

OFFICE OF
APPELLATE COURTS

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FILED

STATE OF MINNESOTA

IN SUPREME COURT

Kevin E. Burns,

Barbara R. Burns,

Petitioners

DOCKET NO. A-09-466

TAX COURT DOCKET NO. 07929-R

v.

Commissioner of Revenue,

Respondents

PETITIONERS' JOINT AND SEPARATE MOTION FOR REHEARING

As provided and authorized by Minn. R. of App. P. 140 and as otherwise provided and authorized by the Minnesota Rules of Court, Kevin E. Burns ("Petitioner") and Barbara R. Burns, as co-Petitioner and in her capacity as Kevin E. Burns' de facto attorney and expressly authorized representative¹, move the seven-member Minnesota Supreme Court for rehearing of their Joint and Separate appeal of the order of the Minnesota Tax Court and Petition for Writ for Mandamus and Prohibition.

The Petitioners additionally request permission to address the seven-member court as to the issue of joinder and substitution of Barbara R. Burns as a necessary and indispensable party in lieu of or in addition to Kevin E. Burns and renew their petition for a writ or mandamus and prohibition and for vacateur of the orders of the Dakota County District Court and the Minnesota Tax Court.

¹ Barbara Burns represented Kevin E. Burns in proceedings before the Minnesota Department of Revenue and the Minnesota Tax Court pursuant to a Power of Attorney authorization reviewed and approved by the Minnesota Commissioner of Revenue and the Minnesota Tax Court. The Petitioners additionally note that the Supreme Court has designated Petitioner Kevin E. Burns as "Burns" and co-Petitioner and de facto attorney Barbara R. Burns as "Barbara." The Petitioners object to this informality. To the extent that it is necessary for the Supreme Court to refer to the Petitioners by name, the Petitioners submit that the Petitioners should be identified collectively as "Burns" or "Petitioners" or, alternatively, as "Kevin Burns" and "Barbara Burns".

STANDARD FOR GRANT OF PETITION FOR REHEARING

A petition for rehearing of an appeal or a petition for mandamus and prohibition is expressly authorized under Minn. R. of App. 140.01. A party may petition for rehearing in cases where the court has overlooked, failed to consider, misapplied, or misconceived any material fact or question in the case and/or controlling statute, decision, or principle of law.

STANDARD FOR VACATEUR OF JUDGMENT FOR LACK OF JURISDICTION

The Minnesota Supreme Court recognizes the general rule that a judgment rendered by a court which lacks jurisdiction to hear a case does not have the effect of res judicata. See, e.g., *Hauser v. Mealey*, 263 N.W. 2d 803, 808 (Minn. 1978).

In actions involving land, the Minnesota appellate courts have held that (1) a judgment may be collaterally attacked for lack of jurisdiction if the record affirmatively shows that the requisite jurisdictional elements are lacking; and (2) a person who obtains an interest in property through the assignment of a void judgment may not acquire title to the property as a bona fide purchaser. *Scott v. Kuhl*, Docket No. A-04-1628 (Minn. App. 2005). In all actions in which title to, or any interest in, real property is affected or involved or is brought into question, a party may file with the county recorder a notice of lis pendens. Minn. Stat. § 557.02 (2002). The purpose of a lis pendens is to warn prospective purchasers that “title to property is in litigation and impedes a property owner’s right to free alienability of real estate.” *Bly v. Gensmer*, 386 N.W. 2d 767, 769 (Minn. App. 1986).

The traditional rule is that there is no time limit for challenging a judgment that is void for lack of subject-matter jurisdiction. See 12 James A. Moore, et al, *Moore’s Federal*

Practice § 60.44 (3rd Ed. 1997). The principle underlying this rule is that the validity of a judgment is of utmost importance.

In *Lange v. Johnson* and its progeny, the Minnesota Supreme Court held that judgments are void if a court lacks subject-matter jurisdiction and that there is no time limit for bringing a motion to vacate such a judgment. 295 Minn. 320, 323-324. 204 N.W. 2d 205, 208 (1973). See also *Peterson v. Eishen*, 512 N.W. 2d 338, 341 (Minn. 1994).

In balancing competing public-policy interests of finality and validity, the Minnesota Supreme Court has held that motions to vacate a judgment rendered in a contested action are authorized without limitation as to time in cases where (1) the subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of that authority; or (2) allowing the judgment to stand would substantially infringe the authority of another court or agency; or (3) the judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have the opportunity belatedly to attack the court's subject-matter jurisdiction.

For the reasons stated in the Argument section of this Motion, all three of the above-stated conditions are met in this case. The face of the Record unequivocally demonstrates that (1) the Petitioners acquired the Property in question via a Torrens decree recorded on October 30, 1988, that at all relevant times there was a total absence of title in Bank of America and its purported assignees, including, but not limited to, R.A. Ungerman, (2) the December 24, 2003 judgment of the Dakota County District Court upon which the Minnesota Tax Court relied is void on the face of the record for lack of subject-matter

jurisdiction by operation of the federal removal statute, 28 U.S.C. § 1441, et seq. and the June 21, 2002 order of the United States District Court for the District of Minnesota², the Minnesota Torrens Act, and the Minnesota Lis Pendens Statute, (3) Bank of America and its purported assignees obtained no rights as a bona fide purchaser of the judgment, and (4) redemption based upon that judgment is void and, consequently, insufficient to terminate the Petitioners' indefeasible Torrens title.

The record considered by the Minnesota Tax Court further demonstrates that (1) at all relevant times, the Petitioners held the Property in fee simple absolute as tenants in common; (2) either or both Petitioners and/or members of their immediate family occupied the Property continuously until prevented from doing so under threat of arrest by the state of Minnesota and its inferior political subdivisions in violation of pertinent and applicable Minnesota laws, requiring any legitimate question as to the Petitioners' occupancy of the Property to be resolved by the court in the Petitioners' favor; and (3) Kevin E. Burns and Barbara R. Burns each filed an application for the Homeowners' Property Tax Refund that was received, acknowledged, and adjudicated by the Commissioner of Revenue and subsequently appealed to the Minnesota Tax Court and the Minnesota Supreme Court and that, to date, the appeal taken by Barbara Burns remains non-adjudicated.

In consideration of these facts, which are evident from the Record, the Minnesota Supreme Court should grant the Petitioners' Petition for Writ for Mandamus and

² June 21, 2002 Order of United States District Court Judge David S. Doty of the District of Minnesota, authorizing transfer of "all claims" involving Kevin Burns, Barbara Burns, and Renee DeFina and Bank of America concerning a Minnesota Torrens property legally described as Lot 15, Block 6, in Palomino Woods, Apple Valley, Dakota County, Minnesota to the United States District Court for the Southern District of New York.

Prohibition, vacate ab initio the orders of the Dakota County District Court and the Minnesota Tax Court, and uphold the Petitioners' tax refund applications.

RESTATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

Kevin E. Burns and Barbara R. Burns (collectively, "Burns") proceed as fee simple owners and tenants in common of a Minnesota Torrens property ("the Property") legally described as Lot 15, Block 6 in Palomino Woods, Apple Valley, Dakota County, Minnesota. Records created and maintained by the Dakota County Registrar of Title confirm that the Burns acquired the Property via a Torrens decree filed on or about October 30, 1988.

By the determination of three Minnesota attorneys of reputation who filed their certifications and affidavit, the Property at all relevant times was encumbered by a first mortgage recorded by Ameristar Corporation that was subsequently assigned to and recorded by Goldome Realty and no other mortgages or assignments of mortgage were of record. See Appendix, Certifications of Andre Zdrazil, Esq. and Bradley Beisel, Esq. and Affidavit of Alan J. Lanners, Esq. By the admission of Bank of America associate general counsel Paul W. Kucinski at deposition on August 17, 2007, Bank of America was not of record as a mortgagee and or assignee of a mortgagee on the Certificate of Title. See Appendix, Kucinski Deposition dated August 17, 2007 taken by Apex Court Reporting at Buffalo, New York.

It is undisputed by all parties, including Bank of America³, and has been separately certified by three Minnesota attorneys of reputation⁴ that (1) Bank of America and its

³ See Appellants' Appendix, Transcript of August 17, 2007 Deposition of Bank of America associate general counsel Paul W. Kucinski, stating that, when presented with the Certificate of Title, Kucinski could not identify a mortgage or assignment of mortgage by Bank of America or BA Mortgage.

subsidiary, BA Mortgage, were not of record as a mortgagee or assignee of a mortgagee on the Certificate of Title and that, moreover, Bank of America and BA Mortgage never even attempted to become of record; (2) Bank of America had and has no standing under the Minnesota Torrens Act; and (3) Bank of America's foreclosure action was not authorized or recognized under Minnesota law.

On or about June 30, 2001, Bank of America and its subsidiary BA Mortgage "empowered" one Lawrence A. Wilford, an attorney licensed to practice law in the state of Minnesota with offices at St. Paul, Minnesota, as its attorney in fact to commence a foreclosure action upon the Property.⁵ The stated basis of the foreclosure action was that Bank of America and BA Mortgage were assignees of Ameristar Corporation and its successor Goldome Realty and that the Burns allegedly defaulted the terms of a mortgage in favor of Ameristar and Goldome of which Bank of America claimed but could not prove assignment and later conceded that Bank of America had recorded no mortgage and no assignment of mortgage in accordance with the recordation requirement of the Minnesota Torrens Act. Id. Wilford, as de factor attorney, filed a foreclosure action in the Dakota County District Court. The Burns, through counsel, promptly disputed the validity of the alleged "default" and also disputed Bank of America's standing to foreclose a mortgage held by Ameristar and Goldome and never assigned to Bank of America.

⁴ See Certifications of Minnesota Attorneys Zdrzil and Beisel, stating that Bank of America is not of record and has no standing under the Minnesota Torrens Act, and June 19, 2003 Affidavit of Alan J. Lanners, Esq., stating that Bank of America was not of record and never even attempted to become of record and that Bank of America's foreclosure action was not authorized or recognized under Minnesota law.

⁵ In a certification filed in the Dakota County District Court on August 2, 2003, Minnesota attorney Bradley N. Beisel stated that Wilford was "empowered" by Bank of America and BA Mortgage to take an action that was not authorized under Minnesota law.

In a letter to Bank of America associate general counsel Kucinkski on June 18, 2001, Minnesota attorney Andre J. Zdrzil formally disputed that any default of the mortgage contract had occurred. Attorney Zdrzil also communicated that Bank of America was not of record on the Certificate of Title and had no standing under the Minnesota Torrens Act.

Between the dates of November 18, 2001 and June 30, 2002, Bank of America authorized representative Lee Ann McNally, acting in her official capacity as a furnisher of consumer credit information, certified to four national credit-reporting agencies, including Experian, Equifax, and Trans Union, that Bank of America had reported derogatory information concerning the Burns in error, that the information should not have been reported, and that the information should be removed from the Burns' consumer credit reports. Since that time, Bank of America and BA Mortgage have consistently reported the Burns trade lines as "foreclosed, never late." On August 17, 2007, Bank of America associate general counsel Kucinski testified under oath when shown a copy of the Certificate of Title that Kucinski could not identify a mortgage or assignment of mortgage in favor of Bank of America, its subsidiary, BA Mortgage and/or its purported assignees, Wells Fargo Corporation and R.A Ungerman.⁶

The Petitioners, through counsel, promptly removed the Bank of America foreclosure action to the United States District Court for the District of Minnesota. In a transcribed

⁶ The Petitions respectfully dispute what appears to be a reference by the court to Wells Fargo and/or R.A. Ungerman as "junior lien holder". In fact, Wells Fargo's application for recordation of a mortgage was denied by the Dakota County District Court for technical defects and Wells Fargo formally relinquished its claim to the Property in late May 2003. R.A. Ungerman twice petitioned the Hennepin County District Court for a mechanics' lien and a constitutional or equitable lien. Both applications were denied by Judge E. Anne McKinsey upon a finding that Ungerman had not complied with the requirements of the Minnesota Mechanic's Lien Statute, Minn. Stat. § 514, et seq. and did not present circumstances that warranted a constitutional lien. To the extent that Ungerman procured "junior lien holder" status in Dakota County, he did so by fraud.

proceeding before United States District Court Judge David S. Doty of the District of Minnesota on June 21, 2002, Judge Doty acknowledged that federal jurisdiction was present when the action was removed on July 25, 2001. Transcript, June 21, 2002 Proceedings before Judge David S. Doty filed in the United States District Court for the District of Minnesota.

The Petitioners moved for transfer of the removed action to the United States District Court for the Southern District of New York, stating that the *Burns-Bank of America* action should be litigated in a New York federal court because key Bank of America and BA Mortgage records, employees, and witnesses were located in Buffalo, New York and for other reasons, including due process, judicial economy, and the interests of justice. Judge Doty granted the Burns' motion for transfer and change of venue. The parties then entered into a recorded stipulation, stating that "all claims" concerning the Property would be litigated in a New York federal court. Bank of America readily stipulated on the record to these conditions.

Judge Doty approved and signed off on the recorded stipulation. Judge Doty then stated on the record that the action would be "dismissed in Minnesota" but would be heard in New York and that the Petitioners would "obtain your due process there" or words of that substance and meaning. The Petitioners took Judge Doty at his word and relied upon Judge Doty's representations.

The transferred action was docketed by the Clerk of the United States District Court for the Southern District of New York on March 11, 2003. Following a dilatory jurisdictional challenge by Bank of America in violation of the Doty stipulation to which Bank of America had previously expressly agreed in a recorded stipulation witnessed and

approved by a Minnesota federal court, the United States Court of Appeals for the Second Circuit upheld federal jurisdiction on December 14, 2004.

On July 21, 2003, then-Dakota County Court Judge Mary E. Pawlenty⁷, wife of Governor Tim Pawlenty, issued a writ for restitution of the Property upon the perjured affidavit of R.A. Ungerman⁸ in an ex parte unlawful detainer proceeding. As the Petitioners noted in their principal Brief, the Pawlenty writ in unlawful detainer was an impermissible collateral attack upon the Burns indefeasible Torrens title and the Minnesota Supreme Court is required to take judicial notice of this fact.

Neither the Petitioners nor their attorney, Alan J. Lanners, a close friend of Pawlenty's, was notified of the Pawlenty proceeding, which appeared to have been carefully orchestrated by Ungerman's attorney, David Albright, in collusion with Pawlenty and Kevin S. Burke to coincide with Barbara Burns' attendance at her father's funeral in New Jersey. In clear violation of the Proceeding Subsequent and notice requirements imposed by the Minnesota Torrens Act as well as fundamental notions of justice and fairness, the Petitioners, the registered property owners, were afforded no opportunity to be heard in opposition to Ungerman's materially false claims that Ungerman owned the Property and that the Petitioners, the registered property owners, were Ungerman's tenants.⁹

The Petitioners were notified of the Pawlenty writ on July 24, 2003. On July 25, 2003 the Petitioners appealed and vacated the writ, thereby triggering the automatic statutory stay imposed under Minn. Stat. § 504B.371, which vested sole ownership and possessory

⁷ Pawlenty resigned her judicial office in 2005. Upon information and belief, Pawlenty no longer practices law and, following a one-month stint as general counsel for a mediation center, is employed by Children's HeartLink, a medical non-profit organization as "director of medical diplomacy".

⁸ Ungerman recanted his earlier statements under oath that he was the property owner and that the Petitioners were his tenants in a subsequent proceeding before Judge John Connelly on August 3, 2003. Ungerman's attorney, David Albright, admitted on the record in this same proceeding that the statements in Ungerman's affidavit that was presumably solicited by Albright, were not true.

⁹ See FN 9.

rights of the Property in the Petitioner. See, e.g., *Lobdell v. Keene*, 1901, 85 Minn. 90, 88 N.W. 426 (stating that appeal from a judgment in forcible entry and unlawful detainer proceedings stays all proceedings, preserves all rights of the parties, and secures to defendant(s) the right to remain in possession of the premises pending the appeal).

On August 8, 2003, Kevin Burns filed lis pendens on the advice of counsel. The lis pendens recorded by the Dakota County Registrar of Titles vested subject-matter jurisdiction of the Bank of America foreclosure action and the parties' competing claims to the Property in the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit under authority conferred by the Minnesota Lis Pendens Statute § 557.02. The United States Court of Appeals for the Second Circuit reviewed and upheld federal subject-matter jurisdiction on December 14, 2004.

The Dakota County District Court ignored the recorded lis pendens and the mandatory stay of proceedings concerning the Property proscribed by the Lis Pendens statute. The Dakota County District Court also refused to enforce the mandatory statutory stay imposed by Minn. Stat. § 504B.371 when asked to do so on motion of Attorney Beisel.

The Petitioners duly note that, under the plain language of two different Minnesota legislative statutes enacted for the protection of property owners (1) the lis pendens filed by Kevin Burns and recorded by the Dakota County Registrar of Titles on August 8, 2003 could not be cancelled for a two-year period pending a judgment by the federal court(s) of jurisdiction; (2) the automatic statutory stay that was activated when the Burns vacated the Pawlenty writ and invoked Minn. Stat. § 504B.371 vested the Petitioners with exclusive ownership and possessory rights in the Property pending adjudication of the

Burns' and Bank of America's claim on the merits by the federal court of jurisdiction; and (3) in any hierarchy of legal authority, the discretion of the Dakota County District Court and, for that matter, of this court, is trumped by statute.

On or about October 14, 2003, the Petitioners took a preemptive appeal on or about October 14, 2003. The filing of the Petitioners' Notice of Appeal and Statement of the Case, with service upon the opposing party and the trial court administrator, vested jurisdiction in the Minnesota Court of Appeals.

As discussed at some length in the Petitioners' principal Brief, the Petitioners' appeal was frustrated by the Dakota County Court administrator, who presumably acted at the direction of Mary Pawlenty and the chief judge of the district, Richard Spicer. More specifically and as discussed in the Petitioners' Brief, the Dakota County Court Administrator, Van C. Brostrom, attempted to obtain an administrative dismissal of the Burns appeal and falsely certified to the Clerk of the Appellate Courts that Kevin Burns had not posted the requisite cost bond. In fact, Kevin Burns did post the cost bond and Brostrom subsequently issued a letter stating that the cost bond had been posted. The Brostrom letter is part of the Petitioners' Appendix.

On November 21, 2003, the Dakota County District Court convened a proceeding on petition of Ungerman as purported assignee of Bank of America. At this time, Ungerman's petition for a new title was denied by Judge Timothy McManus.

To preclude further unauthorized state court proceedings pending adjudication of the validity of the Bank of America foreclosure action by the New York federal court, the Petitioners filed an appeal of the McManus order. The Petitioners asserted that the Dakota County District Court lacked subject-matter jurisdiction concerning adverse

claims to the Petitioners' Torrens title by Bank of America and its purported assignees and was without jurisdiction to convene a proceeding in this matter and that the Burns were able to demonstrate injury in fact by continuing unauthorized state court proceedings in the absence of jurisdiction regardless of whether they concluded favorably or unfavorably.

The appeal was docketed by the Clerk of the Appellate Courts on December 23, 2003 and divested the Dakota County District Court of jurisdiction as of that date. See Transcript of December 24, 2003 Proceedings before Judge Richard Spicer, stating that, if appeal was perfected on December 23, 2003, the Dakota County District Court was without jurisdiction to hear Ungerman's petition.

The Petitioners established that they filed and served a Notice of Appeal and Statement of the Case upon the Clerk of the Appellate Courts, the opposing party, and the trial court administrator and that these were the only actions required to perfect an appeal and transfer jurisdiction. Spicer maintained that additional actions, including, but not limited to, posting of a cost bond, remittance of a filing fee, and payment for a transcript, were jurisdictional and required to perfect appeal and transfer jurisdiction. The Supreme Court may take judicial notice that Spicer's analysis was incorrect, that none of these actions was jurisdictional, that the Petitioners' act of filing a Notice of Appeal and Statement of the Case with proof of service upon the opposing party and the trial court administrator vested jurisdiction in the Court of Appeals, and that there is Supreme Court decisional authority that expressly states this.

The following day, December 24, 2003, Spicer convened a proceeding upon R.A. Ungerman's petition for issuance of a new title. Kevin Burns specially appeared and

objected on jurisdictional grounds, stating that jurisdiction was vested in the United States District Court pursuant to a stipulation between the Burns and Bank of America that was approved by Judge David S. Doty of the District of Minnesota and memorialized by *lis pendens* and that the Dakota County Court lacked subject-matter jurisdiction to hear and adjudicate claims to the Property by the Burns, Bank of America, and its purported assignees.

By pre-arrangement, Bank of America was not made a party to the Ungerman action and other than the 2002 Minnesota District Court proceeding in which Bank of America stipulated to transfer of venue to a federal court in New York, has never appeared in any Minnesota court in this matter. Additionally and as noted in the Petitioners' Brief, the Dakota County Court went to extraordinary lengths to prevent Barbara Burns, the registered property owner, from meaningful participation, including, but not limited to, issuance of a bogus arrest warrant by then-Dakota County Court Judge John Connelly.¹⁰

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The stage was thus set for a sham kangaroo court-type proceeding that Spicer then proceeded to play like a poker hand from a stacked deck. Immediately following the proceeding, Spicer granted a tell-all interview with *Minnesota Lawyer* magazine in which Spicer denounced the Burns, stating in substance that the Dakota County District Court was not interested in anything that the Burns had to say and that the Burns were not worthy of due process in Minnesota.

¹⁰ It is the Petitioners' understanding that Judge Connelly is now "retired".

¹¹ The warrant was quashed on February 20, 2004. Two earlier warrants premised upon the same facts were also quashed. The state of Minnesota and its inferior political subdivision, the City of Apple Valley, never successfully prosecuted the purported "ordinance violations" that were the basis for the warrants, a resolution of the malicious prosecution in Burns' favor.

The Petitioners specifically bring this point to the attention of the court because whether a party was accorded constitutional and procedural due process is a fundamental element of the preclusion theory of collateral estoppel that the court has misguidedly applied to this case. The Petitioners assert that the Dakota County District Court and, for that matter, this court cannot reasonably hope to have it both ways. If, as Spicer publicly stated, the Dakota County Court was pre-disposed to rule against the Burns regardless of the merit of their attorney-certified claims, neither the Dakota County Court or this court can claim that the Burns were afforded the standard of due process held by an esteemed, if not revered, former member of this court, Justice Mary Jeanne Coyne, as “a necessity”¹². Consequently, the Dakota County District Court judgment should be set aside on due process as well as jurisdictional grounds.

Spicer commenced the December 24, 2003 proceeding by conceding on the record that, if perfected, the Petitioners’ December 23, 2003 appeal divested the Dakota Court of jurisdiction to hear Ungerman’s petition. After inaccurately concluding that perfection of an appeal required posting of a cost bond, payment for a transcript, and/or payment of a filing fee, Spicer then unilaterally dissolved the Burns lis pendens, thereby contravening the plain language of the Lis Pendens Statute, as well as the federal removal statute, which prohibits state courts from proceeding in state actions that have been removed to a federal court unless and until there is an order of remand, which did not occur in this case.

Spicer also summarily cancelled the Petitioners’ indefeasible Torrens title, jurisdiction of which was vested by lis pendens in a New York federal court and by appeal in the

¹² See *I.M.O. Burns*, 542 N.W. 2d 389 (Minn. 1996)(stating that the standard for due process articulated by the intermediate appellate court, including a disinterested and unbiased court, is “a necessity” in all justiciable controversies.

Minnesota Court of Appeals and, in the absence of jurisdiction and in gross infringement of federal jurisdiction, issued title to Ungerman. As supra and in the Petitioners' principal brief, Spicer then granted an interview to *Minnesota Lawyer* magazine in which he publicly disparaged the Petitioners' pending federal action, a flagrant breach of judicial ethics that also clearly revealed Spicer's bias, and aided and abetted conversion of the Petitioners' personal property, valued for insurance purposes at \$53, 000, by Ungerman and his censured attorney, David Albright.¹³

On January 20, 2004, Kevin Burke issued a default judgment in favor of Ungerman following an ex parte proceeding of which the Burns were accorded no notice and no opportunity to appear and object. Burke proceeded in the face of a preemptory disqualification that was timely filed by Renee DeFina and later upheld as valid by the Minnesota Court of Appeals.

The Petitioners duly note that neither the Spicer nor the Burke "judgments" were an adjudication of the merits. Thus, they cannot bar a collateral attack by the Petitioners under the three-pronged exception stated by the Minnesota Supreme Court in *Bode v. Department of Natural Resources*, Case No. C-98-2200 (Minn. 2000).

In the meantime, the *Burns-Bank of America* litigation went forward in New York. Following a protracted appeal necessitated by Bank of America's jurisdictional challenge, the United States Court of Appeals for the Second Circuit upheld federal subject-matter jurisdiction and remanded the case to the district court for further proceedings on December 14, 2004.

¹³ See *I.M.O. Albright* (Minn. 2002)

In mid-2005, the United States District Court for the Southern District of New York summoned the parties for a discovery conference and authorized discovery. On June 28, 2006, the District Court denied Bank of America's motion to dismiss.

Pursuant to the discovery and scheduling order issued by the United States District Court for the Southern District of New York in late 2006, the Petitioners obtained subpoena power of Bank of America records for the first time. Consistent with its Fabian strategy of delay and obstruction, Bank of America vigorously opposed the Petitioners' document requests, requiring extensive and time-consuming litigation of discovery issues. After considerable hassling, Bank of America made pertinent documents available to the Petitioners for inspection and copying at the offices of its New York attorneys, Zeichner Ellman and Krause at 575 Lexington Avenue, New York, NY in mid-November 2007.

At this time, the Petitioners secured Bank of America documents that conclusively proved that Bank of America falsified consumer trade lines concerning the Petitioners, that these falsifications were made in accordance with instructions by the Bank of America legal department and the Bank of America Executive offices¹⁴, and that the falsified derogatory consumer trade lines concerning the Petitioners were retracted by Bank of America on three separate occasions between the dates of November 1, 2001 and July 1, 2002. See Appendix, Certifications of Lee Ann McNally. Between the dates of

¹⁴ A December 2002 chain email between Barbara Burns, associate general counsel Kucinski, and one Douglas Norton, copied to a Kimsey Hagedorn, placed the fraudulent and deceptive business practices of which the Petitioners complained within the office of then Chief Executive Officer Kenneth D. Lewis, who was succeeded by Brian Moynahan in 2009, and the Bank of America corporate legal department. The Supreme Court may take judicial notice that Bank of America has been prosecuted and fined by the state of New York numerous times for fraud-related and anti-consumer conduct, most recently for fraud-related charges by New York Attorney General Andrew Cuomo on February 10, 2010.

November 1, 2002 and the present date, Bank of America has consistently certified the Burns' trade lines as "foreclosed, never late."

The Petitioners also secured copies of letter correspondence between Bank of America lead counsel Steven S. Rand, Lawrence Wilford, and David Albright, attorney for R.A. Ungerman. One of these letters, created in mid-2003, discussed how the three would evade a Burns-Bank of America litigation in the New York federal court of jurisdiction to which Bank of America had expressly agreed in a stipulation approved by the Minnesota District Court and, at the same time, collaterally estop the Burns' claims and bypass federal jurisdiction by commencing an action for issuance of a new title that would be brought by R.A. Ungerman and not Bank of America. The Burns assert that the connivances of Wilford, Rand, and Albright constitute an extrinsic fraud upon the Petitioners and that, based upon Kevin Burns' observations of the discussion between Spicer and the Dakota County Examiner of Titles at sidebar on December 24, 2003, there is at least anecdotal evidence that would cause a reasonable member of the public to believe that Spicer was a participant in the fraud undertaken by Bank of America counsel and Albright to prevent the Burns from knowing and exercising their legal rights and to cheat the Burns of their Property.

Based upon the foregoing facts, there can be no question that the Dakota County District Court was divested of jurisdiction under both the Minnesota Lis Pendens Statute and by operation of the federal removal statute, which vested federal jurisdiction, and the Petitioners' appeal, which vested appellate jurisdiction in the Minnesota Court of Appeals as of December 23, 2003. Given this fact, the Dakota County Court judgment upon which Commissioner relies at bar is illegal and void. *Lange*, supra, 295 Minn. 320, 323-324.

204 N.W. 2d 205, 208 (1973). See also *Peterson v. Eishen*, supra, 512 N.W. 2d 338, 341 (Minn. 1994). As noted supra, there is also credible non-hearsay evidence that the Petitioners were preventing from bringing forth in any Minnesota court proceeding that Bank of America, Wilford and Ungerman committed an extrinsic fraud upon the Petitioners. The Petitioners will discuss these points in detail in the Argument section of this Motion.

For texture, the Petitioners are additionally constrained to note that, even if jurisdiction were present and the Dakota County District Court proceeded lawfully, which is not the case, collateral estoppel, a key premise of the August 5, 2010 opinion for which re-hearing is sought, cannot apply because none of the four criteria defined by this court as pre-requisite to application of the collateral estoppel doctrine are met, i.e., the parties and claims are not identical, the issue of the Bank of America foreclosure action and the Petitioners' defenses and counterclaims, were not litigated on the merits by a court of competent jurisdiction, and, most importantly, the Petitioners were not afforded a full and fair opportunity to be heard and were also not accorded basic due process rights that a respected, if not revered, former justice of this court, Mary Jeanne Coyne, determined was "a necessity" in all justiciable controversies. See, e.g., *I.M.O. Burns*, citation omitted (Minn. 1996).

Public policy interests of finality also should not operate to bar the Burns' collateral attack upon the validity of the Dakota County Court and Minnesota Tax Court judgments as the Record is unequivocal that the Petitioners obeyed the law, adhered to the advice of their attorneys, and faithfully complied with the procedural instructions given them by a Minnesota federal judge, Judge Doty, and their attorneys. The Record is also unequivocal

that the Petitioners ultimately secured credible non-hearsay evidence consisting of Bank of America testimony, records, and certifications that invalidated Bank of America's claim of mortgage assignment and mortgage default and that a jury could not reject and would have to believe and that any attendant delays were necessitated by the conduct of Bank of America, its attorneys and purported assignees, and certain employees and agents of the state of Minnesota, and the Petitioners, who, despite severely limited economic resources and other constraints, proceeded diligently and expeditiously.

The Petitioners will address these points in detail in the Argument section of this Motion.

ARGUMENT

For the reasons stated in the Petitioners' Brief and this Motion, the Supreme Court should grant the Petitioners' Writ for Mandamus and Prohibition and uphold the Petitioners' collateral attack upon the December 24, 2003 judgment of the Dakota County District Court for lack of subject-matter jurisdiction. Because the judgment of the Minnesota Tax Court is premised upon the validity of the December 24, 2003 Dakota County District Court judgment that has been demonstrated as invalid, the Supreme Court should vacate ab initio the February 4, 2009 order of the Minnesota Tax Court as well as the December 23, 2003 judgment of the Dakota County District Court on the basis that the Dakota County Court lacked subject-matter jurisdiction by operation of both the Minnesota Lis Pendens Statute and MRAP 101.01 and the Dakota County Court judgment upon which the Tax Court relied is void; and on the basis that the Petitioners were denied the fundamental due process rights promised and secured to them by order of Judge David S. Doty of the District of Minnesota and the late Justice Mary Jeanne Coyne

of the Minnesota Supreme Court, who upheld as “a necessity” the standard for due process stated by the Minnesota Court of Appeals when it affirmed Barbara Burns’ disqualification of Kevin S. Burke on October 17, 1995. See *I.M.O. Burns*, citation omitted (Minn. 1996).

The Petitioners will discuss each of these points in turn.

POINT I

THE MINNESOTA JUDGMENTS ARE VOID FOR LACK OF JURISDICTION

A judgment rendered by a court that lacks jurisdiction is void and can be challenged at any time. *Bode v. Department of Natural Resources*, Case No. C-98-2200 (Minn. 2000). A final judgment in prior contested action may be collaterally attacked for lack of subject-matter jurisdiction in a separate action when (1) the action was so plainly beyond the court’s jurisdiction that its entertaining the action was a manifest abuse of authority; (2) the judgment substantially infringes upon the authority of another tribunal or agency of government; and (3) the court lacked the ability to make an adequately informed determination of a question concerning its own jurisdiction. *Id.* A judgment rendered by a court which lacks jurisdiction to hear a case does not have the effect of *res judicata*. *Hauser v. Mealey*, *supra*, 263 N.W. 2d 803,808 (Minn. 1978).

Here, the Petitioners removed a state court foreclosure action filed by Bank of America and BA Mortgage to a Minnesota federal court. The Minnesota federal court granted the Petitioners motion to transfer and venue the action in a federal court in New York. That court further witnessed and approved a recorded stipulation by and between the Petitioners and counsel for Bank of America and BA Mortgage, stating that “all issues” concerning these parties and the Property that is the basis for the litigation would be

heard and decided by a federal court in New York. Transcript, June 21, 2002 Proceedings before Judge David S. Doty in *Bank of America, et al v. Burns, et al* filed in the United States District Court for the District of Minnesota. Finally, the Minnesota federal court made express assurances to the Petitioners that the action would be dismissed in Minnesota but that the Petitioners would have a full and fair opportunity to “obtain your due process” and to be heard in New York. *Id.*

The Minnesota Supreme Court and its inferior courts are required to take judicial notice of the Record, including the transcript containing the stipulation, which is publicly filed in the United District Court for the District of Minnesota. The Minnesota Supreme Court and its inferior courts are also required to take judicial notice of the lis pendens recorded by Kevin Burns on August 8, 2003 on the advice of counsel. The transcript clearly states that the parties and their successors agreed to litigate “all issues” concerning the Property and the parties’ relationship in a federal court in New York. The lis pendens, which is governed by the Minnesota Lis Pendens Statute, states, equally clearly, that subject-matter jurisdiction has been vested in the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit.

The Dakota County District Court, which cancelled the lis pendens, obviously was fully aware of its existence. The Dakota County District Court also acknowledged that it was aware that an appeal had been filed by the Clerk of the Appellate Courts on December 23, 2003 and admitted that the filing and perfection of an appeal would operate to deprive the Dakota County District Court of jurisdiction.

Based upon these facts, the act of the Dakota County District Court in circumventing federal jurisdiction by convening a proceeding involving a Bank of America successor

and assignee after acknowledging that the court was aware of the filing of both a lis pendens and an appeal plainly was a usurpation of power and a wrongful extension of the authority of the state court beyond the scope of its authority. This compels the conclusion that there was a total want of jurisdiction as opposed to an error in the exercise of jurisdiction that renders the Dakota County Court judgment and the Tax Court judgment that relied upon it void. See, e.g., *Kansas City Southern Ry Co. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Circuit 1980)(stating that “absence of subject-matter jurisdiction may render a judgment void...where there is a plain usurpation of power, when a court wrongfully extends its jurisdiction beyond the scope of its authority.”)

The Petitioners submit that if this case is not representative of a case of a “plain usurpation of power and a wrongful extension of the authority of the court beyond the scope of its authority”. To add insult to injury, it was premised upon nothing more substantial than pure unadulterated hatred that was promptly vented by the trial judge, who granted an interview with a magazine within one month of the “judgment”, no case ever will be.

Additionally, when the Dakota County District Court violated the terms of a recorded stipulation and a transfer order authorized by a Minnesota federal court and disregarded a filed lis pendens that imposed a mandatory two-year stay of proceedings involving the Property pending adjudication on the merits of the parties’ claims by the federal court(s) of jurisdiction under the plain language of a Minnesota legislative statute, it also substantially infringed upon the jurisdiction of the federal court to which the state foreclosure action was removed and the right of the Petitioners to remove a state court action and have it adjudicated on the merits in a federal court. The Petitioners note that

the right to remove a state court action to a federal court is expressly authorized by a federal legislative statute and is *particularly* appropriate in cases such as this one where the state court is demonstrated to be corrupt¹⁵ and the removing party can demonstrate bias in the state tribunal. In this case, the corrupt state court completely usurped and trampled upon this right.

The Dakota County Court—which did not permit impleader of Bank of America (presumably to side-step and frustrate the Burns’ ability to challenge standing issues on which Bank of America could not and would not have prevailed) and which evidenced that it did not have a good command of jurisdictional issues, including but not limited to, the Rule of Appellate Procedure which provides that perfection of an appeal entails only the filing and service of a Notice of Appeal and not payment of a filing fee or a transcript—also clearly lacked the capability to make an adequately informed decision of a question of its own jurisdiction as well as the default issue that is predicate to a lawful foreclosure action and that was eventually invalidated by the Petitioners when they obtained party admissions and Bank of America records that established that no default occurred. The Petitioners cannot and should be not be penalized for the fact that the trial judge, Spicer is, by all appearances, ignorant of the 1999 revision to the Minnesota Rules of Appellate Procedure and Supreme Court decisional authority interpreting the revision and too stupid to accurately determine when an appeal has been perfected and whether the court in which Spicer sits does or does not have jurisdiction.

¹⁵ Referring the Supreme Court to the Petitioners’ principal Brief, the Petitioners again call the attention of the court to the extremely recent censures of Dakota County Court Judges Thomas Murphy, Michael Sovis, William Thuet, Rex Stacy, and William Blakely. The Petitioners further note that one Dakota County Court judge who directly participated in Dakota County litigation involving the Petitioners and this Property was removed from the bench and that two others, John Connelly and Mary Pawlenty, “retired” or resigned.

Based upon these facts, the three-pronged exception to the finality rule has been amply satisfied and the interests of justice require that the Petitioners be afforded the opportunity to belatedly attack the state court's subject-matter jurisdiction. On the basis that the Petitioners have unequivocally demonstrated that the Dakota County District Court was divested of jurisdiction under a state statute, the Minnesota Lis Pendens Statute, as well as the federal removal statute and Supreme Court decisional authority interpreting the Minnesota Rules of Appellate Procedure governing perfection of an appeal and consequential transfer of jurisdiction, the Supreme Court should summarily deem the Dakota County Court judgment void for want of subject-matter jurisdiction on the face of the record and forthwith grant the Petitioners' Petition for a Writ for Mandamus and Prohibition and vacate the orders of the Dakota County District Court and the Minnesota Tax Court.

POINT II

TRANSFER OF THE PROPERTY WAS ILLEGAL AND VOID

Applying the collateral attack rule to cases that involve real property, the Minnesota appellate courts have held that (1) a judgment may be collaterally attacked for lack of jurisdiction if the record affirmatively shows that a requisite jurisdictional element was missing; and (2) a person or persons who obtain an interest in property through assignment of a void judgment may not acquire title as a third-party bona fide purchaser. *Hanson, et al v. Woolston, et al*, Case No. A-04-1628 (Minn. App. 2005). A majority of jurisdictions hold that the bona fide purchaser doctrine does not apply to a transfer or conveyance based upon a void judgment. See *Hanson, supra*, citing *Raniere v. I & M*

Invs., Inc. 387 A.2d 1254, 1258 (N.J. Super. Ct., Ch. Div.1979, N.J. Super. Ct. App. Div. 1980).

A bona-fide purchaser case that is directly on-point that was relied upon by the Minnesota Court of Appeals in *Hanson* is *Sprang v. Petersen Lumber, Inc.*, 798 P.2d 395, 401 (Ariz. Ct App. 1990). In *Sprang*, a buyer obtained a void default judgment foreclosing a property sought the right to obtain title to the property as a bona fide purchaser. The court ruled against the party, reasoning that because the default judgment against the property owner was void for lack of jurisdiction, subsequent transfers based upon the judgment conveyed no rights. *Sprang*, 798 P.2d at 400. This is the identical situation presented by this case.

Here, Bank of America claimed but could not prove an assignment of the Ameristar mortgage and ultimately admitted that it did not have standing to foreclose a mortgage applicable to the Burns Property as a mortgagee or assignee of a mortgagee. In these circumstances, Minnesota law required Bank of America as a purported mortgagee or assignee whose interest was not of record to convene a judicial foreclosure to litigate its claimed interest and standing with regard to the Property. Bank of America did this when it commenced a judicial foreclosure action in Dakota County in mid-2001, claiming a mortgage default that was disputed by the Burns' Minnesota attorney, Andre Zdrzil and ultimately disproven when Bank of America authorized representative Lee Ann McNally retracted derogatory trade lines concerning the Burns and admitted that the trade lines never should have been reported.

The Burns, in the meantime, removed the state court foreclosure action to the Minnesota District Court. That court authorized the Burns to litigate "all claims"

concerning the Property that involved Bank of America, its agents, successors, and assignees in a New York federal court pursuant to a recorded stipulation entered by the Burns and Bank of America counsel and approved by Judge David S. Doty of the District of Minnesota. The Petitioners duly note that recorded stipulations are legal in Minnesota and are presumed binding upon the parties and the court.

Judge Doty also made express assurances to the Burns, stating on the record that the case would “be dismissed in Minnesota” and that the Burns would litigate “all” claims and would obtain their “full due process” in a federal court in New York. The Burns justifiably took Judge Doty at his word and correctly interpreted¹⁶ his statements to mean that all Minnesota legal proceedings would cease and that exclusive jurisdiction of this Property and these parties would be vested in the New York federal court of jurisdiction. On the advice of their Minnesota attorney, the Burns filed lis pendens, vesting subject-matter jurisdiction in the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit, which upheld federal jurisdiction.

Under the plain language of the Minnesota Lis Pendens statute, which trumps any exercise of judicial discretion by the Dakota County District Court, the lis pendens could not be cancelled pending adjudication of the Burns-Bank of America litigation by the New York federal court named in the lis pendens. This compels the conclusion that the proceedings convened by the Dakota County District Court at various times in 2003 were

¹⁶ The notion that jurisdiction of the Burns-Bank of America Property dispute was vested in the New York federal court is not simply the Petitioners’ unsupported representation. Two Minnesota attorneys of reputation who reviewed the Doty stipulation and the Certificate of Title concurred and certified that Bank of America had no standing under the Minnesota Torrens Act and that subject-matter jurisdiction of all claims arising from Bank of America’s foreclosure action was vested in a New York federal court. See Affidavits of Bradley N. Beisel, Esq. and Alan J. Lanners, Esq.

wholly without jurisdiction and could not operate to legally cancel the Burns' title and transfer title to a bona-fide purchaser for value. Put another way, Bank of America never acquired title in accordance with the requirements of the Minnesota Torrens Act and even if Bank of America proceeded in good faith, which it did not, Bank of America could not create and transfer title to its assignees where no title existed.

POINT III

THE BURNS BOTH OWNED AND OCCUPIED THE PROPERTY

Applying the facts set forth in Point II, it follows that, since the Dakota County "judgment" was void on the face of the record for lack of jurisdiction, Bank of America never acquired title to the Property and Bank of America's purported assignees obtained no rights as bona fide purchasers of the Property. Consequently, the "redemption" relied upon by the Minnesota Tax Court based upon the Dakota County judgment was and is void. Given these facts, the unauthorized jurisdictionally invalid Dakota County proceedings involving different parties and different claims did not conform to the four-prong standard for application of the collateral estoppel doctrine as this court has stated it and did not terminate the Burns' indefeasible title. Thus the first prong of eligibility for the Homeowners' Property Tax Refund, ownership, is met.

As to the second prong, occupancy as of January 2, 2004, the Petitioners duly note that the Certificate of Title recites that the Burns are not married and that, at all relevant times, they held the Property in fee simple absolute as joint tenants in common. As joint tenants in common, the property owners were not required to occupy the Property at the same time to qualify for the tax refund or even to personally occupy it at all as long as the Property was occupied by a member of their immediate family.

The Petitioners are additionally constrained to note that the term “occupy” also does not require the property owner to be physically present within the residence at 12:01 a.m. on January 2, 2004, as the court appears to suggest. To the contrary, many Minnesotans who claim the Homeowners’ Tax Refund are absent from their qualifying residences due to home repairs, which were ongoing at the Burns residence as a consequence of a break-in by Bank of America that was aided and abetted by the City of Apple Valley, which subsequently reversed the position taken by assistant city attorney Sharon Hills and declared the Burns the property owners. There are also many Minnesotans who own and occupy more than one residence for any number of reasons or who are temporarily absent from their qualifying residences for months at a time due to business and personal reasons. The court does not appear to be suggesting that these families who experience these circumstances that cause them to be absent from their qualifying residences on January 2 forfeit their Homeowner Tax Credit refunds.

Finally and most importantly, the Petitioners note that either or both Petitioners were legally entitled under the plain language of Minn. Stat. 504B.371 to jointly and/or separately occupy the Property following vacateur of the Pawlenty writ in unlawful detainer on July 25, 2003 *and that the Petitioners were prevented from doing so by agents of the state of Minnesota and its inferior political subdivisions in violation of the law.*

As the Petitioners recounted in detail in their principal Brief, State of Minnesota employees and agents repeatedly violated Minnesota law and obstructed and frustrated the Petitioners’ rights of exclusive possession and occupancy secured to them by a Minnesota legislative statute that expressly divested the Dakota County District Court of

all power to prevent or deny the statutory stay afforded by Subd. (4)(5)(6)(7). Among other actions, state employees and agents subjected both Petitioners to unfounded malicious prosecution and threats of imprisonment if they attempted to exercise their legal right to occupy the Property.

Given these facts, it is patently unreasonable for the Minnesota Supreme Court to deny resident homeowner standing to the Petitioners on the basis that the Petitioners did not physically occupy the Property as of January 2, 2004 when, in fact, the Petitioners were prevented from doing so as a consequence of the unlawful and tortuous conduct of state actors. *The Petitioners submit that, in light of the special circumstances that exist in this case that were caused by the conduct of the state of Minnesota, its employees, and agents, justice requires that any factual question as to whether the Petitioners occupied the Property on January 2, 2004 must be resolved in favor of the Petitioners, thereby satisfying the second eligibility prong, occupancy of the qualifying Property as of January 2, 2004.*

POINT IV

BARBARA BURNS IS A NECESSARY AND INDISPENSABLE PARTY

Both Kevin Burns and Barbara Burns made joint and separate application for the Homeowners' Tax Refund that was acknowledged and adjudicated by the Commissioner and subsequently appealed to the Minnesota Tax Court and this court. Following trial in which both Petitioners participated and in which co-party Barbara Burns was authorized by the Tax Court to represent Kevin Burns as his attorney, the Minnesota Tax Court inexplicably amended the case caption and excluded Barbara Burns, a necessary and indispensable party.

To date, only Kevin Burns' claim has been addressed by the Minnesota Tax Court and by this court and Barbara Burns' claim remains non-adjudicated. For the reasons stated and discussed at length in the Petitioners' principal Brief, this is a fundamentally erroneous and unjust result.

The record establishes that Barbara Burns, not Kevin Burns, applied for and received the tax refund in question. The court's conclusion that the refund was paid to Kevin Burns is incorrect. In fact, Kevin Burns never received nor benefited from the refund. Nor did Kevin Burns play any part in the application or appeal process. Based upon these facts, Barbara Burns is the proper sole appellant in this case and, even if she was not, is entitled to an orderly and legal disposition on the merits of her timely appeal of an adverse determination by the Commissioner of Revenue, which as yet has not occurred.

The Burns also note that former Chief Justice Eric Magnuson, a close friend and former law partner of Governor Tim Pawlenty, whose wife's and employees' actions are at issue in this case, made a number of early decisions concerning this case, including, but not limited to, designation of parties that effectively determined the outcome of this appeal. The Burns have duly objected to the incestuous Magnuson-Pawlenty relationship and filed two motions to disqualify Justice Magnuson, citing the totality-of-circumstances analysis of this court for appellate-judge disqualification in *Powell v. Anderson*. The Burns also filed a complaint with the Board on Judicial Standards, stating that Chief Justice Magnuson's action vis a vis the Burns in this case demonstrated a predisposition to favor Governor Pawlenty and were prejudicial to the expeditious administration of justice and the concept of due process, which this court has held includes a disinterested and unbiased court.

Chief Justice Magnuson resigned his office on June 30, 2010 but, by the account of court employees, participated in and influenced this court's decision, which predictably favors Governor Pawlenty. The decision to manipulate the case caption to exclude a necessary and indispensable party also runs afoul of fundamental elements of justice and fairness that strongly favor adjudication of a party or parties' claims on the merits and require judicial decisions and judgments to be based upon the truth.

The Petitioners also note that, after wrongly and unethically influencing the outcome of this appeal to favor Governor Pawlenty, his wife, and his direct-report executive-branch employees within the Minnesota Tax Court, former Chief Justice Magnuson has escaped into a lucrative private practice and is no longer subject to the disciplinary purview of the Minnesota Board on Judicial Standards. This status quo does little to advance the interests of justice and the important public-policy objective of promoting public confidence in the judiciary.

The Petitioners assert that, at a minimum, de novo review of former Chief Justice Magnuson's decisions in this case by the full court is necessary to remove the taint of his participation in deliberations that have influenced and determined this case and that de novo review dictates reinstatement of the original case caption to include Barbara Burns as a necessary and indispensable party. Accordingly, the court should amend and reinstate the case caption to include Barbara Burns in lieu of or in addition to Kevin Burns.

CONCLUSION

For the reasons stated, the Minnesota Supreme Court should reinstate the original case caption to include Barbara Burns in lieu of or in addition to Kevin Burns. The court

should vacate ab initio the orders of the Dakota County District Court and the Minnesota Tax Court for lack of jurisdiction and should grant the Petitioners' Joint and Separate Petition for a Writ of Mandamus and Prohibition to remedy defects of justice that are evident from the Record.

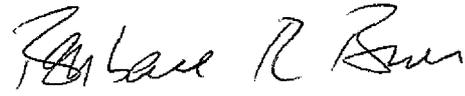
DATED: August 12, 2010

BY:



Kevin E. Burns

BY:



Barbara R. Burns