

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,  
GREGORY T. HOWARD

Appellant,

-VS-

SEAWAY FOOD TOWN, INC., et al.,

Appellees.

Case No. 03-1572

Trial Court Case No. 97AP-860

RECEIVED

JUN 22 2009

CLERK OF COURT  
SUPREME COURT OF OHIO

---

APPLICATION FOR LEAVE TO FILE A MOTION TO DECLARE THE FRANKLIN  
COUNTY COURT OF COMMON PLEAS DECISIONS TO DECLARE PLAINTIFF A  
VEXATIOUS LITIGATOR UNCONSTITUTIONAL PURSUANT TO OHIO REVISED CODE  
SECTION 2921.45 , *INSTANTER*

---

On September 24, 2004, this Court found Appellant, Gregory T. Howard to be a vexatious litigator under S. Ct. Prac. R. XIV (5)(B). This Court further ordered that Appellant was prohibited from continuing or instituting legal proceedings in the Court without obtaining leave. In compliance with that decision and as a matter of right, contemporaneously herewith the Relator files this motion for leave to file a Motion to declare the Franklin County Court of Common Pleas decisions to declare Relator a vexatious litigator unconstitutional pursuant to O.R.C. §2921.45.

As evidenced in the attached Motion to declare the Franklin County Court of Common Pleas decisions to declare Relator a vexatious litigator unconstitutional pursuant to O.R.C. §2921.45, the Franklin County Court of Common Pleas acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment by not allowing

FILED

JUN 22 2009

CLERK OF COURT  
SUPREME COURT OF OHIO

Relator vindication of his legitimate civil rights under Ohio Revised Code Section 2921.45 and Article 1, Section 16 of the Ohio Constitution and other applicable legal provisions.

Accordingly, the Relator respectfully requests that this Court permit him to file instanter the attached Motion to declare the Franklin County Court of Common Pleas decisions to declare Relator a vexatious litigator unconstitutional pursuant to O.R.C. §2921.45.

Respectfully submitted,



Gregory T. Howard<sup>1</sup>

P.O. Box 3096

Toledo, Ohio 43607-0096

Telephone: (419) 450-3408

Relator-Appellant, Pro-se

PROOF OF SERVICE

This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail or via facsimile this 18<sup>th</sup> day of June, 2009 to:

(419) 247-1777  
Eastman & Smith, Ltd.  
C/O Thomas A. Dixon, Esq.  
One Seagate, 24<sup>th</sup> Floor  
Toledo, Ohio 43699-0032

(614) 752-2538  
Ohio Attorney General Office  
William R. Creedon, Esq.  
150 East Gay Street, 22<sup>nd</sup> Floor  
Columbus, Ohio 43215

<sup>1</sup>(614) 466-9354  
Governor Ted Strickland  
77 High Street, 30<sup>th</sup> Floor  
Columbus, Ohio 43215-6117

(614) 728-7592  
Assistant Attorney General  
Kent M. Shimeall, Esq.  
State Office Tower  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43266-0410

The Federal Trade Commission:  
Privacy-Steering-Committee  
Federal-Trade-Commission  
600-Pennsylvania-Avenue,N.W.  
Washington,DC-20580

Office of the Ohio Senate  
Fax: (614) 644-5208

---

<sup>1</sup> Appellant asserts that he has a right to recover damages from any person who fails to prevent or aid in preventing any wrongs as the terms are used in 42 U.S.C. §1985 which he had knowledge were about to occur and power to prevent. 28 U.S.C. §1343(a)(2).

James G. Carr, Chief Judge-Faxed to 419.213.5563

Attn: Deputy Director, Office of the Executive Director

Re: Eastman & Smith, et al.

State of Ohio Office of the Attorney General Complaint #: 327061 & 330421

Federal Trade Commission Complaint # 10010756,10299071 & 10651814

Comptroller of the Currency #685430-(713) 336-4301

Faxed to telephone: (614) 469-5240

Assistant United States Attorney

Mark T. D'Alessandro for Southern District of Ohio,

303 Marconi Boulevard, Suite 200,

Columbus, Ohio 43215-2401


(614) 462-6012

Patrick J. Piccininni

Assistant Prosecuting Attorney

373 South High Street, 13<sup>th</sup> Floor

Columbus, Ohio 43215

  
Gregory T. Howard  
Appellant-Claimant, pro-se

IN THE SUPREME COURT OF OHIO

State of Ohio, ex rel.

**GREGORY T. HOWARD**

Relator,

Case No.

Order No. 05-CVH-01-398

(Mandamus Action)

-VS-

**FRANKLIN COUNTY COURT,  
OF COMMON PLEAS**

Respondents.

---

**MOTION TO DECLARE THE FRANKLIN COUNTY COURT OF COMMON PLEAS  
DECISIONS TO DECLARE PLAINTIFF A VEXATIOUS LITIGATOR  
UNCONSTITUTIONAL**

---

Now comes Relator Gregory T. Howard pursuant to the provisions of Ohio Revised Code Section 2921.45 and Article 1, Section 16 of the Ohio Constitution and other applicable legal provisions, asserts, alleges, and states to this Honorable Court as follows:

1. The Franklin County Court of Common Pleas has violated R.C. 2921.45, a criminal statute prohibiting the State of Ohio from interfering with his civil rights. In support, Relator directs the Court's attention to the Civil Case details outlined in the attached docket entitled *Gregory T. Howard v. Ohio State Supreme Court* and assigned Franklin County Case

No. 05-CVH01-398. The docket references several filings including “a motion released to clear docket and motion for leave” which remain pending disposition by the Franklin County Court of Common Pleas.

Upon information and belief, the Franklin County Court of Common Pleas has deprived the Relator of his rights to access the State Courts of Ohio and his right to remedy for injury or otherwise violated his right to redress for injury; due process secured by the Fourteenth Amendment of the United States Constitution and Article I, Section 16 of the Ohio Constitution. As such, the Franklin County Court of Common Pleas tacitly acknowledges that it acted in manner inconsistent with due process of law or otherwise acted unconstitutional in entering judgment by not allowing Relator vindication of his legitimate civil rights under Ohio Revised Code Section 2921.45 and Article 1, Section 16 of the Ohio Constitution and other applicable legal provisions.

Based on this evidence, the record is now clear that Relator has requisite standing to bring this mandamus action to compel the Franklin County Court of Common Pleas to vacate its Entries of January 11, 2006 declaring Relator to be a vexatious litigator, requiring him to apply to that Court before instituting legal proceedings and March 14, 2008 denying his motions and applications, granting Spartan’s motion to dismiss, and finding that Judge Bender’s unconstitutional decision of January 11, 2006 declaring Relator to be a vexatious litigator, requiring him to apply to that Court before instituting legal proceedings which is void because Judge Bender acted without authority to issue rulings on January 11, 2006 as a result that the transfer entry was not filed until January 18, 2006, pursuant to R.C. §2731.01 *et seq.* The Relator submits that this Court is responsible for giving due consideration to the evidence which is currently before it and the factors contained in Revised Code 2731.11, as shown in this case

and issuing a peremptory mandamus declaring that any and all of the Franklin County Court of Common Pleas orders are void *ab initio* or otherwise unconstitutional to him without delay. For this reason, Plaintiff requests that his instant motion be granted. *Id.*

2. Relator asserts that the presiding judge's motion released to clear docket and decision to not to rule on his pending meritorious motions is unreasonable and unlawful. The decisions to clear the docket and decision to not to rule on Relator's pending motions is unreasonable and unlawful because it violates R.C. §2323.52(F). Pursuant to R.C. 2323.52(F), only this Court [Franklin County Court of Common Pleas] may grant Howard leave for institution or continuance of, or making an application in, legal proceedings in the Ohio Court of Claims, or in any common pleas, municipal court, or any county court in Ohio.

It is evident from the record that several motions are still pending in the Franklin County Court of Common Pleas and that it has no intention in ruling on those proceedings; that those proceedings are not an abuse of discretion and reasonable grounds for those proceedings exist. Based on this evidence, the record is now clear that Franklin County Court of Common Pleas has either willfully refused to render a judgment or has unnecessarily delayed proceedings to judgment. See *State ex rel. Miley v. Parrott* (1996), 77 Ohio St. 3d 64, 65. A writ of mandamus is appropriate when a court has acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment by not allowing Relator vindication of his legitimate civil rights under Ohio Revised Code Section 2921.45 and Article 1, Section 16 of the Ohio Constitution and other applicable legal provisions. See U.S.C.A Const. Amend 14, *World-wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). For this reason, Plaintiff requests that his instant motion be granted. *Id.*

It is also evident from the Franklin County Court of Common Pleas docket entitled *Gregory T. Howard v. Ohio State Supreme Court* and assigned Franklin County Case No. 05-CVH01-398 that it has foreclosed Howard's rights for leave for institution or continuance of, or making an application in, legal proceedings in the Ohio Court of Claims, or in any common pleas, municipal court, or any county court in Ohio in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section 16 of the Ohio Constitution. Relator submits that there are reasonable grounds for this application and that this application is not an abuse of process. Based on this evidence, the record is now clear that the Franklin County Court of Common Pleas violated the Appellant's Fourteenth Amendment of the United States Constitution and Article I, Section 16 of the Ohio Constitution rights and that it is not in compliance with the statutory requirements of R.C. §2323.52. For this reason, the Relator requests that this Court declare any and all of the Franklin County Court of Common Pleas orders void *ab initio* or otherwise unconstitutional and further requests that his instant motion be granted. Id..

3. Relator has set forth a potentially valid motion against the Franklin County Court of Common Pleas and therefore, the motion for leave to file the instant motion should be granted and he should be permitted to proceed with this action because his action is warranted under existing law and has been supported by a good-faith argument for extension, modification, or reversal of existing law. Based on this evidence, the record is now clear that Relator should be granted leave to pursue an action in mandamus seeking to compel the Franklin County Court of Common Pleas to vacate its Entries of January 11, 2006 declaring Relator to be a vexatious litigator, requiring him to apply to that Court before instituting legal proceedings and the March 14, 2008 denying his motions and applications, granting Spartan's motion to dismiss, and finding

that Judge Bender's unconstitutional decision of January 11, 2006 declaring Relator to be a vexatious litigator, requiring him to apply to that Court before instituting legal proceedings which is void because Judge Bender acted without authority to issue rulings on January 11, 2006 as a result that the transfer entry was not filed until January 18, 2006, pursuant to R.C. §2731.01 *et seq.*

To the extent, the Relator declares that because of his poverty that he is unable to prepay the costs of retrieval and photocopying the requested documents in the above case. The Relator declare that he is entitled to these documents and wishes to present them to the Court because they support his belief, that the Franklin County Court of Common Pleas has deprived the Relator of his rights to access the State Courts of Ohio and his right to remedy for injury or otherwise violated his right to redress for injury; due process secured by the Fourteenth Amendment of the United States Constitution and Article I, Section 16 of the Ohio Constitution. Relator declares that he is unable to pay the fees associated with this mandamus action because his source of income is his disability and that he is indigent. Accordingly, the Relator requests that this Court issue an Order to the Franklin County Court of Common Pleas, Clerk to transmit the entire record to this Court for its review and resolution. As such, the Relator respectfully asks that the Court enforce R.C. 2921.45, to prevent the Franklin County Court of Common Pleas from continuing to interfere with his civil rights and to require a penalty to be levied against it for violating his civil rights as the term is used in R.C. 2921.45 to include sanctions, up to including a misdemeanor in the first degree forthwith, pursuant to R.C. §2731.11.

At the risk of repeating himself Relator claims that the Franklin County Court of Common Pleas acted in manner inconsistent with due process of law or otherwise acted unconstitutional in entering judgment by not allowing Relator vindication of his legitimate civil



rights under Ohio Revised Code Section 2921.45 and Article 1, Section 16 of the Ohio Constitution and other applicable legal provisions. For this reason, Plaintiff requests that his instant motion be granted. Id.

For all of the above stated reasons, the Relator asks this Court to declare that the Franklin County Court of Common Pleas decisions to declare Relator a vexatious litigator unconstitutional and to uphold R.C. 2921.45 which bars the State from interfering with his civil rights and for all other proper relief in the premises.

Dated: 06/18/2009

Respectfully submitted,



Gregory T. Howard

P.O. Box 3096

Toledo, Ohio 43607-0096

(419) 450-3408

Relator, Pro-se

#### PROOF OF SERVICE

This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail or via facsimile this 18<sup>th</sup> day of June, 2009 to:

614.387.9019

Supreme Court of Ohio

65 South Front Street

8<sup>th</sup> Floor

Columbus, Ohio 43215

(614) 728-7583

Rene L. Rimelspach, Esq.

Assistant Attorney General

Constitutional Offices

30 East Broad St. 16<sup>th</sup> fl.

Columbus, Ohio 43215

(614) 462-6012

Franklin County Prosecutor's

Office

373 South High Street, 14<sup>th</sup> fl.

Columbus, Ohio 43215

(419) 247-1777

Eastman & Smith, Ltd.

C/O Thomas A. Dixon, Esq.

One Seagate, 24<sup>th</sup> Floor

Toledo, Ohio 43699-0032

(614) 752-2538

Ohio Attorney General Office

William Creedon, Esq.

150 East Gay Street, 22<sup>nd</sup> Floor

Columbus, Ohio 43215



Gregory T. Howard

Relator-Claimant, pro-se

### Court Schedule

Search

 **Email Updates**

## Previous Case

## Next Case

DATE FILED

**CLOSED**

01/11/2005

COURTROOM 8D  
360 SOUTH HIGH STREET  
8TH FLOOR  
COLUMBUS, OH 43215

**Attorney**

GREGORY T HOWARD

**Attorney**

**RENE L RIMELSPACH**

☒ OHIO STATE SUPREME COURT

## CASE SCHEDULE

Date	Description	Time
01/11/05	CASE FILED	
*****	INITIAL STATUS CONFERENCE	
05/31/05	INITIAL JOINT DISCLOSURE OF ALL WITNESSES	
07/26/05	SUPPLEMENTAL JOINT DISCLOSURE OF ALL WITNESSES	
08/09/05	TRIAL CONFIRMATION DATE	
10/18/05	DISPOSITIVE MOTIONS	
11/01/05	DISCOVERY CUT-OFF	
12/13/05	DECISIONS ON MOTIONS	
*****	FINAL PRE-TRIAL CONFERENCE/ORDER (OR BOTH)	
01/17/06	TRIAL ASSIGNMENT	09:00

09:00 AM

DOCKET ☐ Show All Descriptions ☐ Select Docket Category ☐ All ☐ Start Date ☐ Prev Jun 18 2009 ☐ Search ☐ Next ☐

Date	Description	Fiche	Frame	Pages
02/12/09	MISCELLANEOUS PAPER	D8673	R68	3
02/10/09	MISCELLANEOUS PAPER	D8668	L63	36
02/04/09	MOTION FOR LEAVE TO FILE	D8653	T89	16
01/02/09	COST OUTSTANDING-60 DAY LATE NOTICE MAILED	00000	A01	
10/16/08	MISCELLANEOUS PAPER	D6350	X92	40
06/26/08	COST OUTSTANDING-30 DAY REMINDER MAILED	00000	A01	
05/16/08	MOTION RELEASED TO CLEAR DOCKET	D7910	L34	1
05/16/08	MOTION RELEASED TO CLEAR DOCKET	D7910	L34	1
05/16/08	MOTION RELEASED TO CLEAR DOCKET	D7910	L34	1
05/16/08	MOTION RELEASED TO CLEAR DOCKET	D7910	L34	1
03/27/08	MISCELLANEOUS PAPER	D7785	B87	16
03/27/08	MISCELLANEOUS PAPER	D7785	B85	2
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION GRANTED	D7764	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	MOTION DENIED	D7754	A02	23
03/14/08	DECISION ENTRY	D7754	A02	23

D7684	N71	7
D7652	H72	1
D7652	H72	1
D7634	E26	13
D7694	X74	29
D7679	A09	2
D7676	A38	19
C8951	H04	21
C8213	D14	18
C5760	J20	1
C5701	B18	6
C5229	A10	3
C5176	G08	4
C5176	F10	4
C4684	E20	8
C4404	E16	1
C4404	E07	4
C4223	F14	3
C4223	F11	3
C4211	J12	2
C3987	G04	2
C3987	G02	2
C3769	F10	3
C3634	C12	3
C3747	E08	2
C3114	D07	3
C2977	D07	3
C2972	G04	4
C2972	G01	3
C1861	F04	4
C1861	F01	3
C1146	C20	14
C1095	I07	3
C1095	I09	1
C1095	I09	1
C1095	I09	1
C1034	F20	7
C1011	E10	2
C0765	A01	3
C0131	A12	4
B9589	E12	2
B9589	E12	2
B9589	E12	2
B9487	I07	2
B9387	A06	6
B9387	A04	1
B9387	A01	1
B8694	A10	2
B7739	B20	2
B7739	A15	2
B7613	E06	9
B7094	F17	1
B7094	F17	1
B7054	A04	3
B7054	A04	3
B7054	A04	3
B7001	A05	2
B6947	E17	2
B6631	F20	2
B5846	C10	2
B5587	I05	1
B5587	I05	1
B4670	G11	1
B4560	A01	3
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4554	B06	1
B4217	I17	5
B4217	I11	3
B4169	I17	1
B4169	I17	1
B3678	J18	1
B3679	J19	1
B3385	B13	2
B3290	E07	5
B3170	D17	3
B3167	E12	2
B3167	D06	2
B3069	I20	3

06/23/05	MOTION FOR LEAVE TO FILE	B2888	J07	2
06/23/05	MOTION	B2888	J01	2
06/22/05	MOTION FOR LEAVE TO FILE	B2854	D09	2
06/15/05	MOTION	B2890	I02	4
06/13/05	REPLY BRIEF	B2634	J07	4
06/13/05	MISCELLANEOUS PAPER	B2634	J03	1
06/13/05	COST BILL PREPARED			
06/09/05	MOTION	B2578	D06	5
06/08/05	MOTION	B2580	I08	3
06/02/05	MOTION FOR LEAVE TO FILE	B2430	B14	3
05/31/05	ORDER	B2331	J04	1
05/26/05	MOTION	B2319	F13	3
05/26/05	RECORD TRANSMITTED TO COURT OF APPEALS	00000	A01	
05/26/05	MISCELLANEOUS PAPER	00000	A01	
05/24/05	ADDITIONAL COST BILL CREATED			
05/23/05	ORDER	B2227	B19	1
05/20/05	COMPLAINT FILED - CATEGORY D	B2202	A20	3
05/20/05	MISCELLANEOUS PAPER	B2202	A18	2
05/13/05	MOTION FOR LEAVE TO FILE	B2058	I17	2
05/13/05	APPEARANCE FILED - PRO SE	B2058	I17	2
05/13/05	MISCELLANEOUS PAPER	B2052	J11	3
05/11/05	ORIGINAL COPY OF FINAL APPEALABLE ORDER NOTICE FILED			
05/11/05	ORIGINAL COPY OF FINAL APPEALABLE ORDER NOTICE FILED			
05/10/05	STRIKE SCHEDULE DATE	B1882	A19	3
05/10/05	NOTICE OF FINAL APPEALABLE ORDER	B1882	A19	3