

ORIGINAL

IN THE SUPREME COURT OF OHIO

BERNARD NIEDERST,

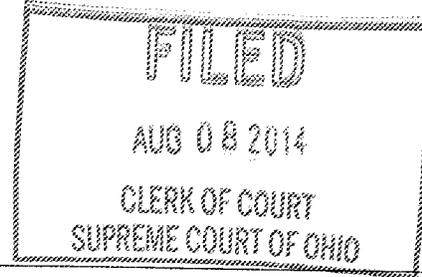
Relator

vs.

RICHARD G. MCMONAGLE,

Respondent.

Case No. 2014-1119



BRIEF IN OPPOSITION TO
MOTION TO FILE UNDER SEAL

Relator Bernard Niederst (“Relator” or “Niederst”), by and through his undersigned counsel, respectfully requests that this Court deny the Motion to File Under Seal filed by proposed interveners David B. Niederst, et al. (“Proposed Intervenors”).

The Proposed Intervenors have filed a Motion to Intervene in the above-captioned case, which Relator has opposed. In anticipation of their Motion to Intervene being granted, the Proposed Intervenors have also filed a Motion to File Under Seal all pleadings, motions and documents containing confidential information. In their motion, the Proposed Intervenors state that this action concerns the Judge McMonagle’s (“Respondent”) jurisdiction to conduct a hearing on a Rule 60(B) motion involving a confidential settlement agreement. The Motion should be denied as the 60(B) motion and its contents are irrelevant. What is relevant is the Respondent exercising jurisdiction in an ultra vires manner. The nature of this case concerns Respondent’s exercising jurisdiction in an ultra vires manner in direct conflict with the Eighth District mandate. Accordingly, the contents of any 60(B) motion or Proposed Intervenors confidential information is irrelevant.

As a result of numerous defaults by the Proposed Interveners under a settlement agreement between Relator and the Proposed Interveners, Relator obtained a judgment on October 2, 2013 signed by the Presiding Administrative Judge Nancy Fuerst (the "Judgment"). Shortly thereafter, Respondent unilaterally vacated the Judgment without a motion, hearing or any evidence. Relator appealed to the Eighth District Court of Appeals, which immediately reversed and reinstated the Judgment but did not remand to the trial court. The Court of Appeal's decision was final and controlling over the trial court. The Proposed Interveners then filed a Rule 60(B) motion and a Motion to Stay the Judgment. Despite having no jurisdiction to do so, Respondent granted the Proposed Interveners' Motion to Stay and stayed the Judgment without a hearing, bond, or allowing Relator to file a Brief in Opposition. It is this conduct of Respondent that Relator's have applied for a writ of prohibition and procedendo. The sole purpose of this action is to seek to have this Court issue the writs directing Respondent to enforce the Judgment. The Proposed Interveners' Rule 60(B) Motion and its contents are not of concern in this action. The only concern is whether Respondent's conduct in exercising any jurisdiction over the Judgment other than enforcing it was improper. This matter is not one of a confidential nature and therefore, documents and pleadings do not need to be filed under seal. Accordingly, the Proposed Interveners' motion should be denied.

Any alleged confidentiality was lost long ago by the Defendant's breaches and actions. Once the Defendants defaulted under the settlement and note, Relator had the absolute right to sue and obtain its judgment. There is no right to any alleged confidentiality when the Defendants breach the settlement. It was Defendants' breaches that necessitated the filing of the underlying lawsuit. Moreover, the Proposed Interveners have waived any right to an order sealing the pleadings because nothing was sealed in the underlying case or subsequent appeal. Specifically, all of the Proposed Interveners alleged confidential information is already a matter of public record and

is an open file with the Eighth District Court of Appeals in Case No. CA-13-100616. Proposed Interveners did not seek an order to file under seal in that case, nor was such an order ever issued. To the extent this Court determines that the Proposed Interveners' 60(B) motion is relevant to this case, Relator respectfully argues that they have waived any right to file under seal.

As set forth herein above, Bernard Niederst requests that this Court deny the Proposed Interveners' Motion to File Under Seal.

Respectfully submitted,

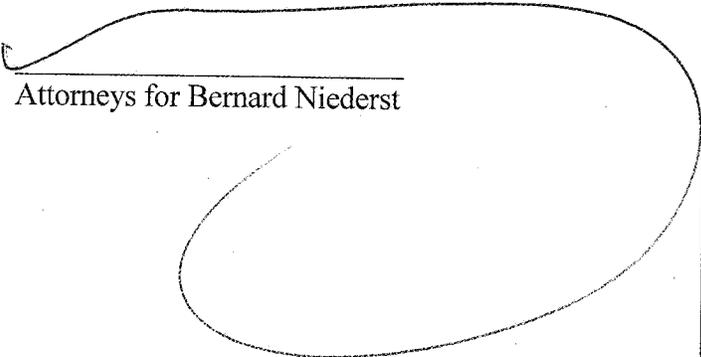
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 7th day of August 2014, via U.S. regular mail upon the following parties:

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