ORIGINAL

IN THE SUPREME COURT OF OHIO

Jack Dixon, et al.,

Appellees,

vs.

Residential Finance Corp., et al.,

Appellants.

Case No.: 12-2135

On Appeal from the Madison County Court of Appeals, Twelfth Appellate District

Case No.: CA 2011-10-014

DEFENDANT/APPELLEE RESIDENTIAL FINANCE CORPORATION'S MEMORANDUM IN RESPONSE TO APPELLEES' MOTION FOR SANCTIONS

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MEMORANDUM

It is difficult to tell whether appellees Jack and Cheryl Dixon ("Appellees") are seeking sanctions against Residential Finance Corporation ("RFC"); therefore, RFC believes that it is appropriate to file a response to the motion for sanctions.

The appeal and subsequent request for jurisdiction to the Ohio Supreme Court is appropriate. The issue is straight-forward and has never been addressed by this Court – whether a court, after consolidating two separately-filed actions and then bifurcating the cases for trial, can take a third-party defendant from one of the cases and make him a defendant in the other case where he was never named as a defendant, was never served with the complaint and had never been afforded an opportunity to answer. The trial court in this case, after consolidating the cases and then bifurcating them, chose to do exactly that, on the eve of trial. It intended to try the case where Mr. Shumaker was not named as a defendant, but to force Mr. Shumaker to participate as a defendant anyway.

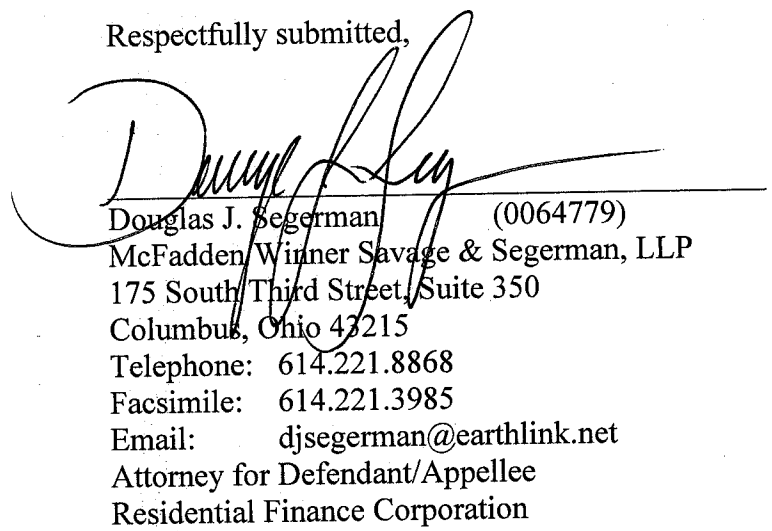
In his dissent in *Mezerkor v. Mezerkor*, 70 Ohio St.3d 304, 309 (Ohio, 1994), Justice Wright eloquently stated the issue and the appropriate result:

> Apparently the issue of consolidation under Civ.R. 42(A) is one of first impression for this court, but other courts and commentators agree that consolidating two cases does not merge them into one. "'[C]onsolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.'" (Emphasis added.) *Transcon Bldrs., Inc. v. Lorain* (1976), 49 Ohio App.2d 145, 150, 3 O.O.3d 196, 199, 359 N.E.2d 715, 719, quoting *Johnson v. Manhattan Ry. Co.* (1933), 289 U.S. 479, 496-497, 53 S.Ct. 721, 727-728, 77 L.Ed. 1331, 1345. "Where multiple cases are consolidated for trial purposes, they are not merged -- they remain separate cases." 2 Fink, Wilson & Greenbaum, Ohio Rules of Civil Procedure With Commentary (1992), 615.

Mezerkor, however, was decided on other grounds and the issue was not addressed. Other Courts of Appeals in Ohio have uniformly held that consolidation does not make parties in one suit parties in another.[1]

Accordingly, since the appeal and request for jurisdiction to this Court are appropriate, the motion for sanctions should be denied.

Respectfully submitted,



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[1] *Monus v. Day*, 2011-Ohio-3170, ¶75 (7th Dist. No. 10 MA 35) ("When two cases are consolidated, they are not merged into a single cause but maintain their individual identities." citing *Transcon Builders, Inc. v. City of Lorain* (1976), 49 Ohio App.2d 145, 359 N.E.2d 715, syllabus.

CERTIFICATE OF SERVICE

I certify that on January 9, 2013, I mailed by regular U.S. mail and sent by email a copy of the foregoing Defendant/Appellee Residential Finance Corporation's Memorandum In Response to Appellees' Motion for Sanctions to the following:

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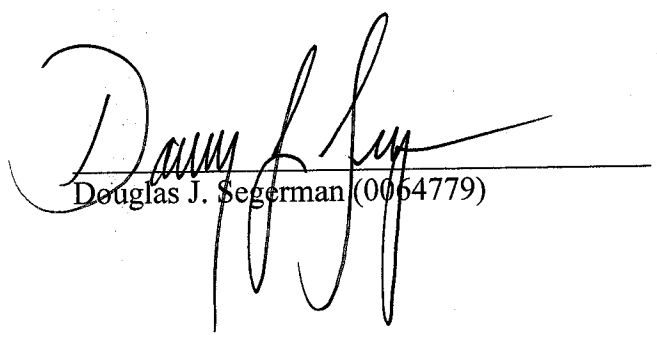

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