

**IN THE
SUPREME COURT OF OHIO**

**STATE OF OHIO EX REL.
ZILBERBRAND, ET AL.**

: **Case No. 13-0051**

Relators

:

**ORIGINAL ACTION
IN PROHIBITION**

vs.

:

MOTION TO DISMISS

**HON. NORBERT A. NADEL, JUDGE,
HAMILTON COUNTY COURT OF
COMMON PLEAS**

:

:

:

Respondent

:

**MOTION TO DISMISS OF RESPONDENTS
HONORABLE NORBERT A. NADEL, JUDGE, COURT OF COMMON PLEAS,
HAMILTON COUNTY AND COURT OF COMMON PLEAS, HAMILTON COUNTY**

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**IN THE
SUPREME COURT OF OHIO**

STATE OF OHIO EX REL. ZILBERBRAND, ET AL.	:	Case No. 13-0051
	:	
Relators	:	<u>ORIGINAL ACTION</u>
	:	<u>IN PROHIBITION</u>
vs.	:	
	:	<u>RESPONDENTS' MOTION TO</u>
HON. NORBERT A. NADEL, JUDGE, HAMILTON COUNTY COURT OF COMMON PLEAS	:	<u>DIMISS</u>
	:	
Respondent	:	

STATEMENT OF FACTS

On December 6, 2011, the case captioned *PNC Equipment Finance LLC v. Ronald A. Zilberbrand, et al.*, case number A1109775 (“Case”), was filed in the Hamilton County Court of Common Pleas before Judge Norbert A. Nadel (“Judge Nadel”). From that date, the docket of the Case shows numerous filings by the parties to that litigation. Specifically, the Relators’ Counsel filed a “Motion for More Definite Statement” on December 30, 2011, a “Joint Stipulation Extending Time” on January 25, 2012, an “Answer, Counterclaims, and Third Party Complaint” on February 21, 2012, an “Agreed Entry” extending time to answer the counterclaim on March 22, 2012, an “Agreed Entry” extending time to answer the third party complaint on April 16, 2012, a “Memorandum in Opposition to the Plaintiff’s Motion to Dismiss” on May 23, 2012, a “Motion for Judgment on the Pleadings” on May 23, 2012, a “Reply in Support of the Motion for Judgment on the Pleadings” on June 12, 2012, and a “Motion to Dismiss for Failure of Service” on December 11, 2012. (A-1, Case Docket for *PNC Equipment Finance, LLC v. Zilberbrand, et al.* (filed Dec. 6, 2011), Hamilton C.P. No. A1109775, unreported).

In response to Relators' Motion to Dismiss, the Plaintiff in the case filed a response which includes an email from Relators' Counsel purporting to waive service on the Relators' behalf. (A-2, "Plaintiff PNC Equipment Finance, LLC's Opposition to Defendants' Motion to Dismiss for Failure of Service" in *PNC Equipment Finance, LLC v. Zilberbrand, et al.* (filed Dec. 6, 2011), Hamilton C.P. No. A1109775, unreported).

There are several motions on the Case docket upon which Judge Nadel has yet to rule. Judge Nadel held no evidentiary hearing, there has been no trial to date in the Case.

Relators filed a Complaint for a Writ of Prohibition ("Complaint") alleging that the Respondents, Hamilton County Court of Common Pleas and Judge Nadel, lack jurisdiction in the Case.

ARGUMENT

FIRST PROPOSITION OF LAW

In order for a writ of prohibition to be issued, 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 either possesses no other adequate remedy in the ordinary course of law if the writ of prohibition is denied or the lack of jurisdiction of the lower court is patent and unambiguous.

In *State ex rel. Tubbs Jones, Pros. Atty. v. Suster, Judge, et al.*, (1998), 84 Ohio St.3d 70, 701 N.E.2d 1002, the Supreme Court set out the following standards for the granting of a writ of prohibition:

In order for a writ of prohibition to be issued, 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 Court in *State ex rel Tubbs Jones v. Suster*, supra, went on to explain:

Prohibition will not lie to prevent an anticipated erroneous judgment. *State ex rel. Heimann v. George* (1976), 45 Ohio St.2d 231, 232, 74, O.O.2d 376, 344 N.E.2d 130, 131. However, we have created a limited exception in cases where there appears to be a total lack of jurisdiction of the lower court to act. Early cases referred to a “total want of jurisdiction” or to the court’s being “without jurisdiction whatsoever to act.” *State ex rel. Adams v. Gusweiler* (1972), 30 Ohio St.2d 326, 329, 59 Ohio Op.2d 387, 388, 285 N.E.2d 22, 24, and paragraph two of the syllabus. Later cases defined this exception as a “‘patent and unambiguous’ lack of jurisdiction to hear a case.” *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.* (1990), 54 Ohio St.3d 48, 51, 562 N.E.2d 125, 129; *State ex rel. Tollis v. Cuyahoga Cty. Court of Appeals* (1988), 40 Ohio St.3d 145, 148, 532 N.E.2d 727, 729.

Therefore, in order for this Court to grant a writ of prohibition, this Court must find that (1) respondent is about to exercise jurisdiction; (2) the exercise of authority is not authorized by law; and, (3) relators have no adequate remedy at law or the Respondent’s lack of jurisdiction is “patent and unambiguous.” These elements must be shown by relator “beyond doubt.”

In this situation, the Hamilton County Court of Common Pleas and Judge Nadel’s jurisdiction is not “patent and unambiguous.” The Complaint for Writ of Prohibition should be dismissed.

SECOND PROPOSITION OF LAW

The Supreme Court hearing a petition for a Writ of Prohibition is not required to determine whether the lower court has jurisdiction. It is only required to determine whether the jurisdiction is patently and unambiguously lacking.

The Supreme Court is not required to address the merits of the Relators’ jurisdictional claim because its jurisdiction in the writ case was “limited to determining whether jurisdiction is patently and unambiguously lacking.” *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, {¶ 12}. Absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal. *State ex rel. Powell v. Markus*, 115 Ohio St.3d 219, 2007-Ohio-4793, 874 N.E.2d 775, {¶ 8}, quoting *State ex rel. Shimko v.*

McMonagle (2001), 92 Ohio St.3d 426, 428–429, 751 N.E.2d 472. See also *State ex rel. Ragozine v. Shaker*, 96 Ohio St.3d 201, 2002-Ohio-3992, 772 N.E.2d 1192, *State ex rel. Key v. Spicer* (2001), 91 Ohio St.3d 469, 746 N.E.2d 1119.

Presently, the Hamilton County Court of Common Pleas and Judge Nadel’s jurisdiction is not “patent and unambiguous.” The Complaint for Writ of Prohibition should be dismissed.

THIRD PROPOSITION OF LAW

A Writ of Prohibition will not issue for contested allegations of defective service.

This Court has held that, “[i]f contested allegations of defective service of process are not premised upon a complete failure to comply with the minimum-contacts requirement of constitutional due process, prohibition does not lie.” *State ex rel. Suburban Construction Co. v. Skok* (1999), 85 Ohio St.3d 645, 646, 710 N.E.2d 710. No such minimum-contacts claims are made by Relators and the Complaint should be dismissed.

FOURTH PROPOSITION OF LAW

Where an attorney representing a defendant purports to waive service on behalf of his clients via email, and then actively participates in the litigation, the lack of personal jurisdiction is not patent and unambiguous.

In this case, the response to the motion to dismiss in the Court of Common Pleas, the Plaintiffs’ attorneys attached an email, purportedly from the attorneys for Defendants in the Court of Common Pleas and the Respondents herein stating that the attorney is waiving service on behalf of their clients. While an evidentiary hearing may be necessary to sort out exactly what happened, if the attachment to the filing dated December 6, 2011 is accurate, it would seem, at minimum, counsel for the Defendants in the Court of Common Pleas is engaging in the type of gamesmanship the Civil Rules tried to eliminate. Compare *Carter v. St. Ann's Hosp.* (10th Dist. 2012) 2012 -Ohio- 1662, 2012 WL 1267987.

The test for issuing a writ of prohibition is whether “jurisdiction is patently and unambiguously lacking.” It is submitted that, in light of the record in this case and the purported waiver of service of summons, jurisdiction is not patently and unambiguously lacking in this case.

FIFTH PROPOSITION OF LAW

The Court of Common Pleas is not *sui juris* and cannot sue or be sued.

Relator purports to sue both Judge Nadel and the Court of Common Pleas. The Court of Common Pleas is not *sui juris* and cannot sue or be sued. This Court in *Malone v. Court of Common Pleas of Cuyahoga County* (1976) 45 Ohio St.2d 245, 248, 344 N.E.2d 126, 128 explained:

Unlike a board of education, a court “* * * is not *sui juris*. “A court is defined to be a place in which justice is judicially administered. It is the exercise of judicial power, by the proper officer or officers, at a time and place appointed by law.” *Todd v. United States* (1895), 158 U.S. 278, 284, 15 S.Ct. 889, 891, 39 L.Ed. 982. Absent express statutory authority, a court can neither sue nor be sued in its own right.’ *State ex rel. Cleveland Municipal Court v. Cleveland City Council* (1973), 34 Ohio St.2d 120, 121, 296 N.E.2d 544, 546.

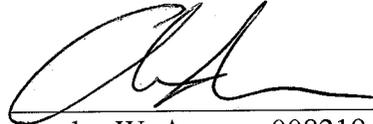
Relators cannot institute an action against the Court of Common Pleas.

CONCLUSION

Relators may not prevail on a Writ of Prohibition as they cannot demonstrate that Respondents patently and unambiguously lack jurisdiction and Prohibition will not issue for contested allegations of defective service. Relators may not institute an action against the Court of Common Pleas. The Relators’ Complaint should be dismissed.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served upon each party of record in this case by ordinary U.S. mail on the 30th day of January, 2013 addressed to:

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CLERK OF COURTS



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Case Summary

Case Number: A 1109775
Case Caption: PNC EQUIPMENT FINANCE LLC vs. RONALD A ZILBERBRAND
Judge: NORBERT A NADEL
Filed Date: 12/6/2011
Case Type: H701 - OTHER CIVIL
Total Deposits: \$ 556.00 Credit
Total Costs: \$ 2055.30

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Doc	Image#	Date	Description	Amount
		12/26/2012	DEFENDANTS REPLY IN SUPPORT OF THEIR MOTION TO DISMISS FOR FAILURE OF SERVICE	
		12/18/2012	PLAINTIFF PNC EQUIPMENT FINANCE LLCS OPPOSITION TO DEFENDANTS MOTION TO DISMISS FOR FAILURE OF SERVICE	
		12/11/2012	DEFENDANTS' MOTION TO DISMISS FOR FAILURE OF SERVICE	
		8/16/2012	ORDER	
		8/2/2012	THIRD PARTY DEFENDANT VINCE RINALDIS MEMORANDUM IN OPPOSITION TO DEFENDANTS MOTION FOR LEAVE TO FILE A SUR REPLY AND MOTION TO SUSPEND DISCOVERY	
		8/2/2012	ORDER	
		7/31/2012	DEFENDANT'S MOTION FOR LEAVE TO FILE SUR-REPLY	
		7/12/2012	VOUCHER FOR TRANSCRIPT FEES	
		7/12/2012	*** MISCELLANEOUS FEES FOR TRANSCRIPT ORDER FOR USE OF THE COURT	
		6/12/2012	DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS (ORAL ARGUMENT REQUESTED)	
		6/7/2012	PLAINTIFF PNC EQUIPMENT FINANCE LLCS RESPONSE IN OPPOSITION TO DEFENDANTS MOTION FOR JUDGMENT ON THE PLEADINGS	
		6/6/2012	THIRD PARTY DEFENDANT LOUIS H LAUCH JRS REPLY IN SUPPORT OF HIS MOTION TO DISMISS COUNTS IX, X, XI, XII, AND XIII OF THIRD PARTY PLAINTIFFS COMPLAINT AND JOINDER IN PLAINTIFF PNC EQUIPMENT FINANCE LLCS REPLY IN SUPPORT OF ITS MOTION TO DISMISS DEFENDANTS COUNTERCLAIMS	
		6/6/2012	PLAINTIFF PNC EQUIPMENT FINANCE LLCS REPLY IN SUPPORT OF ITS MOTION TO DISMISS DEFENDANTS COUNTERCLAIMS	
		6/6/2012	THIRD PARTY DEFENDANT VINCENT RINALDIS REPLY IN SUPPORT OF HIS MOTION TO DISMISS THIRD PARTY COMPLAINT	
		5/23/2012	DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS	
		5/23/2012	DEFENDANTS' MEMORANDUM IN OPPOSITION TO THE MOTION TO DISMISS OF THE PLAINTIFF, PNC EQUIPMENT FINANCE, LLC	
		5/23/2012	THIRD PARTY PLAINTIFFS' MEMORANDUM IN OPPOSITION TO THE MOTION TO DISMISS OF THIRD PARTY DEFENDANT, LOUIS H. LAUCH, JR.	
		5/23/2012	THIRD PARTY PLAINTIFF'S MEMORANDUM IN OPPOSITION TO THE	

	MOTION TO DISMISS OF THIRD PARTY DEFENDANT, VINCENT RINALDI	
5/10/2012	AGREED EXTENSION OF TIME AND SCHEDULING ORDER	
5/8/2012	THIRD PARTY DEFENDANTS WITHDRAWAL OF MOTION FOR DEFAULT JUDGMENT	
4/26/2012	NOTIFICATION FORM FILED.	
4/25/2012	PLAINTIFF PNC EQUIPMENT FINANCE, LLC'S MOTION TO DISMISS DEFENDANTS COUNTERCLAIMS	
4/25/2012	THIRD PARTY DEFENDANT LOUIS H. LAUCH JR.'S MOTION TO DISMISS COUNTS IX, X, XI, XII, AND XIII OF THIRD PARTY PLAINTIFFS COMPLAINT AND JOINDER IN PLAINTIFF PNC EQUIPMENT FINANCE, LLC'S MOTION TO DISMISS DEFENDANTS COUNTERCLAIMS	
4/25/2012	NOTIFICATION FORM FILED.	
4/25/2012	NOTIFICATION FORM FILED.	
4/23/2012	MOTION TO DISMISS THIRD PARTY COMPLAINT BY THIRD PARTY DEFENDANT VINCENT RINALDI AND MEMORANDUM IN SUPPORT	
4/23/2012	THIRD PARTY PLAINTIFFS' MOTION FOR DEFAULT JUDGEMENT AGAINST THIRD PARTY DEFENDANT VINCENT RINALDI	
4/16/2012	AGREED ENTRY GRANTING EXTENSION OF TIME TO RESPOND TO THIRD PARTY COMPLAINT	
3/26/2012	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF THIRD PARTY COMPLAINT DELIVERED TO LOUIS H LAUCH JR ON 03/21/12, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0612 2028]	
3/26/2012	ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF THIRD PARTY COMPLAINT DELIVERED TO VINCENT RINALDI ON 03/23/12, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0612 2035]	
3/22/2012	AGREED ENTRY GRANTING EXTENSION OF TIME TO RESPOND TO COUNTERCLAIM	
3/20/2012	SUMMONS ISSUED BY CERTIFIED MAIL TO VINCENT RINALDI	
3/20/2012	SUMMONS ISSUED BY CERTIFIED MAIL TO LOUIS H LAUCH JR	
3/20/2012	CERTIFIED MAIL SERVICE ISSUED TO VINCENT RINALDI [CERTIFIED MAIL NBR.: 7194 5168 6310 0612 2035]	
3/20/2012	CERTIFIED MAIL SERVICE ISSUED TO LOUIS H LAUCH JR [CERTIFIED MAIL NBR.: 7194 5168 6310 0612 2028]	
3/16/2012	PARECIPE FOR SERVICE	
3/16/2012	PRAECIPE FOR SERVICE	
3/16/2012	ISSUE DESK - POSTAGE DEP. BY SANTEN , HUGHES	14.00-
3/16/2012	WRITTEN REQUEST FOR CERTIFIED MAIL SERVICE OF THIRD PARTY COMPLAINT ON LOUIS H LAUCH JR	
3/16/2012	WRITTEN REQUEST FOR CERTIFIED MAIL SERVICE OF THIRD PARTY COMPLAINT ON VINCENT RINALDI	
3/13/2012	NOTICE OF WITHDRAWAL OF MOTION TO TRANSFER TO COMMERCIAL DOCKET	
2/23/2012	ISSUE DESK - DEPOSIT BY SANTEN & HUGHES	75.00-
2/23/2012	ANSWER COUNTERCLAIMS AND THIRD PARTY COMPLAINT WITH JURY DEMAND ENDORSED HEREON	
2/21/2012	REPLY IN SUPPORT OF MOTION TO TRANSFER TO COMMERCIAL DOCKET	
2/20/2012	DEFENDANTS MEMORANDUM	
2/14/2012	NOTIFICATION FORM FILED.	
2/14/2012	NOTIFICATION FORM FILED.	
2/14/2012	NOTIFICATION FORM FILED.	
2/13/2012	NOTICE TO GLENN V WHITAKER AS TO UNCLAIMED SERVICE ON KEVIN HOFFMAN SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: UNCLAIMED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6180]	
2/8/2012	NOTICE TO GLENN V WHITAKER AS TO UNCLAIMED SERVICE ON AEROSPACE CONCEPTS LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: UNCLAIMED [CERTIFIED MAIL NBR.: 7194	

5168 6310 0596 6296]

2/3/2012 NOTICE OF DISMISSAL WITH PREJUDICE OF CLAIMS AGAINST DEFENDANT LOUIS H. LAUCH, JR. ONLY

2/2/2012 NOTICE TO GLENN V WHITAKER AS TO UNCLAIMED SERVICE ON CASAFIN VII LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: UNCLAIMED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6210]

1/25/2012 JOINT STIPULATION EXTENDING TIME FOR THE ZILBERBRAND DEFENDANTS TO RESPOND TO PLAINTIFF'S AMENDED COMPLAINT

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON GLOBAL XRS 5112 LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: ATTEMPTED - NOT KNOWN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6319]

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON FLYMEX 550 LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: NOT DELIVERABLE AS ADDRESSED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6241]

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON CASAFIN VIII LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: ATTEMPTED - NOT KNOWN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6227]

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON AEROSPACE GROUP LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: ATTEMPTED - NOT KNOWN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6265]

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON FLYMEX 450 LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: ATTEMPTED - NOT KNOWN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6234]

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON TZF ACQUISITIONS LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: ATTEMPTED - NOT KNOWN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6302]

1/23/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON FLYMEX 5502 LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: ATTEMPTED - NOT KNOWN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6258]

1/19/2012 NOTICE TO GLENN V WHITAKER AS TO UNCLAIMED SERVICE ON JASON ZILBERBRAND SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: UNCLAIMED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6203]

1/19/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON THE ZILBERBRAND GROUP LLC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: NOT DELIVERABLE AS ADDRESSED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6272]

1/19/2012 NOTICE TO GLENN V WHITAKER AS TO UNDELIVERED SERVICE ON RONALD A ZILBERBRAND SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: NOT DELIVERABLE AS ADDRESSED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6173]

1/18/2012 STIPULATION EXTENDING TIME FOR DEFENDANT LOUIS H. LAUCH TO RESPOND TO FIRST AMENDED COMPLAINT

1/12/2012 OPPOSITION TO DEFENDANTS MOTION FOR A MORE DEFINITE STATEMENT

1/12/2012 FIRST AMENDED COMPLAINT EXHIBITS 51 TO 62 OF 62

1/12/2012 FIRST AMENDED COMPLAINT EXHIBITS 36 TO 50 OF 62

1/12/2012 FIRST AMENDED COMPLAINT EXHIBITS 23 TO 35 OF 62

1/12/2012 FIRST AMENDED COMPLAINT EXHIBITS 15 TO 22 OF 62

1/12/2012 FIRST AMENDED COMPLAINT EXHIBITS 7 TO 14 OF 62

1/12/2012 FIRST AMENDED COMPLAINT EXHIBITS 1 TO 6 OF 62

1/12/2012 FIRST AMENDED COMPLAINT

12/30/2011 MOTION FOR A MORE DEFINITE STATEMENT

12/28/2011 NOTICE TO GLENN V WHITAKER AS TO REFUSED SERVICE ON LEAR 45210 INC SERVICE TYPE: CERTIFIED MAIL SERVICE REASON CODE: REFUSED [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6326]

12/21/2011 NOTICE OF APPEARANCE

12/19/2011 ELECTRONIC POSTAL RECEIPT RETURNED, COPY OF SUMMONS & COMPLAINT DELIVERED TO LOUIS H LAUCH JR ON 12/14/11, FILED. [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6197]

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO LEAR 45210 INC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO AEROSPACE GROUP LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO RONALD A ZILBERBRAND REVOCABLE TRUST

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO THE ZILBERBRAND GROUP LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO TZF ACQUISITIONS LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO AEROSPACE CONCEPTS LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO GLOBAL XRS 5112 LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO CASAFIN VIII LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO CASAFIN VII LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO JASON ZILBERBRAND

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO LOUIS H LAUCH JR

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO KEVIN HOFFMAN

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO RONALD A ZILBERBRAND

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO FLYMEX 450 LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO FLYMEX 550 LLC

12/13/2011 SUMMONS ISSUED BY CERTIFIED MAIL TO FLYMEX 5502 LLC

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO AEROSPACE GROUP LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6265]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO LEAR 45210 INC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6326]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO TZF ACQUISITIONS LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6302]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO THE ZILBERBRAND GROUP LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6272]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO RONALD A ZILBERBRAND REVOCABLE TRUST [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6289]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO AEROSPACE CONCEPTS LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6296]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO GLOBAL XRS 5112 LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6319]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO FLYMEX 5502 LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6258]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO FLYMEX 450 LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6234]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO CASAFIN VIII LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6227]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO CASAFIN VII LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6210]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO JASON ZILBERBRAND [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6203]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO LOUIS H LAUCH JR [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6197]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO KEVIN HOFFMAN [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6180]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO RONALD A ZILBERBRAND [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6173]

12/13/2011 CERTIFIED MAIL SERVICE ISSUED TO FLYMEX 550 LLC [CERTIFIED MAIL NBR.: 7194 5168 6310 0596 6241]

- 12/13/2011 INDEX ADJUSTMENT: PARTY NAME CHANGED FROM PNC EQUIPMENT (SOTI) TO PNC EQUIPMENT FINANCE LLC(KMAS)
- 12/7/2011 JUDGE ASSIGNED CASE ROLLED TO NADEL/NORBERT/A PRIMARY
-  12/6/2011 MOTION TO TRANSFER TO COMMERCIAL DOCKET
-  12/6/2011 NOTIFICATION FORM FILED.
-  12/6/2011 NOTIFICATION FORM FILED.
- 12/6/2011 FOREIGN PLAINTIFF FEES PAID BY GLENN V WHITAKER 467.00-
-  12/6/2011 CLASSIFICATION FORM FILED.
-  12/6/2011 COMPLAINT FILED

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ABOUT SSL CERTIFICATES

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**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

PNC EQUIPMENT FINANCE, LLC,

Plaintiff,

v.

RONALD A. ZILBERBRAND, et al.,

Defendants.

Case No. A1109775

Judge Nadcl

**PLAINTIFF PNC EQUIPMENT FINANCE, LLC'S OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS FOR FAILURE OF SERVICE**

Having failed to undertake even the most minimal diligence prior to filing the present motion, Defendants' Motion to Dismiss for Failure of Service should be summarily denied, and PNC should be awarded its costs. Contrary to defendants' contention that PNC has "undeniably failed to perfect service on Defendants within one year of the filing of its Complaint," all of the defendants making the motion to dismiss waived service, in writing, on December 6, 2011, the same day this action was commenced. (Exhibit A.)

Plaintiff initially brought suit in federal court on October 24, 2011, and personally served defendants with the federal summons and complaint. Following questions concerning the applicability of federal diversity jurisdiction, PNC voluntarily dismissed the federal court action on December 5, 2011, and re-filed that action in this Court on December 6, 2011. On the afternoon of December 6, 2011, defendants' counsel, Charles E. Reynolds of Santen & Hughes, emailed PNC: "This email will confirm my agreement to accept service on behalf of the defendants we represented in the federal action." (Ex. A.) Mr. Reynolds and the Santen & Hughes firm represented the same defendants in the federal action as in this action; the same

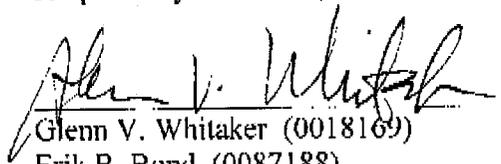
defendants for whom he accepted service now move to dismiss.¹ (Ex. B.) Having obtained a valid waiver of service, there was no need to effect personal service on defendants. *See* Civ. R. 4(D). The motion to dismiss for want of service is frivolous.²

This motion is part of a pattern of frivolous conduct by the Zilberbrand defendants. Earlier, defendants moved for a default judgment on their third party complaint against Vincent Rinaldi prior to the expiration of his time to answer, which motion they were forced to withdraw. Defendants then moved this Court to default Mr. Rinaldi as to defendants' voluminous requests for admission---which motion this Court summarily denied, given that the motions to dismiss the third party complaint and counterclaim remain pending. Now defendants have moved to dismiss for want of service, although even the most minimal diligence would have shown that they accepted service at the outset of this case. The defendants' ill-founded motion practice not only has wasted this Court's time and resources, but also unjustifiably has required other parties to incur their own costs in responding thereto. Given this pattern, PNC requests that the instant motion be summarily denied, and that PNC be awarded its costs of responding to this motion, as well as all other relief this Court finds appropriate and just.

¹ As the attached federal court notice of appearance (Ex. B) evidences, the movants here are the same entities and individuals that Mr. Reynolds and Santen & Hughes represented in the federal court case: Ronald A. Zilberbrand, Kevin Hoffman, 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, Aerospace Concepts, LLC, TZF Acquisitions, LLC, Global XRS 5112, LLC, and Lear 45210, Inc.

² Even without their acceptance of service, the motion to dismiss still would be baseless, because defendants have waived the defense of insufficiency of process through their conduct in this litigation. Defendants' contention that this objection is preserved because they included an affirmative defense as to service of process in their answer is meritless because they entered a general appearance (on 12/21/2011) and made a motion for a more definitive statement (on 12/30/2011) without preserving this objection. prior to filing their answer (on 2/23/2012); they also availed themselves of this Court by filing a counterclaim and third party complaints. *See Joseph v. Latoria*, 12th Dist. No. CA88-05-040, 1988 Ohio App. LEXIS 4323 (Oct. 31, 1988) (finding that defendant's participation in litigation prior to his filing of an answer asserting the defense of insufficiency of process resulted in the waiver of that defense); *NetJets, Inc. v. Binning*, 10th Dist. No. 04AP-1257, 2005-Ohio-3934, ¶ 6 ("Participation in the case can also waive any defect in personal jurisdiction."); *Holloway v. Gen. Hydraulic & Mach., Inc.*, 8th Dist. No. 82294, 2003-Ohio-3965, ¶ 8 ("Participating in the litigation prior to asserting the affirmative defense does constitute a waiver of the defense."); *McBride v. Coble Express*, 92 Ohio App. 3d 505, 510 (3d Dist. 1993) ("[A]ny objection to assumption of personal jurisdiction is waived by a party's failure to assert a challenge at its first appearance in the case, and such defendant is considered to have consented to the court's jurisdiction.").

Respectfully submitted,



Glenn V. Whitaker (0018169)

Erik B. Bond (0087188)

VORYS, SATER, SEYMOUR AND PEASE LLP

301 East Fourth St., Suite 3500

Great American Tower

Cincinnati, OH 45202

James J. Restivo, Jr. (pro hac vice to be filed)

Robert P. Simons (0077212)

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Facsimile: (412) 288-3063

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amuha@reedsmith.com

*Attorneys for Plaintiff/Counterclaim Defendant
PNC Equipment Finance*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via email this 18th day of December, 2012, upon the following:

Charles E. Reynolds
J. Robert Linneman
Brian P. O'Connor
Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202

*Attorneys for Zilberbrand Defendants
and Hoffman Defendants*

Randolph H. Freking
Brian P. Gillan
Freking & Betz, LLC
525 Vine Street, Sixth Floor
Cincinnati, Ohio 45202

Stanley M. Chesley
Waite Schneider Bayless & Chesley Co. LPA
Fourth & Vine Tower
1 W. Fourth St., Suite 1513
Cincinnati, Ohio 45202

*Attorneys for Third Party
Defendant Vincent Rinaldi*



Erik B. Bond (0087188)

Bond, Erik B.

Subject: FW: Aerospace Motion to Dismiss

From: Reynolds, Charles E [<mailto:CER@santen-hughes.com>]
Sent: Tuesday, December 06, 2011 2:21 PM
To: Simons, Robert P.
Cc: Bond, Erik B.
Subject: RE: Aerospace Motion to Dismiss

Bob;

Thanks for the copy of the Complaint. This email will confirm my agreement to accept service on behalf of the defendants we represented in the federal action.

Chuck.

Charles E. Reynolds
Santen & Hughes
Cincinnati, OH 45202
Office: (513) 721-4450
Fax: (513) 852-5969
cer@santen-hughes.com

From: Simons, Robert P. [<mailto:RSimons@ReedSmith.com>]
Sent: 12/06/2011 2:10 PM
To: Reynolds, Charles E
Cc: Bond, Erik B.
Subject: RE: Aerospace Motion to Dismiss

Chuck,

PNC voluntarily dismissed the Federal Court action and have re-filed in The Court of Common Pleas . If needed, please confirm you agreement to accept service on behalf of your clients as indicated below.

In terms of keeping the lines of communication open, are you available to discuss approaching the manufacturers for the potential recovery of deposits and other means to maximize collateral value?

Thanks,

Bob

From: Reynolds, Charles E [<mailto:CER@santen-hughes.com>]
Sent: Friday, November 11, 2011 11:20 AM
To: Simons, Robert P.
Subject: Aerospace Motion to Dismiss

Bob;

Exhibit
A

We will be filing the attached Motion today. I wanted to give you a heads up since it addresses jurisdictional allegations in this and other PNC cases with which you might be involved.

If you decide to file in the Court of Common Pleas, I will accept service in the new case for the defendants listed in the Motion.

Finally, I too wish to keep the lines of communication open.

Regards,

Chuck.

Charles E. Reynolds
Santen & Hughes
600 Vine Street
27th Floor
Cincinnati, OH 45202
Office: (513) 721-4450
Fax: (513) 852-5969
ccr@santen-hughes.com

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This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

To ensure compliance with Treasury Department regulations, we inform you that, unless otherwise indicated in writing, any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or applicable state and local provisions or (2) promoting, marketing or recommending to another party any tax-related matters addressed herein.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

PNC EQUIPMENT FINANCE, LLC,	:	Case No. 1:11-CV-749
	:	
Plaintiff,	:	
	:	(Judge Dlott)
vs.	:	
	:	NOTICE OF APPEARANCE
RONALD A. ZILBERBRAND, et al.,	:	
	:	
Defendants.	:	

Come now Charles E. Reynolds, Esq., J. Robert Linneman, Esq. and Brian P. O'Connor, Esq. and Santen & Hughes and hereby enter their appearance on behalf of the Defendants, Ronald A. Zilberbrand, Kevin Hoffman, Jason Zilberbrand, Casafin VII, I.L.C, Casafin VIII, LLC, Flymex 450, I.L.C, Flymex 550, LLC, Flymex 5502, LLC, Aerospace Group, LLC, The Zilberbrand Group, LLC, Ronald A. Zilberbrand Revocable Trust, Aerospace Concepts, LLC, TZF Acquisitions, LLC, Global XRS 5112, LLC, Lear 45210, Inc., in the above-captioned matter.

Respectfully submitted,

/s/ Charles E. Reynolds
 Charles E. Reynolds (0019935)
 J. Robert Linneman (0073846)
 Brian P. O'Connor (0086646)
 SANTEN & HUGHES
 600 Vine Street, Suite 2700
 Cincinnati, OH 45202
 (513) 721-5972-ph / (513) 852-5969-fx
ccr@santen-hughes.com
jrl@santen-hughes.com
bpo@santen-hughes.com
Attorneys for Zilberbrand and Hoffman Defendants

Exhibit
B

CERTIFICATE OF SERVICE

I hereby certify that on November 11, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Glenn V. Whitaker (0018169)
Erik B. Bond (0087188)
Vorys Sater Seymour & Pease
221 ast Fourth Street
Suite 2000, Atrium Two
Cincinnati, OH 45202

James J. Restivo, Jr.
Robert P. Simons (0077212)
Andrew J. Muha
Reed Smith LLP
225 Fifth Avenue
Pittsburgh, PA 15222

And I certify that I have mailed by U.S. Postal Service the document to the following non ECF-eFiling system participants:

Louis H. Lauch, Jr.
950 Kent Road
Batavia, OH 45103

Peter Snow
Faruki, Ireland & Cox
500 Courthouse Plaza, SQ
Dayton, OH 45402

/s/ Charles E. Reynolds
Charles E. Reynolds (0019935)

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