for all subsequent proceedings in the case". See State ex rel Sharif v. McDonnell, Judge 91 Ohio St.3d 46 (2001), 741 N.E.2d 127, 2001-Ohio-240. Therefore, no distinction applies to an appellate panel especially as in this case, the very same panel that created and/or affirmed the subject Law of the Case. See also Birch v. Cuyahoga Cty 173 Ohio App.3d 696, 880 N.E.2d 132 (8th Dist. Cuyahoga County 2007).

#### BACKGROUND TO EXTRAORDINARY WRIT

8. This is an extraordinary case in which it is undisputed that at the closing of a residential real estate transaction the defendant/appellee Commonwealth Suburban Title Agency, Inc. ("Commonwealth") failed to disclose an unsatisfied mortgage incumbrance, and also failed to issue title insurance after acceptance of all closing fees; failed to disclose to the land owner that the title policy was not issued, attempted to cover up the same upon in person demand, and continued during the conduct of the Trial Court proceedings to fail to disclose. As a result

Relator was deprived of full and fair use of title at a time clear title was needed just before the real estate market nose dived.

9. On cross Summary Judgment Relator argued the same separate tort duty successfully argued by defendant Fidelity Title Insurance Company ("Fidelity") that supported a dismissal against Fidelity but established the Law of the Case of a recognized cause of action against Commonwealth. That Trial Court decision was affirmed in total in an earlier appeal in the same case. See Relators Motion for Reconsideration, Exhibit A, Pages 3-7. The Respondents (Appellate Court) do not dispute that this was the original ruling.

10. Relator used the term "Law of the Case" as part of the separate tort argument in his Cross Summary Judgment motion. The trial court granted Relator's summary judgment against Commonwealth as to negligence but erred on the separate actual damage claim. This error is despite the fact the nonexistence of the policy is undisputed and likewise undisputed is the fact that the policy premiums were charged and accepted by Commonwealth (an element of undisputed actual damages). R.C. § 3905.14(B)(15) requires a title insurance agent to tender a policy within seven days of payment.

11. On the second appeal at oral argument, Relator specifically identified that the Trial Court recognized the separate tort of Commonwealth including but not limited to the failure to issue a title policy. At oral argument Relator argued the receipt of premiums as an initial basis for a damage claim. Relator further argues that the failure to issue a policy bought and paid for as identified on the HUD-1 and fact that the proffered policy had page dates years after the Deed recording, the terms of

which had changed from the time it was paid for and the time the fraudulent policy was proffered, amounts to clear and undisputed "actual damage". Respondents refusal to recognize the "Law of the Case" required a motion for reconsideration which Relator timely filed on March 31, 2010 [Exhibit A]. See also Docket, Case No. 2009-T-0044. Upon the order denying the Motion for Reconsideration [Exhibit B], Respondents continued to refuse to recognize the Law of the Case thereby requiring Relator to file a second Motion for Reconsideration requesting the Appellate Court to take judicial notice of the Law of the case [Exhibit C] which would support reconsideration of the previous order denying reconsideration pursuant to Appellate Rule 26(A).

12. Other district courts have recognized the validity of dual motions for reconsideration and granted them pursuant to the plain language of Appellant's Rule 26(A). See Painter v. State Auto Insurance Company 1996 WL 631201 (Ohio App. 10 Dist. 1996) and United States Excavating Company, Inc. v. Hartford Accident & Indemnity Company 1978 WL 214856 (Ohio App. 7 Dist.). Therefore, under the Doctrine guiding the filing of writs of mandamus, Relator's last step was required in order to exhaust all possible remedies before applying for an extraordinary writ. The second Motion for Reconsideration was also denied. [Exhibits C and D].

#### BASIS FOR MANDAMUS ACTION

13. In denying reconsideration in the first instance [Exhibit B] respondents listed Relator/appellant's arguments but failed to acknowledge and give effect to the all important "Law of the Case" issue mandating a separate tort explicitly detailed in

Relator/appellant's Motion for Reconsideration [Exhibit A, Pages 3-7]. By continually refusing to take notice or "Judicial Notice" of the Law of the Case as an extremely minor act in and of itself, Respondents effectively concede some consequence to the final disposition in the underlying matter.

14. Respondents erroneously anchored their rulings upon the Trial Court's dismissal of the title insurance underwriter as dispositive of any claim against the closing agent (defendant), despite the Respondents having affirmed an earlier ruling in the same case that established a separate tort unaffected by the dismissal of the underwriter. In both the original Opinion and Order entered on March 22, 2010 and the Order denying reconsideration entered on April 28, 2010 [Exhibit B, Page 4] in Huff Case No. 2009 TR 44 (2nd appeal) Respondents stated and restated the following:

"Again, with respect to the issue of damages, it does not matter whether title insurance existed or not <sup>1</sup> since appellants claims against Fidelity, the underwriter of Reggie Huff's Owner's Policy of Title Insurance, were dismissed by the trial court and later affirmed by this Court in Huff [2008-Ohio-4974], and Fidelity is not a named party to the instant appeal."

15. That language does not affect, modify or reverse the Trial Court's initial recognition of the claim against Commonwealth. Further, at Exhibit B, Page 3, respondents actually

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<sup>1</sup>Though not providing construct for the Writ the Court of Appeals identified an issue precluding summary judgment.

for the second time cited the underwriters denial of Respondent's attempted claim under the nonexistent owner's policy contract, as if material to any claim against the closing agent, for separate acts not part of any insurance contract whether it ever existed or not. The underwriter denied the claim by asserting that Realtor "did not suffer any loss covered by the policy" (Emphasis added).

16. In the absence of judicial notice of the Law of the Case it is clear that respondents continued to view damages through the narrow title insurance contract prism where only the impedance of an actual sale defines damages as opposed to the separate tort based on absolute title rights defined by law, fraud and theft by deception involving closing services and title insurance all bought and paid for but never actually produced.

17. The Respondents holding that Relator/appellant was required to attempt a sale of title before a pending and contested foreclosure and to continue doing so even after acquiring knowledge of the unmarketability of the title could only have questionable merit in the contractually narrowly defined damage limits of a typical title insurance policy. However, respondents findings have no possible merit in the context of a separate tort for separate acts which are not controlled or defined by any written contract, insurance or otherwise, as established by the Law of the Case.

18. The separate tort is supported by undisputed material facts not limited to nor defined by the title policy and including the fact that a title policy was paid for and yet no actual physical original copy was ever provided as required by state law, even upon in person demand to do so at the exact time Relator

needed and intended to market title many months before the well documented market downturn.

19. The Law of the Case issue provides a clear basis for reconsideration pursuant to Appellate Rule 26(A).

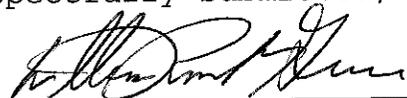
20. Judicial notice of the Law of the Case is required where doing so clearly materially alters the disposition of the underlying case in favor of Relator/appellant as justice so requires.

21. Further, the issue of the Law of the Case could not fully ripen for purposes of a mandamus action until all potential remedies had been reduced to that issue by the Respondents themselves.

#### CONCLUSION

22. Relator having timely applied for mandamus relief in the first instance (Huff Writ No. 1) having been graciously dismissed without prejudice, having used the intervening time to attempt a settlement with Third-Party Defendant-Appellee Commonwealth Suburban Title Agency, Inc., where said Defendant-Appellee has made no attempt to settle, Relator has appropriately refiled this action and proffered all specified fees for a second time and thereby respectfully requests an alternative writ or an order compelling respondents to take judicial notice of the self-generated "Law of the Case" and recall and vacate the current mandate and issue a corrected mandate as required in order to conform to the Law of the Case.

Respectfully submitted,



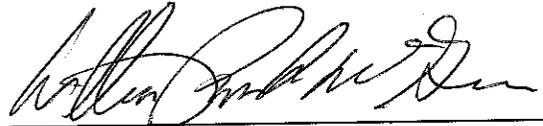
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Writ of Mandamus was served this 4<sup>th</sup> day of March 2011, via facsimile or U.S. ordinary mail to the following person:

Stuart A. Strasfeld, Esq.  
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Third-Party Defendant-Appellee



William Paul McGuire

IN THE SUPREME COURT OF OHIO

State ex rel. Reggie D. Huff

Relator,

v.

Thomas R. Wright, Successor Judge  
to Colleen Mary O'Toole

Diane V. Grendell, Judge

Cynthia Westcott Rice, Judge

Judges for the Eleventh District  
Court of Appeals, Trumbull County  
Ohio

Respondents.

CASE NO. 2010-1296

ORIGINAL ACTION IN MANDAMUS

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AFFIDAVIT OF RELATOR REGGIE D. HUFF  
IN SUPPORT OF MANDAMUS

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The affiant, Reggie D. Huff, first being duly sworn according to law, states that he is over the age of 18, a resident of the State of Ohio and County of Trumbull. Affiant makes this Affidavit in Support of the Writ of Mandamus and states that he has personal knowledge of the following facts:

1. Affiant is the proper Relator of the foregoing Mandamus Action concerning the Eleventh District Court of Appeals in Trumbull County, Ohio, and a case number 2009-T-0044, and the assigned Appellate Panel thereof.
2. The Respondents are properly identified on the foregoing caption as Eleventh District Court of Appeals Judges; Thomas R. Wright, successor judge to Colleen Mary O'Toole,; Diane V. Grendell, J.; and Cynthia Westcott Rice, J.
3. Affiant states that he has personally checked reviewed and examined all of the facts detailed within the foregoing Petition for a Writ of Mandamus Pages 1 through 7, and Exhibits A through D, and solemnly swears that all such facts are accurate and true to the best of his knowledge and are not embellished or exaggerated in any

way for any reason and all copies of original documents are true copies.

4. Affiant relied on the Law of the Case, as he understands he has an absolute right to do in deciding to invest much time, energy and resources into the underlying case. affiant expected the full course of the legal process to yield at least a full recovery of the thousands of dollars of earnest money illegally taken from affiant and his family, if not much more for all the damage caused. Instead of the justice the Law of the Case preserves, affiant is now being taxed \$198.94 in court costs with repeated demands to pay the same.

5. Further, affiant sayeth naught.

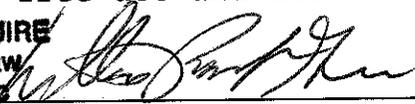
Date: March 4, 2011

  
Reggie D. Huff, Affiant

STATE OF OHIO )  
 ) SS  
COUNTY OF TRUMBULL )

Before me, a Notary Public, in and for said county and state, personally appeared the above named Reggie D. Huff this 4<sup>th</sup> day of March, 2011, who acknowledged that he signed the foregoing instrument, and he same was his free act and deed.



**WILLIAM PMcGUIRE**  
Attorney At Law  
Notary Public  
  
Permanent Commission Public

My Commission Expires: Permanent.

IN THE ELEVENTH DISTRICT COURT OF APPEALS  
TRUMBULL COUNTY, OHIO

COUNTRYWIDE HOME LOANS, INC. )  
AND )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC. C/O )  
COUNTRYWIDE HOME LOANS, INC. )

Co-Plaintiffs- )  
Appellees. )

v. )

REGGIE D. HUFF, ET AL. )

Defendants- )  
Appellants. )

NO. 2009 TR 44

**FILED**  
COURT OF APPEALS  
MAR 31 2010  
TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

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MOTION FOR RECONSIDERATION

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Sup. Ct. Reg. #0003315

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**EXHIBIT**

"A"

Now comes appellant Reggie D. Huff, by and through his counsel, and respectfully moves this Court for reconsideration and/or certification of a question of law to the Supreme Court of Ohio primarily for the following reasons:

ABSOLUTE CERTAINTY AS TO REAL AND ACTUAL DAMAGES

Whether or not specific terms of a title policy are in play in this case is irrelevant to the certainty of damages where the appellee's breach of the duty to provide the policy and the right of appellant to possess an actual physical true original of the title policy bought and paid for has never been disputed or in doubt. The appellee has not and cannot fulfill this duty to provide a title policy at this late date for several reasons not the least of which is the fact that the terms of the policy paid for had changed by the time appellee attempted to pass off a bogus policy as an original. Further it has never been in dispute that as a part of the HUD-1 closing document appellant paid for the tile policy that was never issued. Finally, appellee's active misrepresentation at multiple times, where the alleged policy has never been proven to be in existence, appellee attempted to pass off a fictitious policy as an original. Nor has appellee ever offered to return the closing costs paid.

The fact that the Court of Appeals could not identify the actual physical policy, is as a matter of law, a finding that the duty to provide the policy was breached, and as a matter of law at the very least, the premium paid by the Appellant is actual damages of the Appellant. Therefore, there is as a matter of law, some damages under the applicable standard, defeating the rationale of

the trial court and this court's decision, and the existence of actual damages places the determination of damages within the purview of the jury.

With this certainty of actual damages the amount of total damages is not an issue for this Court as noted in the Opinion but an issue for the jury. Now, the factually undisputed victim, the appellant, is further victimized with the requirement to pay out even more in the form of taxed Court costs. This is unfair. For this foregoing reason alone reconsideration is just and proper.

THE COURT MISPLACED ITS FOCUS ON THE "TITLE POLICY" CONTRACT WHERE THE BREACH OF THE APPELLEE'S CONTRACT TO PROVIDE THE POLICY IS DISPOSITIVE AND CONTROLLING

It is not disputed and therefore incontrovertible that appellee was negligent and breached its duty once it accepted and retained its fee to provide all closing services, evidence of clear title, and a owner's title policy. Appellee misdirects the Court to focus on a fictitious contractual damage limits of a title policy that never existed, that this Court cannot and did not identify in its Opinion. The actual physical policy was never in existence and therefore can not be evidence in this case, and to infer its existence is not supported by the evidence. The title policy insurer, Fidelity, itself successfully asserted in both its the trial and appellate courts briefs, that appellee's closing duties are separately contracted (emphasis ours) and form a separate "TORT DUTY" (emphasis ours), therefore appellant's "Motion for Summary Judgment", which was granted in relevant part, (See

trial court's March 25th 2009 Opinion and Order) referenced the astute arguments of Fidelity's highly qualified counsel and even included this quote from Fidelity referring directly to appellee's separate duty:

"Fidelity did not have an independent tort duty to examine the title to the premises or to conduct the closing" (emphasis quoted from the motion in which it was added).

Further Fidelity clarified upon the record:

"Additionally, the conduct Plaintiff's complain about occurred at their real estate closing, but Fidelity did not conduct the Huffs' closing and the company that did (Suburban Title Agency) is not an agent of Fidelity as to matters of real estate closings but instead only an "issuing agent" as to the issuance of owner and loan policies of title insurance" (emphasis supplied).

The breach of the appellee's duty to provide evidence of clear title, complete title services, and to issue the title policy is a separate professional services contract recognized by the trial court, and with the prior appeal could therefore be argued to be encompassed in the law of the case. The legal effect and reality

is that Appellee is not entitled to damage limitations per the text of a fictitious and misrepresented contract Appellee contrived between Appellant and Fidelity. Again at the risk of repetition, as the alleged contract physically never existed between them. Appellant's rights of marketable absolute title are not limited by contract with Appellee but arise by the Ohio constitution. Even if the policy had been issued, only the contractual right to recover defined damage reimbursement from a particular entity, Fidelity, can be limited such assumed contract (and not conceding otherwise), however such a contract never existed.

Upon de novo review appellant is entitled to a ruling by this Court that (A) acknowledges the title policy never existed; (B) that this duty to provide a clear title as evidenced by a owner's title policy (a tort duty) was repeatedly and materially breached by Appellee, and Appellee engaged in active misrepresentation as to its breach of its tort duty.

Upon a finding that a separate "tort duty" exists, Appellant is entitled to actual and direct damages and to have such issues placed before a jury, including but not limited to the actual closing fees and costs paid, as a matter of law and such other and additional damages as the jury may award. The Ohio Constitution grants persons who purchase real estate in Ohio the right and protection of being able to, at any time, including at a time after foreclosure proceedings have commenced to attempt to sell the property. Appellee's breach of its duty in tort to provide a professional service to ensure appellant was to receive marketable

title as supported by an actual physical policy, caused the foreseeable and consequential effect that the buyer was denied the right to sell his property at any time including during the commencement of foreclosure. A person who contracts for the purchase of real estate with a closing agent is nonetheless absolutely obligated to deliver the real estate with good marketable title, and in a timely fashion. As noted by this Court in its current Opinion, it is uncertainty as to the existence of any damages, "not the amount" that precludes recovery. The title policy premiums and closing fees are not in dispute and those fees paid were sworn to in appellant's Affidavit and provided in specific detail upon the record.

Appellant is entitled to an opportunity to present to the trier of fact evidence including expert testimony, demonstrating a preponderance of lost opportunity to realize gain based on real and actual appreciation before the market downturn to recoup down payment and home improvement costs; to cure a foreclosure and mitigate damage to his credit rating. In fact, had appellee timely disclosed that the title policy was not or could not be issued, then Appellant would not have permitted the deed to be recorded upon the encumbered title, and would have recovered his down payment. In light of these facts, Appellant has the right, and at the trial court level requested to make these facts, the entire damage issue, put before a jury.

The Ohio Supreme Court decision in Haddon View Investment Co. v. Cooper's and Lybrand (1982) (70 Ohio St.2d 154) established 3 Restatement of Torts 2d, 126-127 Section 552 as controlling

language regarding the liability of professionals that supply "information for the guidance of others in their business transactions". The Restatement of Torts establishes the damage standard as "loss suffered" which can also mean "economic loss".

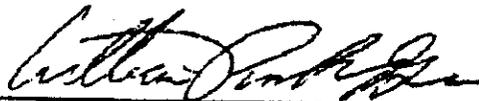
Appellant Cannot Be Required To Engage In Useless If Not Illegal Acts In Order To Establish A Cause For Damages

It is factually inaccurate that appellant made no attempt to sell the property before title marketability issues were known (See Affidavit of Reggie D. Huff). It is factually accurate that all efforts planned and in the works to market the property were halted and obstructed by the encumbered title and by Appellee, and its counsel, for misrepresentation of the claimed existence of the policy. Appellant's further efforts to sell the property would have been useless if not illegal (See Affidavit of Reggie D. Huff). There is no known law requiring the Appellant as a purchaser of unmarketable title to engage in useless if not illegal acts not to disclose to a potential buyer that the title was not marketable. Appellant had actual undisputed damage, and this cause should be remanded to the trial court for a determination by the jury of damages. Alternatively, if this matter is not reconsidered, it will become the law of Ohio that there is a defence for a professional tort of a five year failure to disclose that a title policy was not issued and a defense for failure to disclose a title policy for unmarketable real estate was not issued, and the payment of a fee for a policy that was never issued is not actual damages. See Haddson View Investment Co. v. Cooper's and Lybrand (1982) (70

Ohio St.2d 154) citing 3 Restatement of Torts 2d, 126-127 Section 552.

For the foregoing reasons reconsideration is just and proper.

Respectfully submitted,



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Counsel for Appellant.

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion for Reconsideration was served this 31 th day of MARCH 2010, via facsimile, to the following person(s):

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Youngstown, Ohio 44503



William Paul McGuire

STATE OF OHIO )  
 ) SS.  
COUNTY OF TRUMBULL )

THE COURT OF APPEALS  
ELEVENTH DISTRICT

COUNTRYWIDE HOME LOANS,  
INC., et al.,

Plaintiffs,

JUDGMENT ENTRY

- vs -

CASE NO. 2009-T-0044

REGGIE D. HUFF, et al.,

Defendants/Third Party  
Plaintiffs-Appellants,

- vs -

COMMONWEALTH SUBURBAN  
TITLE AGENCY, INC.,

Third Party Defendant-  
Appellee.

**FILED**  
COURT OF APPEALS

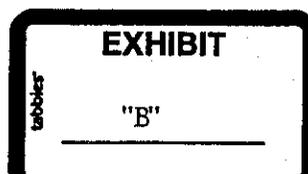
APR 28 2010

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

On March 31, 2010, appellant, Reggie D. Huff, filed a motion requesting this court to reconsider our decision in *Countrywide Home Loans, Inc. v. Huff*, 11th Dist. No. 2009-T-0044, 2010-Ohio-1164.<sup>1</sup> Appellant contends that this court's decision was in error and that we should, therefore, reconsider the opinion pursuant to App.R. 26(A).

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1. We note that Reggie D. Huff and Lisa G. Huff were both named appellants in *Huff*, supra. However, it appears that only Reggie D. Huff filed the present motion for reconsideration through his counsel.



App.R. 26 does not provide specific guidelines to be used by an appellate court when determining whether a prior decision should be reconsidered or modified. *State v. Black* (1991), 78 Ohio App.3d 130, 132. However, the standard that has been generally accepted for addressing an App.R. 26(A) motion was stated in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140. In *Matthews*, the court observed: "The test generally applied \*\*\* is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Id.* at paragraph two of the syllabus.

In his application, appellant seeks reconsideration of this court's opinion in which we affirmed the judgment of the trial court. According to appellant, this court erred in determining that the trial court properly granted the motion for summary judgment of appellee, Commonwealth Suburban Title Agency, Inc. ("Commonwealth"). Specifically, appellant alleges the following: whether or not specific terms of a title policy are in play is irrelevant to the certainty of damages; the existence of actual damages places the determination of damages within the purview of a jury; he is further victimized due to the requirement to pay taxed court costs; the title policy never existed; Commonwealth breached its duty to provide a clear title; upon a finding that a separate "tort duty" exists, he is entitled to actual and direct damages; he was denied the right to sell his property; and all

efforts to market the property were halted and obstructed by the encumbered title and by Commonwealth. We disagree.

In *Huff*, supra, at ¶¶38-42, this court stated the following:

“Here, appellants are unable to point to any direct legal authority to support their arguments regarding the existence or non-existence of title insurance. The trial court correctly indicated that appellants’ claims against Fidelity (the title insurance company) were dismissed by the trial court, which we later affirmed in [*Countrywide Home Loans, Inc. v. Huff*, 11th Dist. No. 2007-T-0121, 2008-Ohio-4974]. We note again here that Fidelity is not a named party to the instant appeal. Our review of the record supports the conclusion by the trial court that Commonwealth was entitled to judgment in its favor as a matter of law.

“In addition, attached to appellant Reggie Huff’s motion for summary judgment was a copy of a letter from Fidelity, dated October 24, 2008, noting the following:

“The only title defect alleged by your claim was the fact that the Prior Mortgage, was still of record when the foreclosure complaint was filed. Any theoretical title defect cause(d) by the Prior Mortgage was cured by the recording of its release on May 18, 2006 by instrument 200605170014091. Therefore you did not suffer any loss covered by the policy.

“In view of the foregoing facts and the terms of the Policy, I must conclude that there is no coverage for your claim under the Policy. Accordingly, (Fidelity) must respectfully deny this claim.’

“Our review of the record establishes that the trial court did not err by holding that appellants suffered no damages as a result of the existence or non-existence of title insurance. Again, with respect to the issue of damages, it does not matter whether title insurance existed or not since appellants’ claims against Fidelity, the underwriter of Reggie Huff’s Owner’s Policy of Title Insurance, were dismissed by the trial court and later affirmed by this court in *Huff*, [2008-Ohio-4974], and Fidelity is not a named party to the instant appeal.”

In addition, this court stated in *Huff*, *supra*, at ¶48-49:

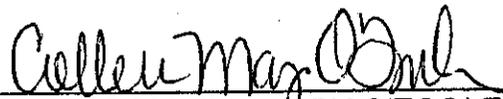
“In the instant case, our review of the record establishes that appellants suffered no damages as a result of the acts or omissions of Commonwealth. The mortgage to Mahoning Fund was released of record prior to appellants’ attempt to sell the subject property. According to appellant Reggie Huff’s deposition, he did not even know of the existence of this mortgage until many months after the foreclosure action was filed. He did not list the property for sale with a realtor until after the Mahoning Fund mortgage was released. Thus, appellants’ opportunity to sell the property was not adversely impacted by the existence of the foregoing mortgage, since they knew nothing about it until after they defaulted on their obligation to Countrywide. Appellants’ default on their obligation to Countrywide led to the foreclosure, not the existence of the subordinate mortgage to the Mahoning Fund.

"The trial court did not err by holding that appellants failed to establish that they suffered any damages as a result of the acts or omissions of Commonwealth."

Upon review of the App.R. 26(A) motion filed in the present matter, it is apparent that appellant has not demonstrated any obvious errors or raised any issues that were not adequately addressed in our previous opinion. We are not persuaded that we erred as a matter of law.

An application for reconsideration is not designed to be used in situations wherein a party simply disagrees with the logic employed or the conclusions reached by an appellate court. *State v. Owens* (1996), 112 Ohio App.3d 334, 336. App.R. 26(A) is meant to provide a mechanism by which a party may prevent a miscarriage of justice that could arise when an appellate court makes an obvious error or renders a decision that is not supported by the law. *Id.* Appellant has made no such demonstration.

Accordingly, appellant's application for reconsideration is hereby overruled.

  
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JUDGE COLLEEN MARY O'TOOLE

DIANE V. GRENDALL, J.,  
CYNTHIA WESTCOTT RICE, J.,  
concur.

**FILED**  
COURT OF APPEALS  
APR 28 2010  
TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

IN THE ELEVENTH DISTRICT COURT OF APPEALS  
TRUMBULL COUNTY, OHIO

COUNTRYWIDE HOME LOANS, INC. )  
AND )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC. C/O )  
COUNTRYWIDE HOME LOANS, INC. )

Co-Plaintiffs- )  
Appellees. )

v. )

REGGIE D. HUFF, ET AL. )

Defendants- )  
Appellants. )

NO. 2009 TR 44

**FILED**  
COURT OF APPEALS

MAY 05 2010

TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

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REQUEST TO TAKE JUDICIAL NOTICE AND APPLICATION FOR RECONSIDERATION

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EXHIBIT

"C"

Now comes appellant Reggie D. Huff, by and through his counsel, and respectfully makes a second application for reconsideration and a request to take judicial notice of the law of the case for just cause and further requests this Court affect a stay upon its March 22nd ruling or otherwise act to preserve Appellant's right to apply for discretionary review by the Ohio Supreme Court which currently expires on May 6, 2010.

Application for reconsideration is allowed under App.R 26(A) for any judgment entry involving clear errors or failure to consider material issues that ought to have been considered or both. See Painter v. State Auto Insurance Company 1996 WL 631201 (Ohio App. 10 Dist. 1996-second motion for reconsideration granted) and United Excavating Company, Inc. v. Hartford Accident & Indemnity Company 1978 WL 214856 (Ohio App. 7 Dist.-second motion for reconsideration granted). Reconsideration of this Court's April 28, 2010 Judgment Entry is based on the following issues not limited to and including:

- 1) Appellant is entitled to full consideration of material issues presented within Appellant's first unopposed motion for reconsideration within 45 days of filing as per App.R 26(C).
- 2) This Court, so far has failed to consider the separate tort duty as established by finality of previous rulings which establishes clear error as a matter of law and the law of the case.
- 3) The Court is asked specifically to take judicial notice of the law of the case as defined within Appellant's

first unopposed motion for reconsideration and below.

- 4) This Court, so far has failed to address other errors involving title rights and a requirement of appellant to attempt to sell the real estate with known fatal title defects, which, if not illegal, is a useless act.
- 5) Due to the law of the case doctrine wherein the trial court defined and permitted a separate cause of action against the title company the Appellate Court may lack jurisdiction to sustain its current rulings.
- 6) Appellant has right to rely on the law of the case in lawful pursuit of relief.

#### LAW OF THE CASE DEFINED

This Appellate Court has made it clear through two rulings that it holds that the dismissal of Fidelity creates an automatic dispositive defense for Commonwealth. This finding stands in direct conflict with previous rulings affirmed by this Court which have been solidified by finality of judgment (i.e. that Appellee did not appeal).

As was addressed within Appellant's first unopposed application for reconsideration, Fidelity successfully argued a separate tort duty from that of its issuing agent, the closing agent Commonwealth, as part of the lower court's first round of dispositive rulings involving the parties to this appeal. Accordingly the lower court refused to release Commonwealth along side Fidelity due specifically to the separate role Commonwealth played. Commonwealth having full and fair opportunity to cross appeal that decision failed to do so and this Court affirmed the

lower court's ruling in its entirety. At that point the separate tort duty for separate acts became the law of the case. Appellant Reggie D. Huff had the right to rely on the established law of the case. Therefore, Appellant Reggie D. Huff does hereby, for just cause, respectfully request this Court take judicial notice of the law of the case. Having taken judicial notice it is respectfully requested that this Court take whatever immediate further action is warranted to preserve justice.

#### NON-DISCRETIONARY JUDICIAL NOTICE

The common law Doctrine of the "law of the case" has been best defined for purposes of this issue in the following manner:

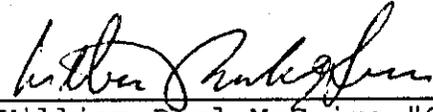
"Doctrine of "law of the case" requires a trial court and reviewing courts (emphasis ours) to follow the principles laid down upon a former appeal in the same case, whether those principles are correctly or incorrectly decided; doctrine applies with equal force to legal determinations whether they are express or implied." City of Oakland v. Superior Court of Monterey County; 150 Cal. App.3d 267 (1984).

It is the position of the Appellant, respectfully stated, that the most recent decision of the Court of Appeal's contradicts its prior rulings (a material distinguishing factor from generic judicial notices i.e facts of common public knowledge, etc.), that is judicial notice of its own former ruling in the same case is non-discretionary and refusal to do so would necessarily invoke the original jurisdiction of the Supreme Court of Ohio. City of Oakland, supra.

App.R 26(C) anticipates jurisdiction of this Court to rule on

a motion for reconsideration timely filed within the discretionary appeal time to the Ohio Supreme Court after that time period has elapsed. Further, common law judicial notice is not controlled by time limits.

Respectfully submitted,



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Counsel for Appellant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Application to Request to Take Judicial Notice and Application for Reconsideration was served this 5th day of May 2010, via facsimile, to the following person(s):

STUART A. STRASFELD, ESQ. - (330) 744-5211  
100 Federal Plaza E. STE 600  
Youngstown, Ohio 44503



William Paul McGuire

STATE OF OHIO )  
 ) SS.  
COUNTY OF TRUMBULL )

THE COURT OF APPEALS  
ELEVENTH DISTRICT

COUNTRYWIDE HOME LOANS,  
INC., et al.,

Plaintiffs,

- vs -

JUDGMENT ENTRY

CASE NO. 2009-T-0044

REGGIE D. HUFF, et al.,

Defendants/Third Party  
Plaintiffs-Appellants,

- vs -

COMMONWEALTH SUBURBAN  
TITLE AGENCY, INC.,

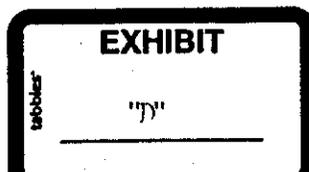
Third Party Defendant-  
Appellee.

**FILED**  
COURT OF APPEALS  
MAY 27 2010  
/ TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK

On March 31, 2010, appellant, Reggie D. Huff, filed a motion requesting this court to reconsider our decision in *Countrywide Home Loans, Inc. v. Huff*, 11th Dist. No. 2009-T-0044, 2010-Ohio-1164.<sup>1</sup>

Pursuant to this court's April 27, 2010 five page judgment entry, we overruled appellant's application for reconsideration.

1. We note that Reggie D. Huff and Lisa G. Huff were both named appellants in *Huff*, supra. However, it appears that only Reggie D. Huff filed the motion for reconsideration through his counsel.



On May 5, 2010, appellant filed a second application for reconsideration.<sup>2</sup> Appellant requests this court take judicial notice of the law of the case, and requests us to take whatever further action is warranted to preserve justice.

This court considered appellant's arguments during his direct appeals and reconsidered the same in his first application for reconsideration. On each occasion, we rejected appellant's contentions and affirmed the judgment of the trial court. Now, appellant seeks reconsideration of our denial of his motion for reconsideration. A vehicle of this sort is not expressly contemplated by App.R. 26(A). Furthermore, we find no case authority authorizing a party to file successive applications for reconsideration under the present set of facts.<sup>3</sup> While appellant may be dissatisfied with our resolution of the underlying issues on appeal as well as our adjudication upon reconsideration, we hold these conclusions are final and entitled to finality.

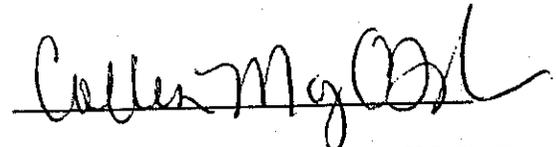
We do not agree with appellant that we have erred by failing to consider material issues in rendering our decisions and/or that our most recent decision contradicts prior rulings.

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2. Again, it appears that only Reggie D. Huff filed the present motion through his counsel.

3. We note that appellant's reliance on *Painter v. State Auto Ins. Co.* (Oct. 31, 1996), 10th Dist. No. 95APE12-1558, 1996 Ohio App. LEXIS 4789, and *United Excavating Co., Inc. v. Hartford Accident & Indemnity Co.* (Mar. 6, 1978), 7th Dist. No. 78 CA 19, 1978 Ohio App. LEXIS 9551, is misplaced. In *Painter*, the court granted a second motion for reconsideration on the basis of a recent Supreme Court of Ohio decision which changed the previous law. In *United Excavating*, the second motion for reconsideration was granted because the court held that the notice of appeal was improperly dismissed and the first motion for reconsideration was improperly overruled due to the fact that a blizzard caused the courthouse to be closed and the notice was not capable of being delivered on time. Clearly, the fact pattern presently before us in the case sub judice is distinguishable from the foregoing two cases cited by appellant.

Accordingly, appellant's second application for reconsideration is hereby  
overruled.



JUDGE COLLEEN MARY O'TOOLE

DIANE V. GREDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.

**FILED**  
COURT OF APPEALS

MAY 27 2010

/ TRUMBULL COUNTY, OH  
KAREN INFANTE ALLEN, CLERK