

ORIGINAL

In the
Supreme Court of Ohio

THE STATE EX REL., RONALD A.
ZILBERBRAND, JASON ZILBERBRAND,
CASAFIN VII, LLC, CASAFIN VIII, LLC,
FLYMEX 450, LLC, FLYMEX 550, LLC,
FLYMEX 5502, LLC, AEROSPACE GROUP,
LLC, THE ZILBERBRAND GROUP, LLC,
RONALD A. ZILBERBRAND REVOCABLE
TRUST, TZF ACQUISITIONS, LLC,
GLOBAL XRS 5112, LLC, LEAR 45210, INC.,
KEVIN HOFFMAN AND AEROSPACE
CONCEPTS, LLC,

c/o Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202,

Relators,

vs.

COURT OF COMMON PLEAS OF
HAMILTON COUNTY, OHIO,
1000 Main Street
Cincinnati, Ohio 45202,

and

THE HON. NORBERT A. NADEL,
Judge of the Court of Common Pleas,
1000 Main Street
Cincinnati, Ohio 45202,

Respondents.

Case No.

13-0051

ORIGINAL ACTION
IN PROHIBITION

FILED
JAN 14 2013
CLERK OF COURT
SUPREME COURT OF OHIO

VERIFIED COMPLAINT FOR WRIT OF PROHIBITION

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**In the
Supreme Court of Ohio**

State ex rel., ZILBERBRAND, et al.,	:	Case No.
	:	
Relators,	:	
	:	
vs.	:	ORIGINAL ACTION
	:	IN PROHIBITION
COURT OF COMMON PLEAS OF	:	
HAMILTON COUNTY, OHIO, et al.,	:	
	:	
Respondents.	:	

VERIFIED COMPLAINT FOR WRIT OF PROHIBITION

Come now the Relators, Ronald A. Zilberbrand, Jason Zilberbrand, Casafin VII, LLC, Casafin VIII, LLC, Flymex 450, LLC, Flymex 550, LLC, Flymex 5502, LLC, Aerospace Group, LLC, The Zilberbrand Group, LLC, Ronald A. Zilberbrand Revocable Trust, TZF Acquisitions, LLC, Global XRS 5112, LLC, Lear 45210, Inc., Kevin Hoffman and Aerospace Concepts, LLC, (“Relators”), by and through counsel, and for their Verified Complaint for Writ of Prohibition against the Respondents, the Court of Common Pleas of Hamilton County, Ohio, and the Honorable Norbert A. Nadel, Judge of the Hamilton County Court of Common Pleas, (collectively, “Respondents”), hereby state as follows:

PRELIMINARY STATEMENT

1. This is an original action under the laws of the state of Ohio by Relators to restrain Respondents from continuing to exercise jurisdiction in a case in which Respondents patently and unambiguously lack jurisdiction. The plaintiff in the case below has, by its own admission, failed to obtain service on any Relator within one year of the filing of the Complaint, as is required by Civ. R. (3)(A).

2. This Complaint follows the Relators' motion to dismiss for failure of service filed in the Court of Common Pleas, which motion has not been decided. Furthermore, the Court of Common Pleas has refused to even hold a status conference concerning these issues, and the Court of Common Pleas has indicated that it will soon act upon other pending motions prior to hearing the Relators' motion to dismiss for failure of service. By this Complaint, Relators respectfully request that this Court issue a writ of prohibition enjoining Respondents from further exercising jurisdiction in the case.

JURISDICTION

3. Original jurisdiction is proper in this Court pursuant to Ohio Constitution, Art. IV, Section 2(B)(1)(d).

PARTIES

4. Relators are persons named as Defendants in Case Number A1109775 styled *PNC Equipment Finance LLC v. Ronald A. Zilberbrand, et al.*, pending in the Hamilton County Court of Common Pleas (the "Case").

5. Respondents are the Court of Common Pleas of Hamilton County, Ohio, and, in his official capacity, Judge Norbert A. Nadel. Judge Nadel is and at all relevant times has been a Judge in the Court of Common Pleas of Hamilton County, Ohio. Judge Nadel is presiding over the Case.

STATEMENT OF THE ACTION

6. PNC Equipment Finance LLC ("PNC") filed a complaint in the Court of Common Pleas of Hamilton County against the Relators on December 6, 2011.

7. PNC attached to its Complaint a Praecipe to the Hamilton County Clerk of Courts (the "Clerk") for service of summons and complaint via certified mail on the Relators.

8. On various dates between December 28, 2011 and February 11, 2012, the Clerk notified PNC's counsel that none of the Relators had received services of the summons and complaint in the Case.

9. As shown by the record in the Court of Common Pleas, no Relator has been served with process in the Case.

10. On February 23, 2012, Relators filed their answer in the Case. In their answer, Relators expressly averred that "Plaintiff's claims are barred by insufficiency of process, failure of process, and failure of service of process."

11. More than one year has passed since PNC filed its complaint in the Case. The Case therefore has not been commenced in accordance with Civ. R. 3(A). Because the Case has not been – and cannot now be – commenced within one year of filing the complaint, the Case must be dismissed. *See* Gliozzo v. Univ. Urologists of Cleveland, Inc., 114 Ohio St.3d 141, 2007-Ohio-3762, 870 N.E.2d 714 at ¶16; Sisk & Assocs. v. Comm. to Elect Timothy Grendell, 123 Ohio St.3d 447, 2009-Ohio-5591, 917 N.E.2d 271 at ¶5.

12. On December 11, 2012, Relators filed a motion to dismiss for failure of service (the "Motion") and PNC filed a response in opposition thereto. Thereafter, Relators have requested to be heard by Respondents regarding the Motion, but the Respondents have declined to hear the Motion.

STATEMENT OF THE CLAIM

13. Judge Nadel has exercised and is about to exercise judicial power over the Relators.

14. Judge Nadel's exercise of judicial power over the Relators is not authorized under the law because PNC has not served Relators in the Case and PNC's time to do so has expired. The Case, therefore, has not been commenced.

15. Relators do not have an adequate remedy at law because of the consequences and costs of the Case remaining pending. For example, during the pendency of the Case, PNC filed a complaint against one of Relators' wives (who is also the mother of another Relator) in the United States District Court for the Northern District of Illinois alleging a fraudulent transfer of the marital residence (the "Federal Litigation"). The Federal Litigation remains pending and threatens the legal and financial interests of both the Relators and their families.

16. In this case, the absence of an adequate remedy at law is not a prerequisite to issuance of a writ of prohibition because Respondents are "without jurisdiction whatsoever to act." State ex rel. Jefferson Cty. Children Servs. Bd. v. Hallock, 28 Ohio St.3d 179, 183, 502 N.E.2d 1036 (1986). For that reason, said the Court, "[w]hile the relator might have had a remedy through appeal, it would not be a bar to a writ of prohibition." Id.

17. Further, this Court has "consistently held that if an inferior court 'patently and unambiguously lacks jurisdiction over the cause, prohibition will lie both to prevent the future unauthorized exercise of jurisdiction and to correct the results of previous jurisdictionally unauthorized actions.'" State ex. rel. Sartini v. Yost, 96 Ohio St.3d 37, 42, 2002-Ohio-3317, 770 N.E.2d 584 at ¶24 (internal citations omitted).

18. Respondents patently and unambiguously lack jurisdiction over the Relators because PNC, the plaintiff in the Case, never served Relators and the Case has not been commenced.

19. In light of the foregoing, Relators are entitled to the issuance of a writ of prohibition ordering Respondents to refrain from exercising jurisdiction over the Case.

PRAYER FOR RELIEF

WHEREFORE, Relators respectfully request that this Court grant them the following relief:

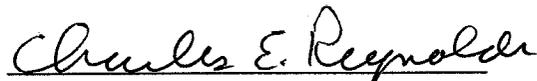
A. The issuance of a peremptory writ of prohibition: (i) ordering Respondents to refrain from exercising jurisdiction over the Case; and (ii) vacating, nullifying, and invalidating any order of the Respondents entered in the Case;

B. The issuance of an alternative writ of prohibition staying the proceedings in the Case during the pendency of this original action;

C. An award of the Relators' costs; and

D. An award of such other relief in law or in equity that this Court deems just and proper.

Respectfully submitted,



Charles E. Reynolds (0019935) *

**Counsel of Record*

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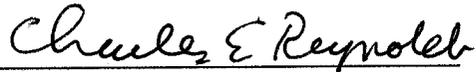
Attorneys for Relators

PRAECIPE

TO: THE CLERK OF THE SUPREME COURT

Pursuant to S.Ct. Prac. R. 10.4, please issue a summons and serve the summons and a copy of the complaint by certified mail, return receipt requested, upon each respondent at the address indicated on the cover page of the verified complaint.

Respectfully submitted,



Charles E. Reynolds (0019935) *

**Counsel of Record*

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