CASE NO.

IN THE SUPREME COURT OF OHIO

STATE EX. REL. SEBASTIAN RUCCI

108 Hawkins Drive
Columbiana, Ohio 44408

RELATOR

vs.

JUDGE JOSEPH L. SCHIAVONI

120 Market Street
Youngstown, OH 44503

RESPONDENT

MEMORANDUM IN SUPPORT OF COMPLAINT FOR WRIT OF MANDAMUS

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COUNT 1 (LANDOWNER FAILED TO SERVE THREE-DAY NOTICE) (LACKED SUBJECT-MATTER-JURISDICTION)

Relator, Sebastian Rucci, is entitled to a writ of mandamus due to Respondent, Judge Schiavoni, exercising judicial power without subject matter jurisdiction. Denying the writ would cause injury without remedy and mandamus is proper "to correct the results of prior jurisdictionally unauthorized actions." *State ex rel. Fiser v. Kolesar*, 164 Ohio St. 3d 1, 2, 2020-Ohio-5483, ¶19.

Before a forcible entry and detainer action is filed, the landowner must give the tenant three-days notice "to **leave the premises** [or] an eviction action may be initiated." R.C. § 1923.04(A). "Proper service of the three-day notice is a **condition precedent to the commencement of an eviction action**, and it is a separate jurisdictional step that must be completed before [an eviction] action is filed." *Ebbing v. Mathis*, 12th Dist. No. CA2012-10-201, 2013-Ohio-2273, ¶11.

"Compliance with the notice provisions of R.C. 1923.04 is a **precondition** to invoking a court's jurisdiction in an eviction action." *UMH OH Buckeye II, L.L.C. v. DeCarlo*, 8th Dist. No. 108912, 2019-Ohio-4986, ¶6. "In order to invoke the jurisdiction of the court, full compliance with R.C. § 1923.04 is a mandatory requirement, and the **notice therein required cannot be waived**." *Riley v. Parker*, 8th Dist. No. 109600, 2021-Ohio-1726, ¶10.

"Courts regularly **dismiss eviction actions** where the statutorily required **notice to vacate in R.C. § 1923.04(A) is not provided three days prior** to filing the eviction action or is served by the wrong method or contains lacking language." *Homeowners Assn. at Arrowhead Bay v. Fidoe*, 7th Dist. 12MA136, 2014-Ohio-1469, ¶12.

Relator, Sebastian Rucci, has "**lived on-site as his permanent residence**" at the Austintown property for over eight years "since 2013." [Compl. ¶10]. The landowner, Pender, was aware he lived on-site, because three months before Pender agreed to make the $4 million loan, "Pender's owner, toured the Austintown property and discussed the loan with Sebastian Rucci in dwelling unit, Room 414 to 418, and was informed he lived on-site and this was his personal residence." [Compl. ¶11].

"Compliance with the notice provisions of R.C. 1923.04 is a precondition to invoking a court's jurisdiction in an eviction action." *DeCarlo*, *supra*, at ¶6. "Despite being aware that Sebastian Rucci lived on-site as his personal residence Pender **did not serve Sebastian Rucci with the statutory three-day notice**." [Compl. ¶19]. Accordingly, the Austintown county court **lacked subject matter jurisdiction** of the eviction against Sebastian Rucci and its judgment of eviction and writ of restitution are *void ab initio*.

Relator, Sebastian Rucci, recognizes that the eviction of a large treatment center is a large task for any judge. However, the Austintown is a county court "a statutory creation with only limited jurisdiction, and may exercise only such powers as are directly conferred by legislative action." *Kolesar*, 164 Ohio St. 3d at 5, 2020-Ohio-5483 at ¶20. Respondent, Judge Schiavoni was aware, before issuing the writ of restitution, that Sebastian Rucci was a long-term resident at the property and that he was not a party to the eviction action and his claims were not being addressed in the eviction, without notice or opportunity to be heard.

On March 18, 2022, Sebastian Rucci filed a motion to intervene in the eviction action stating: "He has not been heard and is impacted both from the contractual rights and

personally as to the **eviction from his home, where he has resided for the past eight years**." [Compl. ¶41]. On March 21, 2022, Judge Schiavoni denied the motion in an order which confirmed that the court was fully aware that residents were living at the facility. [Apx. pg. 13]. The court ordered "that a plan be implemented for placing **any and all existing residents** of the facility into a new facility." [Apx. pg. 13; Compl. ¶42]. The order did not identify who was to implement the plan, presumably this was on Pender, the landlord, the order also did not require the landowner to report compliance with the order back to the court, because the landowner did nothing to relocate "existing residents."

The eviction of Relator, Sebastian Rucci, from his permanent dwelling, issued without service of the three-day notice. Respondent, Judge Schiavoni was without subject-matter-jurisdiction, requiring this Honorable Court issue a writ of mandamus to prevent any future unauthorized exercise of jurisdiction and "to **correct the results of prior jurisdictionally unauthorized actions**." *State ex rel. Sapp v. Franklin County Ct of Appeals*, 118 Ohio St. 3d 368, 370, 2008-Ohio-2637, ¶15. Relator is entitled to an order vacating the judgment of eviction issued without service of the three-day notice without subject-matter-jurisdiction.

COUNT 2 (LANDOWNER FAILED TO SERVE 90-DAY NOTICE)
(VIOLATION OF PROTECTING TENANTS AT FORECLOSURE ACT)

The federally mandated, Protecting Tenants at Foreclosure Act, Public Law No. 111-22, Section 701-704 (formerly codified in 12 U.S.C. § 5220) ("PTFA") provides national standards for protecting tenants with preexisting tenancies after a foreclosure sale.

"The PTFA protects tenants who reside in properties that are subject to foreclosure by imposing certain obligations on successors in interest to foreclosed properties." *Yemma*

v. Reed, 7th Dist. No. 16-MA-015, 2017-Ohio-1015 at ¶40. The PTFA requires the success at a foreclosure sale to provide "a **notice to vacate** to any bona fide tenant **at least 90 days before** the effective date of such notice." PTFA § 702(a)(1). The 90-day notice applies even if the tenant is "**without a lease** or with a lease terminable at will." PTFA § 702(a)(2)(B).

Relator, Sebastian Rucci, did not receive from Pender, the successor at the foreclosure sale, the federally mandated pre-termination "notice to vacate" at "least 90 days" before the eviction issued. See PTFA § 702(a)(1). In *Deutsche Bank Nat'l Trust Co. v. Green*, 5th Dist. No 14CA033, 2015-Ohio-3319, ¶18 the successor at a foreclosure served "a 90-day notice to leave the premises" pursuant to the PTFA, "the **tenants received both the 90-day and 3-day notices**." Sebastian Rucci received neither the federally mandated 90-day notice nor the state mandated three-day notice. [Compl. ¶19].

The PTFA preempted any "state law that is less protective of tenants." *Mik v. Fed. Home Loan Mortg. Corp*., 743 F.3d 149, 165 (6th Cir. 2014). The PTFA's 90-day notice is thirty times more protective than Ohio's statutory three-days notice. The 90-days notice provided by the "PTFA would be rendered virtually meaningless if the successor in interest at the foreclosure sale could ignore its protections with impunity, bypass the judicial process and **evict any tenant without notice or court process**." *Mik*, 743 F.3d at 167.

The PTFA also requires the successor at the foreclosure to allow the tenant with a lease "to occupy the premises until the **end of the remaining term of the lease**." PTFA § 702(a)(2)(A). The PTFA permits a tenant "a right to occupy the premises until the end of the lease term in the case of a bona fide lease." *Yemma v. Reed*, *supra*, 2017-Ohio-1015, ¶40.

Sebastian Rucci, similar to CaliParc, had thirteen months remaining on his lease when Pender filed for eviction. [Compl. ¶44]. He was not provided the right to "occupy the premises until the **end of the remaining term of the lease**" under PTFA § 702(a)(2)(A). The **judgment of eviction and writ of restitution is *void*** for any one of these four violations of the PTFA.

The PTFA applies to Pender's eviction because the Austintown property housed Sebastian Rucci in dwelling units 414, 416, and 418. [Compl. ¶11]. "The Austintown property contains **dwelling units** with living, eating, cooking, sleeping, and sanitation with a private bathroom." [Compl. ¶38]. "**Dwelling unit means** an accommodation room within a hotel that contains independent provisions for living, eating, cooking, sleeping, and sanitation." R.C. § 3731.01(A)(7). The dwelling units are zoned by Austintown Township as residential. Pursuant to PTFA § 702(b), Sebastian Rucci's rent for the past eight years was substantially more than, and "not substantially less than fair market rent." [Compl. ¶40].

Sebastian Rucci was not provided by Pender the federally mandated 90-days notice [Compl. ¶¶ 21, 50] as a tenant "without a lease" requiring Pender to provide "the **receipt by the tenant** of the 90 day notice" before the date of the eviction under PTFA § 702(a)(2)(B). Relator was not provided "**notice to vacate** . . . **at least 90 days before**" the eviction as a tenant with a written lease under PTFA § 702(a)(1).

Sebastian Rucci was not provided the right to "occupy the premises until the **end of the remaining term of the lease**" which had thirteen months remaining [Compl. ¶44] under PTFA § 702(a)(2)(A). Sebastian Rucci was also not provided the three-day notice [Compl. ¶19] required under state law pursuant to R.C. § 1923.04(a).

In *Huntington Nat'l Bank v. Payson*, 2nd Dist. No. 26396, 2015-Ohio-1976, ¶12 the court reversed the foreclosure noting that no "ruling addresses the rights of the tenant pursuant to the **federally mandated** Protecting Tenants at Foreclosure Act."

The Austintown county court **lacked subject matter jurisdiction** of Pender's forcible entry and detainer action used to evict Sebastian Rucci, for any one of the four independent violations noted above, making the judgment of eviction and writ of restitution *void ab initio* for four independent reasons.

COUNT 3 (THREE DAY NOTICE WAIVED BY $500,000 DOWN-PAYMENT)
(LACKED SUBJECT-MATTER-JURISDICTION)

On August 19, 2021 the parties entered into an in-court settlement during a bench trial in the usury case, *Calif. Palms v. Pender*, 20cv119. Sebastian Rucci and CaliParc agreed to purchase the property for $4.6 million, to make an immediate down payment of $500,000 and to dismiss all the pending cases and appeals. CaliParc agreed to a consent eviction if closing did not occur by October 29, 2021 (initial date extended by agreement). The consent eviction implicitly permitted occupancy by the parties during the financing period.

On August 23, 2021, the $500,000 wire transfer for the down payment was received by Pender. [Compl. ¶24]. The payment was made four months after the forcible entry and detainer action was filed. Respondent, Judge Schiavoni, noted in his ruling on January 25, 2022, that he was aware of the $500,000 "payment towards the purchase price of the subject premises" and of "the $500,000 paid to plaintiff [Pender] in August, 2021." [Apx. pg. 11].

The eviction action with CaliParc as a defendant was filed on April 29, 2021, after Pender served the three-day notice on CaliParc on April 21, 2021. Sebastian Rucci was not issued any notice and was not served a summons or complaint as a defendant to the eviction. Four months after the eviction was filed, Pender voluntarily entered into an agreement to sell the property, Pender received $500,000 as a down payment for closing at a date in the future.

If "after serving a notice to vacate" the landowners acceptance of payments for "future" issues, the landowner acts "inconsistent" with the notice to vacate the premises, and "the landowner must be deemed to have **waived the notice to vacate as a matter of law**." *North Face Prop. v. Dong Lin*, 12th Dist. No. CA2012-09-083, 2013-Ohio-2281, ¶9.

Pender willingly allowed occupancy of the property on August 19, 2022 while financing was being pursued, and accepted a $500,000 down-payment on August 23, 2021, for closing in the future (eight months after filing eviction). Both events are inconsistent with the April 21, 2021 notice to vacate the premises, Pender is "deemed to have waived the notice to vacate as a matter of law." *Id.*

"If the landlord waives the notice to vacate, the trial court lacks jurisdiction to proceed with the action." *Premiere Mgmt. v. Nutt,* 3rd Dist., No. 6-09-15, 2010-Ohio-1255, ¶10. However, after Pender "waived its three-day notice [Pender could have] re-filed its forcible entry and detainer action after providing [tenant] with another three-day notice." *North Face Prop. v. Dong Lin*, supra, 2013-Ohio-2281, ¶17. Pender did not correct its clear waiver of the April 21, 2021 three-day notice served on the buyer, CaliParc. Instead, Pender refused to dismiss the existing forcible entry and detainer action, and issue a second three-day notice on the tenants and file a subsequent forcible entry and detainer action.

Because Pender's actions "waive[d] service of the notice to vacate . . . the court lacks subject-matter jurisdiction over the action, thus **rendering any judgment *void ab initio***." *Eureka Multifamily Group v. Terrell*, 6th Dist. No. L-14-1152, 2015-Ohio-1861, ¶11. The Austintown county court **lacked subject matter jurisdiction** of Pender's forcible entry and detainer action against CaliParc and against Relator making the judgment of eviction and writ of restitution *void ab initio* for these additional reasons.

COUNT 4 (WRIT OF RESTITUTION SIGNED BY CLERK IS VOID)

The statutory form for a Writ of Restitution is found in R.C. § 1923.13 and confirms that a judge's signature is required. The last line of the statutory Writ of Execution provides for the signature of the judge (not the clerk) as follows:

> **R.C. § 1923.13(a)** "Writ of Execution. When a judgment of restitution is entered by a court in an action under this chapter . . . that court shall issue a writ of execution on the judgment, in the following form . . .
> Witness my hand, this . . . day of . . . **JUDGE**, . . . **COURT**."

R.C. § 1923.14 provides the procedure for enforcement of the writ of restitution by the Sheriff and states in part as follows:

> **R.C. § 1923.14** "Within ten days after receiving a writ of execution described in division (A) or (B) of section 1923.13 of the Revised Code, the sheriff . . . **shall execute it** ... by restoring the plaintiff to the possession of the premises."

R.C. § 1923.14 permits the sheriff to only execute a Writ of Restitution that complies with R.C. § 1923.13. The Sheriff "shall execute" a writ only if it is signed by a judge, because only a writ signed by a judge complies with R.C. § 1923.13. The sheriff cannot execute a writ signed by a clerk, because it violates R.C. § 1923.13.

On March 21, 2022, the Deputy Clerk, instead of the county judge, signed the Writ of Execution at issue. [Apx. pg. 17; Exhibit C]. The Writs of Restitution at issue is void and therefore not capable of execution. See R.C. § 1923.13 (writ requires judges signature); R.C. § 1923.14 (sheriff only executes writ if it complies with R.C. § 1923.13).

In *Maple Del Manor v. Peterson*, 11th Dist. No. 93-P-039, 1994 Ohio App. Lexis 496 the landlord "filed a praecipe for a writ of restitution. A writ was issued by the clerk of the

municipal court, not the trial judge" the "trial court did not sign the writ." *Peterson* at *3. The "court vacated the writ" and the landlord appealed. The Eleventh District noted: "R.C. § 1923.13 prescribes the form for a writ of restitution. It **indicates that a judge's signature is required**. . . only the clerk of courts signed the writ. Without the trial court's signature, the writ was not final." *Peterson* at *6. Since "only the clerk of courts signed the writ, without the trial court's signature" the writ "was not valid" like a void order. *Id.* at *5-6.

The Writ of Restitution at issue states that the judgement was rendered on January 5, 2022. [Apx. pg. 17; Exhibit C]. The docket confirms that there is no judgement on that date [Apx. pg. 9]. If Respondent had prepared and signed the writ as mandated by R.C. § 1923.13, Respondent could have inserted the correct date which is unclear from the docket.

On January 27, 2022, CaliParc noted in a Motion to Recall the Writ [Apx. pg. 12] that the deputy clerk signed the writ in violation of R.C. § 1923.13 and that the writ should have been signed by the judge. [Compl. ¶53]. Respondent overruled the motion on January 28, 2022 without addressing this issue. [Apx. pg. 16]. The statutory mandate that, Respondent, Judge Schiavoni, sign the writ of restitution is only asking for the performance of Respondent's clear legal duty. Because a writ signed by judge is mandated by R.C. § 1923.13 (writ requires judge's signature) the county sheriff can only evict Relator with a writ signed by a judge. See R.C. § 1923.14 (sheriff only executes a writ of restitution which complies with R.C. § 1923.13).

Relator seeks a **peremptory writ of mandamus** ordering Respondent to issue an order allowing Relator to remove the personal property he left behind when he was evicted from his permanent dwelling with a writ of restitution signed by a clerk instead of the judge.

COUNT 5 (CONSENT EVICTION WAIVED BY PENDER'S BREACH)

Once Pender received the $500,000 down payment [Apx. pg. 57], the dismissal of the usury case, the dismissal of the foreclosure and confirmation appeals, and a pre-signed consent eviction, Pender refused to provide the letter memorializing the sale, which was a material part of the in-court settlement and prevented timely financing of the property.

On January 25, 2022 Respondent ruled in an order the "fact that the prior contractual arrangements between the parties have not come to fruition is not part of this court's eviction action" and this "**court is not bound to evaluate the parties' contractual obligations**, same clearly in excess of this court's monetary jurisdiction." [Apx. pg. 11].

However, the consent judgement, signed three months before it was entered, was the foundation for the eviction and if Pender breached, its breach must be decided before Pender can use the consent to evict tenants. Respondent should have transferred the case to the Court of Common Pleas for complete adjudication of all the issues. See *Richwood Homes v. Brown* (1981), 3 Ohio App. 3d 204, 205 (court in eviction case should have transferred "the entire action to the common pleas court for a complete adjudication upon all issues.")

On March 18, 2022, Sebastian Rucci filed a motion to join, intervene or transfer Pender's forcible entry and detainer action. [Apx. pg. 13]. The motion noted that Sebastian Rucci was a party to an in-court settlement and the consent judgment is based on a settlement which Pender breached vacating any consent eviction given when the settlement was first made. Sebastian Rucci sought that Respondent transfer the case to that court of common pleas for full adjudication. See *Richwood Homes v. Brown* (1981), 3 Ohio App. 3d 204, 205

("court of common pleas also has jurisdiction to hear forcible entry and detainer actions" The case should have been transferred "to the common pleas court for a complete adjudication.")

The motion noted that "Sebastian Rucci gave up multiple appeals, including the usury case, where he and CaliParc prevailed in every motion . . .including the payment of $500,000 to Pender" and "having been deprived of the benefit of the bargain" he "has not been heard and his rights are impacted both from the contractual rights and personally as to the eviction from his dwelling, where **he has resided for the past eight years**."

The motion noted: "If Pender had dismissed the eviction upon agreeing to the contract to sell the property, then Pender would have had to file a forcible entry action on October 29, 2021 which would have permitted the parties an opportunity to either transfer the case or assert that issue as a defense." Instead, "Pender kept the eviction open while it was approving of the party's possession. This act was itself inconsistent with its three-day notice, and many courts have held this strips the court of jurisdiction."

Sebastian Rucci relied on Pender's promise to provide documentation to secure financing. The documentation was not timely provided, as the parties agree in open court, and having been deprived of the benefit of the bargain, Sebastian Rucci sought to intervene, or join, to protect his interest. On March 21, 2022, Respondent, Judge Schiavoni, issued an order denying Sebastian Rucci's motion. [Apx. pg. 13]. Setting aside that Sebastian Rucci should have received notice and an opportunity to be heard in the eviction, the burden to relocate residents as ordered by Respondent was on Pender as the party filing for eviction, but Pender did nothing to transfer existing residents to other facilities.

Emails confirm Pender breached the agreement. [Compl. ¶5]. Pender's counsel confirmed in his in-court presentation he would "prepare a letter that outlines these terms for California Palms to provide to his new financing source." The timing was a material term, Sebastian Rucci stated his main concern was to make "certain that we can get documentation" needed for financing from Pender. [Compl. ¶23]. Magistrate Judge Melone shared this concern: "One concern I have is that [Pender's Counsel] indicated that he's going to draft a letter that [Mr. Rucci] can present to [his] lender for financing . . . how soon do you expect to have that letter detailing the agreement?" Pender's counsel responded he would "draft that letter within a few hours after" leaving court that day. [Compl. ¶23]. The $500,000 was wired only after the assurances that at least six weeks would be provided to secure refinancing. [Compl. ¶24].

If Pender had complied with its promise in providing the letter, financing was a certainty. CaliParc had a four-year history in business, $1 million in the bank, an average daily census of 100 patients, 50 employees including doctors, nurses, and other professionals, two appraisals at two times the loan amount, an environmental report, survey of the property, title report, business plans, tax returns. [Compl. ¶56]. Financing within the time allocated was a certainty, but no lender would begin a $4.1 million loan without a written agreement. [*Id*.]

Pender is in the loan business and is fully aware of the importance of a purchase document to secure a $4.1 million loan. Pender did not provide the letter on April 19th as agreed on the record. Pender provided a letter one month later than promised in court, but

Pender wanted to close the loan in ten days. Instead of six weeks as originally agreed. Pender did not comply with its material promise to provide a letter on August 19th.

The consent eviction was agreed to based upon a promise by Pender to provide the letter needed to secure financing. Pender did not provide the letter as agreed and this material breach prevented financing. Sebastian Rucci eventually secured financing, but Pender refused to cooperate with the sale, even though Pender was responsible for the delay, **and the sale was not consummated**, Pender also refused to return the $500,000 down-payment. See *Richwood Homes v. Brown* (1981), 3 Ohio App. 3d 204, 205 (transfer is proper to court common pleas with jurisdiction over eviction and contract issue).

COUNT 6 (LACK OF DUE PROCESS PROTECTIONS)

The Due Process Clause requires **notice and an opportunity to be heard** before a tenant may be evicted. Sebastian Rucci's rights to notice and a hearing were completely disregarded. The summary eviction requires notice and an opportunity to be heard before a tenant may be evicted. Forcible eviction of tenants is a deprivation of constitutional rights when carried out by law enforcement officers in the absence of a legal basis for doing so.

"The right to **prior notice and a hearing** is central to the Constitution's command of due process." *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53 (1993). "Due process generally **requires notice and a hearing prior to eviction**." *Thomas v. Cohen*, 304 F.3d 563, 576 (6th Cir. 2002). Because Relator "has a protected property interest, a pre-deprivation hearing of some sort is generally required to satisfy the dictates of due process." *Leary v. Daeschner*, 228 F.3d 729, 742 (6th Cir. 2001).

The Fourth Amendment is impacted when the government enforces an **illegal eviction** by forcing a tenant to vacate the premises. "To constitute a seizure of property within the meaning of the Fourth Amendment, it is enough that the governmental agent's action amounted to meaningful interference with an individual's possessory interests in that property." *Thomas v. Cohen*, 304 F.3d 563, 572 (6th Cir. 2002). "Escorting tenants from their residences in the course of effectuating an eviction, as in this case, satisfies the requirement of meaningful interference with their leasehold interest so as to amount to a seizure of their property." *Id*. Sebastian Rucci "had a clearly established right to be free from such unconstitutional seizures." *Id*.

Sebastian Rucci was wrongfully evicted, he **received no notice from the county court**, he was not permitted to intervene, he did not receive service of the three-day notice to vacate; he did not receive service of the 90-day PTFA pre-termination notice; he did not receive protection of the premises until the end of the lease term (two more years), he was evicted with a writ of mandamus signed by the deputy clerk. Not one of the long term residents received any notice, let alone the 90 day notice mandated by the PFTA.

On April 18, 2022, CaliParc notified Respondent that the Seventh District issued a stay on April 5, 2022. [Apx. pg. 13]. The County Court faxed the stay to the Sheriff and CaliParc believed the county court agreed. The last day the Sheriff set for execution of the writ was August 20, 2022. [Compl. ¶64]. On April 20, 2022, the court issued an order, permitting execution of the writ to proceed, the order was faxed to the Sheriff on April 20, 2022. [Apx. pg. 15]. On April 21, 2022 the sheriff evicted Sebastian Rucci and other long

term tenants. [Compl. ¶64]. **All their property remained behind**. The written copy of the court's April 20, 2022 order was not received by anyone, CaliParc received it in the mail on April 23, 2022, two days after the eviction.

The Austintown property comprises a 102 room building, and **all furniture, fixtures and equipment was left behind**. The Sheriff's eviction notice, which had lapsed by April 21, 2022, states that your "property and effects will be moved to the street without further notice to you, or placed in storage." [Apx. pg. 18]. Neither was done that day, Sebastian Rucci believed based on discussions with Pender's representative he could return to get his belongings. Upon approaching Pender to secure access to his property Pender refused to allow access to his property unless he waived his claims against Pender.

Emails between Sebastian Rucci and Pender confirm his efforts to receive the return of his property and that Pender denied access to his personal property. [Compl. ¶¶65-69]. Considering that he has claims that Pender breached the settlement agreement and retained the $500,000 down-payment the waiver is too high a price for a tenant of the property for over eight years, who received no notice or opportunity to be heard.

A temporary restraining order is necessary to prevent irreparable harm so that Relator Sebastian Rucci can secure the property he left behind when the sheriff executed a void writ of restitution without notice, or opportunity to be heard. Sebastian Rucci will face irreparable harm without a **peremptory writ of mandamus** to secure his person property he left behind when he was evicted from his residence with a void judgement from a court without subject matter jurisdiction and a void writ of restitution signed by a clerk instead of the judge.

THERE IS NO ADEQUATE REMEDY AT LAW

"To be entitled to a writ of mandamus, a party must establish by clear and convincing evidence (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law." *State ex rel. Ogle v. Hocking Cty. Common Pleas Court*, 2021-Ohio-4453, ¶20. The third prong is excluded "when there is a **patent and unambiguous lack of jurisdiction**, [mandamus] relief is warranted ... to **correct the results of prior jurisdictionally unauthorized actions**, notwithstanding the availability of appeal." *Id.* at ¶21. Notwithstanding that the third prong is not required, Relator lacks any right to appeal a void order. "Reviewing courts do not, however, have jurisdiction to address the merits of an appeal from a void judgment." *Wright v. Village Brice*, 2021-Ohio-2246, ¶16. The requested writ of mandamus is proper because there is no adequate remedy of an appeal, the order issued by Respondent without subject-matter-jurisdiction are void and are not appealable, because a void judgment does not constitute a final appealable order. *State ex rel. Carnail v. McCormick* (2010), 126 Ohio St.3d 124, 2010-Ohio-2671, ¶36. Because void orders are not final, the court of appeals has no jurisdiction to review a non-final void order. *Gehm v. Timberline Post & Frame* (2007), 112 Ohio St.3d 514, 2007-Ohio-607, ¶14. The court of appeals have repeatedly held "because the order is void, we lack jurisdiction over it." *Huntington Nat'l Bank v. Bywood, Inc*., 10t Dist., 2017-Ohio-2829, ¶14. "But the availability of a direct appeal is not an adequate remedy when there was a jurisdictional defect. **Mandamus will lie where it is apparent from the record that the inferior court had no jurisdiction**, and the writ will lie even though the party aggrieved may also be entitled to appeal." *State ex rel. Washington v. D'Apolito*, 156 Ohio St. 3d 77, 79, 2018-Ohio-5135, ¶8.

"If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition and mandamus will issue to prevent any future unauthorized exercise of jurisdiction and to **correct the results of prior jurisdictionally unauthorized actions**. Where jurisdiction is patently and unambiguously lacking, relators need not establish the lack of an adequate remedy at law because the availability of alternate remedies like appeal would be immaterial." *State ex rel. Sapp v. Franklin County Court of Appeals*, 118 Ohio St. 3d 368, 370, 2008-Ohio-2637, ¶15.

"When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus." Ohio Rev. Code § 2731.06. There is no adequate remedy at law except to apply for a writ of mandamus that requires Respondent to perform his legal duty and to void any orders issued without subject-matter jurisdiction.

PRAYER FOR RELIEF

WHEREFORE, Relator, Sebastian Rucci, prays that this Honorable Court issue a **writ of mandamus ordering Respondent to vacate the judgment of eviction and vacate the writ of restitution**, both of which are *void ab initio* for lack of subject-matter-jurisdiction due to (1) landowner's failure to serve Relator with the three-day notice; (2) landowner's failure to serve Relator the 90-day PTFA notice; (3) landowner's permissive occupancy during the sale of the property to tenants waived the three-day notice; (4) writ of restitution signed by the clerk is not capable of execution and (5) eviction without notice or opportunity to be heard is also not capable of execution..

Relator, Sebastian Rucci, also seeks an **order allowing Relator, Sebastian Rucci, to remove all his property** left behind when the Sheriff removed Relator from the property with a void writ of restitution (1) signed by a deputy clerk instead of the judge, (2) without notice or opportunity to be heard; (3) from a court without subject-matter-jurisdiction; (4) without service of the statutory three-day notice and (5) without service of the 90-day PTFA pre-termination notice.

Respectfully submitted,

/s/ Sebastian Rucci
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CERTIFICATE OF SERVICE

I certify that on August 11, 2022 a copy of this **Complaint for Writ of Mandamus With Supporting Affidavit** was sent by email to Statutory Counsel for Respondents Gina DeGenova, esq., at Gina.DeGenova@mahoningcountyoh.gov, and by email to counsel for Pender the landowner, Allyson Cady, at acady@beneschlaw.com as follows:

Mahoning County Prosecutor's Office
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