

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO EX REL.
OHIO REAL ESTATE AUCTIONS,
LLC d/b/a OHIO SHERIFF SALES, et
al.,

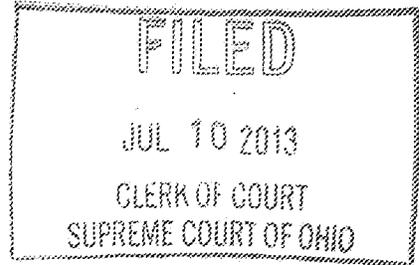
Relators,

-v-

HONORABLE JUDGE FORREST W.
BURT, GEAUGA COUNTY COURT
OF COMMON PLEAS

Respondent.

:
: Case No.: 2013-1023
:
:
: Original Action In
: Prohibition and Mandamus



RELATORS' MEMORANDUM
IN SUPPORT OF MOTION FOR AN EXPEDITED RULING

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and therefore, that portion of Respondent's Order (that altered the designated auctioneer) should be stricken and Relator reinstated. Relator has a vested interest in his state-wide auctioneer license to conduct judicial auctions in Geauga County. Pursuant to R.C. 2329.151, judicial sales " * * * shall be conducted personally by an officer of the court or by an **auctioneer licensed under Chapter 4707** of the Revised Code." Id. Relator is licensed under R.C. 4707 and Respondent's removal of Relator, from the Order, for lack of local residency is denying Relator of his protected right to auctioneer state-wide.

The auction of the underlying property, in Respondent's Order, is scheduled to take place on July 11, 2013 at 4:00 P.M. and is the reason for this expedited ruling request. Relator desires to mitigate his damages by staying the auction until this Court rules on this case or expediting the ruling by issuing a preemptory writ of prohibition preventing Respondent's alteration of the designated auctioneer in Respondent's Order and/or writ of mandamus ordering Respondent to reinstate Relator. However, if the auction should proceed as scheduled Relator believes the case will not be moot² as the nature of orders in general are short lived and in this particular case the Respondent's behavior has the strong likelihood of repeating itself and, therefore, warrants this Court adjudication of the merits.

Supporting Law

Judicial sales are governed by Chapter 2329 of the Ohio revised Code and are procedural in nature and, therefore, the little discretion the Respondent had was in determining whether the judicial sale, in the underlying case, should be conducted by an officer of the court or an

this chapter, it is the **intent of the general assembly to preempt municipal corporations and other political subdivisions from the regulation** and licensing of auctioneers, auction firms, and auction sales. * * * (Emphasis added)."

² *State, ex rel Beacon Journal Pub. Co. v. Kainrad*, 46 Ohio St.2d 349, 351, 348 N.E.2d 695 (1976). When an order has expired the issue should still be decided on the merits if there is a strong likelihood of repetition in the future.

auctioneer. Once the Respondent made the determination that the judicial sale should be conducted by an auctioneer, the only qualifying criteria the Respondent could use was whether the auctioneer was licensed under R.C. 4707. This is because the General Assembly prescribed the State as the sole regulator of auctioneers and auction sales. Through legislation, the General Assembly determined licensed auctioneers, such as Relators, are qualified to conduct any auctions throughout the state. See Chapter 4707 of the Ohio Revised Code. Even if Common Pleas Judges have the discretion of selecting the auctioneer, their selection process cannot be biased nor require local residency or any other condition that would encroach on regulating the profession of auctioneering. To do so would be in violation of the separation-of-power doctrine that this Court recognizes.

Although the separation-of-power doctrine is not expressly stated in the Ohio Constitution, this Court has held it “* * * is implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government.” *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 159, 503 N.E.2d 136 (1986). “[E]ach of the three grand divisions of the government must be protected from the encroachments by the others, so far that its integrity and independence may be preserved.” *Id.*, citing *Fairview v. Giffie*, 73 Ohio St. 183, 187, 76 N.E. 865 (1905). Respondent’s local residency requirement is usurping the General Assembly’s legislative power and enactment of R.C. 4707.111 and is, therefore, patently exceeding its jurisdiction.

Relator is not a party in the underlying Respondent Order but nonetheless has standing because Relator’s legally protected right to auctioneer in Geauga County is being violated by Respondent’s Order. Furthermore, Relator has no other remedy in the ordinary course of law. The issues raised in Relators’ action are unique and distinguishable than most other prohibition

and mandamus cases because it involves a preemption statute; the issue of whether a judge's discretion is abused if an appointee is disqualified against a public policy; and whether the designation of the auctioneer should be left to the bank-creditor to ensure efficient and effective sales.

Other Considerations

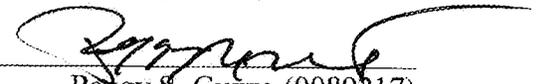
Due to the fast approaching scheduled auction set for July 11, 2013 at 4:00 P.M., Relator has caused a copy of this Motion for Expedited Ruling to be delivered to Mr. Scott Mihalic (the auctioneer inserted by Respondent in the Order) by July 11, 2013 A.M. and provided this Court's Clerk of Court's phone number so Mr. Mihalic can call to check if this Court has issued a stay on the challenged portion of Respondent's Order and the auction.

Conclusion

In this case, therefore, it is imperative that Relator be afforded immediate relief from Respondent's impermissible order, and that the challenged portion not be given any effect. That in turn would require this honorable Court to act before 4:00 P.M. on July 11, 2013. In this case, because of Respondent's egregious conduct, the Court would be well warranted in issuing a preemptory writ of prohibition and/or mandamus now. However, at a minimum the Court must act and issue an alternative writ staying the challenged portion of Respondent's Order before the auction is completed.

Accordingly, Relator respectfully request that this Court either immediately decide the merits of Relator's Complaint and issue a preemptory writ, or immediately issue an alternative writ that expressly stays enforcement of the challenged portion of Respondent's Order until the Court has decided to permanently prohibit Respondent from requiring local residency as a prerequisite to conducting a judicial auction in Geauga County.

Respectfully submitted,



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Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion for an Expedited Ruling was served by delivery service, UPS next day delivery, postage prepaid, on July 10, 2013, upon the following:

James R. Flaiz (0075242),
Geauga County Prosecutor
231 Main Street-Ste. 3A
Chardon, Ohio 44024

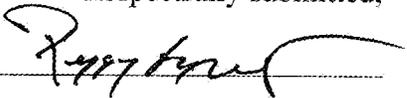
Rebecca F. Schlag (0061897)
Assistant Prosecuting Attorney
Counsel of Record
Courthouse Annex
231 Main Street-Ste. 3A
Chardon, Ohio 44024
(440) 279-2100

Counsel for Respondent

I hereby certify that a true copy of the foregoing Motion for Expedited Ruling was served by delivery service, UPS next day early A.M. delivery, postage prepaid, on July 10, 2013, and the Supreme Court's Clerk of Court's phone number upon the following:

Mr. Scott Mihalic
602 South St. B-15-B
Chardon, Ohio 44024
(440) 796-4739
Auctioneer
Supreme Court Clerk of Court's phone Number: (614) 387-9530

Respectfully submitted,



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