

IN THE SUPREME COURT OF OHIO

ARTHUR McKEE WISEHART,

Relator,

v.

THE HONORABLE JAMES A. BROGAN,  
SITTING BY ASSIGNMENT, PREBLE  
COUNTY COURT OF COMMON PLEAS,  
101 EAST MAINE STREET  
EATON, OH 45320

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

S.Ct. Case No. 2020-1369

20-1379

WRIT OF MANDAMUS AND  
WRIT OF PROHIBITION  
(Filed on November 9, 2020)

---

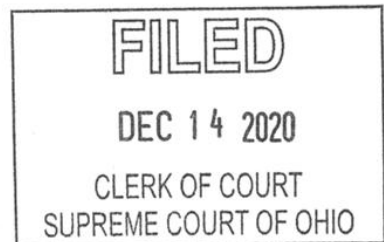
RELATOR'S VERIFIED RESPONSE AND MEMORANDUM, WITH ALL COSTS  
BEING TAXED TO RESPONDENT FOR FILING A MISLEADING  
AND FRIVOLOUS MOTION TO DISMISS

---

ARTHUR McKEE WISEHART  
229 Court Street, Hoboken, New Jersey 07030  
Phone (201) 683-3858; wisehartam@aol.com

RELATOR, PRO SE

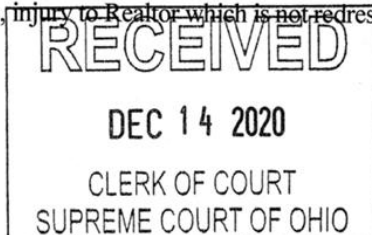
Martin P. Vogel (0067717)  
Preble County Assistant Prosecuting Attorney<sup>1</sup>  
101 East Main Street, First Floor, Eaton, Ohio 45320  
Phone (937) 456-8165; Fax No. (937) 456-8199; [kwest@prebco.org](mailto:kwest@prebco.org).



COUNSEL FOR RESPONDENT, THE HONORABLE JAMES A. BROGAN, SITTING BY  
ASSIGNMENT, PREBLE COUNTY COURT OF COMMON PLEAS

<sup>1</sup>Realtor's Writ of Mandamus and Writ of Prohibition is derivative of "ARTHUR DODSON WISEHART, in his Capacity as co-trustee of the Dorothy R. Wisehart Trust, 39508 Pitkin Road, Paonia, CO 81428 v. ARTHUR McKEE WISEHART, individually and in his capacity as co-trustee of the Dorothy R. Wisehart Trust, 129 Washington Street, Suite LL101, Hoboken, NJ 07030, and SCHRADER REAL ESTATE c/o Nick A. Cummings 2663 Lewis Road NE Washington Court House, OH 43160, and John Doe Address unknown," 15cv030565, hereinafter "15cv030565," commenced on July 6, 2015, as a civil action, not prosecution case, by the non-cognizable plaintiff without proof of the mandatory threshold issues of justiciability, viz., standing, injury-in-fact, and ripeness, seeking a declaratory judgment, injunctive and other relief on behalf of a third-party without standing.

RESPONDENT's non-responsive motion, with intent to deceive, must be DENIED because it is self-serving; Respondent prohibitively seeks appellate review of his own final declaratory judgment and decision entered on April 16, 2020; Respondent is wrong on the facts and law because "justiciability" is not the same as "subject matter jurisdiction," and also because Respondent admits, by waiver, Realtor has a clear right to mandamus relief and that Respondent has a clear legal duty to perform the act in question, namely, 15cv030565, but defiantly has failed and refused to do so and thereby has caused, and continues to cause, injury to Realtor which is not redressable by appellate review and constitutes a clear right to prohibition relief.



STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF HUDSON )

COMES NOW ARTHUR McKEE WISEHART ("RELATOR"), who being duly sworn, deposes and says, in response to Respondent's misleading and frivolous motion and memorandum to dismiss:

1. Respondent has avoided taking a position on the facts of the Writ of Mandamus and Writ of Prohibition filed herein by Realtor on November 9, 2020.

2. Respondent also has scrupulously avoided taking a position on the judicial act this Honorable Court must take, under controlling law of this Court and under controlling law of the Supreme Court of the United States, which is dispositive.

3. Accordingly, Respondent admits, by waiver, Realtor's Writ of Mandamus and Writ of Prohibition is required to be GRANTED, *with all costs being taxed to Respondent* for filing a misleading and frivolous motion to dismiss that is required to be DENIED.

4. Respondent's red hearing motion to dismiss also must be DENIED because Respondent seeks to exonerate himself by incomprehensibly, unreasonably, arbitrarily, and unconscionably requesting appellate review of his own void declaratory judgment and final decision entered by Respondent on April 16, 2020.

5. Respondent does not deny that since April 15, 2019, he has engaged in the unauthorized exercise of judicial power and that Respondent has caused and will continue to cause injury to Realtor who has no remedy at law to redress the past, present, and future injury by Respondent, which requires Realtor's Writ of Prohibition to be GRANTED.

6. Respondent also conceals from this Honorable Court, materially, that Respondent entered an Order on October 14, 2020, and a separate Decision on or about November 23, 2020, in which Respondent ruled he does not have subject matter jurisdiction over the “Colorado” cases.

7. Without jurisdiction, in a case that is not justiciable, Respondent entered an Order in 15cv030565 on November 23, 2020, to add the revised affidavit of attorney Scott J. Robinson to be considered as part of the non-cognizable plaintiff’s motion for attorney’s fees, in excess of \$236,868.18 (Two Hundred Thirty-Six Thousand Eight Hundred Sixty-Eight Dollars and Eighteen Cents), and thereby unlawfully seized assets of Realtor and the wife of Realtor, Joan Carol Lipin who is not a party to that civil action.

8. Recently, Respondent also committed unauthorized abuse of power by causing injury to Realtor, and to the wife of Realtor, regarding substantial acreage of real property, including real property and farms that are not identified in the unsworn complaint filed without standing, by the non-cognizable plaintiff in 15cv030565 on July 6, 2015, which requires the Writ of Prohibition to be GRANTED.

9. Respondent’s misleading and frivolous motion is required to be DENIED for the further reason that the “Colorado” case, regarding which Respondent recently ruled he does not have subject matter jurisdiction, presently are pending, *sub judice*, in three separate appeals, two in the United States Court of Appeals for the Tenth Circuit, and another in the State of Colorado Court of Appeals, located in Denver, Colorado.

10. Respondent admitted, by waiver, that all decisions, orders, injunctions, and also the final declaratory judgment and decision entered on April 16, 2020, are void because Respondent did not have, and does not have, subject matter jurisdiction over 15cv030565.

11. Realtor's Writ of Prohibition therefore is not limited to prospective application because it also is available to correct the results of previous jurisdictionally unauthorized actions, including those unauthorized actions by Judges Bruns and Abruzzo that caused injury, and continue to cause injury, to Realtor, as shown by Respondent's past, present, and threatened future reliance on his own unauthorized abuse of power, without jurisdiction, from which Realtor will not have an adequate remedy of law to appeal "those decisions when the underlying case is final and appealable after the question of attorney fees is determined," contrary to Respondent's fabricated, misleading, and frivolous self-serving statements. (Motion at 1, ¶ 3)

12. If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.

13. Thus, in cases of a patent and unambiguous lack of jurisdiction, the requirement of a lack of an adequate remedy of law need not be proven because the availability of alternate remedies like appeal would be immaterial.

14. Accordingly, Respondent is wrong on the facts and law, and his motion must be DENIED.

15. In addition, Respondent egregiously continues to engaged in unlawful abuse of power by acting as an advocate on behalf of the non-cognizable plaintiff in 15cv030565 who commenced that case simultaneously while he was, and continues to be, a Defendant party in the first in time and first in right litigation and first in time civil action commenced on April 15, 2015, by the father, Arthur McKee Wischart who is the Realtor herein, against his 60+-year-old-second son and third adult child, Arthur Dodson Wischart who is the Defendant-Appellee in each *sub judice* appeal presently pending in the United States Court of Appeals for the Tenth Circuit, located in Denver, Colorado.

16. The preposterous legal theory upon which Respondent relies in his motion to dismiss therefore is required to be DENIED under controlling law of this Honorable Court, the Twelfth District Appellate Court of Ohio, and the United States Supreme Court.

17. Simply put, the indisputable and dispositive facts in the record show, unequivocally, that Respondent, without jurisdiction, has committed engaged, and continues to engage, in unauthorized abuse of power, and thereby has caused, and continues to cause injury to Realtor, and has threatened to cause injury to Realtor in the future, on the basis of repeated prohibited acts.

18. Accordingly, Realtor's Writ of Prohibition must be GRANTED because there is no remedy at law to redress the past or present injuries, or threatened future injuries to Realtor by Respondent.

19. The *prima facie* and admissible evidence against the interests of the fabricated non-cognizable plaintiff in 15cv030565 is clear that that case is not justiciable.

20. "Arthur Dodson Wisehart, co-trustee of the Dorothy R. Wisehart trust, 39508 Pitkin Road, Paonia, CO 81428," did not suffer injury and he was not imminently in danger of suffering any injury and therefore was he did not have standing to commence 15cv030565 on July 6, 2015, when he filed the unsworn complaint seeking a declaratory judgment, injunctive and other relief, as admitted under oath by Arthur Dodson Wisehart in a notarized affidavit signed and filed on September 29, 2017, by Arthur Dodson Wisehart in the parallel Colorado civil action, that is not a prosecution case, contrary to the fabrications of Respondent.

21. Respondent therefore is bound by his rulings that Respondent and the Preble County Court of Common Pleas do not have subject matter jurisdiction over the "Colorado" cases.

22. Accordingly, Respondent's fabrications that purportedly he "has jurisdiction over the [15cv030565] case *sub judice* and the issue is justiciable" (*id.* at 2, ¶ 3), is without merit.

23. Respondent's misleading statements (*id.*), also are contrary to the sworn public filing affidavit admissions of Arthur Dodson Wisheart on September 29, 2017, in the Delta County Colorado state court case that are in issue in the three separate *sub judice* appeals presently pending in the United States Court of Appeals for the Tenth Circuit, *see* Case No. 20-1198 and Case No. 20-1007; and in the State of Colorado Court of Appeals, *see* 2019CA594.

24. It is well-established that subject matter jurisdiction goes to the power of a court to adjudicate the merits of a case and is a condition precedent to the court's ability to hear a case.

25. If a court acts without jurisdiction, then any proclamation by that court is void.

26. A void judgment has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally.

27. Respondent does not deny he has engaged in unauthorized abuse of power, and that he intends to act accordingly, in the future, without jurisdiction, with intent to cause continuing injury to Realtor from which Realtor's only meaningful redress is the Granting of his Writ of Prohibition.

28. Respondent has engaged in said acts, and has threatened to engage in said acts with knowledge of the following dispositive sworn admissions against the interests of Arthur Dodson Wisheart in the notarized public affidavit filing on September 29, 2017:

4. From the time Dorothy [R. Wisheart] died on November 28, 1993  
...., my father [Arthur McKee Wisheart] was the sole trustee of the DRW  
Trust ("Trust").

5. \*\*\* ... [A]n attorney (Richard [W.] Mertens) who practiced in Binghamton [located in Upstate New York], ... draft[ed] the appropriate document ("Appointment") ["Dorothy R. Wisheart Trust Appointment Co-Trustee"] [Record 2, p. 772.] [T]he Appointment [was] prepared by Mr. Mertens [which was not certified or authenticated in any Court of Law and therefore is nugatory because the document is without legal force or effect].....

\*\*\*\*\*

9. I [Arthur Dodson Wisehart] am aware of no amendments to the Trust other than the First and Second Amendments ....

\*\*\*\*\*

11. \* \* \*, and the assessor's office [located in Eaton, Preble County, Ohio] currently shows Ms. Lipin as the sole owner of property which should belong to the Trust. [Emphasis added.]

29. Because Arthur Dodson Wisehart has never been a “co-trustee” of his long-deceased grandmother’s trust, the fabricated non-cognizable plaintiff who commenced 15cv030565 on July 6, 2015, did not suffer and was not imminently in danger of suffering an injury for the further reason that the supposed “auction” of the only property identified in the unsworn complaint - - two separate farms located at 5291 New Paris Gettysburg Road, Jackson Township, Preble County, Ohio, did not happen.

30. Respondent’s statement “It was this action which began the case in controversy” therefore is misleading, frivolous, and contrary to controlling law. (Motion, page 2, ¶ 3).

31. Arthur Dodson Wisehart did not have standing to represent the interest of his long-deceased grandmother, by raising a generalized grievance in 15cv030565 on July 6, 2015, admittedly without standing.

32. Respondent therefore engaged in unauthorized abuse of power on April 16, 2016, by relying nearly five (5) years after 15cv030565 upon a void judgment entered in the non-related Colorado Federal case on February 12, 2018, Defendant Arthur Dodson Wisehart procured by fraud, to declare a final judgment and decision on behalf of the non-cognizable plaintiff, with knowledge that that issue is *sub judice* in each appeal presently pending in the United States Court of Appeals for the Tenth Circuit or in the State of Colorado Court of Appeals, located in Denver, Colorado.

33. On October 14, 2020, and subsequent thereto, Respondent ruled that Respondent and the Preble County Court of Common Pleas does not have subject matter jurisdiction over the



“Colorado” cases, and Respondent therefore is barred from contending to the contrary in his misleading and frivolous motion to dismiss.

34. Respondent’s motion to dismiss, and also Respondent’s past, continuing, and threatened unauthorized abuse of power, without jurisdiction, therefore constitute deliberate, purposeful, willful, knowing, and intentional tortious interference with each *sub judice* appeal presently pending in the United States Court of Appeals for the Tenth Circuit and the State of Colorado Court of Appeals.

35. Redress of the intended consequences and injury by Respondent to Realtor, and also to the wife of Realtor, requires the Realtor’s Writ of Prohibition filed herein to be GRANTED.

36. Respondent also has engaged in unauthorized abuse of power, without jurisdiction, because the matter commenced by the fabricated non-cognizable plaintiff on July 6, 2015, was premature, and continues to be premature for review.

37. If a party does not have standing, and does not have injury-in-fact, and does not have ripeness of the alleged claims, a court does not have jurisdiction because there is no case in controversy, contrary to the misleading statement of Respondent.

38. The undisputed dispositive facts show that the alleged injury as fabricated by the non-cognizable plaintiff in 15cv030565 have yet to occur.

39. Respondent’s self-serving fabrications at pages 2-3 of his motion, in an attempt to establish “subject matter jurisdiction,” therefore does not have merit.

40. Respondent also has engaged in unauthorized abuse of power by prohibitively using his motion to dismiss as a “substitute for an appeal.” (*id.* at page 3, first full ¶)

41. Realtor’s Writ of Mandamus and Writ of Prohibition therefore can be maintained on the facts and law, contrary to Respondent’s incorrect and misleading statements (*id.*, ¶¶ 2; 3)



42. Because the fabricated non-cognizable plaintiff in 15cv030565 admitted he could not have standing, and could not have injury-in-fact, and that his claims could not be ripe, Respondent had no discretion but to DISMISS 15cv030565.

43. Instead, Respondent failed and refused to rule upon the mandatory threshold issues of justiciability, like his predecessors, Judges Abruzzo and Bruns, and in an attempt to fabricate “subject matter jurisdiction” in 15cv030565, that is not “justiciable” (id. at pages 2-3), relied upon a void final judgment entered in a non-related Colorado Federal civil action in which the non-cognizable plaintiff was not a party, which is in issue in the *sub judice* Colorado appeals.

44. In order to cover-up the unauthorized abuse of power by Judges David N. Abruzzo and Stephen R. Bruns, and his own continuing unauthorized abuse of power, Respondent reprehensibly and unconscionably relied upon that void foreign judgment entered in the Colorado Federal Court on February 12, 2018, to enter the final decision and declaratory judgment on April 16, 2020, a copy of which Respondent attached to his motion to dismiss to appellate review, with personal knowledge that that issue is *sub judice* in the separate appeals presently pending in the United States Court of Appeals for the Tenth Circuit, and the Colorado Court of Appeals.

45. Respondent recently has threatened to rely upon a different void judgment, also procured on the basis of fraud by Arthur Dodson Wischart, in the Colorado Delta County district state court that similarly is in issue in the *sub judice* appeal presently pending in the State of Colorado Court of Appeals.

46. Respondent has ruled more than once that Respondent and the Preble County Court of Common Pleas does not have subject matter jurisdiction over the “Colorado” cases, with knowledge that the non-cognizable plaintiff in 15cv030565 admitted he could not demonstrate redressability.

47. This fact is dispositive.

48. Accordingly, each decision, injunction, order, upon which Respondent has relied, continues to rely, and threatens to rely, including and the final declaratory judgment and decision entered on April 16, 2020, also constitute unauthorized and prohibited advisory orders, decisions, injunctions, and a declaratory judgment.

49. Realtor's Writ of Prohibition therefore does meet the standards and it should be GRANTED, contrary to the incorrect contentions of Respondent.

50. The non-cognizable plaintiff in 15cv030565 was required to establish and prove causation at the commencement of the civil action on July 6, 2015, but he failed and refused to do so, and thereby did not have standing.

51. Respondent, with knowledge of the foregoing, like his predecessors.

52. Respondent, however, has acted, and continues to act, as an advocate for the non-cognizable plaintiff, as shown by Respondent's improper attachment of his own void final decision and declaratory judgment entered on April 16, 2020, to the misleading and frivolous motion to dismiss Respondent filed as a substitute for appellate review.

53. Realtor therefore has a clear right to mandamus relief because Respondent had, and has, a clear legal duty to perform the act in question, namely to DISMISS 15cv030565.

54. Realtor also has a clear right to prohibition relief because standing is a jurisdictional requirement.

55. It is an elementary concept of law that a party lacks standing to invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the subject matter of the action.

56. Further, a party is prohibited from relying upon a fabricated representative capacity to commence an action if that party did not have representative capacity at the commencement of the civil action.

57. Accordingly, Respondent continues to engage in unauthorized abuse of power in a Court without jurisdiction because there is no case in controversy, as shown by the unsworn complaint filed in 15cv030565 on July 6, 2015, a copy of which is attached to Realtor's Writ of Mandamus and Writ of Prohibition filed herein on November 9, 2020.

58. Such unauthorized exercise of judicial power by Respondent has caused injury to Realtor, and to the wife of Realtor, and continues to cause irreparable injury to Realtor, Arthur McKee Wisheart, for which there is no remedy at law.

59. Respondent's reliance upon the specious contention "that the issue is not justiciable is without merit" (Respondent's Motion at 2, ¶ 4), therefore is required to be rejected.

60. The law is clear, a court is prohibited from engaging in the unauthorized exercise of judicial power if there is no case in controversy.

61. Respondent, in defiance, prohibitively continues to rely upon the void non-related foreign judgment entered in a non-related Colorado Federal case on February 12, 2018, with knowledge that the non-cognizable plaintiff in 15cv030565, "*ARTHUR DODSON WISEHART, in his Capacity as co-trustee of the Dorothy R. Wisheart Trust, 39508 Pitkin Road, Paonia, CO 81428,*" was not a party in *Joan C. Lipin v. Arthur Dodson Wisheart, et al.*

62. This Honorable Court recently affirmed the dismissal of a complaint for lack of standing when it had been filed before the claimant had suffered any injury.

63. Because standing to sue is required to invoke the jurisdiction of the common pleas court, and standing was to be determined as of the commencement of suit on July 6, 2015, the

claimant in 15cv030565 not suffer injury-in-fact before the commencement of that civil action on July 6, 2015.

64. Because that fabricated plaintiff, or claimant, did not suffer any injury-in-fact before he commenced that civil action, the claims were not ripe, and therefore fabricated.

65. Respondent therefore has prohibitively abused his power.

66. Respondent also has threatened to continue to do so, as admitted by Respondent in his motion to dismiss.

67. Respondent contemptuous and reckless exercise of judicial power that is unauthorized by law, with intent to tortiously interfere with the aforesaid sub judice appeals that presently are pending in the United States Court of Appeals for the Tenth Circuit, and in the State of Colorado Court of Appeals, each located in Denver, Colorado, and to cause continuing injury to Realtor, and to the wife of Realtor, must not be permitted to continue.

68. Accordingly, Respondent must be enjoined, and Realtor's Writ of Prohibition GRANTED.

69. Standing to sue is required to invoke the jurisdiction of the common pleas court, and standing is to be determined as of the commencement of suit.

70. Further, as held by the United States Supreme Court, nearly two hundred years ago, invoking the jurisdiction of the court "depends on the state of things at the time of the action brought," see *Mollan v. Torrance*, 22 U.S. 537, 539, 6 L. Ed 154 (1824); emphasis added.

71. In *Rockwell Internal Corp. v. United States*, 549 U.S. 457, 473, 127 S. Ct. 1397, 167 L. Ed.2d 190 (2007), the Supreme Court also held that the present supposed "state of things" are "not synonymous with the originally alleged state of things." (Emphasis added.)

72. Accordingly, lack of standing challenges the capacity of a party to bring an action, not the subject matter jurisdiction of the court. See State ex rel. Smith v. Smith (1996), 75 Ohio St. 3d 418, 420, 662 N.E.2d 366, 369; State ex rel LTV Steel Co. v. Gwin (1992), 64 Ohio St. 3d 245, 251, 594 N.E. 6161, 621, 1992 Ohio 20. 84 Ohio St. 3d 70, 77, 1998 Ohio 275, 701 N.E.2d 1002 (further stating that “challenge to jurisdiction on the basis of ... lack of standing does not attack the court’s subject matter jurisdiction, but rather its power to hear the claim as asserted by this particular party,” and that “[standing is a threshold question for the court to decide in order for it to proceed to adjudicate the action”).

73. Realtor’s Writ of Mandamus and Writ of Prohibition therefore should be GRANTED for the further reasons that the law is well-established that for a cause to be “justiciable, there must exist a real controversy presenting issues which are ripe for judicial resolution and which will have a direct and immediate impact on the parties.” *See Burger Brewing Co. v. Liquor Control Comm.* (1973), 34 Ohio St.2s 93, 97-98, 296 N.E.2d 261; *State ex rel. Barclays BankPLC v. Court of Common Pleas of Hamilton County*, 74 Ohio St. 3d 536, 542, 1996 Ohio 286, 660 N.E.2d 458. Respondent’s misleading and frivolous motion must be denied under this Honorable Court’s holding that “actual controversies are presented only when the plaintiff sues an adverse party. This means not merely a party in sharp and acrimonious disagreement with the plaintiff, but a party from whose adverse conduct or adverse property interest the plaintiff properly claims the protection of the law.” (Emphasis added.)

74. Respondent also has direct knowledge that when an action is brought by a plaintiff who lacks standing, such as in 15cv030565, the action is not justiciable because it fails to present a case or controversy between the parties before it.

75. In addition, Respondent also has direct knowledge that the law also is well-established that a court's lack of jurisdiction, *i.e.*, its ability to properly resolve a particular action due to the lack of a real case or controversy between the parties, does not mean that the court lacked subject-matter jurisdiction over the case, but that a court, such as the Preble County Court of Common Pleas, did not have jurisdiction, and that Respondent was, and is, without legal authority to act.

76. Respondent therefore had no discretion but to DISMISS 15cv030565 because the non-cognizable plaintiff failed and refused to establish a justiciable interest of the subject matter of the suit at the time the fabricated plaintiff therein attempted to invoke the jurisdiction of the Preble County Court of Common Pleas on July 6, 2015, without satisfying his burden of proof regarding the threshold mandatory issues of justiciability.

77. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), reversing and remanding on justiciability grounds because the plaintiffs had not met their burden of proof regarding causation and redressability and therefore did not have standing to bring the action, like in the instant case.

78. Respondent therefore knowingly engaged in unauthorized abuse of power by relying upon the non-related void Colorado Federal court post-filing event on February 12, 2018, to enter the final judgment and declaratory judgment on April 16, 2020, nearly five years (5) after the commencement of the case, without standing, on July 6, 2015.

79. This Honorable Court has established the principle that standing is determined as of the filing of the complaint. *Mt. Pilgrim Baptist Church, Inc. v. Bishop*, 2014 Ohio Misc. LEXIS 23919 (Sept. 3, 2014), granting the motions to dismiss plaintiffs' Verified Complaint for declaratory relief, injunctions and damages.

80. See also *Cleveland v. Shaker Hts.*, 30 Ohio St.3d 49, 51, 30 Ohio B. 156, 507 N.E.2d 323 (1987):

“Whether a party has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy is what has traditionally been referred to as the question of standing to sue ... [and] the question of standing depends on whether the party has alleged a personal stake in the outcome of the controversy.” *Id.* \* \* \* Similarly, the United States Supreme Court observed in *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102, 118, S. Ct. 1003, 140 L.Ed.2d 210 (1998), that ‘[s]tanding to sue is part of the common understanding of what it takes to make a justiciable case.’ [Emphasis added.]

81. See also *Kincaid v. Erie Ins. Co.*, 128 St.3d 322, 2010 Ohio 6036, 944 N.E.2d 207, in which the Court affirmed the dismissal of a complaint for lack of standing when it had been filed before the claimant had suffered any injury, and held “Kincaid lacked standing to assert the cause of action, had suffered no actual damages, the parties do not have adverse legal interests, and there [was] no justiciable controversy.” *Id.* at ¶ 13.

82. Accordingly, Realtor moves that Respondent’s motion to dismiss be DENIED.

83. Realtor also moves that his Writ of Mandamus and Writ of Prohibition be GRANTED.

Dated: December 11, 2020



---

Arthur McKee Wischart  
229 Court Street  
Hoboken, New Jersey 07030  
201.683.3858; [wischartam@aol.com](mailto:wischartam@aol.com)

Relator, *Pro Se*



STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF HUDSON )

I have read the foregoing statements of fact, and know the contents thereof, and the same are true to my personal knowledge and belief insofar as the statements set forth herein conform to the record of the proceedings in this Court, and in other Courts.

Mr. Wm. McKee & Son

Defendant, *Pro Se*

Sworn to before me this  
11th day of December, 2020, by Arthur McKee Wischart,  
a person personally known to me:

Notary Public

**Sarahi Echeverri**  
**Notary Public**  
**New Jersey**  
**My Commission Expires 01-09-2025**  
**No. 50119804**

### CERTIFICATE OF SERVICE

ARTHUR MCKEE WISEHART, who is the undersigned, hereby certifies that a true copy of the foregoing document was served by e-mail upon counsel of record for Respondent, Honorable James A. Brogan, Sitting by Assignment, Preble County Court of Common Pleas, 101 East Main Street, Eaton, Ohio 45320, this 12th day of December, 2020, at their offices listed below:

Martin P. Vogel (0067717)  
Preble County Assistant Prosecuting Attorney  
101 East Main Street, First Floor, Eaton, Ohio 45320  
Phone (937) 456-8165; Fax No. (937) 456-8199; [kwest@prebco.org](mailto:kwest@prebco.org).



---

Arthur McKee Wischart  
229 Court Street  
Hoboken, New Jersey 07030  
(201) 683.3858; [wisehartam@aol.com](mailto:wisehartam@aol.com)

REALTOR, PRO SE