

IN THE SUPREME COURT OF OHIO

Gregory D. Adkins and :
Jo Ellen Adkins :

Appellants :

v. :

Honorable Megan Shanahan, :
Hamilton County Municipal Court, :

Appellee. :

Case # 2012--508

On Appeal from the
Hamilton County Court
of Appeals, First
Appellate District

**MERIT BRIEF OF APPELLANTS
GREGORY D. ADKINS AND JOELLEN ADKINS**

Charles E. McFarland (0031808) (Counsel of Record)
Attorney at law
338 Jackson Road
New Castle, Kentucky 40050
(502) 845-2754
Fax (502) 845-2754
mcfarlandc@bellsouth.net

COUNSEL FOR APPELLANTS
GREGORY D. ADKINS AND
JO ELLEN ADKINS

Joseph T Deters
Prosecuting Attorney
Hamilton Ohio
Christian J. Schaefer (0015495) (Counsel of Record)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3041
Fax No. (513) 046-3018
chris.schaefer@hcpros.org

COUNSEL FOR APPELLEE
HONORABLE JUDGE MEGAN SHANAHAN
HAMILTON COUNTY MUNICIPAL COURT

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I. STATEMENT OF FACTS

This case arose as an original action in the First District Court of Appeals in Hamilton County, Ohio, through a Petition for Writ of Prohibition filed on February 8, 2012, by the Relators Gregory D. and Jo Ellen Adkins (Appellants). The Petition was intended to prevent Respondent, Honorable Judge Megan Shanahan (Appellee) from exercising any further jurisdiction in the case before her titled, *Walker Wayne Smith v. Gregory D. and Jo Ellen Adkins*, Case No. 10 CV 12756 in the Hamilton County Municipal Court. The Petition asserted that Judge Shanahan and the municipal court lacked subject matter jurisdiction over claims made by the Plaintiff Walker Smith of alleged unpaid debts by the Adkins created in 1996. The assertion was based on the 2001 no-asset 11 U.S.C. §727 discharge of Adkins' unsecured debts. Judge Shanahan filed a Rule 12(B)(6) Motion to Dismiss on February 14, 2012, which was granted on February 29, 2012.

The Adkins timely filed a Notice of Appeal to the Ohio Supreme Court on March 26, 2012. Subsequent to the Notice of Appeal, in an apparent response to the Application for Reconsideration filed by the Adkins on March 7, 2012, the First District Court of Appeals issued an Amended Entry Dismissing the Petition for Writ of Prohibitions and Overruling the Application for Reconsideration. The Amended Entry was issued on March 28, 2012.

The facts supporting the Petition for a Writ of Prohibition are as follows:

On May 12, 2010, the Plaintiff in the case of *Smith v. Adkins, supra*, initiated the case by filing a complaint against the Adkins. The complaint alleged a breach of contract and unjust enrichment. The complaint alleged the Adkins co-signed for a Patriot mobile home in 1996 and for received in 1996 unjust enrichment related to the Patriot mobile home. All of the

circumstances involved took place in 1996. (See Exhibit A, Complaint, attached to Petition). The Patriot mobile home was never owned or titled by either the Smiths or the Adkins.

On December 15, 2010, during his deposition, Greg Adkins provided Smith's attorney with a copy (Exhibit C, attached to Petition) of the Adkins' bankruptcy discharge under 11 U.S.C. §727 (See Exhibit B, page 43 of the December 15, 2010 deposition of Greg Adkins, attached to Petition). Smith continued with the action, even after being made aware of Adkins bankruptcy in 2001.

When the Adkins pointed out that the Patriot mobile home as listed in the Complaint and its attached exhibits was never owned by either party, Plaintiff Smith filed an affidavit on February 8, 2011, which he subsequently amended on February 25, 2011 (See Exhibits D and E, affidavits of Smith, attached to Petition). Smith's affidavits effectively changed his theory of the case from Adkins being a co-signer to the Patriot mobile home to allegations that the Adkins made an oral agreement to be co-signers of a loan to purchase a Fleetwood mobile home. According to the affidavits, the Adkins were left off the loan agreement because of the inactions of two unnamed parties (See ¶6 in both affidavits, D-2 and E-2 respectively, attached to Petition).

Prior to the trial the parties were required to file pre-trial statements. In his pre-trial statement, filed on January 3, 2012, Smith claimed his claims of breach of contract and unjust enrichment were based on an oral contract made in 1996. See (Exhibit F, Smith's Pre-trial statement at F-1, attached to Petition). Smith also accurately anticipated, as right so, in his pre-trial statement the Adkins would claim that they were only renters (See F-3 of Exhibit, attached to Petition).

The trial was set for January 10, 2012. At the beginning of the trial Plaintiff Smith gave his opening statement and the Adkins responded. At the closing of their opening statement the Adkins questioned why the trial was going forward when any claim of unsecured debts made by

Smith, if he did win a judgment, was automatically discharged pursuant to their §727 bankruptcy discharge in 2001. Smith's attorney, called Greg Adkins to the stand as a witness. But before he asked Adkins any questions, Smith's attorney requested a brief recess to explore the possibility of settling the case due to the bankruptcy issue. The court requested the parties to file an agreed entry and set the date for the submission of the agreed entry for January 24, 2012 (See Exhibit G, docket sheet entry dated January 11, 2012, attached to Petition).

The settlement agreement was unsuccessful as Smith's attorney insisted that there had to be a judgment, while Adkins' attorney maintained the case should be dismissed. As a result of the unsuccessful settlement, On January 23, 2012 Adkins' attorney filed a Motion to Dismiss due to the bankruptcy discharge (See Exhibit H, attached to Petition,). On the same day the Adkins subsequently filed a Notice of Lack of Jurisdiction. (See Exhibit I attached to Petition). With no notice reflected in the docket sheet (See Exhibit G , attached to Petition), the court held an *ex parte* hearing with Smith's attorney on January 24, 2012 (See Exhibit J, transcript of January 24, 2012, attached to Petition). Subsequently, the court issued an order setting the matter to continue the trial on February 15, 2012 (See Exhibit K, Petition).

In addition to the foregoing facts the Adkins asserted that 1.) without a Writ of Prohibition the Hamilton County Municipal Court through the Honorable Judge Shanahan will continue to exercise jurisdiction it does not have; time was of the essence in this matter and unless there is an immediate judicial determination issued prohibiting Judge Shanahan from continuing with the trial the Petitioners would have to defend a claim that has already been discharged in bankruptcy; and 3.) the defense of the claims in the trial would will result in unnecessary expenses to the Petitioners, which they could ill afford, and squander precious judicial resources (See Petition, ¶¶22-24).

II. ARGUMENT

Proposition of Law I

A municipal court lacks jurisdiction to hear claims by an alleged creditor for and unsecured debt created prior to a discharge in a no-asset bankruptcy case under 11 U.S.C. §727.

A. Introduction

Before the Supreme Court can determine if the Entry on February 29, 2012 and Amended Entry on March 28, 2012 by the First District Court of Appeals to dismiss the Writ of Prohibition were in error, the Court must first determine whether the Hamilton County Municipal had jurisdiction to hear a claim alleging a debt created prior to a no-asset bankruptcy discharge under 11 U.S.C. §727. This is the crux of the instant case.

The original Complaint filed by Walker Smith alleged that the Adkins had co-signed to purchase a Patriot mobile home. The alleged contract for a Patriot mobile home was supposedly made in June of 1996 (Exhibit A, ¶9, attached to Petition). In April of 2010 Smith paid \$7,000.00 to Huntington National Bank to settle the obligation in order to prevent foreclosure on a Fleetwood mobile home. Smith and his wife were the only parties to the contract to purchase the Fleetwood mobile home. (*Id.* Ex A at ¶11).

The Complaint also alleged that Smith loaned the Adkins \$2,600.00 to assist with the purchase of the Patriot mobile home for the payment of insurance, the first three monthly installments and relocation expenses for the Patriot mobile home. (*Id.* Ex A at ¶8).

If these facts were true, then the Adkins would not have a claim that their obligation under the alleged co-signed agreement was discharged in a no-asset bankruptcy because it would have been a secured debt. But these facts are not true.

The Complaint was filed on May 12, 2010. Smith later changed the facts in two affidavits filed under oath. The first affidavit, made by Smith on February 8, 2011, stated that he and his

wife purchased a Fleetwood mobile home in July of 1996 (Exhibit D, ¶¶6-8, attached to the Petition). According to Smith, the lender was supposed to secure the signatures of the Adkins on another date (*Id.* Ex D at ¶6). No signatures were obtained. The affidavit also alleged Smith loaned the Adkins \$2,600.00 to assist with the purchase of the Fleetwood mobile home for the payment of insurance, the first three monthly installments and relocation expenses (*Id.* Ex D at ¶12).

Smith later changed the facts again on February 25, 2011 when he filed a second affidavit under oath (Exhibit E, attached to Petition). In this affidavit Smith again stated that he and his wife purchased a Fleetwood mobile home in July of 1996 (*Id.* Ex E at ¶¶6-8). But in the second affidavit the Adkins were supposed to go to Holiday Homes to sign the papers (*Id.* Ex E at ¶6). No signatures were made by the Adkins. The second affidavit also changed the reasons for loaning the Adkins \$2,600.00. The \$2,600.00 was now allegedly loaned only to purchase insurance and for three late payments (*Id.* Ex E at ¶12). No dates were given as when the late payments were made and the relocation expenses were not listed as part of the loan.

Prior to the scheduled trial on January 10, 2012, Smith again modified the facts. In the pre-trial statement Smith alleged that the Adkins made an agreement to co-sign for the Fleetwood mobile home and to be financially responsible for all expenses associated with the mobile home (Exhibit F at page 1, attached to Petition). The loan for \$2,600.00 was not mentioned in the pre-trial statement. The very first statement in the pre-trial statement made the basis of Smith allegations clear; the action by Smith was “based on a beach of an oral contract, and for unjust enrichment arising from the purchase of a mobile home in 1996.” (*Id.*)

Given that the claims made by Smith are for debts created by an alleged oral contract in 1996, the questions remains, “Does the Hamilton County Municipal Court have jurisdiction to

consider alleged debt obligations that were created prior to a discharge in a no-asset bankruptcy case under 11 U.S.C. §727?" The answer to this question is NO!

B. Municipal Court lacks Jurisdiction Over Discharged Debts

The Adkins maintain that the claims for unsecured loans advanced by Plaintiff Smith were discharged in 2001 and the municipal court lacked subject matter jurisdiction over the alleged debts. The essence of the Adkins' argument is that their bankruptcy discharge was a no-asset, no-time-bar, discharge. Pursuant to *In re Madlaj*, 149 F.3d 467, 470 (6th Cir. 1998), which was cited with approval by *Toledo Bar Ass'n v. Hale*, 120 Ohio St.3d 340, 2008-Ohio-6201, 899 N.E.2d 130, ¶14, fn 1, a claim by an unscheduled creditor in a no-asset case was discharged when the creditor received notice. *In re Gunter*, 389 B.R. 67, 71 (Bkrcty. S.D. Ohio 2008), further holds that a discharge in a bankruptcy case "operates as an injunction against the commencement or continuation of an action."

The discharge injunction takes effect when the creditor receives actual notice of the discharge, *id.* at 72. Once an automatic injunction applies, the bankruptcy court has conclusive jurisdiction, *Choa v. Hospital Staffing Services, Inc.*, 270 F.3d 374, 383 (6th Cir. 2001). See also *City of Shaker Heights v. Green*, 8th Dist. No. 82236, 2003-Ohio-4056, ¶9 and *Coles v. Daniels*, 8th Dist. No. 85573, 2005-Ohio-4701, ¶9. The temporary stay of 11 U.S.C. §362 becomes permanent with a discharge injunction. "Confirmation grants the debtor a discharge that replaces the automatic stay with a permanent injunction pursuant to 11 U.S.C. § 524(a)." See *In re Diamantis*, 380 B.R. 838, 843 (Bkrcty, N.D. Ala. 2007) and *In re White*, 466 F.3d 1241, 1246 (11th Cir. 2006).

In the case before the municipal court Plaintiff Smith received knowledge of the Adkins' bankruptcy through his attorney on December 15, 2010, yet continued the action, knowing he

had a duty to withdraw the action. Thus, the alleged claim in 2010 by Plaintiff Smith of a debt created in 1996, which was prior to the Adkins' bankruptcy discharge in 2001, is discharged as a matter of law pursuant to the above cited cases. Judge Shanahan and the Hamilton County Municipal Court, as matter of law, had no subject matter jurisdiction over claims for unsecured debts discharged in no-asset bankruptcy.

Proposition of Law II

An appellate court must grant a Writ of Prohibit when it is shown that a municipal court lacks jurisdiction to consider non-secured debts created prior to a discharge in a no-asset bankruptcy case under 11 U.S.C. §727.

A. Introduction

Appellants Adkins Petitioned the First District Court of an Appeal for a Writ of Prohibition to prevent the Honorable Judge Megan Shanahan of the Hamilton County Municipal Court from exercising jurisdiction over unsecured debts discharged in bankruptcy. Shanahan filed a Rule 12 (B)(6) Motion to Dismiss. The appellate court dismissed the appeal on February 29, 2012. But because the order was confusing, the Adkins filed a Motion for Reconsideration on March 7, 2012. Respondent Shanahan filed an opposition brief noting that a Motion for Reconsideration may not be authorized when the case before the court of appeals is an original action. In response to the opposition and to avoid missing the filing deadline for a Notice of Appeal if the Motion for Reconsideration was deemed unauthorized, the Adkins timely filed a Notice of Appeal to the Ohio Supreme Court on March 26, 2012. Subsequent to the filing of the Notice of Appeal, in response to the Application for Reconsideration filed by the Adkins, the First District Court of Appeals issued an Amended Entry Dismissing the Petition for Writ of Prohibitions and Overuling the Application for Reconsideration. The Amended Order was issued on March 28, 2012.

Having shown that the Hamilton County Municipal Court lacked jurisdiction to consider claims involving discharged debts, the question now becomes, "Did the First District Court err when it dismissed the Adkins' Writ of Prohibition." The answer is YES!

B. Writ of Prohibition Should Have Been Granted

1. Legal grounds for Writ

To obtain a writ of prohibition, a relator must establish: 1.) that the respondent is about to exercise judicial or quasi-judicial power; 2.) that the exercise of such power is unauthorized by law; and 3.) that a denial of the writ will cause injury for which no other adequate remedy exists. See *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 336, 686 N.E.2d 267 (1997). In addition, prior to listing the elements above, in the case of *State ex rel. Tubbs Jones, Pros. Atty. v. Suster, Judge, et rel.*, 84 Ohio St.3d 70, 701 N.E.2d 1002 (1998), the court gives an excellent explanation, which fully supports the granting of Adkins' Petition.

This court has original jurisdiction to issue a writ of prohibition. Section 2(B)(1)(d), Article IV, Ohio Constitution. However, neither the Constitution nor the General Assembly has defined the parameters of prohibition. *State ex rel. Burtzloff v. Vickery* (1929), 121 Ohio St. 49, 50, 166 N.E. 894, 895. Drawing from principles of common law, this court has determined that a "writ of prohibition has been defined in general terms as an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions." *Id.* at 50, 166 N.E. at 895. ***In other words, the purpose of a writ of prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction.*** *State ex rel. Barton v. Butler Cty. Bd. of Elections* (1988), 39 Ohio St.3d 291, 530 N.E.2d 871. As such, a writ of prohibition is an "extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies." *State ex rel. Henry v. Britt* (1981), 67 Ohio St.2d 71, 73, 21 O.O.3d 45, 47, 424 N.E.2d 297, 298-299; *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas* (1996), 74 Ohio St.3d 536, 540, 660 N.E.2d 458, 461 ("Prohibition is an extraordinary writ and we do not grant it routinely or easily.").

In addition, a writ of prohibition "tests and determines 'solely and only' the subject matter jurisdiction" of the lower court. *State ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409, 534 N.E.2d 46, 52; *State ex rel. Staton*

v. Franklin Cty. Common Pleas Court (1965), 5 Ohio St.2d 17, 21, 34 O.O.2d 10, 13, 213 N.E.2d 164, 167. (Emphasis added)

Thus, it is clear that a writ of prohibition is warranted when an inferior court is attempting to operate beyond its subject matter jurisdiction.

Pursuant to *State ex rel. White, supra*, there are three criteria that must be met before an appellate court will grant a writ of prohibition. Appellants will address each of these individually.

a. Judge Shanahan Was About to Exercise Judicial Power

In the Petition the Adkins asserted that the Honorable Judge Shanahan was about to exercise jurisdiction over claims involving discharged bankruptcy unsecured debts, which she had no authority or jurisdiction. Judge Shanahan was given oral notice on January 10, 2012 that the claims Smith was advancing had been discharged in bankruptcy. Yet, Judge Shanahan allowed the parties to attempt a settlement agreement, which is void *ab initio* as matter of law. The Adkins gave Judge Shanahan written notice of the bankruptcy through their Motion to Dismiss and Notice of Lack of Jurisdiction. Since Judge Shanahan had scheduled February 15, 2012 as the date for the trial to be continued, it was clear that she was going to exercise jurisdiction over a claims for unsecured debts that has been discharged in bankruptcy. Accordingly, the Adkins met the first criterion.

b. The Exercise of Such Power is Unauthorized by Law

The Adkins, as shown above, maintained that the claims advanced by Plaintiff Smith were discharged. But for the purposes of the Petition for a Writ of Prohibition, the question was whether the municipal court has authority to continue on with a trial to determine if the Plaintiff could obtain a judgment even though the claims are discharged. The cases indicate that the answer is no.

In answering the foregoing question the issue of subject matter jurisdiction is a primary factor to be considered. "Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits." *Morrison v. Steiner*, 32 Ohio St.2d 86, 87, 290 N.E.2d 841 (1972). See, also, *Valmac Industries, Inc. v. Ecotech Mach., Inc.*, 137 Ohio App.3d 408, 411-412, 738 N.E.2d 873 (2nd Dist. 2000) ("Subject matter jurisdiction refers to the authority that a court has to hear the particular claim brought to it and to grant the relief requested"). If a court lacks subject matter jurisdiction and renders a judgment, that judgment is void *ab initio*. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988) paragraph three of the syllabus. Moreover, "[w]here a court has no jurisdiction over the subject matter of an action or an appeal, a challenge to jurisdiction on such ground may effectively be made for the first time on appeal in a reviewing court." *Jenkins v. Keller*, 6 Ohio St.2d 122, 123, 216 N.E.2d 379 (1966), paragraph five of the syllabus. See, also, Civ.R. 12(H)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action").

In the case before Judge Shanahan the subject matter is the claims involving unsecured debts discharged in bankruptcy. While there are conflicting theories about whether state courts have concurrent jurisdiction to determine the dischargeability of debts, that ability is stripped when the bankruptcy court issues a discharge injunction. "Once a bankruptcy proceeding begins in one court, the concurrent jurisdiction of other courts is partially stripped." See *Choa, supra*, 270 F.3d at 383.

"However, the exclusivity of the bankruptcy court's jurisdiction reaches only as far as the automatic stay provisions of 11 U.S.C. § 362. That is, if the automatic stay applies to an action directed at the debtor or its property, jurisdiction is exclusive in the bankruptcy court. If the automatic stay does not apply-- e.g., if an exception to the stay covers the action in question-- the bankruptcy court's

jurisdiction is concurrent with that of any other court of competent jurisdiction,”
id.

See also *City of Shaker Heights, supra*, 2003-Ohio-4056 at ¶9 and *Coles, supra*, 2005-Ohio-4701 at ¶9.

The temporary stay of 11 U.S.C. §362, however, becomes permanent with a discharge injunction. “Confirmation grants the debtor a discharge that replaces the automatic stay with a permanent injunction pursuant to 11 U.S.C. § 524(a).” See *Diamantis, supra*, 380 B.R. at 843 and *White, supra*, 466 F.3d at 1246.

Accordingly, since Congress has granted the bankruptcy court with exclusive jurisdiction under §524(a), the only way the municipal court could have jurisdiction over a claims of unsecured debts originating before the 2001 discharge of the Adkins’ debts, is for the Plaintiff to allege a claim that falls under one of the exceptions in §523(a). Because there are no such allegations and the record is void of any such allegations, Judge Shanahan and the municipal had no authority or jurisdiction to proceed with the case. Judge Shanahan and the municipal court patently and unambiguously lacked jurisdiction to consider the matter.

c. No Other Adequate Remedy Exists if Writ Is Denied

In this case, if the dismissal of Petition for the Writ of Prohibition is upheld, the Adkins will suffer irreparable harm. They will be forced to go through an extensive and expensive trial and with a very distinct probability of an appeal to vindicate their bankruptcy rights. Fortunately, “a writ of prohibition will issue to prevent a lower court from exercising jurisdiction regardless of the availability or adequacy of appeal.” See *State ex rel Phiels v. Pietrykowski*, 83 Ohio St.3d 460, 462, 755 N.E.2d 893 (2001) and *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001).

2. Arguments for Dismissal of Petition Not Warranted

Respondent Shanahan responded to the Petition with a Rule 12(B)(6) Motion to Dismiss on February 14, 2012. The Adkins replied on February 21, 2012. The Motion to Dismiss claimed the Petition for Writ of Prohibition should have been dismissed for four reasons.

a. Testimony Cited Out of Context

The first reason was not clearly addressed. But Shanahan asked the appellate court to consider an attachment to the Petition out of context.

The Adkins had attached Exhibit B to the Petition, which was an excerpt from Greg Adkins deposition transcript. The excerpt was attached only to provide proof that the attorney for the Smith was presented with documented evidence of the Adkins 2001 bankruptcy as early as December 15, 2010 (Petition at ¶4). The excerpt also contained the tail-end testimony relating to a loan repayment made on a \$2,000.00 loan made and paid in 2007. This was an unrelated loan that was not alleged in the original complaint, nor included any of the later adjustments to the claims made by Smith. Shanahan's focus on this loan was out of context and ignored the presentation of the documented evidence of the Adkins' bankruptcy discharge on the same deposition page. There is no dispute that the original complaint filed by Smith alleged a breach of contract that was allegedly co-signed in 1996. There is also no dispute that Smith later changed his allegations to an oral contract allegedly made 1996 as part of the stated facts in his pre-trial statement. The pre-trial statement was filed in January, 2012. The 2007 loan and repayment was never a part of Smith's claims and had no relevance in the case. It was obvious that the essence of the submission of the excerpt of the deposition (Ex B, *supra*), along with the bankruptcy discharge documents (Ex C, *supra*), were ignored when the Shanahan claimed that the time and nature of the bankruptcy discharge needed to be resolved, see page 5 of Motion to

Dismiss. The time and nature of the debt was resolved in Smith pre-trial statement. It was a debt arising from 1996.

b. Affirmative Defense Not Required

The second issue raised in the Motion to Dismiss was the claim that the Adkins failed to raise their discharge in bankruptcy as an affirmative defense.

The two cases cited by Shanahan are inapplicable. *Jungkunz v. Fifth Third Bank*, 99 Ohio App.3d 148, 650 N.E.2d 134 (1st Dist. 1994) was not decided on the basis of a discharge in bankruptcy, but the issue was the doctrine *res judicata*. The term “affirmative defense” did not appear in the opinion.

The case of *Fountain Skin Care v. Hernandez*, 175 Ohio App.3d 93, 2008-Ohio-489, 885 N.E.2d 286 (2nd Dist.) is also inapplicable. While this case does state that Carter waived his bankruptcy discharge because he failed to raise it as an affirmative defense, it cites no rule or case law for such a proposition. But the real reason the court ruled against Carter was the statements in ¶21, which were notably not quoted by Judge Shanahan. The quote by Shanahan from *Fountain Skin Care* is immediately followed by:

Further, Carter inexplicably failed to present any evidence to the trial court that his petition in bankruptcy and subsequent discharge included the debt to Fountain Skin Care. ***Had he done so, he would have been legally excused from paying the amount owed to Fountain Skin Care.*** (Emphasis added)

Thus, the court in *Fountain Skin Care* advised that had Carter provided evidence of the bankruptcy discharge, his discharge would have been honored. The Adkins did provide evidence of their bankruptcy discharge, both to Smith’s attorney on December 15, 2010, see Exhibit B of the Petition and Judge Shanahan in her Motion to Dismiss, see exhibit H of the Petition. Thus, under the findings in *Fountain Skin Care*, the Adkins’ discharge should have been honored.

There are three reasons why the claim that the bankruptcy defense was waived for failure to raise was a charade.

First, Rule 8(C) does not govern whether a defense is waived or not. In fact, Rule 8(C) does not even use the word “waived.” Instead Rule 12(H) governs the waiver of defenses. Rule 12(H) states,

(H) Waiver of defenses and objections.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (a) if omitted from a motion in the circumstances described in subdivision (G), or (b) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(A) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(A), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action.

Section (H)(1) lists the defenses that are waived. A discharge in bankruptcy is not listed.

Therefore, it is not waived.

Furthermore, Rule 15(B) expressly allows amendments to the pleadings to be made, even at trial, to conform to the evidence.

Second, the affirmative defense of a discharge in bankruptcy is essentially a challenge to the subject matter jurisdiction of the court. Section (H)(3) of Rule 12 makes it clear that a court is to dismiss the action when it appears that the court lacks subject matter jurisdiction. This can happen at any stage of the proceedings and it cannot be waived, *United States v. Cotton*, 535 U.S.625, 630, 112 S.Ct. 1781, 152 L.Ed.2d 860 (2002).

The Adkins stated at ¶30 in the Petition that Judge Shanahan lacked subject matter jurisdiction because of the discharge in bankruptcy. The cases cited in ¶30,

“Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits. ***” *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87. See, also, *Valmac Industries, Inc. v. Ecotech Mach., Inc.* (2000), 137 Ohio App.3d 408, 411-412 (‘Subject matter jurisdiction refers to the authority that a court has to hear the particular claim brought to it and to grant the relief requested’). If a court lacks subject matter jurisdiction and renders a judgment, that judgment is void *ab initio*. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, paragraph three of the syllabus.

In addition these case, the court *Cheap Escape Co., Inc. v. Haddox, LLC*, (Ohio 2008) 2008-Ohio-6323, 120 Ohio St.3d 493, 900 N.E.2d 601, ¶7, defined subject matter jurisdiction.

“‘Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits’ and ‘defines the competency of a court to render a valid judgment in a particular action.’” Since the discharge injunction under 11 U.S.C. §524(a) prohibits the continuation of an action on a discharged claim and any judgment obtained in violation of the discharge injunction is void *ab initio*, the Hamilton County Municipal Court and Judge Shanahan lacked subject matter jurisdiction.

The Shanahan’s claim of a waiver of the bankruptcy discharge because the Adkins failed to list it as an affirmative defense has also been unequivocally rejected by the 6th Circuit. In *In Re Hamilton*, 540 F.3d 367, 372 (6th Cir. 2008), “This provision [§524(a)] was designed ‘to effectuate the discharge and make it unnecessary to assert it as an affirmative defense in a subsequent state court action,’” (citations omitted).

Third, the Adkins filed their Answer *pro se*. As a technical matter, they would not have been able to raise their bankruptcy discharge as an affirmative defense, because at the time of their Answer the Plaintiff Smith was claiming that his breach of contract was derived from the Adkins’ alleged breach of a written co-signed contract on the purchase of a Patriot mobile home.

If the Adkins were co-signers on the contract for a Patriot mobile home, they would also have been co-owners. If said allegation was true, which it was not true as later acknowledged by Smith, *supra*), then the debt would not have been dischargeable as an unsecured debt under 11 U.S.C. §523(a). This would occur because an unsecured debt based on an asset, as evidenced by a co-signor contract, would have changed the no-asset case into an asset case. Thus, an affirmative defense would not have been technically appropriate because of the original nature of the claim in Smith's complaint.

Judge Shanahan concluded section A of her Motion to Dismiss with this curious observation. "The fact that an affirmative defense may exist does not deprive the Court of jurisdiction. Especially when factual issues need to be resolved, as in this case, concerning the time and nature of the bankruptcy discharge and the time and nature of the debt."

The Adkins had already shown in the Petition that the municipal court lacked jurisdiction because it was prohibited from rendering a judgment on a discharged claim. Any judgment to the contrary is void *ab initio*. What factual issues needed to be resolved? The time and nature of the bankruptcy is clear. The bankruptcy was filed in 2001 and the discharge was granted on November 23, 2001. This was clearly explained and supported by evidence in the Petition as shown above.

The time and the nature of the debt were also clearly explained in the Petition as shown above. Plaintiff Smith originally claimed there was a breach of contract resulting from the Adkins co-signing of an alleged note to buy a Patriot mobile home and their failure to pay all of the mortgage payments. The claims in the complaint regarding the breach of a co-signed contract were not true and Smith later admitted they were not true. Eventually, Smith stated the claim arose in 1996 as an oral agreement to pay the mortgage on a Fleetwood mobile home (See the

first paragraph of Exhibit F and also F-2 attached to the Petition). Smith's claim occurred before the 2001 bankruptcy and the nature of the debt was an unsecured debt arising from an oral contract. The Petition and the attached Exhibits H and I fully explained why the debt was discharged.

Thus, it is readily apparent the claim that the Adkins waived their bankruptcy discharge by failing to list it as an affirmative defense is patently unsupported by any case law.

c. Bankruptcy Court Enforcement of a Discharge Not Relevant

The third issue raised by Shanahan addresses the claim that the ability of a bankruptcy court to enforce a discharge through contempt proceedings does not divest the municipal court of subject matter jurisdiction. Through this issue Shanahan demonstrated some confusion concerning sections 523(a) and 524(a) of the bankruptcy code. §523(a) addresses what debts are discharged and lists the exceptions to the discharge. This section is the one that *In Re Madaj*, 149 F.3d 467 (6th Cir. 1998) and *In Re Gunter*, 389 B.R. 67 (Bkrcty S.D. Ohio 2008) primarily addressed. On the other hand, as explained in the Petition at ¶¶ 32 and 33, §524(a) operates as a discharge injunction. §524(a) is used against attorneys to find them in contempt when they violate the discharge injunction. *Madaj* did not address the contempt issue and *Gunter* did not find contempt. The holding in both cases was that an unsecured debt in a no-asset bankruptcy was discharged. The result is clear, §523(a) strips state courts of jurisdiction to rule on a discharged debt.

d. Municipal Court Has No Jurisdiction to Enforce Settlement Agreement

The fourth and final reason cited by Shanahan should not have been a reason for dismissal. Shanahan concluded her Motion to Dismiss to have the Petition dismissed with the argument the municipal court allegedly had jurisdiction to enforce settlements.

On page 6 of the Motion to Dismiss the Shanahan stated, "Settlement agreements are contracts designed to terminate a claim by preventing or ending litigation and they are valid and enforceable by any party to the agreement." A simple response is, "A court cannot enforce an illegal contract." Not only is a postpetition judgment on an unscheduled discharged debt void, but a postpetition agreement to settle a case is illegal, *In Re Cruz*, 254 B.R. 801, 806 (Bkrcty. S.D. N.Y. 2000). Any settlement agreement that fails to adhere to the requirements of §§524(c) and (d) is unenforceable. It is obvious that there is no evidence that the so-called agreed settlement made on January 10, 2012 was made before the discharge in 2001 or filed with the bankruptcy court. These requirements are mandatory.

In effect, Shanahan was attempting to request the appellate court to allow her and the Hamilton County Municipal Court to enforce an illegal settlement. Thus, the entire argument regarding a municipal court having jurisdiction to enforce an agreed settlement regarding a discharged debt is contrary to law and therefore meritless.

3. Appellate Court Original Dismissal Not Warranted

Despite the fact that the Rule 12(B)(6) Motion to Dismiss was not supported by the facts of the case, nor by the law, the appellate court issued an Entry dismissing the Petition on February 29, 2012. The Adkins filed a Motion for Reconsideration on March 7, 2012, because the entry was confusing. The entire Entry stated as follows:

This cause came on to be considered upon the petition for writ of prohibition, the respondent's motion to dismiss, the petitioner's memorandum in opposition, and the respondent's reply.

The Court finds that the motion to dismiss is well taken and is granted.

The petition for writ of procedendo is dismissed.

The court in *Genhart v. David*, 7th dist. No. 10 MA 144, 2012-Ohio-433, ¶2 set forth the well settled standard of review for reviewing applications for reconsideration. The court stated,

The standard for reviewing an application for reconsideration pursuant to App.R. 26(A) is whether the application "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." *Columbus v. Hodge*, 37 Ohio App.3d 68, 523 N.E.2d 515 (1987), paragraph one of the syllabus. Similarly, "[a]n application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. App.R. 26 provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law." *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (1996).

The February 29, 2012 was in error for two reasons. First, the Entry made several obvious errors on its face. Second, the appellate court, through its Entry, rendered an unsupportable decision under the law.

a. Obvious Errors in Entry

There were only three documents filed in court of appeals. They were:

1. Petition for writ of prohibition filed by the Adkins;
2. Motion to Dismiss, with its memorandum, filed by the Judge Shanahan; and
3. Reply to the Motion to Dismiss filed by the Adkins.

Yet the Entry filed by the Court stated that it reviewed four documents as follows:

1. The petition for writ of prohibition;
2. The respondents' motion to dismiss;
3. The petitioner's memorandum in opposition; and
4. The respondent's reply.

The appellate court's claim that it reviewed four documents was perplexing. The first two documents reviewed by the court correspond to what was actually filed in the case. But the second two documents reviewed by the court are not documents filed with the court. The Adkins did not file a memorandum in opposition. And likewise, Judge Shanahan did not file a reply. The listing of these two documents as being reviewed by the court, begged the questions, "What

documents were actually reviewed?” and “Why are these two documents not on the docket sheet.”

The list of reviewed documents does not contain the Adkins Reply to the Motion to Dismiss, even though it was filed. This also begs the question, “Why did the Court not review the Adkins’ reply?”

Furthermore, the Adkins filed a Petition for Writ of Prohibition. Yet, the Entry granted the Motion to Dismiss, but then stated, “The petition for writ of procedendo is dismissed.” This further begged the question, “What conclusion did the Court reach, and what logic did the Court use, to dismiss a writ of procedendo when a petition for writ of prohibition was filed.”

To obtain a writ of prohibition, a relator must establish: 1.) that the respondent is about to exercise judicial or quasi-judicial power; 2.) that the exercise of such power is unauthorized by law; and 3.) that a denial of the writ will cause injury for which no other adequate remedy exists. See *State ex rel. White, supra*, 80 Ohio St.3d at 336. Thus, a writ of prohibition is a request to a higher court to prohibit an action by an inferior court, when the inferior court is attempting to exceed its jurisdiction.

The writ of procedendo has the exact opposite operation.

It is well settled that,

A writ of procedendo has “the limited purpose of [requiring] a lower court to go forward ‘when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.’ *State ex rel. Miley v. Parrott* (1996), 77 Ohio St.3d 64, 65, 671 N.E.2d 24.” *State ex rel. Lemons v. Kontos* [2009-Ohio-6518] 2009 WL 4756269, 2 (Ohio App. 11 Dist.). See *State ex rel. Hoffman v. Eyster* (Ohio 5th Dist, 2012) 2012-Ohio-597 at ¶3.

The Supreme Court in *State ex rel. Sawicki v. Lucas Cty. Court of Common Pleas*, 126 Ohio St.3d 198, 2010-Ohio-3299, 931 N.E.2d 1082, ¶11 has also held,

A “writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. CNG Fin. Corp. v. Nadel*, 111 Ohio St.3d 149, 2006-Ohio-5344, 855 N.E.2d 473, ¶ 20, quoting [*State ex rel. Weiss*, 84 Ohio St.3d [530] at 532, 705 N.E.2d 1227 [(1999)]].

The Supreme Court further stated, *id* at ¶12,

“ [T]he requirements for a writ of procedendo are met if a judge erroneously stays a proceeding.” *State ex rel. Charvat v. Frye*, 114 Ohio St.3d 76, 2007-Ohio-2882, 868 N.E.2d 270, ¶ 15. Consequently, “a writ of procedendo will issue to require a court to proceed to final judgment if the court has erroneously stayed the proceeding.” *State ex rel. Watkins v. Eighth Dist. Court of Appeals* (1998), 82 Ohio St.3d 532, 535, 696 N.E.2d 1079.

Thus, it is an obvious error for the February 29, 2012 dismissal to consider a petition for a writ of prohibition, then dismiss a writ of procedendo, which was not requested.

Before the Court “dismissed the writ of procedendo,” it granted the motion to dismiss. No legal conclusion was stated by the court in the Entry, nor was the logic of the court expressed. The Entry left a very strong impression that something was radically wrong in the court’s decision making process. This is especially true when the Shanahan’s Motion to Dismiss should have been denied as a matter of law.

b. Entry Unsupportable Under the Law

1.) Factual Allegations

The *State ex rel. White* decision, *supra*, set forth the requirements for a writ of prohibition to be granted. The Adkins met these requirements in their Petition for a writ of prohibition. Therefore, they stated a claim that should have been granted as a matter of law, because Judge Shanahan was attempting to exercise jurisdiction over a debt discharged in bankruptcy. The Bankruptcy Court has exclusive jurisdiction over discharged claims. The Judge Shanahan’s Motion to Dismiss failed to demonstrate that the Hamilton County Municipal Court had any jurisdiction over a claim discharged in bankruptcy as shown in the above discussion.

Thus, the Adkins met all of the factual requirements for a writ of prohibition to be issued. And Judge Shanahan did not dispute nor challenge any of them.

2.) Legal Factors

In addition to the factual allegations, listed in the Petition, the Adkins also set forth specific legal support in ¶¶27 through 35 of the Petition showing that Judge Shanahan and the Hamilton County Municipal Court had no subject matter jurisdiction over debts discharged under the discharge injunction of 11 U.S.C. §524(a). The legal support has been discussed above.

Thus, neither the Entry, nor Judge Shanahan's Motion to Dismiss were supportable by any facts or law, statute or otherwise. Thus, the appellate court rendered a decision unsupportable under the law.

4. Appellate Court Amended Entry Not Supported by Facts or Law

Based on the assertion in Judge Shanahan's opposition to the Motion for Reconsideration that such motion may not be authorized in an original action in the appellate court, the Adkins filed a Notice of Appeal regarding the original entry to the Supreme Court on March 26, 2012. Two days later the appellate court issued an Amended Entry on March 28, 2012. While this appeal was originally filed based on the denial on February 29, 2012, the Amended Entry lends tremendous insight to this case. After citing *Keenan v. Calabrese*, 69 Ohio St.3d 176, 178, 631 N.E.2d 119 (1994) for the writ of prohibition standards, the court stated,

“The second and third prongs of this test have not been satisfied. While relators have established the existence of a no-asset discharge in bankruptcy as a bar to recovery on the loan guaranty, the petition also confirms ongoing activity between the relators and the creditor after the discharge in bankruptcy. If all of the alleged indebtedness occurred before the relators sought relief in bankruptcy court, there would have been no purpose in the parties engaging in settlement discussions after their discharge in bankruptcy had been disclosed.

Under the circumstances, it is an appropriate exercise of jurisdiction for the trial court to consider the creditor's claims, if any, on the merits.”

In effect, while the appellate court stated that the Petition for a Writ of Prohibition was dismissed, it actually amended the dismissal in part. The Amended Entry clearly recognized that the Adkins did prove the no-asset bankruptcy discharge barred Smith's recovery of the \$7,000.00 Smith claim to have lost in settling the Fleetwood mobile home loan. Smith's complaint alleged a total of \$9,600.00. This leaves \$2,600.00 not directly connected to the oral agreement to co-sign for a Fleetwood mobile home.

Without citing any facts from the Petition, the Amended Entry then states, "the petition also confirms ongoing activity between the relators and the creditor after the discharge in bankruptcy." There are no facts in the Petition to support this statement. Nor are there any facts in the Petition to establish, or even hint, that a debt was created after the 2001 bankruptcy discharge. The only debts claimed by Smith were the debts created in 1996. This was affirmed by the first sentence in Smith's pre-trial statement (Exhibit F, attached to Petition). Thus, there were no debts created after the 2001 bankruptcy discharge and the Writ of Prohibition should have been granted.

Instead, the court made an erroneous assumption, "If all of the alleged indebtedness occurred before the relators sought relief in bankruptcy court, there would have been no purpose in the parties engaging in settlement discussions after their discharge in bankruptcy had been disclosed." The court did not consider that the settlement discussions were based on the counsel for Smith erroneously representing that a judgment had to be obtained before the bankruptcy discharge could be effected. After the alleged settlement was reached, it was discovered by Adkins' counsel, not only was the Smith's counsel's representations not true, but any settlement agreement not in compliance with the bankruptcy code was illegal and therefore void. Thus, the parties did not settle because there were debts created after the discharge in 2001. The alleged

settlement was solely to avoid needless expense and time in a protracted trial based on incorrect information regarding when a bankruptcy discharge was effective.

In a nut shell, had the appellate court, through the Amended Entry, understood the reasons behind the alleged settlement, it would have set aside the dismissal and granted the requested Writ of Prohibition. A granting of the Petition would have and honored the principle that an appellate court must grant a Writ of Prohibition when it is shown that a municipal court lacks jurisdiction to consider non-secured debts created prior to a discharge in a no-asset bankruptcy case under 11 U.S.C. §727.

III. CONCLUSION

Appellants Adkins have clearly and unambiguously demonstrated that Judge Shanahan and the Hamilton County Municipal Court lacked jurisdiction to hear the claim of the unsecured debts alleged by Smith against the Adkins, which were created in 1996 and prior to a discharge in a no-asset bankruptcy case under 11 U.S.C. §727 in 2001.

Appellants Adkins have also clearly and unambiguously demonstrated that all of the elements for a Writ of Prohibition have been satisfied in their Petition. They clearly demonstrated Judge Shanahan: 1.) was about to exercise judicial; 2.) that her exercise of such power was unauthorized by law, and 3.) that a denial of the writ of prohibition would cause injury for which no other adequate remedy exists. The Adkins established that the Honorable Judge Shanahan lacked jurisdiction to address a claim advanced by Plaintiff Smith that had been discharged pursuant to the discharge injunction under 11 U.S.C. §524(a). Neither Judge Shanahan's Motion to Dismiss, nor the Court's Entry have shown otherwise. To allow the Entry and the Amended Entry to stand would cause the First District Court of Appeals to be in direct conflict with the decisions of the Ohio Supreme Court, the 6th Circuit Court of Appeals and the Bankruptcy Court.

It would also result in irreparable emotional, financial stress and damage to the Adkins and unnecessarily over burden an already fragile judicial economy.

WHEREFORE, since neither the February 29, 2012 Entry, nor the March 28, 2012 Amended Entry, have discredited any allegations or legal arguments in the Petition, it is clear neither Judge Shanahan, nor the Hamilton County Municipal Court, have subject matter jurisdiction to render a judgment on a discharged debt. The Adkins respectfully request the Ohio Supreme Court to reverse the February 29th Entry and March 28th Amended Entry and remand the case to the First District Court of Appeals with instructions to grant the Writ of Prohibition as requested by the Adkins.

Respectfully submitted this 14th day of May, 2012.



Charles E. McFarland
Ohio Bar # 0031808
Counsel for the Defendants
338 Jackson Road
New Castle, Kentucky 40050
Phone (502) 845-2754
Fax (502) 845-2754
mcfarlandc@bellsouth.net

CERTIFICATE OF SERVICE

The undersigned does hereby certify that the above Merit Brief was served on Christian J. Schaefer, Assistant Prosecuting Attorney, at 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 by pre-paid 1st Class US mail on May 14, 2012.



Charles E. McFarland

APPENDIX

ORIGINAL

IN THE SUPREME COURT OF OHIO

12-0508

GREGORY D. AKINS and
JO ELLEN ADKINS
1325 Fuhrman Road
Cincinnati, Ohio 45215,

Appeal No.

Appellants,

On Appeal from the Hamilton
County Court of Appeals
First Appellate District

v.

Honorable Judge Megan Shanahan
Hamilton County Municipal Court Judge
1000 Main Street,
Room 144
Cincinnati, Ohio 45202,

Court of Appeals
Case No. C-120087

Appellee.

NOTICE OF APPEAL OF APPELLANTS GREGORY D. AND JO ELLEN ADKINS

Charles E. McFarland (0031808) (Counsel of Record)
338 Jackson Road
New Castle, Kentucky 40050
(502) 845-2754
Fax No. (502) 845-2754
mcfarlandc@bellsouth.net

COUNSEL FOR APPELLANTS, GREGORY D. AND JO ELLEN ADKINS

Joseph T Deters
Prosecuting Attorney
Hamilton Ohio
Christian J. Schaefer (0015495) (Counsel of Record)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3041
Fax No. (513) 046-3018
Chris.schaefer@hcpros.org

FILED
MAR 26 2012
CLERK OF COURT
SUPREME COURT OF OHIO

COUNSEL FOR APPELLEE HONORABLE JUDGE MEGAN SHANAHAN

RECEIVED
MAR 26 2012
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANTS GREGORY D. AND JO ELLEN ADKINS

Appellants Gregory D. and Jo Ellen Adkins hereby give notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals, First District, entered in the Court of Appeals case No. C-120087 on February 29, 2012.

Because the Petition for Writ of Prohibition was an original action in the First District Court of Appeals, this appeal is an appeal as of right, pursuant to Rule 2.1(A)(1) of the Ohio Supreme Court Rules of Practice.

Respectfully submitted this 23rd day of March, 2012.



Charles E. McFarland
Ohio Bar # 0031808
Counsel for the Defendants
338 Jackson Road
New Castle, Kentucky 40050
Phone (502) 845-2754
Fax (502) 845-2754
mcfarlandc@bellsouth.net

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellee, Christian J. Schaefer, Assistant Prosecuting Attorney, at 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 by pre-paid 1st Class US mail on March 23, 2012



Charles E. McFarland

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO EX REL.
GREGORY D. ADKINS,

APPEAL NO. C-120087

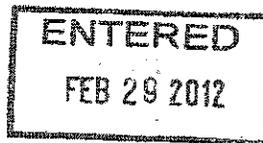
Petitioner,

vs

ENTRY DISMISSING PETITION
FOR WRIT OF PROHIBITION

HON. MEGAN SHANAHAN, JUDGE,
HAMILTON COUNTY MUNICIPAL COURT

Respondent.



This cause came on to be considered upon the petition for writ of prohibition, the respondent's motion to dismiss, the petitioner's memorandum in opposition, and the respondent's reply.

The Court finds that the motion to dismiss is well taken and is granted.

The petition for writ of procedendo is dismissed.



D96594642

To The Clerk:

Enter upon the Journal of the Court on FEB 29 2012 per order of the Court.

By: _____

Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

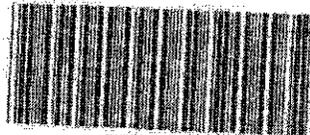
STATE OF OHIO EX REL,
GREGORY D. ADKINS AND
JO ELLEN ADKINS,

APPEAL NO. C-120087



Petitioners,

VS



D96960766

AMENDED ENTRY DISMISSING
PETITION FOR WRIT OF
PROHIBITION AND OVERRULING
APPLICATION FOR
RECONSIDERATION

HON. MEGAN SHANAHAN, JUDGE,
HAMILTON COUNTY MUNICIPAL COURT

Respondent.

This cause came on to be considered upon the application of the relators for reconsideration and the memorandum in opposition.

The Court amends the entry of dismissal dated February 29, 2012 and states that the Court considered the petition for writ of prohibition, the respondent's motion to dismiss, and the relators' reply memorandum in opposition. The petition for writ of prohibition is dismissed.

The Court finds that the remainder of the application for reconsideration is not well taken and is overruled.

It is axiomatic that in order for a writ of prohibition to issue, the relator must prove that (1) the lower court is about to exercise judicial authority, (2) the exercise of authority is not authorized by law, and (3) the relator possesses no other adequate remedy in the ordinary course of law if the writ of prohibition is denied. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St.3d 176, 178, 631 N.E.2d 119, 121.

The second and third prongs of this test have not been satisfied. While relators have established the existence of a no-asset discharge in bankruptcy as a bar to recovery on the loan guaranty, the petition also confirms ongoing activity between the relators and the creditor after the discharge in bankruptcy. If all of the alleged indebtedness occurred before the relators sought relief in bankruptcy court, there

would have been no purpose in the parties engaging in settlement discussions after their discharge in bankruptcy had been disclosed.

Under the circumstances, it is an appropriate exercise of jurisdiction for the trial court to consider the creditor's claims, if any, on the merits.

To the clerk:

Enter upon the journal of the court on MAR 28 2012 per order of the court.

By: 
Presiding Judge

(Copies sent to all counsel)

