

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

THE PEOPLE OF THE STATE OF ILLINOIS)	Judge: Richard W. Vidal
Plaintiff,)	
)	Case Nos. 01-CF-2701
vs.)	01-CM-8121
)	02-CM-637
Clarence L. Vance,)	02-CM-3066
Defendant,)	02-CM-6438

MOTION TO DISMISS INVALID CRIMINAL CHARGES

Now comes the above named as Defendant, Clarence L. Vance, and states to this Court as follows:

1. Pursuant to established Law, this Motion is timely in that:

"It is well established that a judgment is void when it is entered by a court which lacks jurisdiction of the parties or of the subject matter, or by a court which lacks the inherent power to enter the particular order involved. A void judgment may be attacked at any time, either directly or collaterally." Skrypek v. Mazzocchi, 1992, 2nd Dist, 227 Ill.App.3d 1,5.

"Every judgment of a court rendered without jurisdiction is a nullity -- not merely voidable but void -- and may be disregarded. It is subject to attack by any person at any time in any court and in any proceeding in which it is brought in question." People v. Miller, 1930, 339 Ill 573, 578, 579.

"A void order or judgment is one entered by a court without jurisdiction of the subject matter or the parties, or by a court that lacks the inherent power to make or enter the order involved. A void order may be attacked either directly or collaterally, at any time. . . . Subject matter jurisdiction is the power of the court to hear and determine the particular matter presented to it" In Re Estate of Steinfeld, 1994, 158 Ill.2d 1, 12.

"Since the *Rooker-Feldman* doctrine is about whether inferior federal courts have the authority (i.e., subject matter jurisdiction) to hear a given case, it can be raised at any time, by either party, or sua sponte by the court." Garry v. Geils, 1996, 82 F.3d 1362, 1364.

2. Evidence of Record establishes that the criminal charge set forth in each of the above styled matters is based entire upon the document, entitled "TRUSTEE'S DEED" and dated September 26, 2000, which "*THOMAS J. LESTER, Trustee of the Bankruptcy Estate of Clarence L. Vance, Case No. 97 B 50687*" issued, unlawfully, "*to Purchaser, ALAN F. MILLER*", under color of official right of the United States Bankruptcy Court for the Northern District of Illinois, Western

Division.

3. Said Bankruptcy Court so "*authorized*" the issuing of said "TRUSTEE'S DEED" despite being deprived of subject matter jurisdiction, by an act of the Congress of the United States (28 U.S.C. 1257), to reverse or modify the state-court judgment which had effectively and conclusively adjudicated the ownership of the real estate in question.

4. This Motion constitutes an attack upon the said "TRUSTEE'S DEED" and also upon those "orders" by which said Bankruptcy Court so "*authorized*" the issuing of said document.

5. This Court, as is established by Law that "*when presented with allegations that the foreign court lacked jurisdiction, or when presented with allegations of fraud in the procurement of the foreign judgment*", is required to entertain said attack, in that:

"An Illinois court will entertain a collateral attack on a foreign judgment only under two circumstances: when presented with allegations that the foreign court lacked jurisdiction, or when presented with allegations of fraud in the procurement of the foreign judgment." Pelczynski v. Dolatowski, 1999, 2nd Dist., 308 Ill.App.3d 753, 758.

6. It is well settled in the Law that:

"The subject matter jurisdiction of the federal court is established by federal statute in accord with Article III of the Constitution. U.S. Constitution, Art. III, §1-2; 28 U.S.C. §1330-1368." In Re Alpern, 1995, Bankruptcy Court, N.D. IL, E.D., 191 B.R. 107, 109.

7. The Congress of the United States established that:

". . . appellate jurisdiction to reverse or modify a state-court judgment is lodged, initially by §25 of the Judiciary Act of 1789, 1 Stat. 85, and now by 28 U.S.C. 1257, exclusively in this (the Supreme) Court (of the United States)" Exxon Mobil Corp. vs. Saudi Basic Industries, Corp., 2005, 161 L.Ed.2d 454, 461.

8. Said Statute of the United States states as follows:

"(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

9. As is established by Law, both the said "TRUSTEE'S DEED" and said "orders" are "*subject to attack by any person at (this) time in (this) court and in (this) proceeding*" and are herein and hereby "*brought in question*" (People v. Miller, supra, at 579) due to the fact that the said issuing

of said document has drawn into question the validity of said 28 U.S.C. 1257 Statute of the United States, as is more fully set forth hereinafter.

10. Evidence of Record establishes that the Winnebago County Circuit Court rendered its FINAL JUDGMENT ORDER, in Case 97-ED-1 on October 27, 1998, and thereby did judicially confirm the Winnebago County Recorder's Office Title Records and also conclusively adjudicated the sole and lawful Title to, and ownership of, both:

- A. The "2.782 AC." portion of said real estate taken; and
- B. The entire of said real estate consisting of the "*TOTAL AREA 181.400 AC.*" prior to the taking of the subject portion and the "*AREA REMAINING 178.618 AC.*" after the taking of the said "2.782 C." portion, to be vested, since 1993, solely in:

"Harriet P. Vance as Trustee under a Declaration of Trust dated October 22, 1993, known as the Thousand Hills Trust No. 1."

11. Said FINAL JUDGMENT ORDER also judicially confirmed the Winnebago County Recorder's Office Title Records that Clarence L. Vance had **NO** Title interest in the subject real estate after 1983.

12. Evidence of Record establishes categorically that the State Bank of Davis:

- A. Was named as a party Defendant in said 97-ED-1 Complaint and was also a named party Defendant to said state-court FINAL JUDGMENT ORDER; and
- B. Failed to raise any claim pertaining to the ownership of the subject real estate either in said pertinent state-court 97-ED-1 Case or in any other manner in said State-Court; and
- C. Failed entire to seek any review or modification of said FINAL JUDGMENT ORDER, either in the rendering Winnebago County Circuit Court or in any reviewing court.

13. It is well settled and established in the Law that:

"Unless and until . . . reversed or modified [the state-court judgment] would be an effective and conclusive adjudication." Exxon Mobil Corp., supra, at 464, footnote.

"Defendant (State Bank of Davis) had an adequate remedy for review of the State Court determinations by appeal . . . failure to petition the appropriate forum acted as a waiver of the right to seek reversal of the State Court determination." Reich v. City of Freeport, 1974, 388 F.Supp. 953, 956.

"In *Feldman* itself, the Supreme Court acknowledged this consequence: 'By failing to raise his claims in state court a (party) may forfeit his right to obtain review of the state court decision in any federal court. This result is eminently defensible on policy grounds.' . . .

noting that lack of jurisdiction in Supreme Court, due to state-court waiver, does not imply jurisdiction in lower federal courts. Garry v. Geils, supra, at 1369.

14. Bankruptcy Court Records establish that Clarence L. Vance filed a personal and voluntary Chapter 7 Bankruptcy Petition, as Case 97-B-50687 on March 10, 1997, and therein listed the real estate he owned as being "NONE", on his "SCHEDULE A-REAL PROPERTY", and also listed three (3) creditors.

15. Bankruptcy Court Records, in said 97-B-50687 Case, establish categorically that:

A. Said State Bank of Davis was the **ONLY** creditor to appear in said Bankruptcy Case of "*Clarence L. Vance, Debtor*"; and

B. Said State Bank of Davis: (1) **DID** appear in said Bankruptcy Case as "*a secured creditor*" **ONLY**; and (2) **DID**, by one of its attorneys (Daniel M. Donahue) file, on September 3, 1997, a "*secured claim*" in said Bankruptcy Case in the amount of \$121,810.24.

C. Said State Bank of Davis: (1) **DID NOT** appear in said Bankruptcy Case as a "*creditor holding an unsecured claim*" (11 U.S.C. 544(b)); and (2) **DID NOT** file a claim against the "*Bankruptcy Estate of Clarence L. Vance, Debtor*" as a "*creditor holding an unsecured claim*".

16. The Congress of the United States established that the **ONLY** Statutory Duty of a Chapter 7 Bankruptcy Trustee is to administer a Chapter 7 Bankruptcy Estate solely "for the benefit of general **UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS**" (11 U.S.C. 704 Notes of Committee on the Judiciary, Senate Report No. 95-989, Emphasis added).

17. Pursuant to the Bankruptcy Code as enacted by the Congress of the United States:

A. Said State Bank of Davis, as a "*secured creditor*", was **NEVER** a part of said Bankruptcy Estate; and

B. Said Bankruptcy Estate **NEVER** had any "**UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS**" (Senate Report No. 95-989).

18. Consequently, the Trustee for said Bankruptcy Estate:

A. **NEVER** had any "**UNSECURED CREDITORS**" to represent; and, as is well established by said Bankruptcy Code,

B. Had **NO** lawful authority to represent the interests of said "*secured creditor*" in said Bankruptcy Case.

19. Said Bankruptcy Court Records indicate that the filing of said "*secured claim*" was part of a carefully crafted scheme to give the appearance of legitimacy to the efforts to obtain Title to the

said real estate, under color of official right of said Bankruptcy Court, by said Bankruptcy Trustee and by said Daniel M. Donahue.

20. Said Bankruptcy Court Records establish that Daniel M. Donahue was appointed to be the Trustee for said "*Bankruptcy Estate of Clarence L. Vance*" on April 25, 1997.

21. Said Bankruptcy Court Records also establish that Daniel M. Donahue, a member of the law firm of McGreevy, Johnson & Williams, P.C., was, at that very same time, one of the attorneys for said State Bank of Davis.

22. Said Bankruptcy Court Records further establish that Daniel M. Donahue, on behalf of said "*secured creditor*" in said 97-B-50687 Bankruptcy Case, obtained a Bankruptcy Court Order on April 25, 1997, the very same day he was appointed to be the Trustee for said Bankruptcy Estate.

23. Said Bankruptcy Court Order therein stated that:

" . . . *the State Bank of Davis is given relief from the Automatic Stay in order to pursue its state court remedies . . .*" against said "*Debtor*".

24. Said Daniel M. Donahue, by so obtaining said April 25, 1997 Bankruptcy Court Order, thereby:

- A. Exercised a conflict of interest by representing both said "*secured creditor*" and said Bankruptcy Estate at the very same time;
- B. Established demonstrably that he was **NOT** a "disinterested person" as is defined by 11 U.S.C. 101(14), *infra*;
- C. Effectively removed any possible barr to said State Bank of Davis presenting any Title or ownership claim pertaining to the subject real estate in said 97-ED-1 Case; and
- D. Effectively removed said "*secured creditor*" from said 97-B-50687 Bankruptcy Case of "*Clarence L. Vance, Debtor*".

25. Thereafter, said Daniel M. Donahue, by a letter addressed to the "*Clerk of the U.S. Bankruptcy Court*" and dated May 2, 1997, belatedly declined the appointment to be the Trustee for said Bankruptcy Estate by stating in said letter that: "*I am unable to accept this appointment due to a conflict*".

26. Thereupon, Thomas J. Lester was appointed to be the Trustee for the "*Bankruptcy Estate of Clarence L. Vance, Debtor*".

27. Despite said noted "*conflict*", said Thomas J. Lester, on July 7, 1997, filed a "TRUSTEE'S APPLICATION TO EMPLOY SPECIAL COUNSEL" which therein stated, in pertinent part, to wit:

" 2. To perform his duties as Trustee, the applicant requires the services of Daniel M. Donahue of the firm of McGreevy, Johnson & Williams, P.C., to pursue the liquidation of the Debtor's interest in various properties. . . .

4. The firm of McGreevy Johnson & Williams, P.C. represents the State Bank of Davis in State Court proceedings brought (AGAINST said Debtor) prior to the filing of the bankruptcy. The representation of the creditor has been disclosed to the Trustee and both the Trustee and the State Bank of Davis consent to the employment of the firm of McGreevy, Johnson & Williams, P.C. for the limited purpose as set forth herein.

WHEREFORE, applicant prays that he be authorized to employ Daniel M. Donahue and McGreevy, Johnson & Williams, P.C. as special counsel to render services in the areas described above."

28. Contrary to said request, the Bankruptcy Code, as enacted by the Congress of the United States, clearly and unambiguously states, in pertinent part, as follows:

A. 11 U.S.C. 327: "(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. . . .

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed."

B. "The term 'disinterested person' means a person that---

(A) is not a creditor, . . .

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors . . . or by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason." 11 U.S.C. 101(14)

C. "'creditor' means---

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; 11 U.S.C. 101(10)

29. It is well established in the Law that:

" . . . the Supreme Court (of the United States has) repeated many times in recent years, when statutory language is clear and unambiguous it ordinarily must be followed." U.S. Trustee v. Price Waterhouse, 1994, 3rd Cir., 19 F.3d 138, 141.

"A bankruptcy court does not enjoy the discretion to bypass the requirements of the Bankruptcy Code. Based on the language of the Code, a bankruptcy Court that approves the retention of a prepetition creditor . . . **necessarily abuses its discretion**. These provisions, taken together, unambiguously forbid a (Bankruptcy Trustee) from retaining a prepetition creditor to assist (him) in the execution of (his) Title 11 duties." In Re Pillowtex, Inc., 2002, 3rd Cir., 304 F.3d 246, 254.

"In circumstances such as these, professionals desiring to be employed by trustees waive their disqualifying prepetition claims. In this case, (said creditor's attorney (did) not (do) so. Instead, (said Application) . . . makes clear that (said "*secured creditor*") retains his claim and intends to have the claim paid by the debtor . . . however (said "*secured creditor*") is still a creditor, as a creditor, (said creditor's attorney) continues not to be a 'disinterested person'. . . . the court (could) not have (lawfully) approved this application . . ." In Re Princeton Medical Management Inc., 2000, Bkrcty. M.D. Fla., 249 B.R. 813, 816.

30. Bankruptcy Court Records further establish that, the Clerk of the Bankruptcy Court, on July 10, 1997, issued an automatic "**DISCHARGE OF DEBTOR**", in said 97-B-50687 Bankruptcy Case, due to the fact that:

" . . . *no complaint objecting to the discharge of the debtor was filed within the time fixed by the court*".

31. Consequently, said "*Clarence L. Vance, Debtor*", pursuant to the Bankruptcy Code, was "*released from all dischargeable debts*" by said "**DISCHARGE OF DEBTOR**".

32. In utter disregard of the clear and unambiguous language of both the Bankruptcy Code and said "**DISCHARGE OF DEBTOR**", a Bankruptcy Court Order, "*prepared by: Daniel M. Donahue*" and dated July 18, 1997, "*authorized*" said Bankruptcy Trustee to so employ the law firm representing the interests of said "*secured creditor*" by stating, in pertinent part, to wit:

" . . . *the law firm of McGreevy, Johnson & Williams, P.C., is a disinterested person, and that the employment of said law firm generally by the Trustee is in the best interest of the estate.* (Emphasis added)

IT IS HEREBY ORDERED that the Trustee is authorized to employ the law firm of McGreevy, Johnson & Williams, P.C., generally as attorneys for the estate and for the Trustee . . ."

33. Pursuant to said July 18, 1997 Order, and in utter disregard of said requirements and limitations mandated by the Congress of the United States, said Bankruptcy Trustee, despite said acknowledged conflict, so "*employed*" said Daniel M. Donahue to assist said Bankruptcy Trustee "*to pursue the liquidation of the Debtor's (purported) interest in various properties*" (from Trustee's

Application) in utter disregard of the fact, of Record, that said "*Bankruptcy Estate of Clarence L. Vance, Debtor*" had **NO "UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS"** (Senate Report No. 95-989, Emphasis added).

34. Nevertheless, on February 24, 1999, almost four (4) months **AFTER the rendering of** said FINAL JUDGMENT ORDER and in the of Record absence of any claim filed against said Bankruptcy Estate by any "**UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS**" (Senate Report No. 95-989, Emphasis added), the "*Trustee for the Bankruptcy Estate of Clarence L. Vance, Debtor*", by his said attorney, filed the "ADVERSARY COMPLAINT TO AVOID FRAUDULENT TRANSFER" and thereby initiated the Adversarial Proceeding, identified as Case 99-A-5023 within said 97-B-50687 Bankruptcy Case, from which said "TRUSTEE'S DEED" proceeded.

35. Said Adversary Complaint alleges therein, on page "3" thereof, that the 1983 "*quit claim deed regarding his (Clarence L. Vance) interest in the Farm Property*" was a "*fraudulent transfer*".

36. Said allegation constitutes an utter disregard of the fact, of Record, that said FINAL JUDGMENT ORDER had judicially confirmed and conclusively adjudicated **ALL** Title transfers to the subject real estate transacted and Recorded **PRIOR** to the October 27, 1998 rendering of said state-court FINAL JUDGMENT ORDER.

37. Said FINAL JUDGMENT ORDER and said Adversary Complaint, together, establish that each party named as a Defendant in said Adversary Complaint was also a named party Defendant in said 97-ED-1 Complaint and was also a named party Defendant to said FINAL JUDGMENT ORDER.

38. Evidence of Record also establishes categorically that the State Bank of Davis was a named party Defendant both in said 97-ED-1 Complaint and also to said FINAL JUDGMENT ORDER and, by Law, is bound by the "*effective and conclusive adjudication*" (Exxon Mobil Corp., supra, at 464) rendered by said State-Court and set forth in said FINAL JUDGMENT ORDER.

39. Said Adversary Complaint involved the very same parties named as Defendants in the said pertinent 97-ED-1 state-court Case and did also address the very same issue (being the ownership of the subject real estate) effectively and conclusively adjudicated by said State-Court and rendered in said FINAL JUDGMENT ORDER.

40. Consequently, said Adversary Complaint was "inextricably intertwined" with said FINAL JUDGMENT ORDER in that:

The *Feldman* court found that (federal) claims that are 'inextricably intertwined' with state court judgments negate federal (bankruptcy) court jurisdiction because such claims 'in essence' call for review of the state court's decision." Garry v. Geils, supra, at 1369.

"*Rooker-Feldman* bars a losing party in state court (i.e., said State Bank of Davis) 'from seeking what in substance would be appellate review of the state judgment in a

United States(bankruptcy) court, .." Exxon Mobil Corp., supra at 463.

41. Furthermore, said Bankruptcy Trustee was closely aligned with said State Bank of Davis, through his said attorney, and also represented the same legal interests pertaining to the ownership of the subject real estate and, thereby, was in privity with said State Bank of Davis in that:

"Privity between parties is established where those parties' interests are so closely aligned that they represent the same legal interests." Tice v. American Airlines, Inc., 1997, N.D.Ill, E.D., 959 F. Supp. 928, 933.

42. Consequently, both said Bankruptcy Trustee and said State Bank of Davis were and are bound by said FINAL JUDGMENT ORDER and were and are also barred from relitigating said 97-ED-1 "*effective and conclusive adjudication*" (Exxon Mobil Corp., supra, at 464, footnote) rendered in said state-court FINAL JUDGMENT ORDER.

43. Said Adversary Complaint, signed by said Daniel M. Donahue, was prepared and filed on behalf of said State Bank of Davis and therein states, in pertinent part, as follows:

"13. *The State Bank of Davis is a secured creditor of this estate holding an allowable claim under 11 U.S.C. §502, and was a creditor at the time of the transfer and said conveyance is voidable by said creditor under the Uniform Conveyance Act of the State of Illinois.*

14. *Pursuant to 11 U.S.C. §544(b), said transfer is voidable by the Trustee."*

44. Irregardless of whether said "*secured creditor*" was or was not "*holding an allowable claim under 11 U.S.C. §502*", said statement constitutes a material misrepresentation of said 11 U.S.C. §544(b) and, actually, is contrary to said Statute of the United States.

45. Contrary to said misrepresentation, the Congress of the United States explicitly established that a Bankruptcy Trustee has power to so act only on behalf of "*a creditor holding an unsecured claim*", when said Congress clearly and unambiguously stated to wit:

" . . . the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by **A CREDITOR HOLDING AN UNSECURED CLAIM** that is allowable under section 502 of this title . . ." (Emphasis added)

46. Contrary to said claim by both said Bankruptcy Trustee and his said attorney, it is well settled in the Law that, "*Pursuant to 11 U.S.C. §544(b)*," said Bankruptcy Trustee:

A. Was statutorily barred, "*by Congressional mandate*" EXHIBIT B, page 2), from so acting on behalf of said "*secured creditor*", in that:

"Under section 544(b), the trustee succeeds to the rights of an **UNSECURED**

creditor in existence at the commencement of the case who can avoid the transfer or obligation under applicable state or local law. . . . If there are no creditors against whom the transfer is voidable under the applicable law, the trustee is **POWERLESS** to act under section 544(b).

The creditor whose rights the trustee invokes **MUST** be one 'holding an **UNSECURED** claim. . . .' (Emphasis added) COLLIER ON BANKRUPTCY, 15th Edition, Pages 544-16 - 544-18;

"Before the trustee can rely upon section 544(b), he must first show that there is an **actual creditor holding an allowable unsecured claim** pursuant to section 502 who, under (Illinois) law, could avoid the transfer in question. In other words, the trustee cannot act as a hypothetical creditor as allowed in section 544(a); he must show that there is a **present unsecured creditor** against whom the transfer was fraudulent and voidable under the controlling state law." IN RE INTERNLOAN NETWORK, INC., 1993, Bkrtcy.D.Dist Col, 160 BR 1, 18. (Emphasis added)

B. Was statutorily barred from conducting a "Sale" of the subject real estate (having been previously and conclusively adjudicated to be owned solely by a non-debtor), and was also barred from subsequently issuing said "TRUSTEE'S DEED", for the purported benefit of said Bankruptcy Estate which, of Record, had **NO "UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS"** (Senate Report No. 95-989, Emphasis added) in that:

"It is not the proper function of the trustee to liquidate property solely for the benefit of secured creditors". COLLIER ON BANKRUPTCY, 15th Edition, Page 725-2.

"A chapter 7 trustee is usually regarded as the representative of a debtors' unsecured creditors and is to use the powers granted him by the Bankruptcy Code for the benefit of those creditors. A trustee may sell a debtors' property under 11 U.S.C. 363, but generally only to benefit the unsecured creditors. . . **In short, this sale was completely unnecessary**" (Emphasis added). In Re Williamson, 1988, 94 B.R. 958, 963.

47. Again, it is well established in the Law that:

"A bankruptcy court does not enjoy the discretion to bypass the requirements of the Bankruptcy Code." IN RE PILLOWTEX, INC., 2002, 3rd Cir., 304 F.3d 246, 254

48. Nevertheless, said Bankruptcy Trustee and his said attorney filed said Adversary Complaint having reason to know that said Complaint was based on an ownership claim, pertaining to the subject real estate, which:

(A) Said State Bank of Davis failed entire to raise in said pertinent 97-ED-1 State-Court Case; and

- (B) Said State Bank of Davis failed to seek review of in an appropriate forum;
- (C) Was contrary to the "*effective and conclusive adjudication*" (Exxon Mobil Corp., supra, at 464 footnote) previously rendered in said FINAL JUDGMENT ORDER.

49. Said Bankruptcy Trustee together with his said attorney, by filing said Adversary Complaint, in essence asked said Bankruptcy Court to engage "*in an impermissible appellate review*" (Ritter v. Ross, infra) and to thereby "*effectively void*" (Levin v. ARDC, infra), said FINAL JUDGMENT ORDER on behalf of said "*secured creditor*" for the purported benefit of **NO "UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS"** (Senate Report No. 95-989).

50. Contrariwise, the Supreme Court of the United States has:

". . . declared such suits out of bounds, i.e., properly dismissed for want of subject matter jurisdiction." Exxon Mobil Corp., supra, at 461.

51. Said Bankruptcy Court, in the statutory deprivation of subject matter jurisdiction, engaged in an impermissible appellate review of said state-court FINAL JUDGMENT ORDER when it entertained said Adversary Complaint, in that:

"Engaging in an impermissible appellate review may occur when a (bankruptcy) court is asked to entertain a claim that was not even argued in the state court but is 'inextricably intertwined' with the state court judgment. Plaintiffs who lose in state court may not 'recast their claims in federal court under the guise of federal . . . claims that were not raised or decided by the state court . . . if the . . . claims are inextricably intertwined with the merits of the state court judgment. . . . A plaintiff may not relitigate in federal court a particularized challenge to an adjudication against him in state court." Ritter v. Ross, 1993, 7th Cir, 992 F.2d 750, 753-755.

"A (bankruptcy) court engages in impermissible appellate review when it hears claims that are 'inextricably intertwined' with the state court decision. . . . We have also held that claims for relief are barred by *Rooker-Feldman* if upholding the claims and granting relief would effectively void the state court ruling." Levin v. ARDC, 1996, 7th Cir., 74 F.3d 763, 766.

52. Said Adversary Complaint asked said Bankruptcy Court, on the basis of said ownership claim, "*to enter an order authorizing the Trustee to sell the Farm Property*" (Page 5) for the alleged benefit of said Bankruptcy Estate which, of Record, had **NO "CREDITOR HOLDING AN UNSECURED CLAIM"** (11 U.S.C. 544(b), Emphasis added) entitled to benefit from any proceeds from such a "Sale".

53. Said Bankruptcy Trustee and his said attorney, by filing said Adversary Complaint, exercised a concerted attempt to:

". . . relitigate the substantially identical facts and legal contentions previously decided by (said) State Court of Illinois." Reich v. City of Freeport, 1974, 388 F.Supp. 953, 955.

54. Contrary to said request, it is well established in the Law that the Congress of the United States, long ago, statutorily deprived said Federal Bankruptcy Court of subject matter jurisdiction to review said FINAL JUDGMENT ORDER, in that:

". . . limitations on jurisdiction prevent such a procedure. The plaintiff (i.e., said Bankruptcy Trustee) cannot circumvent the boundaries imposed upon the jurisdiction of (said Federal) Court." Reich v. City of Freeport, 1974, supra, at 955, 956.

"The subject matter jurisdiction of the federal court is established by federal statute in accord with Article III of the Constitution. U.S. Constitution, Art. III, §1-2; 28 U.S.C. §1330-1368.

It is clear that (the district) court and the bankruptcy court have no power to vacate a state court judgment. Any attempt to do so would run afoul of the *Rooker-Feldman* doctrine which teaches that lower federal courts have no jurisdiction to reexamine the decisions of state tribunals in civil litigations." (In Re Alpern, 1995, Bankruptcy Court, N.D. IL, E.D., 191 BR 107, 109, 110).

"Federal courts are courts of limited jurisdiction and are empowered to hear only those cases which have been entrusted to them by a Congressional grant of jurisdiction. They have no power to review the judgment of a state court, except where a substantial federal question is involved. In such a case, the final judgment or decree rendered by the 'highest court of a State in which a decision could be had', may be reviewed by the Supreme Court of the United States pursuant to the provisions of 28 U.S.C. 1257. But federal district courts are limited to cases of original jurisdiction and cannot entertain a proceeding to modify or reverse a state court proceeding. To do so would be an exercise of appellate jurisdiction." Reich v. City of Freeport, supra, at 955.

"A United States District (i.e.,Bankruptcy) Court has no authority to review final judgments of a state court in judicial proceedings. A federal court has no authority to review an 'unhappy state court litigants' state case." Andersen v. Roszkowski, 1988, N.D.IL, W.D., 681 F.Supp. 1284, 1292.

"Lower federal courts lack jurisdiction to engage in appellate review of state-court determinations, or to consider collateral attacks on state court civil judgments. . . . district (i.e., bankruptcy) courts have no authority to review the proceedings or final judgments of state courts." Young v. Murphy, 1996, 7th Cir., 90 F.3d 1225, 1230.

". . . under 28 U.S.C. §1257 (which gives the Supreme Court the power to review final judgments of the highest state courts), only the Supreme Court itself is empowered to review the final determinations of state courts. This Circuit has consistently emphasized that

'taken together, Rooker and Feldman stand for the proposition' lower federal courts lack jurisdiction to engage in appellate review of state-court determinations." Garry v. Geils, supra, at 1365.

"Holding the federal suits (in Rooker and in Feldman) impermissible, we emphasized that appellate jurisdiction to reverse or modify a state-court judgment is lodged, initially by §25 of the Judiciary Act of 1789, 1 Stat. 85, and now by 28 U.S.C. §1257, **EXCLUSIVELY** in this (Supreme) Court (of the United States). Federal district (i.e., bankruptcy) courts, we noted, are empowered to exercise original, not appellate jurisdiction. Plaintiffs in Rooker and in Feldman had litigated and lost in state court. Their federal complaints, we observed, essentially invited federal courts of first instance to review and reverse unfavorable state-court judgments. We declared such suits out of bounds, i.e., properly dismissed for want of subject matter jurisdiction. . . . Among federal courts, the Rooker court clarified, Congress had empowered only this Court to exercise appellate authority 'to reverse or modify' a state-court judgment." Exxon Mobil Corp. vs. Saudi Basic Industries, Corp., supra, at 461 (Emphasis added).

55. Consequently, said Bankruptcy Court, being deprived of subject matter jurisdiction by said 28 U.S.C. 1257 Statute of the United States and said *Rooker-Feldman* doctrine, engaged in an impermissible appellate review of said state-court FINAL JUDGMENT ORDER when it entertained said Adversary Complaint, in that:

"Engaging in an impermissible appellate review may occur when a (bankruptcy) court is asked to entertain a claim that was not even argued in the state court but is 'inextricably intertwined' with the state court judgment. Plaintiffs who lose in state court may not 'recast their claims in federal court under the guise of federal . . . claims that were not raised or decided by the state court . . . if the . . . claims are inextricably intertwined with the merits of the state court judgment.

A plaintiff may not relitigate in federal court a particularized challenge to an adjudication against him in state court." Ritter v. Ross, 1993, 7th Cir, 992 F.2d 750, 753-755.

"A (bankruptcy) court engages in impermissible appellate review when it hears claims that are 'inextricably intertwined' with the state court decision. . . . We have also held that claims for relief are barred by *Rooker-Feldman* if upholding the claims and granting relief would effectively void the state court ruling." Levin v. ARDC, 1996, 7th Cir., 74 F.3d 763, 766.

56. Said Bankruptcy Court was and remains "*barred by Rooker-Feldman*" from entertaining said Adversary complaint, being a claim for relief, because "*upholding the claims and granting relief* (set forth in said Adversary Complaint) *would effectively void the state court ruling.*" (Levin v. ARDC, supra, at 766).

57. Nevertheless, based upon representations to said Bankruptcy Court that Title to the

subject real estate was then "*vested in: THOMAS LESTER, TRUSTEE IN BANKRUPTCY FOR CLARENCE L. VANCE, BANKRUPT*", as if "*Clarence L. Vance, Debtor*" was the sole owner of Record of the subject real estate, said Bankruptcy Trustee was so "*authorized*", by said Bankruptcy Court, to conduct a "*Sale*" of the subject real estate and to so issue said "TRUSTEE'S DEED to said Complainant.

58. Contrariwise, the Winnebago County Recorder's Office Title Record, judicially and conclusively confirmed by said FINAL JUDGMENT ORDER, establish categorically that Clarence L. Vance, of Record:

- A. Has **NEVER** been a sole owner of said real estate as so misrepresented; and
- B. Has had **NO** Title or ownership interest in said real estate since 1983.
- C. Had **NO** title or ownership interest in said real estate in 2000.

59. Furthermore, Assistant State's Attorney Wendy Larson acknowledged on the Record, during a hearing conducted before this Court in said matters on April 28, 2004, the fact that said Defendant has had no Title or ownership interest in the subject real estate since 1983.

60. Attorney Woodruff A. Burt, in said 1974 Reich Case, succinctly and pertinently argued said statutory absence of subject matter jurisdiction when he successfully stated to the District Court, of which said Bankruptcy Court is a part of, to wit:

"The Defendants . . . move the court as follows:

A. 1. To dismiss the action on the ground that the court lacks jurisdiction of the subject matter, in that:

a. A Federal District Court has no authority to review the decision of a state court."
(EXHIBIT A, MOTION TO DISMISS filed June 28, 1974, page 1)

B. "I. Review of a State Court Decision - Inappropriate forum.

A federal district court has no power to review the judgment of a state court . . ."
(EXHIBIT B, MEMORANDUM IN SUPPORT OF MOTION TO DISMISS filed July 2, 1974, page 1)

" . . . The decision, whether right or wrong, is an exercise of jurisdiction and must be reversed or modified in an appropriate and timely appellate proceeding to change the decision. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Rooker v. Fidelity Trust Co., 263 U.S. 13, 44 S. Ct. 149 (1923). . . .

When the defendant (State Bank of Davis) in the state court proceedings declined to seek an appeal . . . to the appropriate forum, he waived the right to seek reversal of the state

court determinations. . . . The Federal District courts are strictly limited to original jurisdiction by Congressional mandate and cannot entertain a proceeding to modify or reverse the state court proceeding." (EXHIBIT B, page 2)

C. "I. A FEDERAL DISTRICT COURT LACKS JURISDICTION TO REVIEW THE DECISION OF A STATE COURT.

Federal courts are courts of limited jurisdiction and are empowered to hear only those cases which have been entrusted to them by a congressional grant of jurisdiction. They have no power to review the judgment of a state court, except where a substantial federal question is involved. In such a case, the final judgment or decree rendered by the 'highest court of a state in which a decision could be had', may be reviewed by the Supreme Court of the United States pursuant to the provisions of 28 U.S.C.A. Sec. 1257. But federal district courts are limited to cases of original jurisdiction and cannot entertain a proceeding to modify or reverse a state court proceeding. To do so would be an exercise of appellate jurisdiction.

When the defendant (said State Bank of Davis in said 97-ED-1 Case) was rebuffed by (said 97-ED-1) State Court of Illinois, he chose not to appeal to the (appropriate reviewing) Court. Instead, (said Bank effectively filed) suit in (said) Federal Court alleging (fraud) . . . in an attempt to . . . relitigate substantially identical facts and legal contentions previously decided by (said State) Court of Illinois. But limitations on jurisdiction prevent such a procedure. The Plaintiff (in said 99-A-5023 Case) cannot circumvent the boundaries imposed upon the jurisdiction of (said federal) Court." (EXHIBIT C, MEMORANDUM OF LAW SUBMITTED IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS filed September 30, 1974, page 3)

"Defendant (State Bank of Davis) had an adequate remedy for review of the State Court determinations by appeal . . . His failure to petition the appropriate forum acted as a waiver of the right to seek reversal of the state Court determinations." (EXHIBIT C, page 4).

61. Evidence of Record establishes categorically that said Attorney Woodruff A. Burt:

A. Was the Legal Counsel who represented the City of Freeport in said Reich v. City of Freeport Case (Cited herein) and successfully argued, on behalf of his City of Freeport client, that "*A Federal District Court has no authority to review the decision of a State Court*" (EXHIBIT A, page 1).

B. Was the Legal Counsel for said State Bank of Davis for many years prior to and during the pendency of both said 97-ED-1 Case and said 97-B-50687 Bankruptcy Case which included said 99-5023 Adversarial Proceeding; and

C. Pursuant to the FINAL REPORT filed by said Bankruptcy Trustee on November 7, 2001, had conversations of Record with said Daniel M. Donahue, pertaining to said obtaining of said real estate, during the pendency of both said Bankruptcy Case and said Adversarial Proceeding (While said Daniel M. Donahue was both an attorney for said "*secured creditor*"

and at the very same time, the attorney for said Bankruptcy Trustee).

D. By said conversations, established that he was a party to said scheme to so obtain said real estate despite his knowledge that said Bankruptcy Court, being a part of the very same District Court in which he argued said absence of subject matter jurisdiction in 1974, ". . . *has no authority to review* (said FINAL JUDGMENT ORDER) *of* (said) *State Court*" (EXHIBIT A, page 1).

62. Consequently, said Woodruff A. ("Woody") Burt, said State Bank of Davis, said McGreevy, Johnson & Williams, P.C., said Daniel M. Donahue, and said Thomas J. Lester knew, or had reason to know, during the pendency of said 97-ED-1 pertinent state-court Case and said 97-B-50687 Bankruptcy Case and said 99-A-5023 Bankruptcy Adversary Case, that:

A. Said State Bank of Davis failed entire to present any claim, in said 97-ED-1 state-court Case, pertaining to the ownership of the subject real estate;

B. Said State Bank of Davis, as so pertinently argued by said Woodruff Burt, "*had an adequate remedy for review of* (said) *State Court* (FINAL JUDGMENT ORDER) *by appeal.* (The State Bank of Davis) *failure* (in said 97-ED-1 Case) *to petition the appropriate forum acted as a waiver of the right to seek reversal of* (said) *state Court determination.*" (EXHIBIT C, page 4);

C. Said Federal Court, as so argued by said Woodruff Burt, was deprived of subject matter jurisdiction, by both said long established 28 U.S.C. 1257 Statute of the United States and pertinent Case Law, to reverse or modify said state-court FINAL JUDGMENT ORDER;

D. The filing of said Adversary Complaint sought an impermissible appellate review of said state-court FINAL JUDGMENT ORDER and said filing constituted a concerted attempt, as so argued by said Woodruff Burt, to "*circumvent the boundaries imposed upon the jurisdiction of* (said bankruptcy) *Court*" (EXHIBIT C, page 3) as so established "*by Congressional mandate*" (EXHIBIT B, page 2); and

E. The filing of said Adversary Complaint, despite the limitations imposed by said Statute of the United States, constituted a concerted, albeit unlawful, effort to "*effectively void* (said) *state court ruling.*" (Levin v. ARDC, 1996, supra, at 766).

63. Conversely, said Defendant did not become aware of the applicability of said 28 U.S.C. 1257 Statute and said *Rooker-Feldman* doctrine until September, 2004, and the point of Law that said Bankruptcy Court was deprived, by said Statute and said doctrine, of subject matter jurisdiction to entertain the claim for relief, set forth in said Adversary Complaint, seeking to "*effectively void* (said) *state court ruling.*" (Levin v. ARDC, 1996, supra, at 766).

64. Nevertheless, said Bankruptcy Trustee effectively acknowledged the invalidity of said "TRUSTEE'S DEED" by stating therein, in pertinent part, as follows:

"On motion of Trustee, . . . such (Bankruptcy) Court made an order authorizing and directing Trustee to sell the real estate described below free and clear of all liens and other interests in such real estate, . . . and

Pursuant to such Order, Trustee entered into a Contract for Purchase and Sale with Purchaser for the sum (specified) and the Bankruptcy Court has entered an Order approving said sale.

NOW, THEREFORE, I, as Trustee of the Estate of Clarence L. Vance, Debtor, and by virtue of the title and powers vested in me by the provisions of the Bankruptcy Code, and by such Orders of the Bankruptcy Court authorizing the sale, . . . give, grant, bargain, sell, set over, and convey to Purchaser, ALAN F. MILLER, his heirs, executors, and assigns . . . all my right, title and interest in and to" the subject real estate." (Emphasis added)

65. Said statements, by said Bankruptcy Trustee, constitute a concerted effort to give the appearance of legitimacy to the taking of the subject real estate, under the color of official right of said Bankruptcy Court, despite the fact that he had reason to know that said Bankruptcy Court was barred, by said 28U.S.C. 1257 Statute of the United States and by said *Rooker-Feldman* doctrine, from "*Engaging in an impermissible appellate review*" (Ritter v. Ross, *supra*) of said FINAL JUDGMENT ORDER.

66. Contrariwise, as set forth hereinbefore, the Supreme Court of the United States explicitly and recently declared, pertaining to the appellate jurisdiction of said Bankruptcy Court, that:

" . . . appellate jurisdiction to reverse or modify a state-court judgment is lodged, initially by §25 of the Judiciary Act of 1789, 1 Stat. 85, and now by 28 U.S.C. 1257, EXCLUSIVELY in this (Supreme) Court (of the United States)." (Emphasis added) Exxon Mobil Corp. vs. Saudi Basic Industries, Corp., 2005, 161 L.Ed.2d 454, 461; AND ALSO

*" . . . declared such suits out of bounds, i.e., properly dismissed for want of subject matter jurisdiction." Exxon Mobil Corp., *supra*, at 461.*

67. Bankruptcy Court Records also establish that, on or about August 25, 2000, said "*Purchaser, ALAN F. MILLER*" was served with a copy of said FINAL JUDGMENT ORDER and other Title related Public Documents establishing categorically that said Clarence L. Vance had **NO** Title interest in the said real estate after 1983.

68. Consequently, said Complainant knew, or had reason to know, **PRIOR** to the issuing of said "TRUSTEE'S DEED" to him, that:

- A. Said Public Title Records establish categorically that neither Clarence L. Vance nor his said Bankruptcy Trustee was the lawful owner of the subject real estate in 2000; and
- B. Said Bankruptcy Trustee had **NO** capacity to convey lawful Title to said real estate to

said Complainant; and

C. Said "TRUSTEE'S DEED" so issued, unlawfully, to said Complainant, in point of fact, *"is a nullity -- not merely voidable but void -- and may be disregarded"* (People v. Miller, supra, at 579) and is invalid.

69. In the of Record absence of any claim filed against said Bankruptcy Estate by any **"UNSECURED CREDITORS WHOM THE TRUSTEE REPRESENTS"** (Senate Report No. 95-989, Emphasis added), evidence of Record indicates that the filing of said Adversary Complaint was part of a carefully crafted scheme to obtain Title to the subject real estate, under color of official right of said Bankruptcy Court, without the consent of said lawful and conclusively adjudicated owner of Record of said real estate.

70. Furthermore, Bankruptcy Court records establish categorically that the proceeds from said "Sale" were distributed solely to said Bankruptcy Trustee and those who assisted him in said scheme and that **NO** unsecured creditor (there being **NONE** in said Bankruptcy Estate) received any proceeds from said "Sale".

71. Consequently, this Court has reason to know that the said "TRUSTEE'S DEED", unlawfully issued under said color of official right of said Bankruptcy Court "orders", has no basis either in Law or in fact, and is of no lawful force or effect, and is void, ab initio, and *"is a nullity -- not merely voidable but void -- and may be disregarded"* (People v. Miller, supra, at 579), and is, by Law, invalid in that:

" . . . jurisdiction involves not only the power to hear and determine a given case but also the power to grant the particular relief requested, and every act of the court beyond its jurisdiction is void." Miller v. Balfour, 2nd Dist., 1999, 303 Ill.App.3d 209, 216.

72. This Court also has reason to know that each said criminal charge, being based entire upon said "TRUSTEE'S DEED", also has no basis either in Law or in fact, and is of no lawful force or effect, and is void, ab initio, and, by Law, *"is a nullity. . . and may be disregarded"* (People v. Miller, supra, at 579) and, therefore, is only a Legal Folly.

73. This Court has reason to know that said unlawfully issued "TRUSTEE'S DEED" can not confer jurisdiction upon this Court to allow the ongoing prosecution of said criminal charges against said Defendant in that:

"A court which does not have jurisdiction over a party may not create that jurisdiction by judicial fiat." Morey Fish Co. v. Rymer Foods, Inc., 1994, 158 Ill.2d 179, 189.

74. This Court has reason to know that the filing of said criminal charges, with the ongoing prosecution of said charges in this Court, constitutes the continuation of said scheme to so obtain Title to said real estate under color of official right.

75. This Court also has reason to know that the ongoing prosecution of said charges against

said Defendant, based entire on said "TRUSTEE'S DEED" issued unlawfully despite the said statutory deprivation of subject matter jurisdiction of said Bankruptcy Court, is contrary to established Law and is further drawing into question the validity of both said 28 U.S.C. 1257 Statute of the United States as well as the supporting *Rooker-Feldman* doctrine of the Supreme Court of the United States.

THEREFORE, in consideration of the premises and in the interest of both justice and the Rule of Law, said Defendant asks this Court to dismiss each said criminal charge, with prejudice, and thereby remove the subject question as to the validity of both said 28 U.S.C. 1257 Statute of the United States and said *Rooker-Feldman* doctrine.

Dated: October 16, 2006

Respectfully submitted,

Clarence L. Vance
Named as Defendant

2203 Halsted Rd.
Rockford, IL 61103

AFFIDAVIT

Pursuant to 735 ILCS 1-109, the undersigned certifies that the statements set forth in the foregoing Motion are true and correct and that he will, on this date, serve, either personally or by depositing in the U.S. Mail with postage prepaid, a true and correct copy of said Motion upon each of the following:

Paul A. Logli
Winnebago County State's Attorney
400 West State Street
Rockford, IL 61101

Lisa Madigan
Illinois Attorney General
100 West Randolph Street
Chicago, IL 60601

Executed: October 16, 2006

Clarence L. Vance

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

FILED

JUN 28 1974

AT 10 O'CLOCK
H. STUART CUNNINGHAM
CLERK

ALBERT REICH,)
)
 Plaintiff,)
)
 vs.)
)
 CITY OF FREEPORT, an Illinois)
 Municipal Corporation, THE BOARD)
 OF FIRE AND POLICE COMMISSIONERS)
 OF THE CITY OF FREEPORT, CHARLES)
 BALZ, ROBERT F. MILLER, ALEX)
 McKNIGHT, and DAVID STEARNS,)
)
 Defendants.)

No. 74 C 29

MOTION TO DISMISS

The Defendants, CITY OF FREEPORT, an Illinois Municipal Corporation, THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF FREEPORT, CHARLES BALZ, ROBERT F. MILLER, ALEX McKNIGHT, and DAVID STEARNS move the court as follows:

1. To dismiss the action on the ground that the court lacks jurisdiction of the subject matter, in that:
 - a. A Federal District Court has no authority to review the decision of a state court.
 - b. The matters set forth and alleged in the complaint are insufficient to confer jurisdiction of the court over the subject matter under the provisions of 28 U.S.C.A. §1331, 28 U.S.C.A. §1343, or 42 U.S.C.A. §1983.
 - c. The provisions of 28 U.S.C.A. §2201 do not create or confer original or independent jurisdiction upon a Federal District Court.

EXHIBIT A

Doc # 6

d. Neither a municipality nor a municipal body such as the Board of Fire and Police Commissioners are subject to suit under 42 U.S.C.A. §1983.

e. No substantial federal question is involved.

f. The matter in controversy, exclusive of interest and costs, is less than \$10,000.00.

2. To dismiss the action on the ground that the court lacks jurisdiction of the defendants because they were acting in an administrative quasi-judicial capacity and are immune from civil suit.

3. To dismiss the action on the ground that Res Judicata bars the relitigation of the same cause of action between the same parties or their privies in federal district court after a decision on the merits has been reached by a state court.

4. To dismiss the action on the ground that the identical issues were litigated and determined on the merits in a prior lawsuit between the same parties and are barred from relitigation by the doctrine of Collateral Estoppel.

5. To dismiss the action as to David Stearns because he was im- properly joined as a defendant.

CITY OF FREEPORT, an Illinois
Municipal Corporation, THE BOARD
OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF FREEPORT, CHARLES
BALZ, ROBERT F. MILLER, ALEX
McKNIGHT, and DAVID STEARNS,
Defendants,

By Woodruff A. Burt
Woodruff A. Burt, Their Attorney

Woodruff A. Burt
Attorney for Defendants
216 W. Stephenson St.
Freeport, Illinois
Tel: 233-3104

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above case by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Freeport, Illinois, on the 21st day of June, 1974.
Woodruff A. Burt
subscribed and sworn to before me this 21st day of June

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

ALBERT REICH,

Plaintiff,

vs.

CITY OF FREEPORT, an Illinois
Municipal Corporation, THE BOARD
OF FIRE AND POLICE COMMISSIONERS
OF THE CITY OF FREEPORT, CHARLES
BALZ, ROBERT F. MILLER, ALEX
MCKNIGHT, and DAVID STEARNS,

Defendants.

FILED
JUL 2 1974
H. STUART CUNNINGHAM
CLERK
No. 74 C

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

This Memorandum is filed pursuant to Rule 13 of the Rules of the United States District Court for the Northern District of Illinois, Western Division.

I. Review of a State Court Decision - Inappropriate forum.

A federal district court has no power to review the judgment of a state court even though a federal question was passed upon by the state court. Haydu v. City of Billings, Montana, 258 F. Supp. 785 (D.C. Mont. 1966). The only appropriate forum for review when a substantial federal question is considered in the state court is the United States Supreme Court. 28 U.S.C.A. Sec.1257.

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court...."

EXHIBIT B

Doc. #7

If the constitutional questions are presented in the state court, that court must decide them. The decision, whether right or wrong, is an exercise of jurisdiction and must be reversed or modified in an appropriate and timely appellate proceeding to change the decision. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Rooker v. Fidelity Trust Co., 263 U.S. 13, 44 S. Ct. 149 (1923).

A Civil Rights Act may not be used as a device to secure federal review of a state court judgment as plaintiff is attempting to do in this instant case. Rodes v. Municipal Authority of the Borough of Milford, 409 F.2d 16 (3d Cir. 1969).

When the defendant in the state court proceedings declined to seek an appeal or writ of certiorari to the appropriate forum, he waived the right to seek reversal of the state court determinations. Frazier v. East Baton Rouge Parish School Board, 363 F.2d 861 (5th Cir. 1966) The Federal District courts are strictly limited to original jurisdiction by Congressional mandate and cannot entertain a proceeding to modify or reverse the state court proceeding. P. I. Enterprises, Inc. v. Cataldo, 457 F.2d 1012 (1st Cir. 1972)

II. Jurisdiction of the Subject Matter

A. 28 U.S.C.A. Sec.2201, Declaratory Judgment Act.

The Declaratory Judgment Act is procedural in nature and does not create independent ground for jurisdiction. Chance v. County Board of School Trustees of McHenry County, Ill., 332 F.2d 971 (7th Cir. 1964); Employing Plasterer's Association of Chicago v. Operative Plasterer's and Cement Masons International Association of U. S. And Canada, 172 F. Supp. 337 (D.C. Ill. 1954).

363 F. Supp. 510 (D.C. Pa. 1973). See also Borum v. American Motors Corp. 301 F. Supp. 255 (D.C. Wis. 1969), where res judicata barred relitigation of a claimant's workmen's compensation claim under 28 U.S.C.A. Sec. 1343, based on the allegation that he was denied due process and that he was not given a complete hearing before the State Industrial Commission as to the nature and extent of his injuries.

Other cases in point are Grubb v. Public Utilities Commission of Ohio, 281 U.S. 470, 50 S. Ct. 374 (1930); Lavasek v. White, 339 F.2d 861 (10th Cir. 1965). Chirillo v. Lehman, 38 F. Supp. 65 (D.C. N.Y. 1941); aff'd 312 U.S. 662, 61 S. Ct. 741; Cauefield v. Fidelity & Casualty Co. of New York, 378 F.2d 876 (5th Cir. 1967) cert. denied 389 U.S. 1009, 88 S. Ct. 571.

All of the above principals are applicable in the instant case and must act as a bar to relitigation of the state court determination.

Respectfully submitted,

Woodruff A. Burt
Attorney for Defendants

Woodruff A. Burt
Attorney for Defendants
216 West Stephenson Street
Freeport, Illinois 61032
Telephone: 815-233-3104

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the persons of record of all parties to the above cause by enclosing the same in an envelope addressed to such address as their respective address as disclosed by the pleadings of record herein, and postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Freeport, Illinois, on the

25th day of June 1974
Woodruff A. Burt
Subscribed and sworn to before me on the 25th day of June 1974
Ethel Sarkis
Notary Public

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

FILED
859 30 107A
DOCKETED
AT 10 O'CLOCK
H. STUART CUNNINGHAM
CLERK

ALBERT REICH,)
)
) Plaintiff,)
)
) vs.)
)
) CITY OF FREEPORT, an Illinois)
) Municipal Corporation, THE BOARD)
) OF FIRE AND POLICE COMMISSIONERS)
) OF THE CITY OF FREEPORT, CHARLES)
) BALZ, ROBERT F. MILLER, ALEX)
) MCKNIGHT, and DAVID STEARNS,)
)
) Defendants.)

NO. 74 C 29

MEMORANDUM OF LAW SUBMITTED IN SUPPORT
OF DEFENDANT'S MOTION TO DISMISS

This Memorandum is filed pursuant to Rule 13 of the
General Rules of the United States District Court for the
Northern District of Illinois, Western Division.

STATEMENT OF FACTS

Albert Reich, Plaintiff, was discharged for cause as a
patrolman from the Freeport Police Department by the Board
of Fire and Police Commissioners of the City of Freeport
pursuant to the provisions of Section 10-2.1-17 of the
Illinois Municipal Code (Ill.Rev.Stat. ch. 24, Sec. 10-2.1-17
(1971)). The Circuit Court of Stephenson County entered an
order affirming the decision of the administrative agency.

EXHIBIT C

Doc. #21

Plaintiff then appealed to the Appellate Court of Illinois, Second Judicial Circuit, under various legal theories, including the allegations: (1) that the Ordinances and Statutes under which Reich was charged were unconstitutional and (2) that Reich was denied due process of law during the proceedings before the Board of Fire and Police Commissioners. The Appellate Court upheld the actions of the Board and the decision of the Circuit Court.

Reich's Petition for leave to appeal to the Supreme Court of Illinois was denied. No appeal or petition for writ of certiorari was taken to the Supreme Court of the United States.

Subsequently Reich filed this suit in Federal District Court proposing substantially the same legal theories that he raised in the State Courts of Illinois. He also added an additional allegation of conspiracy in an effort to gain jurisdiction before this Court. Joined as additional parties to this suit were the City of Freeport and the individual members of the Board of Fire and Police Commissioners. David Stearns, one of the Board members named as a Defendant in this action, was not a Board member during the period that the incidents in question occurred and was not involved in the proceedings. The factual situation is identical in both suits.

Defendants now seek to have the suit dismissed with prejudice, or to have the Motion to Dismiss treated as a Motion for Summary Judgment to facilitate a quick resolution of this suit.

I. A FEDERAL DISTRICT COURT LACKS JURISDICTION TO REVIEW THE DECISION OF A STATE COURT.

Federal courts are courts of limited jurisdiction and are empowered to hear only those cases which have been entrusted to them by a congressional grant of jurisdiction. They have no power to review the judgment of a state court, except where a substantial federal question is involved. In such a case, the final judgment or decree rendered by the "highest court of a state in which a decision could be had", may be reviewed by the Supreme Court of the United States pursuant to the provisions of 28 U.S.C.A. Sec. 1257. But federal district courts are limited to cases of original jurisdiction and cannot entertain a proceeding to modify or reverse a state court proceeding. P.I. Enterprises, Inc. v. Cataldo, 457 F.2d 1012 (1st Cir. 1972) To do so would be an exercise of appellate jurisdiction. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149 (1923)

When the defendant in the instant case was rebuffed by the State Courts of Illinois, he chose not to appeal to the United States Supreme Court. Instead, he filed suit in this Federal Court alleging violations of his Constitutional rights, in an attempt to use the Constitution and the Civil Rights Act as tools to relitigate substantially identical facts and legal contentions previously decided by the State Courts of Illinois. But limitations on jurisdiction prevent such a procedure. The Plaintiff cannot circumvent the boundaries imposed upon the jurisdiction of this Court. The

Civil Rights Act cannot be used as a substitute for the right of appeal. Coogan v. Cincinnati Bar Association, 431 F.2d 1209 (6th Cir. 1970).

Defendant had an adequate remedy for review of the State Court determinations by appeal or by petition to the Supreme Court of the United States for a writ of certiorari. He chose not to resort to either remedy. His failure to petition the appropriate forum acted as a waiver of the right to seek reversal of the State Court determinations. Frazier v. East Baton Rouge Parish School Board, 363 F.2d 861 (5th Cir. 1966).

II. JURISDICTION OF THE SUBJECT MATTER

A. THE DECLARATORY JUDGEMENT ACT DOES NOT CONFER JURISDICTION UPON A FEDERAL COURT.

The Declaratory Judgement Act, 28 U.S.C.A. Sec. 2201, is procedural in nature and does not create independent ground for jurisdiction. Chance v. County Board of School Trustees of McHenry County, Ill., 332 F.2d 971 (7th Cir. 1964); Employing Plasterer's Association of Chicago v. Operative Plasterer's and Cement Masons International Association of U.S. and Canada, 172 F. Supp. 337 (D.C. Ill. 1959). It does not confer any substantive rights, Skelley Oil v. Phillips Petroleum Co., 339 U.S. 667, 70 S.Ct. 876 (1950), but rather provides an additional remedy where jurisdiction already exists. Terminal Freight Handling Co. v. Solien, 444 F.2d 699 (8th Cir. 1971) cert. denied 92 S.Ct. 124. The Defendant cannot use this section as a jurisdictional basis.

City of Freeport, when Reich was dismissed as a patrolman from the Police Department of the City of Freeport. David Stearns had no connection with the proceedings before the Board at that time, and he has no personal knowledge of any of the activities that took place at that time. He cannot be held liable for acts rendered by another public official before he took office. (see attached affidavit)

CONCLUSION

For the foregoing reasons, the complaint of the Plaintiff should be dismissed with prejudice.

CITY OF FREEPORT, an Illinois Municipal Corporation, THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE CITY OF FREEPORT, CHARLES BALZ, ROBERT F. MILLER, ALEX McKNIGHT and DAVID STEARNS, Defendants

By Woodruff A. Burt

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Telephone: 815-233-3104