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STATE OF MINNESOTA

IN SUPREME COURT

Kevin E. Burns,

Petitioner

DOCKET NO. A-09-466

TAX COURT DOCKET NO. 07929-R

v.

Commissioner of Revenue,

Respondent

PETITIONER'S INFORMAL BRIEF

TABLE OF AUTHORITIES

Minnesota Court Rules

Minn. R. of App. P. 103.01 [1]

Minn. R. of App. P. 110.01 [2]

Minn. R. Civ. P. 60

Minn. R. Civ. P. 63

Minnesota Statutes

Minn. Stat. 297A.25(9)

Minn. Stat. 504B.371 [3]

Minn. Stat. 508 [4]

Minn. Stat. 557.02 [5]

Minn. Stat. 563.01 [6]

Minnesota and State Court Cases

Kunkel v. Commissioner of Revenue [7]
2001 WL 1673715 (Minn. Tax)

Appelhof v. Commissioner of Jobs and Training
450 N.W. 2d 589, 591 (Minn. App. 1990) [8]

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[1] Rule 103.01 was amended by the Minnesota Supreme Court on January 1, 1999. Under the amended Rule, filing of a Notice of Appeal with the Clerk of the Appellate Courts and service on the opposing party are the only jurisdictional steps required to perfect an appeal and invoke appellate jurisdiction and the failure of the Appellant to take any other steps does not affect appellate jurisdiction.

[2] Stating that the papers filed below, the exhibits, and the transcripts, if any, shall constitute the record on appeal in all cases.

[3] Imposing a **mandatory** statutory stay of an order in unlawful detainer and stating that a Minnesota trial court is powerless to deny the stay and enforce an order in unlawful detainer order once a Notice of Appeal has been filed.

[4] The Minnesota Torrens Act, stating that the purpose of the Torrens Act is to create title that is **indefeasible** and abrogating the doctrine of constructive notice, except for matters noted on the Certificate of Title.

[5] Stating that *lis pendens* may be filed and record and **may not be cancelled** until adjudication by the court named in the *lis pendens*.

[6] Stating that court fees and costs may be waived by determination by a court of the state of Minnesota that (1) the petitioner is unable to pay court fees and costs; and (2) the cause or claim asserted is not frivolous.

[7] Stating that the Minnesota Tax Court is constrained by the terms of Minn. Stat. 297A.25 and that the court cannot grant itself jurisdiction where none exists.

[8] Stating that evidence not received below may not be reviewed as part of the record on appeal.

Thiele v. Stich
425 N.W. 2d 580, 582-83 (Minn. 1988) [9]

Safeco Ins. Co. v. Diaz
385 N.W. 2d 845, 847 (Minn. Ct. App. 1986) [10]

Johnson v. Clay County Residence [11]
1992 WL 174662 (Minn. App)

Breza v. Schmitz [12]
311 Minn. 236, 237, 248 N.W. 2d 921, 922 (Minn. 1976)

IN RE: Juran [13]
178 Minn. 55, 60, 228 N.W. 201, 202 (Minn. 1929)

Nord v. Herried
305 N.W. 2d (Minn. 1981) [14]

Hutton v. Bosignar
366 N.W. 2d (Minn. 1985) [15]

Spaeth v. City of Plymouth
344 N.W. 2d 824 (Minn. 1984) [16]

Park Elm Homeowners' Assn v. Mooney [17]
398 N.W. 2d 643 (Minn. App. 1987)

Velantzas v. Colgate-Palmolive Co.
109 N.J. 189, 193 (1988) [18]

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[9] Stating that an appellate court will not consider issues not raised and litigated below

[10] Stating that additional evidence may not be considered by the court and must be stricken from the record.

[11] Stating that the appellate court cannot take judicial notice of all documents filed in an agency and that documents that could have been presented to the Commissioner's representative and were not are properly stricken from the record.

[12] Stating that dismissal may be an appropriate sanction against a party who willfully, without justification or excuse, and with intent to delay trial fails to comply with discovery orders or refuses to cooperate with the court to resolve the case promptly and expeditiously

[13] Stating that **reference to an unregistered interest on a registered instrument is not notice** and that **the purpose of the Torrens Act is to create and vest title that is indefeasible**; abrogating the doctrine of constructive notice except for matters noted on the Certificate of Title; and holding that in adjudicating ownership of a Torrens property, **a Minnesota court may not consider extrinsic evidence.**

[14] Stating that, on motion for summary judgment, a court may not undertake to determine credibility, but may only determine if there is an issue of fact to be tried.

[15] Stating that a pro se pleading is to be liberally construed "even to the point that (pro se Plaintiff) has misconceived or mischaracterized her claims."

[16] Stating that the filing of an appeal suspends the authority of the trial court to modify or make any order necessarily affecting the order or judgment appealed from).

[17] Stating that **a Minnesota trial court lacks subject-matter jurisdiction to vest property rights in derogation of the Torrens Act and that any such order is void for want of subject-matter jurisdiction.**

[18] Stating that summary judgment should await completion of discovery and that summary judgment should not be granted when critical facts are peculiarly within the moving party's knowledge.

IN RE. The Matter of Burns
Docket No. CX-95-141 (Minn. App. 1995) [19]

I.M.O. David E. Albright
C-3-02-101 (Minn. 2002) [20]

IN RE. Hormel's Trusts
282 Minn. 197, 163 N.W. 2d 844 (Minn. 1968) [21]

Hauser v. Mealey
263 N.W. 2d 803, 808 (Minn. 1978 [22]

Morton Bldgs v. Commissioner of Revenue
560 N.W. 2d 254, 257 (Minn. 1992)

Riddle v. Ringwelski
451 N.W. 2d 372, 373 (Minn. App. 1990)

McIntosh v. Davis
441 N.W. 2d 115, 118 (Minn. 1989)

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[19] Upholding disqualification of Kevin S. Burke by Barbara R. Burns and stating that due process requires a disinterested and unbiased court.

[20] Finding that Respondent Albright violated Rules of Professional Responsibility and issuing suspension without reinstatement hearing.

[21] Stating that the fact that the order of a disqualified judge is seconded by another judge or judges does not remove the taint and preserve the validity of the order.

[22] Stating that the Minnesota Supreme Court recognizes the general rule that a judgment rendered by a court that does not have jurisdiction to hear a case does not have the effect of res judicata.

STATE OF MINNESOTA

IN SUPREME COURT

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DOCKET NO A-09-466

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v.

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Respondent

APPELLANT'S INFORMAL BRIEF

Kevin E Burns ("Petitioner") hereby files this informal brief in accordance with the February 24, 2010 briefing order of this court For the reasons stated, the Petitioner also moves the court for amendment of the case caption[1], for an order vacating ab initio the orders of the Minnesota Tax Court and the Dakota County District Court upon which the Tax Court relied on constitutional grounds and on grounds of fraud and plain and fundamental error, and for issuance of a writ for mandamus/prohibition to remedy defects of justice that are evident from the Record.

The Petitioner also renews his previously-filed motion for disqualification of Chief Justice Eric Magnuson from all proceedings on ground of disqualifying bias and on the basis that Justice Magnuson's participation in this case poses a severe actual and potential conflict of interest arising from Justice Magnuson's known relationship with Governor Tim Pawlenty and his wife, Mary Pawlenty, a former Dakota County District Court judge

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[1] The March 16, 2007 Determination written by Beth Spellerberg, Minnesota Department of Revenue, states that appeal is taken from an appeal of a denial of an amended Property Tax Refund application filed by Barbara Burns in her own name, and a Property Tax Refund application filed by Barbara Burns as de facto attorney for Kevin Burns The Homeowners' Property Tax Refund was paid to Barbara Burns The Minnesota Tax Court appeal was construed as taken by two Appellants, Kevin E Burns and Barbara R Burns, and litigated by two Appellants

who participated in proceedings below that the Tax Court ruled were relevant to the ruling from which appeal was taken

PRELIMINARY STATEMENT

Due to political and other extra-judicial factors that are reflected by the Record and discussed infra in this informal brief, this case has a long, tortured, and unfortunate history The Record is replete with irregularities, improprieties, law violations, and ethical misconduct by public officials of the state of Minnesota, including, but not limited to, acts of fraud and malicious prosecution in violation of the laws and court rules of the state of Minnesota on the part of Governor Pawlenty's wife, a former Dakota County District Court judge, and certain of her Dakota County Court colleagues, some of whom have left the bench following public censure and/or removal by this court on petition of the Minnesota Board on Judicial Standards [2] This history is set forth at length in the Background section of this Brief

The Petitioner is also constrained to note that the February 24, 2010 order authored by Chief Justice Magnuson not only clearly reveals Justice Magnuson's bias but also misstates the law, misstates certain key facts, and mischaracterizes others. In the interest of a clear record, the Petitioner will address and correct these factual inaccuracies

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[2] The Petitioner refers specifically to public censures issued against Dakota County Court judges Thomas Murphy, William E Thuet, Rex Stacy, Michael Sovis, and Timothy Blakely. See Appendix The Petitioner additionally notes and calls the attention of the court to a thoughtful editorial published in the *Minneapolis Star-Tribune*, stating that Blakely will likely not be re-elected to judicial office in 2010 following his suspension by this court in late 2009 but that this court, led by Chief Justice Magnuson, should have set a higher standard for judicial ethical conduct and removed Blakely from his judicial office mid-term The Petitioner asserts that these public censures of judges within the judicial district that employed Mary Pawlenty and who, according to published reports, have been guests of Governor and Mrs Pawlenty at the Governor's House connotes a widespread pattern of duplicitous, dishonest, and corrupt judicial conduct that Governor Pawlenty and Chief Justice Magnuson have negligently permitted and appeared to tolerate and condone

As a preliminary matter, the Petitioner disputes that he has been a party to sixteen previous cases heard by this court or that he has ever even been a party to a single case in which the Minnesota Supreme Court granted certiorari. In fact, this is the first such case

The Petitioner additionally notes that, even if he had been involved in any previous unrelated case in which this court granted review, which is not the case, he is a pro se party and, as such, is entitled to appropriate latitude in accordance with rulings by both the United States Supreme Court and the Minnesota appellate court, stating that the Petitioner, pro se, cannot be held to the same standard as that applied to an experienced trial attorney The Petitioner further notes that Chief Justice Magnuson himself concedes in his February 24, 2010 memorandum order authorizing the filing of an informal brief that this court's actions and instructions in this case may have been misleading and confusing.

Finally, Petitioner notes that Chief Justice Magnuson's interpretation of the Minnesota in forma pauperis statute, Minn Stat. § 563 01, et seq. is factually inaccurate and legally incorrect Specifically, Justice Magnuson states in his February 24, 2010 memorandum order that a grant of fee waiver under Minn Stat. § 563.01, et seq. does <u>not</u> imply or constitute a finding that the legal position or cause asserted by the Petitioner is not frivolous. In fact, thus us *exactly* what the in forma pauperis statute states

Under the plain language of the Minnesota in form pauperis statute, to qualify for in forma pauperis status, as the Petitioner has done in this case not once but three different times, the Petitioner is required to establish and the court is required to find that (1) as a matter of fact, that he cannot pay court-related fees and costs, and (2) as a matter of law, his legal position or case is not frivolous. It must be, and is, expressly noted that, by order

filed July 19, 2007, the Minnesota Tax Court expressly found that claims asserted by Kevin E. Burns and Barbara R. Burns (collectively, "Burns") were "not of a frivolous nature" and that Chief Justice Magnuson himself affirmed this finding not once but twice Appendix, July 19, 2007 Order George W. Perez, finding that the claims asserted by Kevin E. Burns and Barbara R. Burns in Docket No 7929-R are "not of a frivolous nature "

Based upon these facts and this Record, Chief Justice Magnuson's conclusion that a motion for reinstatement that he himself expressly authorized and that was necessitated by his conduct in calling into question an IFP status that has now been resolved in Burns' favor four times is or could be legally frivolous is, to say the least, absurd and totally belied by the facts and the plain language of the Minnesota fee-waiver statute that Justice Magnuson himself has interpreted and applied. The Petitioner submits that, at best, Justice Magnuson's extremely recent attempts to claim otherwise create an appearance of bias and impropriety and at worst confirm a deep-seated bias and predisposition to rule against both Kevin Burns and Barbara Burns[3] that is grounds for his disqualification. Accordingly and as discussed infra, the Petitioner renews his previously-filed motion for disqualification of Chief Justice Magnuson for cause.

BACKGROUND

The Property that is the basis for this appeal and petition for review is a Minnesota Torrens property legally described as Lot 15, Block 6, in Palomino Woods, Apple Valley, Dakota County, Minnesota. The Certificate of Title confirms that the Property was acquired by Kevin E. Burns and Barbara R Burns via a Torrens decree registered on

[3] Barbara Burns was formally designated Kevin Burns' de facto attorney and a co-party to this action by the Commissioner of Revenue and the Minnesota Tax Court The Minnesota Supreme Court is requested to construe this Brief as written and submitted by both Kevin E Burns and Barbara R Burns

October 30, 1988 By the determination of Minnesota Attorneys Andre Zdrazil, Alan Lanners, and Bradley Beisel, the Property was encumbered by a first mortgage in favor of Ameristar Corporation that was later assigned to Goldome Realty with no other assignments of record. Appendix, Zdrazil, Lanners, Beisel Certifications, Certificate of Title, Kucinski Deposition Transcript.

In late 1992, the Burns were indemnified by the State Farm Insurance Company for property damage to the first floor of their home In conjunction with this insurance claim, State Farm arrived at the Property to inspect and appraise the damage with a contractor, one R A Ungerman, in tow. Ungerman "low-balled" the estimate, which was adopted by State Farm as the maximum allowable payment State Farm refused to pay the claim based upon competitive estimates by other reputable contractors, which were considerably higher, and exerted undue influence of the contracting process to ensure that Ungerman obtained the business and that State Farm could pay the Burns' homeowner's claim based upon the Ungerman lower-than-market repair estimate.

At various times in 1992 and 1993, Ungerman performed repair work at the Burns home, including installation of a floor that was subcontracted to Al's Floor Covering, Minneapolis, Minnesota As concerned authorities later found and Ungerman later admitted, Ungerman did not comply with Minnesota law governing duties of contractors who contract to perform home repairs Among other actions, Ungerman did not obtain a written contract or other authorization by the homeowner, did not obtain and produce certificates of insurance from his sub-contractors, and did not obtain a building permit from the City of Apple Valley

It is undisputed by all parties and a matter of public record that (1) Ungerman and his construction company have been sued by homeowners other than the Burns for unsatisfactory home repairs, (2) State Farm has been successfully sued and administratively sanctioned by the Minnesota Department of Commerce and other regulatory authorities and these actions were and are premised upon State Farm's deceptive and fraudulent claims practices, (3) Ungerman's attorney, David Albright, is a practitioner of dubious reputation who is the subject of two restraining orders obtained by Kevin Burns and Barbara Burns[4] and formally adjudged guilty of attorney misconduct, including, but not limited to, income tax evasion, for which he was publicly censured and suspended from the practice of law by this court in 2002[5], (4) the Ungerman-installed floor cracked, necessitating replacement within two years by Floors and More, Willmar, Minnesota, at a cost of $2,200, (5) Ungerman's sub-contractor, Al's Floor Covering, went out of business, and (6) in a civil action, *Burns v Ungerman*, certified "not frivolous" by a total of twelve state and federal judges[6], Judge E. Anne McKinsey of the Fourth Judicial District of Minnesota heard and denied two motions by Ungerman for a statutory mechanics' lien and a constitutional or equitable lien upon a finding that

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[4] On December 6, 1994, following a trespass by David Albright upon the Property that occurred at 8.00 a m on a Saturday morning, Barbara Burns obtained a restraining order against Albright and Ungerman that was issued by Judge Daniel Mabley of the Fourth Judicial District of Minnesota On August 20, 2004, Kevin Burns, through counsel, obtained a restraining order against Albright that was issued by United States District Court Judge Richard H Kyle of the District of Minnesota

[5] *I M O Albright*, March 6, 2002 Order of Justice Paul H Anderson

[6] The judges who signed orders certifying Barbara Burns' legal position "not frivolous" were Judges Tonya Bransford, E Anne McKinsey, Kevin S Burke, a three-judge panel of the intermediate appellate court led by Judge Jack Davies, United States Magistrate Judge Franklin Noel, and a three-judge panel of the United States Court of Appeals for the 8th Circuit Judge Mary Louise Klas of the Ramsey County District Court adjudged the legal position asserted by Kevin Burns and Barbara Burns "not frivolous" in a related case, *Kevin Burns v State Farm*

Ungerman did not comply with the requirements of the Minnesota Mechanics' Lien Statute and was not entitled to an equitable lien [7]

On December 14, 1994, Kevin S. Burke, who had certified the *Burns-Ungerman* action "not frivolous", convened an ex parte proceeding in which he made numerous unfounded accusations premised upon alleged hearsay statements and writings of his direct-report employees, none of whom were willing to testify against Barbara Burns in court [8] The substance of these allegations was that Barbara Burns engaged in objectionable litigation conduct to the detriment of adverse parties such as R A Ungerman and filed frivolous claims, an allegation directly contradicted by the order of Kevin S. Burke, certifying Barbara Burns' claims against R.A Ungerman "not frivolous " Transcript, December 14, 1994 Order of Kevin S Burke, upholding IFP order granted by the Honorable Tanya Bransford

In the course of this proceeding, Burke, who was established by Judge La June Lange as having severe anger management issues[9] and who as been described, the Petitioner believes accurately, by a number of his colleagues, including Judge Daniel Mabley as

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[7] McKinsey dismissed the action off the merits on June 15, 1995 In a transcripted proceeding on February 16, 1996, acting as special referee of the Minnesota Court of Appeals and filed in the Office of Appellate Courts, McKinsey stated on the record that her judgment was not an adjudication of the merits but, rather, a discovery sanction issued against Barbara Burns who invoked the Mabley restraining order and would not permit David Albright in her house McKinsey certified the appeal "not frivolous" and admitted that she abused her discretion See February 16, 1996 McKinsey order in *Burns v Ungerman* The appellate panel led by Judge Davies affirmed McKinsey's certification and granted Barbara Burns IFP status on appeal

[8] The Minnesota Court of Appeals, which reversed Burke in 1995, ruled that Burns had a due process right to confront her accusers that was thwarted by Burke See, *I M O Burns*, CX-95-141 (Minn App 1995)

[9] Judges with severe anger management issues are a recurring theme in Hennepin County The Petitioner notes that, in addition to Lange, who prevailed against Burke's attempts to remove her from the bench, court employees have reported similar uncivil conduct on the part of Judge Patricia Belois, Judge Charles Porter, and Judge Sean Rice A fourth Hennepin County judge, Harvey Ginsburg, was criminally prosecuted for aggravated assault and removed from the bench following an incident where he harassed and threatened a member of the public, a child who played on Ginsberg's son's baseball team

"vindictive and controlling"[10], became enraged and, at one point, shouted a threat that he would "lock up" Barbara Burns if she did not demonstrate appropriate deference. See Transcript, December 14, 1995 Proceeding in *IN RE· Burns*, taken by Registered Court Reporter Christine E. Frenzal Two days earlier, on December 12, 1994, Barbara Burns had filed a removal and disqualification of Burke that was upheld by the intermediate appellate court on October 17, 1995. [11]

At various times in 1996 and 1997, other judges contrived to support Burke by issuing copycat orders that summarily declared Barbara Burns a frivolous litigant These other judges included Edward Lynch of the First Judicial District and Daniel Mabley of the Fourth Judicial District [12] The Lynch order unilaterally empowered Lynch to preclude Barbara Burns' pro se advocacy or meaningful participation in any case filed in Dakota County involving Barbara Burns as a plaintiff or defendant, including, but not limited to, cases in which Barbara Burns was forced to defend maliciously-prosecuted trumped-up misdemeanor charges, a violation of Barbara Burns' constitutional right to defend herself in a court of law.

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[10] Litigants other than Barbara Burns who have appeared before Burke have spoken of his propensity to use the judicial office to indulge his personal biases Appendix, Star-Tribune Burke Article

[11] On January 19, 1996, after the January 5, 1995 Burke order had become void of its own terms, the Minnesota Supreme Court provided political cover for Burke, the protégée of then-Chief Justice Alexander M. Keith, by issuing an order upholding the power and authority of a chief judge to issue administrative orders and to enforce the Rules of Court Burke and his supporters have appeared to interpret this opinion as abrogating Minn R Civ P 63 03 and permitting a biased chief judge to use the judicial office to commit unlawful and unconstitutional acts and to abuse members of the public that the judge dislikes while cloaked in judicial immunity The Petitioner notes that, in all other cases that do not involve a protégée of the chief justice, expiration of a lower-court order that has become void by its own terms moots the issue and operates to deprive the Minnesota Supreme Court of jurisdiction The Petitioner also notes that the 1996 Supreme Court order did not authorize Burke or any other judge to restrict Barbara Burns' filings or curtail her due process right to represent herself and be heard in a court of law.

[12] Barbara Burns filed a disqualification of Lynch in 1997 and the disqualification was upheld by the Minnesota Court of Appeals Barbara Burns filed a disqualification of Mabley for cause that was appealed but dismissed off the merits due to Burns' inability to obtain the necessary transcripts

Barbara Burns raised this issue in a 1998 proceeding in which Barbara Burns first encountered then-Dakota County Court Judge Mary Pawlenty Burns stated that she had disqualified Lynch for cause and that the removal had been upheld by the Minnesota Court of Appeals, concluding that there was no legal basis for Lynch to exercise judicial power with respect to Burns Pawlenty treated Burns' objections lightly and made it clear that, if forced to choose between Barbara Burns' legal rights and Edward Lynch's judicial reputation, Pawlenty would choose Lynch A short time later, Pawlenty was interviewed and quoted by the Star-Tribune as speaking warmly of Lynch as a friendly colleague

The Petitioner asserts that the copycat orders were politically motivated and not based upon the actual facts of litigation in which Barbara Burns was a party as plaintiff or defendant. The Petitioner duly notes that, up to the time that the Lynch and Mabley orders issued in 1995 and 1996, Barbara Burns had obtained in forma pauperis orders for each and every action in Minnesota to which she was a party and that these orders were signed by a number of Minnesota judges, all of whom reviewed her legal claims and certified them "not frivolous." The Petitioner further notes that the mere fact that certain Minnesota judges do not personally like Barbara Burns and/or find her legal claims politically incorrect or inconvenient does not mean that they are legally frivolous; to the contrary, in light of the fact that each and every action in which Barbara Burns was a party was judicially reviewed and adjudged meritorious prior to its filing, no Minnesota court can find, as a matter of fact or law, that any of the Burns legal actions were frivolous

Throughout this time period, Barbara Burns was subjected to harassment by employees of the Counties of Hennepin and Dakota and the City of Apple Valley. These actions

included numerous unfounded malicious prosecutions for alleged traffic violations and other minor alleged offenses, in addition to trespass, invasion of privacy, and defamation On September 20, 1994, Barbara Burns commenced the first of a series of legal actions against the state of Minnesota and its inferior political subdivisions ("the Minnesota Defendants") and sued the County of Hennepin Judge Peter J. Lindberg of the Fourth Judicial District of Minnesota and Chief United States Magistrate Judge Jonathan Lebedoff certified the action not frivolous.

There were hostilities and reprisals, culminating in Barbara Burns' decision to leave Minnesota and establish domicile in the tri-state area of New York, New Jersey, and Connecticut. Barbara Burns found peace and happiness in the East but the Minnesota Defendants, who continued their harassment long-distance, would not allow her to enjoy it.

The Petitioner specifically makes this point to the court because, to the Petitioner's knowledge, Minnesotans invariably view themselves as fair-minded, kind, Christian, and humane people, far superior to Easterners, who are viewed by Minnesotans with suspicion and distrust The Petitioner does not believe that this position is well taken. The Petitioner was born and raised in northern New Jersey and knows the tri-state area very well. No Easterner that the Petitioner has ever known is capable of the animalistic acts directed by the Minnesota Defendants to Barbara Burns.

On November 15, 1999, Sharon Hills, then an Apple Valley deputy city attorney[13], solicited an affidavit from one Mike Hammerstad, an employee of the Apple Valley Public Works Department Hills then charged Burns with three city ordinance violations

[13] On January 29, 2008, Hills testified under oath at a deposition that she was no longer permitted to act as a deputy city attorney, that this decision was the decision of her firm and not her own personal decision, and that she presently practices family law

The complaint, drafted by Hills and signed by Hammerstad under oath, alleged that to Hammerstad's personal knowledge, the alleged violations were personally committed by Barbara Burns in the City of Apple Valley on August 4, 1999

In fact, Barbara Burns was living in northern New Jersey[14] and attending graduate school in southern Connecticut on August 4, 1999. Barbara Burns was not present in the City of Apple Valley on August 4, 1999 or at any time within several months of that date and, in city records produced to the Petitioner in late 2007, the city manager, Thomas Lawell, as well as employees of the Apple Valley public works and police departments admitted that they knew this.

Claiming a bad-faith state prosecution, Barbara Burns removed the state misdemeanor action to the United States District Court for the District of Minnesota, which accepted jurisdiction on January 9, 2001. On January 18, 2001, Minnesota Attorney Andre Zdrazil appeared specially in Dakota County on behalf of Barbara Burns, objected as to jurisdiction, and recorded a jury trial demand that was acknowledged by the City of Apple Valley and the Chief Judge of the Dakota County District Court, Leslie Metzen, on January 30, 2001.

The City of Apple Valley failed to bring its "case" to trial within the 120-day requirement imposed by MRCP 11 and thereby waived its right to condition Barbara Burns' future appearance on the "charges" in Dakota County. The Minnesota District Court dismissed the case on June 19, 2001

[14] By order filed December 30, 2008, United States District Court Judge Dennis M. Cavanaugh of the District of New Jersey ruled that Barbara Burns established continuous permanent legal domicile in New Jersey on or about December 30, 1998, that this domicile, once established, never changed and that, consequently, Barbara Burns was not a citizen of the state of Minnesota at any time relevant to Hills' malicious prosecution of her, which occurred between the dates of November 15, 1999 and April 30, 2006

The City of Apple Valley refused to accept the dismissal and reinstated the action in Dakota County on August 9, 2001 The Dakota County District Court, Richard Poch, admitted that the State of Minnesota and the County of Dakota did not have and could not obtain personal jurisdiction of Burns, a New Jersey citizen, but nonetheless issued a "body only" arrest warrant for Barbara Burns. An earlier arrest warrant issued on December 30, 1999 and based upon the same "charges" had been quashed on motion of Attorney Zdrazil on March 30, 2000

Barbara Burns did not return to the state of Minnesota and continued to live in northern New Jersey On August 3, 2003, after the Burns appealed and vacated the July 21, 2003 Pawlenty writ of restitution that underlies this appeal, Dakota County Court Judge Judge John Connelly issued a third warrant on the same time-barred misdemeanor charges that the City of Apple Valley had failed to bring to trial in 2001, presumably to discredit Barbara Burns as a credible plaintiff and to frustrate the Burns' ability to contest and set aside the Pawlenty writ.

All told, the City of Apple Valley obtained three arrest warrants against Barbara Burns from the Dakota County District Court where Edward Lynch and Mary Pawlenty continued to serve as district court judges All three warrants were quashed. The City of Apple Valley never obtained a conviction and never even brought its case to trial By the account of its attorneys, Iverson Reuvers, the City of Apple spent in excess of $10,000 in the course of its malicious and unsuccessful prosecution of Barbara Burns

The Petitioner specifically brings this point to the attention of the Minnesota Supreme Court because the state of Minnesota and its inferior political subdivisions, employees, officers, agents, and attorneys have appeared to take the position that Barbara Burns is a

frivolous litigant The Petitioner submits that there are frivolous litigants and serial abusers of process within a core group of key players who have influenced this case, but that this core group does not include Barbara Burns and is comprised of Hills, certain City of Apple Valley employees, and a number of Dakota County judges, two of which, Thuet and Sovis, have been publicly censured and, in the case of Thuet, left the bench

In mid-2003, the City of Apple attempted to sue Barbara Burns in Trenton, New Jersey for money damages to recoup the costs of its unsuccessful multi-year malicious prosecution Barbara Burns was notified of the filing by the Clerk of the Superior Court in Trenton, New Jersey, and was heard in opposition in the New Jersey Superior Court, Law Division, Bergen Vicinage, in Hackensack, New Jersey

In a Certification filed in the New Jersey Superior Court, Barbara Burns testified by declaration that the City of Apple Valley was negligent and corrupt and that, among other facts, an Apple Valley police officer named Shane Mikkelson was culpable in the vehicular homicide that caused the death of a 28-year-old Apple Valley teacher named Katie Burg [15] Although served twice, the City of Apple Valley did not contest the Certification On September 12, 2003, the New Jersey Superior Court, Richard J Donahue, Judge, issued an order enjoining the City of Apple Valley from filing any action or claim premised upon the same or similar facts as those underlying the failed misdemeanor prosecution and directed court administrators in Hackensack and Trenton not to accept filings made by attorneys for the City of Apple Valley

[15] The car driven by Katie Burg, then eight months' pregnant, was struck by a squad car driven by Mikkelson, who had an underage girlfriend in the squad car According to published reports, Burg was rushed to Fairview Ridges Hospital in Burnsville, where she was kept alive by artificial means until her son could be delivered by post-mortem Caesarian section Mikkelson, upon information and belief the son or close relative of Cottage Grove police chief John Mikklelson, was fired but not criminally charged The City of Apple Valley eventually settled with the Burg family for an amount said to be in excess of $1 million

FACTS

The operative facts and relevant procedural history of this case are set forth at some length in the Trial Brief and other materials filed by the Appellants, Kevin E. Burns and Barbara R. Burns, in the Minnesota Tax Court on September 8, 2008 and made a part of this Record. For brevity and to avoid unnecessary duplication of argument, the Petitioner will cite and discuss those facts directly relevant to the points and issues raised on appeal in the Issues and Argument sections of this Brief. In the event that a more detailed recitation of the facts and the relevant procedural history is required, the Petitioner refers the court to the Trial Brief and Trial Memorandum filed below and part of this Record..

FACTS UNDERLYING DETERMINATION OF COMMISSIONER

The March 16, 2007 Determination issued by the Commissioner of the Minnesota Department of Revenue that underlies this appeal denied Kevin and Barbara Burns' 2003 joint and separate application for a homeowners' property tax refund with respect to a Minnesota Torrens Property legally described as Lot 15, Block 6, in Palomino Woods, Apple Valley, Dakota County, Minnesota ("the Property"), and sought to recoup the refund that was issued to Barbara R. Burns.[16] The stated reason for the determination was the Commissioner's conclusion that neither of the applicants was eligible for the Property Tax Refund because the property was owned not by the Appellants but by Wells Fargo as of June 11, 2003 and that, consequently, the Property was not occupied by either applicant on January 2, 2004, which is predicate to eligibility for the Homeowners' Refund.

[16] The Commissioner has withheld and has never paid to Kevin Burns the Renter's Credit Refund that is referenced by the Determination, although the Minnesota Tax Court ordered the Commissioner to do so in a transcripted proceeding on May 21, 2008. Transcript, May 21, 2008 Proceeding.

In support of his conclusion that title to the Property passed to Wells Fargo on or before June 11, 2003 and that the Burns did not occupy the Property on January 2, 2004, the Commissioner, through counsel, cited hearsay writings and non-sourced telephone conversations with unidentified Dakota County employees who allegedly informed the Department of Revenue that Wells Fargo took title to the Appellants' Torrens Property on or before June 11, 2003 The Record confirms that, although the Appellants duly served and moved to compel discovery, the Commissioner never identified the Dakota County employees or produced any discoverable information in support of his claim and instead ambushed the Appellants at trial with documents and other litigation materials that the Commissioner, through counsel, had previously denied existed or was considered by the Commissioner [17]

The Petitioner notes that trial by ambush is a litigation tactic strongly disfavored by this court The Petitioner further notes that, in cases involving parties other than the governor and his wife and the governor's direct-report employees, one of which was the presiding Tax Court judge, this court has characteristically responded by striking and suppressing legal claims and defenses See, e g. *Breza v Schmitz*, 311, Minn. 236, 237, 248 N W 2d 921, 922 (Minn. 1976).

ACTUAL FACTS

The Certificate of Title on file in the office of Joel T Beckman, the Dakota County Registrar of Titles that is the sole determinant of the ownership of a Minnesota Torrens

[17] Following the May 21, 2008 motion hearing in which Assistant Attorney General Tamar Gronvall, manager—and according to Lori Swanson's office, the only employee—of the Tax Division, represented to Judge Perez that the Commissioner had "nothing else" to offer in discovery, the Tax Department apparently doubled with the addition of Kevin Rodlund who replaced Gronvall as attorney of record Appearing to take the position that, even through Rodlund worked for Gronvall, he was not bound by her in-court statements, the Tax Court permitted Rodlund to evade Gronvall's statements that no discoverable evidence existed and to introduce evidence not considered by the Commissioner without the necessity of a motion that this court has confirmed is otherwise required in all cases

property directly contradicts the Commissioner's claim that ownership of the Property was transferred to Wells Fargo on or before June 11, 2003 and is unequivocal that the Property was not owned by Wells Fargo on June 11, 2003 or any other date but was held in fee simple absolute by Kevin E. Burns and Barbara R. Burns as joint tenants at all legally relevant times. In accordance with a century of Minnesota case law, the Certificate of Title is the sole determinant of property ownership of a Torrens or registered property and the legislative purpose and intent of the Torrens Act is to "to cut off any interest that does not appear on the Certificate." See *Capital Indemnity v. Wells Fargo Plumbing and Heating, Inc.*, 145 F. 3d 998 (8th Circuit 1998)

Based upon these facts, which are readily apparent from the Record, the Commissioner's conclusion that Wells Fargo owned the Property on June 11, 2003 cannot possibly be accurate and the judgment of the Tax Court, affirming this conclusion, is plain and fundamental error. Additionally, the Record presented to and reviewed by the Tax Court that this court is required to review contains non-hearsay attorney correspondence between Minnesota attorneys Alan J. Lanners and Rebecca F. Schiller that directly contradicts the Commissioner's finding and confirms that (1) Wells Fargo was not only not of record as an owner, mortgagee or assignee on the Certificate of Title, but also had no valid legal claim to the Property; (2) that, on or about May 13, 2003, Wells Fargo counsel Schiller relinquished any claim to the Property that Wells Fargo could assert in response to notice by Attorney Lanners that, by Lanners determination, Wells Fargo had no valid legal claim upon the Property and that, if Schiller would not voluntarily stipulate to relinquishment of its legally unfounded claim, Lanners would obtain an injunction to enforce the Minnesota Torrens Act in the Ramsey County District

Court, and (3) on or about May 30, 2003, Schiller conceded this point and advised Lanners that Wells Fargo would not pursue any claim against the Property

As the Appellants noted on Trial Brief and discuss infra in the Issues and Argument sections of this Informal Brief, the Appellants noticed and sought to place this attorney testimony, which invalidates the sole premise of the Commissioner's Determination, on the record at trial. The Appellants duly obtained, issued, and personally served witness subpoenas upon Rebecca Schiller and Minnesota attorney Lawrence A. Wilford, de facto attorney for Bank of America, Wells Fargo's purported assignor, the stated purpose of which was to elicit testimony that neither Schiller's nor Wilford's client was of record on the Certificate of Title and that Bank of America and Wells Fargo had no legal claim to the Property [18]

These subpoenas were wrongfully quashed by the Minnesota Tax Court in violation of published Minnesota Tax Court procedural rules governing conduct of trial, including issuance of subpoenas, and published representations by the Minnesota Tax Court, stating that parties have the right to compel testimony in their favor at trial The Appellants were thus wrongfully deprived of their due process right to compel testimony in their favor that would have bolstered and proved their claims of statutory and common-law fraud, and suffered a denial of substantive and procedural due process and a harmful abuse of discretion that the Petitioner has raised for review by this court

[18] Calling the attention of the court to the excerpted transcript of the deposition of former Bank of America associate general counsel Paul W Kucinski, taken in Buffalo, New York on August 17, 2007, Kucinski, an attorney licensed to practice law in the state of New York, testified under oath that Bank of America was not of record on the Certificate of Title. Appendix, Kucinski Deposition. Four Minnesota attorneys of reputation, namely Andre Zdrazil, Alan Lanners, Bradley Beisel, and Joel Hilgendorf, have concurred and corroborated this testimony Appendix, Certifications of Andre Zdrazil, Esq , Alan Lanners, Esq., Bradley Beisel, Esq , and Joel Hilgendorf, Esq

The Record is also completely devoid of any evidentiary support for the Commissioner's conclusion that the Burns did not occupy the Property on January 2, 2004 To the contrary, the Record contains numerous references to mail directed by the Minnesota courts to the Burns at the Harmony Way address, in addition to attorney certifications that the Burns occupied the property on January 2, 2004 and for several months thereafter that compels the conclusion that the Burns did live there, as their attorney, Joel Hilgendorf certified on April 7, 2004

The Petitioner specifically calls the court's attention to letter correspondence authored by David Albright, attorney for R A Ungerman, in which Albright threatened to remove the Burns' furniture and personal property from the Property and, in collaboration with the Dakota County Sheriff, Donald C Gudmundson, now retired, to auction it if the Burns did not acceded to Albright's demands and voluntarily relinquish their claims and concede the validity of conveyance of their Torrens property by Bank of America to R A Ungerman on or before January 6, 2004. Appendix, Albright Correspondence

The court may and is requested to take judicial notice of the fact that, in order for Albright to have a factual basis to demand removal of the Burns' property on or before January 6, 2004, the property would have be there and was there between the dates of December 30, 2003, the date Albright wrote the letter, and January 23, 2004, the date Albright and Gudmundson sold it at auction and pocketed the proceeds. This compels the conclusion that the Burns occupied the Property on January 2, 2004.

The court should conclude that there is no factual or evidentiary support for the Commissioner's assertion that the Burns did not occupy the Property on January 2, 2004 and that the Minnesota Tax Court—an executive-branch government employee and, in

common with the Commissioner of Revenue and the chief justice of this court, a Pawlenty direct-report employee or appointee—granted judgment solely on the basis that the Commissioner of Revenue said so The Commissioner is not legally entitled to judgment on this basis, even from a judge who works for the same person as the Commissioner

Based upon these facts, which are evident from the Record, the decision of the Minnesota Tax Court to disregard and reject at trial contemporaneous attorney correspondence and other non-hearsay evidence, all of which established the Burns' indefeasible ownership and occupancy of the Property as of January 2, 2004, and to adopt the unsubstantiated contrary statements of the Commissioner's attorney[19], which is not evidence, was clearly, plainly, and harmfully erroneous and a gross abuse of discretion For texture, the Petitioner again notes that the Minnesota Tax Court is an executive-branch agency under the control and jurisdiction of Governor Tim Pawlenty, whose wife, Mary Pawlenty, then a Dakota County District Court judge, convened the ex parte proceeding in unlawful detainer and influenced subsequent Dakota County Court proceedings that the Commissioner has claimed are authoritative and operate to transfer title of the Property to Wells Fargo and its purported assignee, R A Ungerman. The Petitioner asserts that Governor Pawlenty, his direct-report, George Perez, and his close friend and former law partner, Eric Magnuson, all have ample motive to provide political cover for the governor and his wife by sweeping the Petitioner's claims and evidentiary support under the rug and rubber-stamping decisions of the Commissioner of Revenue

[19] The court is asked to take judicial notice of the fact that attorney statements at trial are not evidence and that the Petitioner preserved this issue for appeal by objecting to the Minnesota Tax Court treatment of them as such

and the Minnesota Tax Court that are clearly erroneous, contrary to law, and unsupported by admissible evidence introduced and made part of the Record at trial.

SUPPLEMENTAL OPERATIVE FACTS

On July 21, 2003, then-Dakota County Court Judge Mary Pawlenty, wife of Governor Tim Pawlenty, convened an ex parte proceeding in unlawful detainer upon the perjured affidavit of R A Ungerman, the State Farm contractor who had installed a defective floor in the Burns home in 1993. As noted, supra, in the Background section of this Brief, Barbara Burns and Pawlenty had met several years earlier, at which time Pawlenty went on record as adopting and given credence to an order by Edward Lynch, whose disqualification by Burns was upheld by the Minnesota Court of Appeals in 1997 [20] The court is required to take judicial notice of the fact that the Burns acquired indefeasible title to the Property via a Torrens decree recorded on October 30, 1988 and that the ex parte Pawlenty proceeding in unlawful detainer was an impermissible collateral attack upon the Burns Torrens title.

The stated purpose of the ex parte Pawlenty proceeding was to adjudicate property rights and adverse claims concerning the Minnesota Torrens property that the Certificate of Title recited was held in fee simple absolute by Kevin E. Burns and Barbara R Burns Neither the Burns nor their Minnesota attorney, Alan Lanners, were notified of the ex parte Pawlenty proceeding, an oddity, given the strict notice requirements imposed by the Minnesota Torrens Act for the protection of the property owners, and the close personal friendship between Lanners and Pawlenty

[20] The Petitioner notes that this court has determined that the fact that the order of a disqualified judge is seconded by another judge or judges does not remove the taint and preserve the validity of the order *In Re Hormel's Trusts*, 282 Minn 197, 163 N W 2d 844 (1968)

The Petitioner asserts that the unnoticed 2003 ex parte Pawlenty proceeding in unlawful detainer was intended as payback by Pawlenty, Lynch, and Burke The Petitioner notes that Barbara Burns, Lynch, and Burke were and are bitter adversaries, that Pawlenty is on record as supporting Lynch, that Burke was in close communication with Albright, and that, apart from Attorney Lanners and Kevin Burns, neither of whom spoke with Pawlenty, Burke was the only person who was aware that Barbara Burns was participating in the funeral of her father during the week preceding the ex parte Pawlenty proceeding—and therefore would be certain not see the purported "eviction notice" that Albright claimed that he posted at the Property on July 18 in lieu of service upon Kevin Burns or Attorney Lanners [21]

On July 21, 2003, Ungerman and Albright appeared before Pawlenty Among other statements, Ungerman falsely stated under oath that he was the fee simple owner and that the Burns were his tenants. In a supplemental proceeding in Dakota County on August 8, 2003, Ungerman and his attorney, David Albright, admitted on the record that these statements were not true and that Ungerman was not the property owner or the Burns' landlord. Transcript, August 8, 2003 Proceeding before Judge John Connelly of the First Judicial District of Minnesota.

Ungerman also falsely represented to the Dakota County District Court that Ungerman had a lienable claim upon the Property and that Ungerman had obtained a constitutional lien from Judge E. Anne McKinsey of the Fourth Judicial District of Minnesota In reality

[21] Referring the court to the Background section of this Brief, the Petitioner again duly notes that, prior to the 2003 Pawlenty proceeding in unlawful detainer, certain employees and agents of the state of Minnesota, the counties of Hennepin and Dakota, and the City of Apple Valley engaged Barbara Burns in a well-publicized personal vendetta that lasted for several years and that entailed numerous tortuous acts of malicious prosecution, abuse of process, conversion and attempted conversion of property, slander of title, per se libel and slander, and false-light invasion of privacy Barbara Burns filed a Notice of Tort Claim on December 7, 2003. On January 30, 2004, the State of Minnesota and the County of Hennepin authorized Barbara Burns to sue the State of Minnesota and its inferior political subdivisions

and as noted in the Background section of this Brief, Judge McKinsey denied Ungerman's motion for a statutory lien, finding that Ungerman did not comply with the Minnesota Mechanics' Lien Statute, and also denied Ungerman's motion for an equitable or constitutional lien. [22]June 15, 1995 Order by Judge E. Anne McKinsey in *Burns v Ungerman* in 94-5558. Upon this false testimony, Pawlenty issued a writ of restitution to Ungerman on July 21, 2003.

It is undisputed by all parties, including the Dakota County District Court and Ungerman, that on July 21, 2003, the Certificate of Title, the sole determinant of ownership of a Minnesota Torrens property, recited that the Property was owned not by Ungerman but by Kevin E. Burns and Barbara R. Burns as fee simple owners and joint tenants. The Petitioner again notes that the court is required to take judicial notice of the fact that the ex parte proceeding in unlawful detainer convened by the governor's wife not only violated due process and fundamental concepts of justice and fairness but also violated the statutory Proceeding Subsequent requirement of the Minnesota Torrens Act that trumps any exercise of judicial discretion, and was an impermissible collateral attack upon the Burns' Torrens title.

On July 25, 2003, immediately upon notification of issuance of the Pawlenty order in unlawful detainer, the Burns appealed and vacated the writ, thereby triggering the statutory stay imposed by Minn. Stat. §504B.371(4)(5)(6). On the advice of Minnesota attorney Bradley Beisel, the Burns also filed lis pendens, vesting jurisdiction of the

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[22] As noted suprea, Ungerman was hired by State Farm Insurance Companies to perform insurance-reimbursed repairs at the Burns' Apple Valley home in 1993. Among other repairs, Ungerman sub-contracted a floor that cracked, necessitating replacement at a cost of $2200 by Renee DeFina, a vested party and mortgagee. The sub-contractor, Al's Flooring, went out of business. DeFina obtained an affidavit from James Dokken, Floors and More, Willmar, MN, stating that the Ungerman floor was sub-standard and defective. DeFina then sued Ungerman in the Hennepin County District Court in 1996, the claim was never adjudicated because the complaint and the Dokken affidavit were intercepted and destroyed by then-chief Hennepin County District Court Judge Daniel Mabley, the successor chief judge to Kevin S. Burke.

property dispute in the United States District Court for the Southern District of New York [23]

Consistent with the position taken by Pawlenty in 1998, the Dakota County District Court attempted to obstruct and frustrate these filings, stating that even appellate filings that the Burns were required to serve upon the trial court administrator could not be filed in Dakota County unless Lynch approved them. At one point, the Dakota County Court Adminsitrator, Van C Brostrom, denied that Kevin Burns had filed a cost bond for which Kevin Burns remitted a check for $500 and falsely certified to the Clerk of the Appellate Courts that the cost bond had not been filed when it had in an attempt to achieve an administrative dismissal of the Burns' appeal off the merits that would favor Pawlenty and frustrate appellate review of her unauthorized July 21, 2003 order in unlawful detainer. Brostrom later admitted that Kevin Burns did file the cost bond Appendix, Burns-Brostrom Correspondence

Under the plain language of Minn Stat § 504B 371(4)(5)(6) and the Minnesota Lis Pendens statute, once the Pawlenty writ was appealed and vacated on July 25, 2003, the Burns as fee simple owners were vested with exclusive ownership and possessory rights in the Property pending adjudication of the adverse property claims of Bank of America and its purported assignees, including Ungerman, by the New York federal court named in the lis pendens Ungerman and his attorney, David Albright[24], would not honor what

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[23] On June 30, 2001, the Burns, through counsel, removed an attempted foreclosure action by Bank of America to the United States District Court for the District of Minnesota. Transfer of the case *Burns v Bank of America, et al* to the District of New York on Burns' motion was authorized on June 21, 2002 by United Stats District Court Judge David S Doty of the District of Minnesota pursuant to the parties' recorded stipulation that all claims involving claims to the Property by Ungerman's purported assignor, Bank of America, would be heard and decided in a federal court in New York.

[24] As noted supra, the court is or should be familiar with David Albright's sleazy modus operandi and dubious reputation, having publicly censured and suspended him from the practice of law in 2002 See *I M O David Albright*, March 6, 2002

Minnesota attorney Bradley Beisel and Judge John Connelly confirmed to Albright were the requirements of the law. Appendix, Beisel Correspondence and Excerpted Connelly Transcript

Albright, already the subject of a restraining order obtained by Barbara Burns from Judge Daniel Mabley and a public censure by this court, then proceeded to engage the Burns, who were represented by counsel, in a series of threatening direct letter communications. Appendix, Albright Correspondence One of these letters directed Kevin Burns not to allow "that woman (Barbara Burns) to lead you around by the nose" and can only be described as disgusting, a description that fits Albright himself very well.

The Petitioner notes that Albright's actions in engaging in direct communications with parties represented by counsel were not only harassing but were a serious breach of attorney ethics. The Petitioner submits that, if committed by any other Minnesota attorney not in cahoots with a well-connected district court judge, this conduct would have resulted in censure, if not suspension, by the Lawyers' Board of Professional Responsibility. Albright, operating under the protective umbrella of Burke and the governor's wife, suffered no consequences

Throughout this time period, Albright made clear that he did not want the Burns-Bank of America claims to the Property to be adjudicated by a New York federal court or any other court that would be guided by the law, which Attorney Beisel certified favored the Burns Appendix, Beisel Memorandum and Certification The stated strong preference of Albright and attorneys for Bank of America, one of which was Lawrence Wilford,[25] was

[25] The Beisel Memorandum notes Bank of America "empowered" Wilford, a Minnesota attorney, to act as its de facto attorney and to perform acts that Beisel certified Bank of American was not legally authorized to take On June 21, 2002, Wilford's law partner, James Geske, entered into a recorded stipulation before United States District Court Judge David S Doty of the District of Minnesota, stating that all claims

for a kangaroo-court, cowboy-justice proceeding in Dakota County, arguably the most corrupt judicial district in Minnesota[26], where Mary Pawlenty still held sway, and where the judges, led by Lynch, were known to be biased against the Burns and could be counted upon to decide the case on some basis other than the law

In lieu of the contested and properly noticed Proceeding Subsequent involving Bank of America, the property owners, and all vested parties that was mandated by the Minnesota Torrens Act, Albright advocated a summary proceeding in Dakota County in which Ungerman would be the nominal plaintiff and Bank of America would not be a party (and thus not subject to challenge as to its lack of standing under the Minnesota Torrens Act). In such a proceeding, Albright could be confident that Ungerman's claims would be rubber-stamped by an obliging Dakota County judge and that Lynch would ensure that the Burns would not be afforded a meaningful hearing or any other due process rights

In correspondence produced to the Burns by lead Bank of America counsel Steven S. Rand in discovery, Albright proposed in a letter to Wilford and copied to Rand that a Dakota County proceeding in which Ungerman would be the nominal plaintiff would effectively circumvent Bank of America's lack of standing under the Torrens Act and also collaterally estop the Burns' right to enforce the recorded stipulation to lay venue in New York and the Minnesota Lis Pendens Act and obtain a meaningful hearing in the

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involving these parties and the Property would be heard and decided in a federal court of the Burns' choice in the tri-state area of New York, New Jersey, and Connecticut.

[26] According to records maintained by the Board on Judicial Standards and the Supreme Court, there have been at least six public censures of Dakota County Court judges, some of which, including witness tampering, court records tampering and destruction, and issuance of bogus arrest warrants by Dakota County Court judges William Thuet and Michael Sovis, were repeat offenses, within the last five years, more than any other judicial district Appendix, Dakota County Judge Censures

New York federal court of jurisdiction named in the lis pendens.[27] In this way, Albright reasoned, Bank of America and Ungerman could and would obtain an adjudication of the parties' claims on some basis other than the law, which did not favor Bank of America and its purported assignees, and the Burns would never obtain a hearing on the issues of Bank of America's lack of standing under the Minnesota Torrens Act and Bank of America's inability to prove any default of the Ameristar mortgage contract of which Bank of America claimed but could not prove that Bank of America was an assignee that were conceded by Bank of America.[28] Appendix, Kucinski Deposition, McNally Certification

Calling the attention of the court to the August 17, 2007 Transcript of Deposition of former Bank of America associate general counsel, Paul W. Kucinski, Kucinski, an attorney licensed to practice law in the state of New York, testified under oath that Bank of America was not of record on the Certificate of Title and had no standing under the Minnesota Torrens Act. Petitioner's Appendix, Kucinski Deposition. This statement is corroborated by the affidavits and certifications of Minnesota attorneys Zdrazil, Lanners, Beisel, and Hilgendorf and constitutes a party admission that a jury could not reject and would have to believe. Appendix, Certifications of Attorneys Zdrazil, Lanners, Beisel, and Hilgendorf. The Petitioner additionally notes that, while that Bank of America's lack of standing is the only showing required for the Petitioner to defeat Bank of America's

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[27] Bank of American challenged subject-matter jurisdiction of the New York federal court in 2003. On December 14, 2004, a three-judge panel of the United States Court of Appeals for the Second Circuit, upheld federal jurisdiction.

[28] Bank of America associate general counsel Kucinski admitted in deposition on August 17, 2007 that Bank of America was not of record on the Certificate of Title as a mortgagee or an assignee of a mortgagee. Between the dates of November 18, 2001 and June 30, 2002, Bank of America authorized representative Lee Ann McNally certified in her official capacity as a furnisher of consumer credit information that Bank of America falsified derogatory consumer trade lines concerning the Burns and ordered deletion of the trade lines.

purported foreclosure action and to prevail on his Torrens claim as a matter of law, the Record also evidences official certifications by Lee Ann McNally, an expressly authorized representative of Bank of America in her official capacity as furnisher of consumer credit information that invalidates Bank of America's claims of delinquency that are predicate to a valid foreclosure action

These facts compel the conclusion that—assuming arguendo that Bank of America was of record and had standing to foreclose the Ameristar mortgage, which was not the case—if Bank of America had convened the requisite Proceeding Subsequent in its own name and participated in it as the named Petitioner for New Title, as it was required to, and the court upheld the recordation requirement of the Minnesota Torrens Act, as it was required to do, Bank of America surely would not have prevailed. Albright and Wilford clearly recognized this and, after extensive scheming among themselves and with Bank of America lead counsel Rand, opted to collaterally attack the Burns Torrens title in Dakota County, where the governor's wife had already ruled in Ungerman's favor in an ex parte proceeding The Petitioner asserts that the collusive actions of Ungerman, Albright, Wilford, and certain employees of the state of Minnesota, the County of Dakota, and the City of Apple Valley, all of which were intended to deprive the Burns of their Property and prevent them from learning and exercising their legal rights, constitute an extrinsic fraud for which the Burns may properly petition for relief. [29]

On October 30, 2003, by pre-arrangement with Wilford and Rand and in clear violation of the Minnesota Lis Pendens Statute that suspends conveyance of a Minnesota property pending adjudication by the court named in the lis pendens, in this case, the United States

[29] See July 12, 2005 Order of Judge Steven Wheeler of the Second Judicial District of Minnesota filed in the Minnesota Tax Court, stating that wrongful conveyance of a Torrens property may be set aside on ground of fraud and that the property owners have this right "forever "

District Court for the Southern District of New York, Ungerman brought an action for a new title, the purpose of which was to adjudicate the validity of the Bank of American claims pending before the New York federal court on the transfer order of the Minnesota District Court. Ungerman's petition was heard and denied by Dakota County Court Judge Timothy McManus on November 21, 2003

In the meantime, Ungerman and his attorney had converted the Property and its contents and, with the eager assistance of the City of Apple Valley and, by the account of the police department, the knowledge, approval, and encouragement of Mary Pawlenty[30], deprived the Burns of their exclusive right to own and occupy the Property, secured to them as property owners under Minn Stat § 504B.371(4)(5)(6) Throughout this time period, Ungerman destroyed the Burns' mailbox and substantially interfered with their mail delivery. Ungerman and his attorney, Albright, also attempted to have Kevin Burns arrested for "trespassing" upon his own property. [31]

Ultimately, after acknowledging that the Burns occupied the Property as of January 5, 2004, Ungerman converted and permanently deprived the Burns of their personal property, valued for insurance purposes at $53,000, by selling it an auction held by Donald Gudmundson, one of the subjects of the Tort Claim Notice filed by Barbara Burns on December 7, 2003 Contemporaneous records created and maintained by the City of Apple Valley in the ordinary course of business expressly state that this theft of the Burns' personal property was authorized by "Mary Pawlenty "

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[30] Contemporaneous official letter correspondence and business records created and maintained in the ordinary course of business by the Apple Valley Police Department, "Mary Pawlenty" expressly authorized Ungerman to seize the Burns real and personal property and also encouraged the City of Apple Valley police department to maliciously prosecute, harass, and intimidate Kevin Burns from exercising his right of exclusive ownership and occupancy secured to him under Minn Stat. § 504B 371(4)(5)(6)(7) during the pendency of his appeal of the Pawlenty writ, which was ongoing

[31] See FN 11

There is also credible evidence that Ungerman's attempts to deprive the Burns of their property and their legal rights were facilitated by the court administrator of the Dakota County Court As noted supra, the trial court administrator, Van Brostrom, falsified trial court records to undermine and defeat the Burns' appeal of the Pawlenty writ

As noted and discussed supra, the Burns appealed the July 21, 2003 Pawlenty writ to the Minnesota Court of Appeals on July 25, 2003. That court issued a docketing order In accordance with the appellate court order, Kevin Burns paid a $500 cost bond to the Dakota County Court

The district court administrator, Van C. Brostrom, then falsely certified to the Clerk of the Appellate Courts that the cost bond had not been paid when it was paid in an attempt to obtain an administrative dismissal of the appeal off the merits before it could be decided on the basis of the facts, the law, and the merits, which did not favor Mary Pawlenty The court may and is requested to take judicial notice that, at all relevant times, Brostrom, a Dakota County Court employee, was housed in the same building and subject to the direct control and supervision of then-district court judge Mary Pawlenty and that both Mary Pawlenty and her husband, who has national political aspirations that are widely known, have motive to frustrate appellate review and evade a reversal of Pawlenty's unlawful detainer order that would entail public disclosure of Mary Pawlenty's disregard and disdain for a Minnesota legislative statute that inconveniences her and her political cronies.

The City of Apple Valley was also a willing and even eager participation and repeatedly utilized its police department to harass and threaten Kevin Burns Its then-

deputy city attorney, Sharon Hills[32], encouraged unauthorized and unlawful trespass upon the Burns Property by Bank of America and its agents for the purpose of bolstering Bank of America's spurious legal claim and separating the Burns from their Property

As noted in the Background section of this Brief, Dakota County Court Judge John Connelly issued an arrest warrant on false charges against Barbara Burns on August 3, 2003 to prevent Barbara Burns from appearing in the Dakota County Court and contesting Ungerman's claims in a supplemental proceeding before Judge Connelly in Dakota County on August 8, 2003 The warrant, the third in a series of warrants, all of which were quashed on motion of Burns' attorneys, was quashed and the "charges" were dismissed, a resolution in Burns' favor In the meantime, Kevin Burns, a pro se party with no legal training or experience, was forced to specially appear in the divested Dakota County District Court and object on his own behalf and that of Barbara Burns to avoid default At hearing on August 8, 2003, Judge Connelly upheld the statutory stay imposed by Minn Stat 504B.371(4)(5)(6)(7) but refused to enforce it, stating that jurisdiction was vested in the Court of Appeals

Throughout this time period, then-Chief Dakota County Court Judge Richard Spicer engaged in substantive ex parte letter communications with Sharon Hills, the deputy Apple Valley city attorney known to be hostile to the Burns and who was ultimately removed from her position as deputy city prosecutor Prior to engaging Spicer in ex parte letter communications, the substance of which were to attempt to persuade Spicer to terminate the Burns' property rights and bias the court against the Burns for the benefit of

[32] In a deposition on January 30, 2008 authorized by the United States District Court for the District of Minnesota, Hills testified under oath that she was without authority to vest property rights or authorize entry upon property owned by the Burns Hills also testified that, in accordance with a decision by the management of her law firm, she was no longer permitted to handle cases for the City of Apple Valley and that she practices family law

Ungerman, with whom the City of Apple Valley had had past dealings regarding the Property[33], Hills had personally authorized and encouraged Bank of America to break into the Burns' house and had instructed the City water department to shut off the water supply on Bank of America's instructions. This instruction by Hills was countermanded by the Apple Valley City Attorney, James Dougherty, Hills' superior. At a deposition on January 29, 2008 that Hills attempted to evade[34]. Hills later admitted in a deposition that she was without authority to take any of these actions and also admitted that her superior, James Dougherty, the Apple Valley City Attorney, had determined that the Burns, not Bank of America, owned the Property.

As noted supra, Hills harassed and maliciously prosecuted Barbara Burns even after Barbara Burns left the state of Minnesota and established domicile in New Jersey in 1998. At the time that she commenced ex parte communications with Spicer in late 2003, Hills was actively engaged in prosecuting Kevin Burns for exercising his right as property owner to occupy the Property. Hills' malicious prosecution of Kevin Burns was ultimately disallowed by Spicer, who advised Hills in an ex parte letter communication that Kevin Burns legal position that he owned the Property was reasonable and that Spicer could not authorize Hills to prosecution Kevin Burns for trespassing upon his own property. Id.

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[33] In late 1994, Annette M. Marguerite, then an attorney employed by the Apple Valley law firm of Severson, Sheldon, Dougherty, and Molenda, P.A., suborned a perjured affidavit provided by Apple Valley Police Sergeant Dan Sams that was solicited by David Albright. The substance of this testimony, which Sams later recanted in a deposition convened by Barbara Burns, was that Burns refused to permit Ungerman entry to her Apple Valley home in accordance with a discovery order issued by Judge E. Anne McKinsey. In fact and as Sams admitted in deposition, Burns admitted Ungerman but would not admit Albright on the basis that Burns had obtained a restraining order against Albright from Hennepin County Court Judge Daniel Mabley that prohibited Albright from coming within 50 feet of Burns or her home following a trespass upon the property by Albright at 8.00 a.m. on a Saturday morning. The Petitioner notes that, by the determination of Justice Paul Anderson of this court, who censured Albright in 2002, Albright suffers from bi-polar disorder and has abused witnesses and other third parties. The Petitioner asserts that Barbara Burns' refusal to admit Albright to her home was reasonable in the circumstances.

[34] Appendix, Affidavit of Attempted Service by Timothy Walter

Following extensive ex parte communications with Hills and others, Spicer convened a hearing in the Dakota County District Court on December 24, 2003 on Ungerman's petition for a new title By design, Bank of America, Ungerman's purported assignor, was not a party to this proceeding and Barbara Burns was prevented by the Dakota County Court from attending and participating in the proceeding following issuance of an arrest warrant on false charges and in violation of Minnesota law by Dakota County Court Judge John Connelly on August 3, 2003 Thus, Kevin Burns, a pro se party, totally untrained and inexperienced in the law, was again forced to specially appear on his own behalf and that of Barbara Burns.[35]

In the course of the December 24, 2003 Spicer proceeding, Kevin Burns observed a discussion at sidebar between Spicer, Donald Gudmundson, the Dakota County Sheriff, and the Dakota County Examiner of Titles in which Gudmondson asked Spicer if "this is the same case we talked about". From this, Kevin Burns inferred that Spicer had engaged in substantive ex parte communications with the Examiner and the Sheriff prior to the hearing

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[35] By this time, the Dakota County District Court and Kevin Burke had effectively separated the Burns form their lawyers The Petitioner notes that this tactic is frequently used in Dakota County to frustrate even the constitutional right of a criminal defendant to effective counsel The Petitioner notes that Kevin and Barbara Burns engaged Minnesota attorney Brian Karalus to contest the trumped-up ordinance violation charges alleged by Sharon Hills and to quash the warrant issued by the Dakota County Court in 2003 Karalus promised to bring a motion to dismiss and to quash the warrant He quashed the warrant but, before he could move to dismiss, was summoned by Judge William Thuet, a publicly-censured judge of the First Judicial District of Minnesota Thuet told Karalus that the Dakota County bench disliked the Burns and that Karalus could not represent "the most frivolous" client in Minnesota, even in a criminal action premised upon trumped-up charges that clearly violated the victim's civil rights, or words of that substance and meaning, On July 16, 2004, Karalus testified under oath in the Ramsey County District Court that he had been summoned by Thuet and told not to zealously represent the Burns, who had paid Karalus $2000, and to "tank" the case or words of that substance and meaning, and that Karalus complied with Thuet's directive and never filed the motion to dismiss that he represented to the Burns had been filed, while falsely representing to the Burns that he had filed the motion On July 16, 2004, the Burns sued Brian Karalus for breach of contract and fraud Karalus testified under oath that he had been summoned and directed by Thuet, who shortly thereafter resigned from the bench On July 22, 2004, the Ramsey County Court entered judgment for the Burns in the amount of $2000 plus court costs and fees Appendix, Judgment of Ramsey County Court for Plaintiff Barbara Burns and against Defendant Brian Karalus

In due course, Spicer noticed the appearances of parties and counsel At this time, Kevin Burns stated that he was appearing specially, that the Dakota County Court lacked subject-matter jurisdiction under the lis pendens naming the New York federal court as the court of jurisdiction with respect to claims to the Property asserted by Bank of America and its purported assignees, and that he objected to the proceeding on this basis. Kevin Burns also noted that an appeal had been docketed by the Minnesota Court of Appeals on December 23, 2003 and that the Dakota County District Court was divested of subject-matter jurisdiction on this basis in accordance with the opinion of this court in *Spaeth v City of Plymouth*, 344 2d 824 (Minn 1984), previously cited by Minnesota Attorney Beisel in the August 3, 2003 hearing before Judge Connelly

Although the Clerk of Appellate Courts had issued a copy of the docketing notice to the Dakota County Court Administrator, Spicer disputed that an appeal had been docketed. In support of this statement, Spicer opined on the record that Burns was required to pay a filing fee to perfect the appeal and transfer jurisdiction Spicer then acknowledged on the record that, if an appeal had in fact been perfected and jurisdiction transferred, he was divested of subject-matter jurisdiction. See Transcript of December 24, 2003 Spicer Proceeding Filed in Minnesota Tax Court.

The Supreme Court may and is required to take judicial notice that the Clerk of the Appellate Courts issued a publicly-filed docketing order confirming that an appeal was indeed publicly filed and docketed on December 23, 2003 in the *Burns-Ungerman* case and that, by the determination of the current chief justice of this court interpreting the 1999 revision of the Minnesota Rules of Appellate Procedure, the only actions required to perfect appeal and transfer jurisdiction are (1) filing of the Notice of Appeal and

Statement of the Case in the Office of Appellate Courts, and (2) service of the Notice of Appeal upon the trial court administrator and the opposing party, both of which were certified by the Clerk of the Appellate Courts has having been accomplished in this case.

These facts compel the conclusion that, even if Spicer was not divested of jurisdiction to adjudicate claims involving this Property and these parties under the Lis Pendens Statute, which he clearly was, he was, by his own admission, divested of jurisdiction by the December 23, 2003 Burns appeal, rendering Spicer's December 24, 2003 "judgment" upon which the Commissioner relies at bar void for want of subject-matter jurisdiction The Burns concur with prior decisions by this court that a judgment rendered by a court in the absence of subject-matter jurisdiction is illegal and void and does not have the effect of res judicata See, e.g., *Hauser v. Mealey*, 263 N.W. 2d 803 (Minn 803, 808 (Minn. 1978)[36]; *Park Elm Homeowners' Assn v Mooney*, 398 N W 2d 643 (Minn. App 1987).[37]

For texture, the Petitioner notes that one of Spicer's first acts after entering judgment against the Burns on December 24, 2003 was to grant an interview with *Minnesota Lawyer* magazine that was published on January 20, 2004. [38]See *Minnesota Lawyer,*

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[36] Stating that the Minnesota Supreme Court recognizes the general rule that a judgment rendered by a court that does have jurisdiction to hear a case does not have the effect of res judicata

[37] Stating that a Minnesota trial court lacks jurisdiction to vest property rights in derogation of the Minnesota Torrens Act and that any such judgment is void as lacking subject-matter jurisdiction

[38] The article also mentions Edward Lynch and Kevin S Burke. Both were validly removed and disqualified by Barbara Burns under Minnesota law and Minnesota court rules and both removals were upheld by the Minnesota appellate court On January 30, 2005, the memoranda authored by Burke that is referenced by the article was sealed by Judge Jack Nordby of the Fourth Judicial District of Minnesota The Burns have no comment as to the substance of the Minnesota Lawyer article, which was proffered by Brian Karalus and rejected as authoritative by the Ramsey County Court in *Burns v Karalus* other than to state that it represents a self-serving attempt by Spicer and Burke to litigate in the court of innuendo and public opinion a case that they have demonstrated they cannot win in court and that, in light of Spicer's ex parte communications and tacit encouragement of Hills who wasted ten years and tens of thousands of dollars in her vindictive, unlawful, and ultimately unsuccessful attempted malicious prosecutions of Kevin Burns and Barbara Burns, Spicer's claims that it is the Burns who are frivolous litigants who have corrupted the processes of the already-corrupt and repeatedly sanctioned Dakota County Court are beyond laughable.

January 20, 2004 The Petitioner specifically brings this point to the attention of the court because the Minnesota appellate court has defined due process as the right to appear before a disinterested and unbiased court[39] and Spicer's extensive and collusive ex parte communication and his public statements establish that he is not exactly impartial The Petitioner also does not know how Spicer could comment upon whether the case was or was not frivolous, given that Kevin Burns appeared by special appearance to object on jurisdictional grounds and the merits of the case were not discussed or litigated

The above-stated facts compel the conclusion that any purported conveyance of the Property to Ungerman by Bank of America, aided and abetted by certain employees, officers, and agents of the state of Minnesota and its inferior political subdivisions, was and is illegal and void and also constitutes an extrinsic fraud perpetrated by a number of persons, certain of which are employees and agents of the state of Minnesota and its inferior political subdivisions, who specifically intended to prevent the Burns from knowing and exercising their rights under Minnesota legislative statutes that were enacted for their protection as Torrens property owners and that the Burns have established entitlement to judgment on their Torrens claims as a matter of law The pervasive involvement of Minnesota state and municipal employees also is persuasive that the Burns may and likely were subjected to an unconstitutional "taking" of their real and personal property by agents of the state of Minnesota without due process of law and without just compensation, entitling them to compensation and remedial action by the state of Minnesota The Petitioner will discuss this point in Point III of the Argument section of this Brief

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[39] See *IN RE. The Matter of Burns*, citation omitted, Minn App 1995 (upholding Barbara Burns' disqualification of Kevin S Burke and stating that the Appellant has a due process right to "a disinterested and unbiased cour t"

Accordingly, the Burns jointly and separately move for an order by this court vacating the judgment of the Minnesota Tax Court and for a writ for mandamus and prohibition, restraining the Dakota County District Court from enforcing its orders concerning the Property and directing the Dakota County Registrar of Titles to restore the Burns to title. For clarity, the Burns will address and briefly discuss specific issues raised for appellate review *infra.*

POINT I

THE SUPREME COURT SHOULD OVERRULE THE TAX COURT AS TO AMENDED DESIGNATION OF PARTIES TO INCLUDE BARBARA BURNS

The March 16, 2007 Determination by the Minnesota Commissioner of Revenue that underlies this appeal and petition for Supreme Court review was premised upon **two** applications, one for a Homeowners' Property Tax Refund filed by Barbara Burns as de facto attorney for Kevin Burns[40] and the second an amended Homeowners' Property Tax Refund filed by Barbara Burns in her own name Appendix, Burns Property Tax Refund Applications and March 16, 2007 Determination by Beth Spellerberg The Commissioner did not reject either application as untimely or for any other procedural reason and considered and adjudicated both applications on the merits whereupon Barbara Burns filed an appeal in the Minnesota Tax Court on her own behalf and that of Kevin Burns. Appendix, Notice of Appeal Filed by Barbara R Burns

The Minnesota Tax Court construed the appeal as from both Kevin E Burns and Barbara R. Burns The Tax Court also made a preliminary determination of merit with regard to both Appellants and granted the Appellants' Joint and Separate Motion to

[40] Barbara Burns filed for designation as Kevin Burns' attorney in fact for purposes of dealings with the Minnesota Department of Revenue and was granted this status by the Department of Revenue prior to filing either of the two returns

Proceed In Forma Pauperis on July 19, 2007. Appendix, July 19, 2007 Order of Judge George Perez

For the next year, the Tax Court construed the appeal as from the Commissioner's denial of Barbara Burns' amended Property Tax Refund application The Appellants were accorded co-party status and Barbara Burns was authorized to represent Kevin Burns, a status that is accorded only to non-attorneys who are co-parties.

On May 21, 2008, the Commissioner through counsel moved the court to designate Kevin Burns as the only party to the appeal The Burns objected, stating that Barbara Burns had filed both tax refund applications without consultation with Kevin Burns pursuant to the Power of Attorney authorization that was granted by the Commissioner, that the parties co-owned the Property in question and occupied it as joint tenants, and that Kevin Burns could not obtain complete relief unless Barbara Burns was joined.

The Tax Court agreed and denied the Commissioner's motion to amend the case caption. May 21, 2008 Transcript of Proceedings on Appellants' Motion to Compel Discovery The Tax Court also ordered the Commissioner to pay to Kevin Burns the 2003 Renters Credit Refund that the Commissioner had withheld to offset against the Homeowner Refund claimed by Barbara Burns, stating that the two refunds were separate issues and could and should not be co-mingled Id The Commissioner never paid Kevin Burns the 2003 Renters Credit and, to date, it remains unpaid after more than six years

At trial, the Commissioner renewed the motion to amend case caption The Tax Court again denied the Commissioner's motion. The Tax Court also required Barbara Burns to participate in the trial as a co-party and to represent both Appellants at trial. The trial

yielded no new information that would justify amendment of the case caption or redetermination of designation of parties based upon different facts

Six months later, the Tax Court issued its judgment, stating arbitrarily that the Commissioner's Determination referenced an appeal by Kevin Burns only, which it did not The Tax Court then ruled that Kevin Burns was the only party to the appeal and that judgment was entered against Kevin Burns only.

This appeal and petition for review followed The Burns assert on appeal that the Supreme Court should overrule the Tax Court and reinstate the original two-Appellant case caption for two reasons

First, the appeal was unquestionably taken by two Appellants and construed by the Tax Court as involving two Appellants. Throughout the proceedings below, which lasted for more than one year, the Tax Court required participation by both Appellants and further required Barbara Burns to represent Kevin Burns at trial as an uncompensated de facto attorney, which is not permitted unless the uncompensated de facto attorney is a co-party.

The Appellants submit that the law is meaningless unless consistent in its application and that important public policy interests mandate consistency and stability in the law. Accordingly, consistent decisions by a court that constitute the law of the case should not arbitrarily change unless the underlying facts have changed. That is not the case here

Additionally, both Kevin Burns and Barbara Burns can establish prejudice by arbitrary decision of the Minnesota Tax Court to change the case caption and the designation of parties Specifically, Barbara Burns was forced to participate in the Tax Court proceedings as a co-party and de facto attorney for a party. Had she known that the Tax

Court would change the designation of parties and exclude her as a party, she would not have done this or would have done it differently.

Similarly, Kevin Burns, in his reliance upon the Tax Court's preliminary designation of parties and the Tax Court's repeated rulings that the appeal was taken by two Appellants, one of which, Barbara Burns, was not barred from claiming the Homeowners' Property Tax Refund, Kevin Burns did not assert any affirmative defenses or otherwise fashion his litigation strategy to establish his entitlement to the refund independent of Barbara Burns, which he otherwise would have done Based upon these facts, which are evident from the Record, the Burns are acutely prejudiced by the eleventh-hour decision of the Tax Court to change its position and arbitrarily designate only Kevin Burns as a party to an appeal taken by Barbara Burns.

Secondly, public policy interests strongly favor designation of the Burns as co-parties or as Barbara Burns as the only party to the appeal. The law exists to allocate legal and financial responsibility to the parties most directly responsible for the acts that are the basis for litigation.

Here, the Record clearly demonstrates that Kevin Burns did not file either refund application The Record is also unequivocal that both applications were filed by Barbara Burns with the knowledge and approval of the Commissioner of Revenue, who permitted her to proceed as Kevin Burns' attorney-in-fact and who accepted and ruled upon her amended refund application without asserting any statute-of-limitation or other defense It is undisputed by all parties that Kevin Burns did not participate in the filing of either application and did not receive the homeowners' refund that is at issue in this case.

Moreover, Kevin Burns was never paid the Renters Credit Refund that the Commissioner admits is owed to him.

The law strongly favors allocation of financial and legal responsibility to the parties most directly responsible for an act. In this case, the person legally and financially responsible for the refund application is Barbara Burns or, alternatively, Barbara Burns and Kevin Burns, not Kevin Burns only.

The law also dictates reason and requires courts to render judgments that are based upon the facts, the law, and the merits of each case and not personal biases, expediency, or political gain. Here, the Tax Court's decision to amend the case caption to exclude a necessary and indispensable party is not based upon new facts that would justify departure from the court's previous decisions to construe the appeal as taken by Kevin Burns and Barbara Burns. It is completely arbitrary, if not whimsical, and appears to have been taken on the basis that the Renters' Credit Refund precludes payment of the Homeowners' Refund to Kevin Burns and that the Tax Court can force judgment for the Commissioner only if Kevin Burns is the sole party, regardless of the fact that this conclusion is wholly without basis of fact and contradicted by the March 16, 2007 Determination, which references and acts upon applications filed by both Kevin Burns and Barbara Burns.

Finally, the decision of the Tax Court to wait until evidence was closed and change its position to that previously advocated by the Commissioner and his attorneys creates an appearance of impropriety. The Petitioner submits that a reasonable person would at least question whether improper ex parte communications had occurred between the Commissioner and the Tax Court and whether the decision came about because the

Attorney General and perhaps Governor Pawlenty's office lobbied or issued a direct order to the Tax Court.

Based upon the foregoing facts, the Minnesota Supreme Court should designate the parties to this appeal as Kevin E. Burns and Barbara R. Burns consistent with the March 16, 2007 Determination and the case caption designation consistently construed and applied by the Tax Court.

POINT II

THE BURNS ARE ENTITLED TO VACATEUR ON THE BASIS THAT THE JUDGMENT OF THE MINNESOTA TAX COURT IS NOT JUSTIFIED OR SUPPORTED BY THE ADMISSIBLE RECORD, IS CLEARLY ERRONEOUS AND CONTRARY TO LAW, AND IS AN ABUSE OF DISCRETION

As a preliminary matter, the Minnesota Supreme Court reviews the Record to determine if the Commissioner's and the Tax Court's findings are supported by the record. The Commissioner's determinations are justified only if there is "reasonable evidence to sustain the findings." *Morton Bldgs., Inc v. Commissioner of Revenue*, 560 N.W. 2d 254, 257 (Minn. 1992). An appellate court will and must reverse the Commissioner's Determination of Appeal if the appellant demonstrate that there is insufficient evidence in the record to support the Commissioner's findings or that the Commissioner applied the law inaccurately based upon matters produced and facts received in evidence below.

This court has consistently held that the Record on appeal is limited to documents and evidentiary matter considered by the court below. Facts not received in evidence below will not be considered as part of the record on appeal. *Thiele v. Stich*, 425 N.W. 2d 580, 582-83 (Minn. 1988).

Here, the Commissioner stated in his March 16, 2007 Determination that the sole basis for his Determination is his conclusion, based upon the statements of unidentified employees of Dakota County, that title to the Burns' Torrens Property was transferred to Wells Fargo on June 11, 2003. At a hearing convened by the Minnesota Tax Court on the Petitioners' Motion to Compel Discovery, the Commissioner, through counsel, Assistant Attorney General Tamar Gronvall, Manager of the Tax Division of the Office of the Attorney General, represented to the court ***that her client considered no other evidence or documents and that the March 16, 2007 Determination from which appeal is taken was based solely upon the Commissioner's conclusion, based upon hearsay statements by Dakota County personnel, that title to the Property was transferred to Wells Fargo on or before June 11, 2003*** Transcript, May 21, 2008 Proceeding At trial, the Appellants invalidated the Commissioner's Determination and proved it inaccurate by producing the Certificate of Title, reciting that the Burns, not Wells Fargo, owned the Property

Under the rule of *Thiele v Stitch* that this court has applied to numerous appellants, including the Burns, the Minnesota Tax Court was precluded from considering any other evidence Since the Burns' proffer of the Certificate of Title, the ultimate authoritative document with regard to the ownership of a Torrens property, trumped the non-sourced hearsay statements and writings proffered by the Commissioner and proved that the Burns, not Wells Fargo, owned the Property, the Minnesota Tax Court should have concluded that the Burns were entitled to judgment as a matter of law.

The Minnesota Supreme Court should conclude that, based upon the Record before the Tax Court, as defined by *Thiele v. Stitch,* the Commissioner's findings were clearly

erroneous and not supported by the Record. The court should further conclude that Assistant Attorney General Gronvall's duplicitous and dishonest litigation conduct is grounds to strike and suppress litigation materials and evidence that Gronvall represented on the Record did not exist. Accordingly, the Minnesota Supreme Court should overrule the Minnesota Tax Court and order the Minnesota Tax Court to enter judgment for the Burns. The Minnesota Supreme Court should further order the Commissioner of Revenue to pay to Kevin Burns the Renters Credit Refund that the Commissioner has withheld since 2003, inclusive of prejudgment interest.

The Petitioner additionally notes that, even if the Minnesota Tax Court could consider materials and evidence not considered by the Commissioner, which, under *Thiele v. Stitch*, it cannot, the Record still would not justify judgment for the Commissioner. More specifically, the Minnesota Tax Court relied upon a "judgment" entered by a divested state court in the absence of subject-matter jurisdiction. The Minnesota Supreme Court has repeatedly held that such a judgment, particularly in cases involving attempts by the Dakota County District Court to vest property rights in derogation of the Torrens Act, is illegal and void and does not have the effect of res judicata. See, *Park Elm Homeowners' Assn v. Mooney*, supra, 398 N.W. 2d 643 (Minn. App. 1987). See also *Hauser v. Mealey*, 263 N.W. 2d 803, 808 (Minn. 1978). Accordingly, the court should conclude that the judgment of the Minnesota Tax Court is clearly erroneous and contrary to law on substantive as well as procedural grounds and should not be permitted to stand.

Finally, even if the Dakota County Court had jurisdiction to adjudicate the Burns-Bank of America claims, which it did not, and even if the Commissioner had considered additional evidentiary matter, which he and his attorney conceded that he did not, the

Appellants brought forth credible evidence of fraud and other improprieties that they attempted to introduce at trial and that the Tax Court wrongfully and improperly frustrated and obstructed.

The Petitioner submits that, regardless of whether the presiding judge is favorably disposed to him, the co-Appellant, and/or their claims and regardless of personal relationships and reporting structures between the judge, the governor, his wife, and/or the chief justice of this court, he has a due process right to present and prosecute his case, including, but not limited to, the right to issue compulsory process to compel witness testimony, in this case by attorneys Schiller and Wilford, in his favor. Based upon the attorney affidavits and certifications of Minnesota attorneys, Zdrazil, Beisel, Lanners, and Hilgendorf and the recorded admissions of Bank of America counsel Kucinski, who testified in deposition that Bank of America was not of record as a mortgagee or assignee of a mortgagee, there is little doubt that, had the Petitioner been permitted to call and compel this testimony and Schiller's admission that she relinquished her client's claims because Bank of America's "conveyance" of the Property was contrary to law, the Petitioner would have established entitlement to judgment as a matter of law.

The Minnesota Tax Court completely usurped and frustrated this right, an abuse of discretion that is properly raised to this court on appeal. Accordingly, the Minnesota Supreme Court should issue an order of vacateur, declaring the judgment of the Minnesota Tax Court a nullity.

POINT III

THE PETITIONER HAS ESTABLISHED ENTITLEMENT TO MANDAMUS AND PROHIBITION ON GROUND THAT THE ACTIONS OF THE LOWER COURTS FROM WHICH APPEAL IS TAKEN AND REVIEW SOUGHT ARE AN UNCONSTITUTIONAL TAKING OF THE PROPERTY WITHOUT JUST COMPENSATION AND WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE LAWS OF THE STATE OF MINNESOTA

A taking is an action by government that deprives a person of private real or imagined personal property without due process of law and without just compensation. A government can effect a taking in several ways, including, but not limited to, physically occupying it and preventing others from entering it and confiscating by repossession, followed by property auction

In the United States, under the Fifth Amendment to the United States Constitution, taking of private real or personal property by the government or its agents requires due process of law and just compensation The state of Minnesota and its inferior political subdivisions cannot constitutionally steal or otherwise appropriate the Burns' personal real and personal property without notice, a meaningful hearing before a disinterested and unbiased court that includes all adverse claimants, and just compensation

Here, the Record as a whole establishes that the collusive and pervasive involvement of state actors, including but not limited to, the wife of the governor, the County of Dakota, the First Judicial District, and the City of Apple Valley, in a private civil action operated to prevent the Burns from knowing and exercising their legal rights with the intended result of separating the Burns from their property. While Bank of America and its purported assignees, Wells Fargo and R.A Ungerman, were the nominal plaintiffs, the moving spirit was arguably the state of Minnesota and its employees, agents,

officers, attorneys, and inferior political subdivisions. Moreover, state actors not only did not accord the Burns their constitutional and due process rights to a due process and to just compensation but actively conspired and schemed to deprive them of these rights for political and monetary gain, a violation of the Fifth Amendment to the United States Constitution and an intrinsic and extrinsic fraud.

Excepting the United States Supreme Court, the Minnesota Supreme Court is the final arbiter of the constitutional rights of the people of the state of Minnesota and is also responsible for regulation of the practice of law and for attorney and judicial discipline. The authority of the Minnesota Supreme Court to issue writs of mandamus and prohibition to remedy defects of justice perpetrated by legal errors of omission and commission committed by inferior courts and by attorneys and judges regulated and supervised by the Minnesota Supreme Court is plenary. Accordingly, the Petitioner moves the court for a writ for prohibition, restraining inferior Minnesota courts from taking and enforcing judicial action that violates the Fifth Amendment to the United States Constitution and Minnesota legislative statute and requiring the state of Minnesota, its employees, officers, agents, and attorneys to make restitution for private real and personal property owned by Kevin Burns and Barbara Burns that was unlawfully seized by state actors or at their direction without due process of law and without just compensation.

A writ for mandamus is expressly authorized under Rule 120 and 121 of the Minnesota Rules of Civil Appellate Procedure. Mandamus is a prerogative writ of the common law and is issued by a superior court to an inferior court to compel the inferior court perform mandatory or purely ministerial duties correctly

The purpose of mandamus is to remedy defects of justice. It lies in cases where there is a clear legal right in the Petitioner, but no specific remedy for enforcing that right. It also lies in cases where there is an alternative remedy but the mode of redress is less convenient, less beneficial, or less effectual.

Mandamus will issue to compel performance of an act that a trial court is clearly required to do. See, e.g., *Riddle v. Ringwelski*, 451 N.W. 2d 372, 373 (Minn. App. 1990). The Petitioner must show that the court had "a clear and present official duty to perform a certain act." *McIntosh v. Davis*, 441 N.W. 2d 115, 118 (Minn. 1989).

Mandamus may issue to compel an inferior court to exercise its judgment. Examples of situations where writs of mandamus have been issued include writs that have issued to compel compliance with the mandate of an appellate court following an appeal; to compel the court to proceed to trial; and to compel the court to appoint counsel to represent an indigent party. Mandamus is particularly appropriate when there is no meaningful or adequate remedy at law. *McIntosh*, supra, 441 N.W. 2d at 118.

It is frequently stated that mandamus cannot be used "to control judicial discretion." *Riddle*, supra, 451 N.W. 2d at 373. If the action for which the petitioner seeks to compel performance is a discretionary one, the petitioner must establish that the failure to perform it was so arbitrary and capricious as to constitute a clear abuse of discretion. *McIntosh*, supra, 441 N.W. 2d at 118. There is an illegal abuse of discretion in cases where (1) an order is made without or in excess of jurisdiction, (2) the order is mala fides; or (3) the authority is influenced by extraneous considerations or collateral factors.

A writ for prohibition is expressly authorized by the Federal Rules of Civil Appellate Procedure and the United States Code. A writ for prohibition is issued by an appellate

court in cases where an inferior court exceeds its jurisdiction, acts contrary to the rules of natural justice, or is deemed headed towards defeating a legal right

Prohibition issues in response to abuses of judicial power and, insofar as it tests the ability of a district court to act, is a direct attack. To obtain a writ for prohibition, the petitioner must show that (1) the lower court is about to exercise judicial power, (2) the exercise of power is unauthorized by law; and (3) it will result in an injury for which there is no adequate remedy at law

Prohibition is appropriate to obtain review in a case where the effect of an order of remand is to extend an ex parte order without providing an evidentiary or other hearing and where appeal is unavailable or clearly inadequate Other types of orders that have been successfully reviewed by writ for prohibition include an order dismissing a counterclaim and granting a party a default judgment.

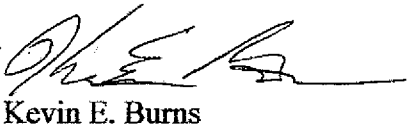
In this case, the Petitioner has established that the Burns acquired indefeasible title to the Property via a Torrens decree registered on October 30, 1988 and that the adverse claimant and its purported assignees are not of record and do not have standing under the Minnesota Torrens Act The recordation requirements of the Torrens Act are statutory. There is no judicial discretion. The adverse claimant has conceded that there was no delinquency, which is predicate for a valid foreclosure by a mortgage of record

A state court has attempted to vest property rights in derogation of the Torrens Act and in the absence of subject-matter jurisdiction. The Petitioner has no remedy at law to enforce the Minnesota Torrens Act that is as effectual as the extraordinary remedy of mandamus.

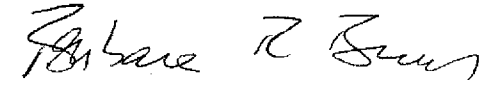
The Petitioner has also brought forth credible evidence of illegal abuse of discretion. Specifically, the Record establishes that the lower court acted without or in excess of jurisdiction; that the lower court issued orders in mala fides; and that the lower court was influenced by extraneous considerations and collateral factors. The court should conclude that the Petitioner has established that the lower courts exceeded their jurisdiction and acted contrary to the United States Constitution and the rules of natural justice to the end of defeating the Burns legal rights.

Based upon the foregoing facts, which are readily apparent from the Record, the Petitioner has demonstrated a clear legal right in the Petitioner, a corresponding duty in the Respondent, the State of Minnesota and its inferior political subdivisions to uphold the property owners' indefeasible title, and a want of any other equally effectual and efficient remedy. Accordingly, the Supreme Court should grant the Petitioner's motion for a writ for prohibition restraining the Minnesota district court and the Minnesota Tax Court from enforcing its orders and for a writ for mandamus, requiring employees, officers, agents, and employees of the state of Minnesota and its inferior political subdivisions to make restitution and restore to the Burns their indefeasible Torrens title.

DATED: March 24, 2010

BY: 

Kevin E. Burns

BY: 

Barbara R. Burns

Attorney in Fact

RULE 132.01(3)(a) CERTIFICATION

I hereby certify that the enclosed Petitioner's Informal Brief complies with the word limit specified by MRAP 132.01(3)(a) and contains 12,939 words.

DATED: March 25, 2010

BY: Barbara R. Burns

Barbara R. Burns