

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel. Ohio Real Estate Auctions, LLC, d.b.a. Ohio Sheriff Sales, And Barry Baker

Relators

vs.

Honorable Judge Forrest W. Burt, Respondent

Case No. 2013-1023

IN MANDAMUS AND PROHIBITION

RESPONDENT'S MOTION FOR EXTENSION OF TIME IN WHICH TO FILE RESPONSE PER S. CT. PRAC. R. 12.04(A)

JAMES R. FLAIZ, GAUGA COUNTY PROSECUTOR

Rebecca F. Schlag (#0061897) Assistant Prosecuting Attorney

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Attorney for Respondent

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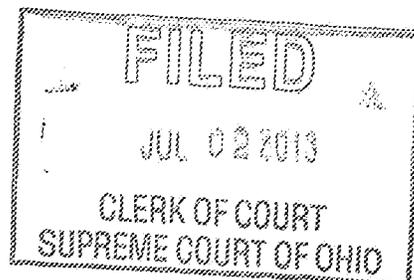
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(740) 368-0008

Attorney for Relators



**RESPONDENT'S MOTION FOR EXTENSION OF TIME
IN WHICH TO FILE RESPONSE
PER S. CT. PRAC. R. 12.04(A)**

The Geauga County Prosecutor's Office is the statutory legal representative for Respondent The Honorable Judge Forrest W. Burt in the within matter. Respondent respectfully moves this Honorable Court for an extension of time in which to file his response to the Peremptory and/or Alternative Writs Requested, pursuant to the Rules of Practice of the Supreme Court of Ohio.

The within matter was commenced June 25, 2013. The next day, on June 26, 2013 the Court sua sponte ordered that Respondent file a response to the complaint no later than July 1, 2013.

Service of the Complaint in Mandamus and Prohibition was made on July 1, 2013. Moreover, on July 1, 2013, undersigned counsel received a courtesy letter alerting us to the existence of this filing. See Affidavit of Geauga County Prosecutor James R. Flaiz, attached. In an attempt to comply with the Court's order for a response, undersigned counsel attempted to reach Respondent, only to discover the Honorable Judge Forrest W. Burt was unavailable due to a previously scheduled vacation. Moreover, although service to the Courthouse was delivered on July 1, 2013, Respondent has not seen the Complaint filed herein.

Rule 12.04(A) of the Rules of Practice of the Supreme Court of Ohio states:

(A) Except as provided by S. Ct. Prac. R. 12.08 and 12.09, the respondent shall file an answer to the complaint or a motion to dismiss within twenty-one days of service of the summons and complaint.

This Original Action in Mandamus and/or Prohibition was not filed pursuant to S. Ct. Prac. R. 12.08 or 12.09. As such, in accordance with the Court's own rules of practice, Respondent is entitled to a period of twenty-one (21) days in which to file his response.

While styled Respondent's Motion for Extension of Time, in reality Respondent is not seeking an *extension* of time, but rather sufficient time in which to fashion his timely response in accordance with the Court's own Rules of Practice. Motion is hereby made to extend the response period articulated in the Court's Entry of June 26, 2013 for twenty-one (21) days, so that all parties to this matter may fully respond.

Respectfully submitted,

JAMES R. FLAIZ
GEAUGA COUNTY PROSECUTOR


Rebecca F. Schlag (#0061897)
Assistant Prosecuting Attorney
231 Main Street – Ste. 3A
Chardon, Ohio 44024
(440) 279-2100
Attorneys for Respondent

CERTIFICATE OF SERVICE

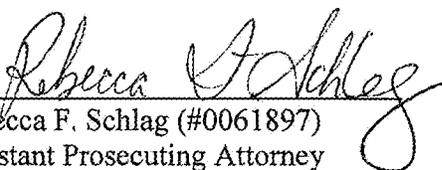
A true and accurate copy of the foregoing was sent by regular U.S. mail, postage prepaid on this 2nd day of July 2013, to the following:

Peggy S. Guzzo (#0089217)
Guzzo Law Office, LLC
100 E. Broad Street, Suite 1340
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Attorney for Relators

Attorney for Relators


Rebecca F. Schlag (#0061897)
Assistant Prosecuting Attorney

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel. Ohio Real Estate) Case No. 2013-1023
Auctions, LLC, d.b.a. Ohio Sheriff Sales,)
And Barry Baker)
Relators)
vs.) ORIGINAL ACTION IN
) MANDAMUS AND PROHIBITION
)
Honorable Judge Forrest W. Burt,)
Respondent)

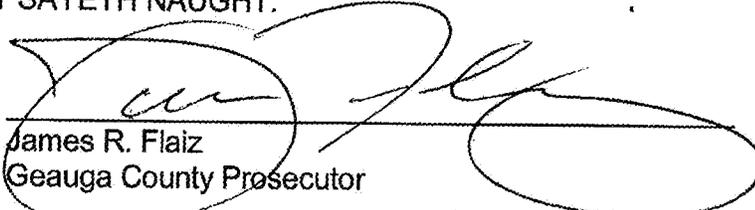
AFFIDAVIT OF PROSECUTOR JAMES R. FLAIZ

I, James R. Flaiz, having been first duly sworn and cautioned according to law hereby state that I am over the age of eighteen years old and am competent to testify as to the facts set forth below based on my personal knowledge and having personally examined all records referenced herein, further state as follows:

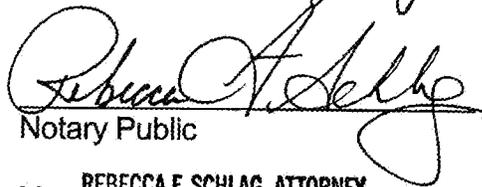
1. I am the duly elected Prosecutor of Geauga County, Ohio.
2. My office is the statutory legal representative to the Geauga County Common Pleas Court, and the Honorable Judge Forrest W. Burt.
3. On the afternoon of July 1, 2013 I received by regular U.S. mail a courtesy copy of the summons issued in Supreme Court Case No. 2013-1023 captioned *The State of Ohio ex rel. Ohio Real Estate Auctions, LLC, d.b.a. Ohio Sheriff Sales, and Barry Baker v. Honorable Judge Forrest W. Burt, Geauga County Court of Common Pleas*. In the same envelope I received a copy of the June 26, 2013 Entry of the Court ordering, sua sponte, that Respondent Honorable Judge Burt "shall file a response to the complaint no later than July 1, 2013."

4. In examining the Court's docket, I determined that this action was commenced on June 25, 2013, one day prior to the Court's Entry ordering a response within five (5) calendar days.
5. The June 26, 2013 Order of the Court effectively precluded Respondent's ability to file a response to this Complaint, in that the response was due the same day received.
6. Respondent The Honorable Judge Forrest W. Burt is temporarily out of the county and has not seen this Complaint, nor have I been able to speak with him regarding this matter.
7. Rule 12.04(A) of the Rules of Practice of the Supreme Court of Ohio states "[e]xcept as provided by S. Ct. Prac. R. 12.08 and 12.09, the respondent shall file an answer to the complaint or a motion to dismiss within twenty-one (21) days of service of the summons and complaint."
8. By its own rules of practice, therefore, the Supreme Court of Ohio grants a period of twenty-one (21) days for filing a response, rather than the five (5) days ordered by the Court.

FURTHER AFFIANT SAYETH NAUGHT.


James R. Flaiz
Geauga County Prosecutor

Sworn to before me and in my presence on this 2nd day of July
2013.


Notary Public

REBECCA E. SCHLAG, ATTORNEY
My commission expires
Notary Public - State of Ohio
My Commission has no Expiration Date
Ohio Revised Code 147.03