



interest in the circuit, superior, and probate courts as other civil actions. Such actions are to be known as **actions for mandate.**" *I.C. § 34-27-1-1.* (emphasis added);

7. "Indiana Code § 34-27-1-1 abolished the writ of mandate but allows for an action called an action for mandate." *Malone v. Price*, 755 N.E.2d 213 at 217 (Ind. Ct. App. 2001);

8. "An action for mandate may be prosecuted against any inferior tribunal, corporation, public or corporate officer, or person to compel the performance of any: (1) act that the law specifically requires; or (2) duty resulting from any office, trust, or station." *I.C. § 34-27-3-1*;

9. "(a) Except as provided in subsection (b), in an action for mandate, as in other civil actions: (1) the complaint must be verified; (2) the summons must be issued, or publication made, and proof of service and notice made; and (3) the person, body, or tribunal defendant shall: (A) appear and answer the complaint; or (B) suffer default." *I.C. § 34-27-3-2(a)*;

10. "(b) When an emergency is shown in the complaint, the court or the judge may issue an order at the time the complaint is filed, directing a shorter time for the return of the summons and for the appearance and answer of the defendant than is provided in civil cases. The return of the summons and the time for appearance must be fixed by the court." *I.C. § 34-27-3-2(b)*;

11. Plaintiffs' July 13<sup>th</sup> lawsuit attached as their Exhibit 1, complies with the above provisions, but **in any event**, the defendant Goldman has no authority to halt its assignment. *See, LR 45-AR1-01 Caseload Allocation Rule, IN Orders 2014-16*;

12. "(C)ertain types of constitutional violations deprive a court of the authority to exercise its jurisdiction." *Hornaday v. State*, 639 N.E.2d 303 at 311 (Ind. Ct. App. 1994);

13. As a direct and proximate result of defendant Goldman's failure to perform all acts and duties "resulting from (his) office, trust, or station", the Lake Superior Court, Small Claims Division III at Crown Point, Indiana is poised to proceed with trial of Cause No. 45D09-1501-SC-00040, *Logal v. Richard Wilson, et al.*, on August 3, 2015, in disregard of Plaintiff Rodney A. Logal's most fundamental Fifth Amendment rights. *See, State ex rel. Kiritsis v. Marion Probate Court*, 381 N.E.2d 1245 at 1247-1248 (Ind. 1978) ["(W)here a (civil or criminal) proceeding seeks to impose a criminal or quasi-criminal sanction upon an individual . . . the Fifth Amendment (privilege against self-incrimination is) applicable".] and *Plaintiffs' Exhibit 1*;

14. The plaintiffs acted in a timely manner so as to spare the small claims court the referenced trial for which they contend it has no authority under present circumstances, but defendant Goldman appears to have thwarted that effort. *Cf., State ex rel. Kiritsis v. Marion Probate Court*, 381 N.E.2d 1245 at 1247-1248 (Ind. 1978) and *Plaintiffs' Exhibit 1*;

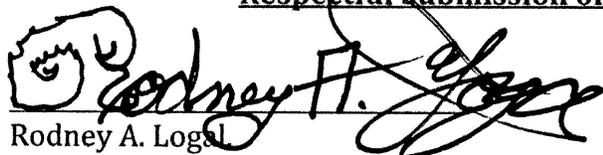
WHEREFORE, the Plaintiffs and each of them pray for:

- (a). judgment against the defendant Goldman as contemplated by I.C. §34-27-3-3; and  
(b). all other relief just and proper upon the premises.

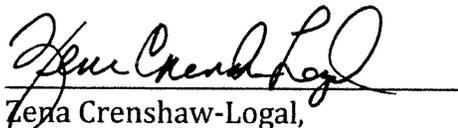
**VERIFICATION**

Under penalties of perjury, the Plaintiffs affirm that the above and foregoing is true and correct.

**Respectful Submission of Verified Action for Mandate.**



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In The Lake \_\_\_\_\_ Court  
Sitting at \_\_\_\_\_, Indiana

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Rodney A. Logal and Zena Crenshaw-Logal, )  
Husband and Wife, *Pro Se* and as Relators for )  
the State of Indiana, )  
**Plaintiffs,** )

-vs-

Cause # \_\_\_\_\_

Lake Superior Court, Small Claims Division III )  
and the Honorable Julie N. Cantrell as its Judge )  
and Michael N. Pagano as her Magistrate, )  
**Defendants.** )

**Plaintiffs' Exhibit 1**

**Verified Action For Mandate**

Come now the Plaintiffs, *Pro Se* and as Relators for the State of Indiana, pursuant to Indiana Code §34-27-3, *et seq.*, and for their verified complaint against the above named defendants, respectively say as follows:

1. Plaintiff Rodney A. Logal is the Plaintiff/Counter-Defendant in a three (3) Count complaint for *Quantum Meruit*, Civil Conversion, and Abuse of Process pending as Cause No. 45D09-1501-SC-00040 and captioned *Logal v. Richard Wilson, et al.*, before the Lake Superior Court, Small Claims Division III at Crown Point, Indiana;
2. Twice as Plaintiff/Counter-Defendant before the lower court Plaintiff Rodney A. Logal moved for summary judgment on the Defendants'/Counter-Plaintiffs' counter-claim;
3. He also amended his referenced pleadings in accord with Indiana Trial Rule 15(A) to join his wife, current Plaintiff Zena Crenshaw-Logal, as a plaintiff in the lower court proceeding pursuant to Indiana Trial Rule 20(A)(1);
4. She joined him in contending that the Defendants'/Counter-Plaintiffs' counter-claim is an abuse of process — fairly considered an attempted extortion detrimental to them both — and sought a corresponding summary judgment;
5. The first motion for partial summary judgment was struck by the lower court<sup>1</sup>, *sua sponte*, without hearing, based on unspecified "formality requirements" and the notion that "summary judgment proceedings are incompatible with the Small Claims Rules." See, *Plaintiffs' Exhibit 1 - Lower Court Order of 3/31/15* citing Small Claims Rule 8(A) -

*"The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall*

<sup>1</sup> While the Plaintiffs initially believed all evidence supporting their referenced motions for partial summary judgment was struck from the record, at least the court's original/copy of the same may remain of record.

*not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.” (emphasis added);*

6. Summary judgment proceedings are **not** abbreviated trials — a fact that calls into question any preemption of them pursuant to provisions on the conduct of trials such as S.C. 8.(A). *See, Dickerson v. Strand*, 904 N.E.2d 711 at 715 (2009 Ind. App.) and *Cf, S. C. 8.(A)*;

7. Moreover, ‘(t)he function of a summary judgment proceeding is to **expedite** the disposition of disputes in which there is no genuine issue of fact material to the claim involved and a party is entitled to judgment as a matter of law.’ *Gaboury v. Ireland Rd. Grace Brethren, Inc.*, 446 N.E.2d 1310 at 1312 (1983 Ind.) (emphasis added);

8. Preempting summary judgments hardly serves the lower court’s “objective of dispensing speedy justice between the parties according to the rules of substantive law”. *Cf, S. C. 8.(A)*;

9. As Plaintiff/Counter-Defendant and Plaintiff respectively, the above named plaintiffs filed a second Motion for Partial Summary Judgment before the small claims court, this time with a separate Supporting Brief, Designation of Evidence (*referencing previously filed affidavits and exhibits*), and related Motion for Hearing;

10. Contravening Indiana Trial Rule 56 in a variety of ways, the lower court struck this second motion, incorporating by reference “its order of March 31, 2015 as well as the court’s comments during (a) hearing of April 21, 2015.”<sup>2</sup> *See, Plaintiffs’ Exhibit 2 – Lower Court Order of 4/22/15, p 1*;

11. The lower court cites *Niksich v. Cotton*, 810 N.E.2d 1003 (Ind. 2004), for the proposition that Indiana Trial Rule 12(B)(6) motions are “at the limits of acceptable pre-trial motion practice for small claims cases.” *See, Plaintiffs’ Exhibit 1*;

12. “(I)n deciding what process constitutionally is due in various contexts, the (U.S. Supreme) Court repeatedly has emphasized that ‘procedural due process rules are shaped by the risk of error inherent in the truth-finding process’.” *Carey v. Piphus*, 435 U.S. 247 at 258 (1978);

13. Surely relevant risks of error are great, especially in forcing Mr. Logal to abandon the admissions he made circumspectly in seeking partial summary judgment and, instead, attempt proving he is innocent of criminal conversion through oral testimony at trial in small claims court, *i.e.*, through a predictably hurried and/or disjointed recitation of intricate facts, presentation of detailed documents, and consideration of law.<sup>3</sup>;

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<sup>2</sup> This hearing was not scheduled on the second motion for summary judgment;

<sup>3</sup> Such was the parties’ trial experience in *Logal, et al., v. Wiley, et al.*, Cause No. 45D09-1502-SC-00222 before the Lake Superior Court, County Division III at Crown Point, Indiana. Without counsel and, as to one defendant, without even being present, the defendants gained a significant advantage in that case when the orderly presentation of evidence that Mr. and Mrs. Logal planned as plaintiffs was preempted by the Court’s

14. Confirming the risk of unwittingly implicating oneself through oral testimony, the lower court even managed to mischaracterize Mrs. Crenshaw-Logal's related contentions and determine that she "has no standing and cannot proceed in (the matter before it) as a party." *See, Plaintiffs' Exhibit 2, p 2;*

15. Mrs. Crenshaw-Logal is left excluded from lower court proceedings, apparently because the Defendants/Counter-Plaintiffs have yet to extort or otherwise extract a *substantial* sum of money from her husband pursuant to what by all indications is an abuse of process as a matter of law; a tort that has already exacted a hefty emotional and modest financial toll on Mrs. Crenshaw-Logal and her household. *See, Plaintiffs' Exhibit 2, p 2;*

16. When one or more parties before them undertake to establish that there is no genuine issue of fact material to the claim(s) at issue and they are entitled to judgment as a matter of law, Indiana Trial Rule 56 "specifically requires" the above named defendants to ascertain the presence or lack of good faith controversy attendant to the matter through certain pre-trial proceedings; actions that may be in lieu of trial. *See, Ind. T.R. 56 and Cf. S. C. 8.(A);*

17. This action is "to compel the performance" of any and all acts and duties "resulting from (the defendants' respective) office, trust, or station" as well as those specifically required by Indiana Trial Rule 59 on its face and as interpreted by common law in accord with I.C. §34-27-3, *et seq.*;

18. Without this Court's corresponding mandate, it appears that Plaintiff Rodney A. Logal will be compelled to incriminate himself at trial below, a much less structured context than summary judgment proceedings, or risk losing at trial for criminal conversion (among other claims) in contravention of his Fifth Amendment right to avoid or limit self-incrimination;

19. That risk does not abate totally if at all should Mr. Logal have an attorney for trial and/or his wife participates as a co-plaintiff;

20. So concern that "Mrs. Crenshaw-Logal would like to represent her husband" is unfounded as a matter of fact and law. *Cf, Plaintiffs' Exhibit 2, p 2 ;*

21. Mrs. Logal represented to the lower court that not only does she have a direct interest in fending off attempts to extract money from her husband through abuses of process<sup>4</sup>, but also that "(a)s a direct and proximate result of the acts and omissions of the Defendants/Counter-Plaintiffs, (which include abuse of process, **she** has) been subjected to anxiety, inconvenience, and other mental distress as well as costs";

22. Without this Court's mandate, Mrs. Logal may not only lose what she believes is her entitlement (and that of her husband) to partial summary judgment below, but also the opportunity to represent herself in related proceedings;

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direct and cross examination of them. They shudder to imagine how "the truth-finding process" will unfold in their case at issue given the deference already extended in the lower court to the Wilsons and their lawyers.

<sup>4</sup> Mr. Logal is Mrs. Logal's sole source of financial support.

23. This Court “has statutory authority to grant mandamus relief upon the filing of (the Plaintiffs’) complaint and summons in the name of the State on relation of the part(ies) in interest’, those being said Plaintiffs. *See, Goshen City Court v. State*, 287 N.E.2d 591 at 594 (1972 Ind. App.) (internal footnote and citations omitted)<sup>5</sup>;

24. A circuit court may “(m)ake all proper judgments, sentences, decrees, orders, and injunctions, issue all processes, and do other acts as may be proper to carry into effect (said authority), in conformity with Indiana laws and Constitution of the State of Indiana.” *See, I.C. §33-28-1-5*;

25. A superior court may do the same. *See, I.C. §33-29-5-3*;

26. “Mandamus relief flows in a parallel fashion from the reviewing court to the inferior court where there is concurrent jurisdiction.” *Goshen at 596*;

27. So this Court is empowered to stay the subject trial below which is scheduled to commence on August 3, 2015. *See, Plaintiffs’ Exhibit 2, p 2*;

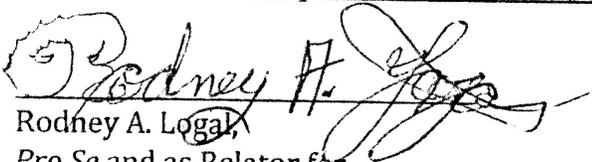
WHEREFORE, the Plaintiffs and each of them pray for:

- (a). an Order of this Court directing a return of the summons no later than July 24, 2015;
- (b). an Order of this Court commanding the Lake Superior Court, Small Claims Division III at Crown Point, Indiana and The Honorable Julie N. Cantrell as Judge as well as The Honorable Michael N. Pagano as Magistrate thereof to refrain from any further proceedings in Cause No. 45D09-1501-SC-00040 before it/them, captioned as *Logal v. Richard Wilson, et al.*, until disposition of the Action for Mandate at hand or further Order of this Court;
- (c). judgment against the defendants, jointly and severally, as contemplated by I.C. §34-27-3-3; and
- (d). all other relief just and proper upon the premises.

#### VERIFICATION

Under penalties of perjury, the Plaintiffs affirm that the above and foregoing is true and correct.

#### Respectful Submission of Verified Action for Mandate.



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<sup>5</sup> At least on this point, Indiana Code §34-27-3, *et seq.* align with their predecessor as of the *Goshen* decision.

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

IN THE LAKE SUPERIOR COURT  
COUNTY DIVISION III  
2293 MAIN STREET  
CROWN POINT INDIANA

RODNEY LOGAL  
Plaintiff/Counter Defendant  
v.

MAR 31 2015

CAUSE NO.: 45D09-1501-SC-00040

JUDGE LAKE COUNTY  
COURT #3

RICHARD AND PEGGY WILSON  
Defendants/Counter Plaintiff

ORDER

This matter is before the court upon receipt of a Motion for Partial Summary Judgment filed by Plaintiff Logal and his wife, Mrs. Zena Crenshaw-Logal. Therein, Mrs. Logal also seeks to be joined as a party-Plaintiff pursuant to Trial Rule 20(A).

First, summary judgment proceedings are incompatible with the Small Claims Rules. See Small Claims Rule 8(A); Cf. *Niksich v. Cotton*, 819 N.E.2d 1003 (Ind. 2004), citing *Bedree v. DeGroot*, 799 N.E.2d 1167 (Ind. Ct. App. 2003) (holding that, within limits, 12(B)(6) motions are appropriate in small claims proceedings, but suggesting that same is at the limits of acceptable pre-trial motion practice for small claims cases.) Regardless, the motion does not comport to the formality requirements of summary judgment practice. See T.R. 56, generally. For these reasons, the Motion for Summary Judgment is ORDERED STRICKEN.

As to Mrs. Logal's attempt to be added as a party-Plaintiff, scant facts are presented to justify her addition to this lawsuit. Nonetheless, the court now directs Defendants to file any objection thereto within 20 days. Failure to do so shall result in the court granting Mrs. Logal's request to be added as a party-Plaintiff. The remainder of relief sought in Plaintiff's motion is summarily DENIED, with one exception. Plaintiff shall have 15 days to file any amended complaint. Failure to do so will waive any issues for which leave was sought to amend.

SO ORDERED THIS 31<sup>st</sup> DAY OF MARCH 2015.

  
MICHAEL N. PAGANO  
MAGISTRATE, DIVISION III

STATE OF INDIANA )  
 ) SS:  
COUNTY OF LAKE )

IN THE LAKE SUPERIOR COURT FILED IN OPEN COURT  
COUNTY DIVISION III  
2293 MAIN STREET  
CROWN POINT INDIANA

APR 22 2015

RODNEY LOGAL<sup>1</sup>  
Plaintiff/Counter Defendant  
v.

JUDGE LAKE COUNTY  
COURT #3

CAUSE NO.: 45D09-1501-SC-00040

RICHARD AND PEGGY WILSON  
Defendants/Counter Plaintiffs

RULING ON PENDING MOTIONS

This matter was before the court for hearing on all pending motions on April 21, 2015. Mr. Logal and Mrs. Crenshaw-Logal appeared in person, pro se. Defendants appeared in person and by counsel, Mrs. Craig and Mr. Maroc. The court took the standing issue under advisement and ruled on all other issues from the bench. The court now issues this order regarding same.

Although the facts of the case have yet to be fully developed, this matter appears to arise out of a purported verbal agreement for the parties (who are neighbors) to obtain a tenant-farmer to jointly farm their land. Mr. Logal has sued for breach of the agreement and Defendants have countersued asserting conversion and tortious interference with a contract. Mr. Logal (together with Mrs. Crenshaw-Logal) has filed an amended complaint adding, inter alia, abuse of process regarding the counterclaim.

Furthermore, the Logals have submitted a second Motion for Summary Judgment; the Wilsons have moved to strike this motion and for sanctions. The court now GRANTS the Wilson's motion to strike and, as reason therefore, incorporates by reference its order of March 31, 2015 as well as the court's comments during the hearing of April 21, 2015. The Wilsons' request for sanctions is DENIED.

The court now turns to the issue of standing. Ms. Crenshaw-Logal asserts she has standing to be joined as a party-Plaintiff in this matter, because if Defendants are successful on their counterclaim they may diminish her husband's assets, upon which she depends. She also urges that her legal training<sup>2</sup> better equips her to defend this matter than her layman-husband. The Wilsons object thereto.

In order to sue or be sued, the real parties in interest must be involved. As was stated in *Inlow v. Henderson*, 787 N.E.2d 385, 395 (Ind.Ct.App. 2003):

"According to our supreme court, in order to invoke a court's jurisdiction, a plaintiff must demonstrate a personal stake in the outcome of the lawsuit and must show that he or she has sustained or was in immediate danger of sustaining, some direct injury as a result of the conduct at issue. *Hammes v. Brumley*, 659 N.E.2d 1021, 1029-30 (Ind. 1995) (alteration added) (quoting *Higgins v. Hale*, 476

<sup>1</sup> Mrs. Crenshaw-Logal has also sought to join this suit as a party-Plaintiff.

<sup>2</sup> Mrs. Crenshaw-Logal's license to practice law in this state is suspended.

N.E.2d 95, 101 (Ind. 1985)). To put it another way, for a plaintiff to have standing his interest must be a present, substantial interest, as distinguished from a mere expectancy or future, contingent interest. 59 Am. Jur. 2d Parties § 37, at 442 (2002). . . A real party in interest, on the other hand, is the person who is the true owner of the right sought to be enforced. He or she is the person who is entitled to the fruits of the action." *Id.* at 395. (internal quotations omitted).

Mrs. Crenshaw-Logal is not in privity of contract with Defendants, was not named as a Defendant in the counterclaim and, at best, has an "expectancy or future, contingency interest" in these proceedings. While the court appreciates that Mrs. Crenshaw-Logal would like to represent her husband in this matter, the status of her law license forbids it. The court will not warp the law of standing to allow Mrs. Crenshaw-Logal to legally do that which she cannot legally do.

Accordingly, the court finds and concludes that Mrs. Crenshaw-Logal has no standing and cannot proceed in this matter as a party. Accordingly, any portion of the Logal's amended claim referencing Mrs. Crenshaw-Logal is now deemed irrelevant to these proceedings. The remainder of the amended claim, however, will be permitted to stand as Mr. Logal's amended claim against the Wilsons.

Finally, by agreement of the parties, this matter is now reset for Bench Trial on August 3, 2015 at 9:00 a.m. Failure to appear by any party may result in default or dismissal.

SO ORDERED THIS 22<sup>nd</sup> DAY OF APRIL 2015.



MICHAEL N. PAGANO  
MAGISTRATE, DIVISION III