IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

LARRY E. PARRISH, P. C.,	)	
Applicant/Non-Party	)	
v.	)	
	)	**No. M2017-02451-SC-R11-CV**
	)	Lincoln County Chancery
	)	No. C13039
NANCY J. STRONG	)	
Respondent/Appellee.	)	

APPLICATION FOR PERMISSION TO APPEAL

On appeal from Tennessee Court of Appeals, Middle Section.

COMES NOW, appellant, LARRY E. PARRISH, P.C. (hereinafter "**Applicant**"), pursuant to ***Tennessee Rules of Appellate Procedure***, Rule 11(a), and applies for permission to appeal from the Opinion and Judgment, filed on December 28, 2018, by the Court of Appeals, Middle Section (hereinafter "**COA**"), in the above styled case. The appellee is Nancy J. Strong (hereinafter "**Appellee**").

A true and exact copy of the Opinion (hereinafter "**Opinion**") is attached. Applicant timely-filed a ***Tennessee Rules of Appellate Procedure***, Rule 39(a) petition to rehear, which the COA denied on March 14, 2019.

Because no pleading was ever filed seeking any relief from Applicant and because no allegation has ever been made by Appellee, in the case below, accusing Applicant of any tortious or any other actionable conduct or failure to act, Applicant would have no standing to initiate or

prosecute the instant appeal, except for the fact that, in spite of these objective facts, the trial court entered an ostensible final "judgment" against Applicant and the COA affirmed the ostensible "judgment" as is not void *ab initio*. Thus, Applicant has standing on the authority of ***In re: Jocelyn L.,*** 2014 WL 7148789 (Tenn. Ct. App. 2014) stating as follows at *2:

> There also is the legal requirement that a party must be aggrieved by the trial court's decision in order to have standing to appeal the trial court's decision. This Court has discussed the status of being aggrieved as follows:
>
> > Standing limits access to the courts to those who have a justiciable claim. *Thomas v. Tenn. Dep't of Transp.,* No. M2010–01925–COA–R3–CV, 2011 WL 3433015, at *6; 2011 Tenn. App. LEXIS 426, at * 18–19 (Tenn. Ct. App. Aug. 5, 2011); *Wood v. Metro. Nashville & Davidson Co. Gov't,* 196 S.W.3d 152, 157 (Tenn.Ct.App.2005); *Metro. Air Research Testing Auth., Inc. v. Metro. Gov't of Nashville & Davidson Co.,* 842 S.W.2d 611, 615 (Tenn.Ct.App.1992). In order to have standing to appeal a trial court's order, a party must be "aggrieved" by the order. *Clark v. Perry,* No. 02A01–9704–CH–00080, 1998 WL 34190562, at *7; 1998 Tenn. App. LEXIS 194, at * 19 (Tenn. Ct. App. Mar. 19, 1998) (citing *Ray v. Trapp,* 609 S.W.2d 508, 512 (Tenn.1980); *Koontz v. Epperson Elec. Co.,* 643 S.W.2d 333, 335 (Tenn.Ct.App.1982)). In the legal sense, "[a] party is 'aggrieved' when he has an interest recognized by law which is injuriously affected by the order... ." *Clark,* 1998 WL 34190562, at *7; 1998 Tenn. App. LEXIS 194, at *19 (citing *Koontz,* 643 S.W.2d at 335).
>
> ***
>
> [*3]
>
> *In re: Montana R.T.,* No. E2011–00755–COA–R3–PT, 2012 WL 2499498, at *5 (Tenn. Ct. App. June 29, 2012), no appl. perm. appeal filed.
>
> ***
>
> [*4]

> As outlined in the case law above, to be an aggrieved party means to have one's legal interests injured or to have personal or property rights directly affected by operation of the trial court's order.

QUESTIONS PRESENTED FOR REVIEW

Question One

Where an ostensible judgment creditor, with full knowledge, filed a claim for relief, stated in what is labeled "counter-complaint," naming as the only so-called "counter-defendant" a human person who is not a party and who never made any appearance as an adversary, does a trial court have any jurisdiction to enter an *in personam* judgment, based on the claims for relief stated in the so-called "counter-complaint,"[1] against a person who is never accused of **any** acts or omissions in the so-called "counter-complaint" nor in any ***Tennessee Rules of Civil Procedure***, Rule 7.01 pleading of any other kind?

This question is 100% a jurisdiction question of case-dispositive significance. This is an out-of-the-shoot issue. In this case, it makes no difference what who did to whom. An appropriate analogy comes from baseball.

If, in the bottom of the ninth inning, with two outs, a home team batter hits the ball and **ostensibly** drives in three runs and lands on third base, with what **appears** to be a triple and 3 RBI's, rounds the bases without touching first base, the batter is out and no runs are counted, if the first baseman, with the ball in hand, touches first base before the next play of the game. Nothing else that occurs matters.

After the batter failed to touch first base and the first baseman timely touches first base with the ball, the batter is out at first and no runs count, lights out and the game is over, all of the

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[1] The term **"so-called counter-complaint"** is used because the title "counter-complaint," which appears on the face of the filed document is misleading. A Rule 13 *in personam* counterclaim can only be filed by a defendant who has been sued by a Rule 3 complaint and to whom there is issued a summons and a Rule 4-compliant service of the issued summons (or waiver of service of the issued summons) on the defendant. Appellee never had standing as a "defendant" against whom *in personam* claims for relief and a summons had issued; therefore, Appellee never had standing to file a Rule 13 counterclaim. Referring to what was filed as if a counterclaim gives the false impression that Appellee actually filed a Rule 13 counterclaim. What Appellee filed is a document misleadingly labeled as "counter-complaint." Contrary to what politicians say, it's not what you called it; rather, it's what it is that counts. *See* RoA Vol. VIII p. 1036 n. 4; Vol IX p.1146.

equities and "fairness" to the contrary notwithstanding. There is NOTHING that can rescue the ostensible three runs or the batter's ostensible triple.

Here, Appellee failed, indisputably (as an irrefutable and uncontestable video of first base proves), failed to touch first base, i.e., failed to file a Rule 3 complaint (or any other Rule 7.01 pleading) making a single allegation or seeking an iota of relief from the person (Applicant) against whom the subject *in personam* judgment is entered. Using the analogy, the batter missed first basr by three feet, not three inches, as if in a brain fog.

It could not possibly be more elementary. It is impossible to sue A, i.e., Larry E. Parrish (hereinafter "**LEP**"), and, thereby, get a judgment against B (Applicant). That such a judgment could be entered is such a bizarre thought that it is hard to take in that this is what happened, but this is exactly what happened. The reality becomes more and more bizarre as the case continues.

Thirty-five (35) days after (using the baseball analogy, before the next play), Appellee filed the so-called "counter-complaint" against a non-party (i.e., A, LEP), Applicant (i.e., B), the same as if the first baseman in the analogy, with ball in hand, is timely (before the next play) jumping up and down on first base, yelling to the umpires to call the batter out and erase the runs, but every umpire ignores the first baseman, even though the batter missed first base by three feet. No umpire claims the batter touched first base. The batter does not claim to have touch first. Rather, the umpires just ignore the first baseman.

This question is not classifiable as either subject matter or personal jurisdiction, *in rem* or *in personam*. This is a case where the trial court had no jurisdiction of any kind, shape or form to enter any judgment against Applicant because Applicant was never even attempted to be sued by Appellee and, with full knowledge, Appellee willfully (as if in a brain fog) refused, at a time when it remained possible, to sue Applicant.

One can search, high and low, for any reason why Appellee did not, in this case, sue Applicant, and there is not even a hint why. This willful refusal by Appellee will remain the great mystery of this case.

But why is immaterial. Objective reality is that Appellee never filed a Rule 3 complaint nor any other Rule 7.01 pleading (e.g., a counterclaim) making a single allegation pertaining to or seeking an iota of relief from the person (Applicant) against whom the subject two million dollar *in personam* judgment is entered.

The date by which the instant Application is due to be filed is today, May 13, 2019. If this Application is, instead, filed tomorrow, May 14, 2019, it would be rejected as being filed in violation of the rules. Lights out. Game over! All of the understandable and heart-rending protestations to the contrary notwithstanding, this case would be over. The undeniable objective reality reduce the understandable and heart-rending protestations to the contrary to nothingness.

To appreciate the breadth of this question, it could be stipulated that Appellee (contrary to actuality) had been sued by an *in personam* claim for relief, perfectly served with a summons and had unquestionable standing to file a Rule 13 counterclaim. If the perfectly filed and served Rule 13 counterclaim had in it not a single word, directly, indirectly or impliedly about Applicant, the *arguendo* counterclaim would never have vested a court with an iota of either subject matter or personal jurisdiction to enter an *in personam* judgment **against Applicant**.

Because this is a question is about a perfectly void *ab initio* ostensible (but not real) judgment, the case-dispositive "facts" are found nowhere but on the face of the technical record. There is no evidence concerning who did what or did not do what to whom that has any bearing on the outcome of Question One. The relevant record which is case-dispositive is discussed below under the heading of facts.

Question Two

Is it impossible for any trial court to have or to acquire any subject matter jurisdiction to enter an *in personam* judgment (e.g., a judgment ordering an entity or human person to pay money) in a case where no summonses ever **issued** summoning any person to appear and defend any *in personam* claims for relief?

A caveat is in order before further discussion of Question Two. By deciding that, for failure of Appellee to file any pleading (e.g., a Rule 7.01 complaint or counterclaim or third-party complaint) making any claim for relief against Applicant, as discussed as Question One, never was any jurisdiction, personal or subject matter, which vested the trial court with any power or authority of any kind to enter an *in personam* judgment" against Applicant, based on the claims stated by Appellee in the so-called "counter-complaint."

Thus, Question Two should be moot and/or academic and, in effect, could be seen as if a request for an advisory opinion which the Court has no appellate jurisdiction to render.

Because, though confidant that what Applicant has advocated by Question One is correct, Applicant cannot be absolutely certain how the Court will decide Question One, Applicant raises Question Two.

As with Question One, Question Two raises a question of jurisdiction. If Question Two is answered by a "no," the *in personam* ostensible "judgment" is void *ab initio*. Therefore, Question Two, like Question One, the case-dispositive "facts" are found nowhere but on the face of the technical record.

There is no evidence concerning who did what or did not do what to whom that has any bearing on the outcome of Question Two. The relevant record which is case-dispositive is discussed below.

Question Three

Did the trial court and the COA make reversible errors of constitutional magnitude by superimposing *in personam* jurisprudence procedures onto a case governed only by *in rem* jurisprudence procedures?

Like Question Two, Question Three is not an issue necessary to completely adjudicate the instant appeal. That is, Applicant contends that Question One presents the end-all issue that is dispositive of this appeal.

However, Question Three is closely tied to the instant appeal because Question One would never have existed, except for the issue raised by Question Three.

This appeal is a perfect vehicle to address a serious problem in the administration of justice in Tennessee, which Applicant contends is the reason that what should have been a six (6) month or less *in rem* proceeding has turned into a 10-year saga of very, very unnecessary and great cost to the litigants and the justice system, and, if not resolved by an appeal to this Court, the same unnecessary costs are likely to recur in subsequent cases, and the instant case is apt to continue for years to come, beyond its upcoming eleventh (11^{th}) anniversary.

FACTS RELEVANT TO QUESTIONS

Question One Facts

On March 30, 2009, Appellee filed "Answer" which included the so-called "counter-complaint" (RoA TR Vol I at 102-114), amended April 6, 2009 (RoA TR Vol. I at 115-17) asking, exclusively, for ***in personam*** relief, i.e., a judgment requiring a **person** (LEP) to pay money to another **person** (Appellee).

After the March 30, 2009 so-called "counter-complaint" and April 6, 2009 amendment were filed, on May 4, 2009, Applicant filed Motion To Strike (RoA TR Vol II at 121) reading, in pertinent part, as follows:

COMES NOW plaintiff, Larry E. Parrish, P.C. (hereinafter "**Parrish, P.C.**"), pursuant to ***Tennessee Rules Of Civil Procedure***, Rule 12.06, and respectfully moves the Court to dismiss any and all *in personam* claims for relief against Larry E. Parrish, a non-party, said claims being immaterial to any issue raised in the instant *in rem* case.

> In particular, Parrish, P.C. [Applicant] respectfully moves the Court **to dismiss, by striking** the following parts of the document entitled "Answer And Counter-Complaint To Sworn In Rem Complaint To Trace And Recover *Res* And For Other Equitable Relief, Including An Immediate Issued Order, Pursuant To Tennessee Rules Of Civil Procedure Rule 67.02 And Rule 67.03, And For Costs And Attorney's Fees" (hereinafter "**Purported Answer**") filed March 30, 2009, beginning at page 3, paragraph 9, as follows: a **counterclaim for legal malpractice against the plaintiff, Larry Parrish** [i.e., LEP]. (p. 5, para. 11-12)
>
> ***
>
> Strong would aver that the **plaintiff Parrish** has been **guilty** of certain violations and deviations from the standard of care as well as violations of the Rules of Professional Conduct as follows:
>
> Rule 8 RPC 1.4 Communication, **Parrish failed** to reasonably communicate as hereafter set out in the counterclaim the status of a matter and comply with reasonable requests for information within a reasonable time.
>
> Rule 8 RPC 1.4(b). **Plaintiff failed** to as reasonably necessary to permit the client to make informed decisions regarding **his** representation.
>
> **Plaintiff violated** RPC 1.5 as **his** fees were unreasonable and unnecessary under the standards set out therein.
>
> **Plaintiff** was **guilty** of conflict of interest with reference to prohibitive transactions with **his** own client, i.e. the Chose, Rule 8 RPC 1.8.

COUNTERCLAIM

Comes now **Strong** in her position as counter-plaintiff and for her **separate and independent cause** under the contract, Exhibit B to the Complaint would aver as follows:

I

The acts ... complained of, i.e. the **legal malpractice of** the counter-defendant **Parrish.** Counter-defendant **Parrish**, has submitted **himself** to the jurisdiction ... for ... the purposes of **legal malpractice** by alleging ... in his [LEP's] ... Complaint herein. ... .
(p. 6, para. 14 – p. 7, para 1)

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III

Counter-defendant **Parrish** held **himself** [LEP] out as an expert ... malpractice. Counter-defendant **Parrish** held **himself** [LEP] out ... **his** [LEP's] expertise ... . Counter-defendant **Parrish** filed ... against John H. Baker ... .

[d]efendants averred ... that counter-defendant **Parrish failed** ... .

[B]aker in ... litigation counter-defendant **Parrish filed** ... .

[B]aker alleged that ... counter-defendant **Parrish** on behalf of Strong ... was insufficient. Counter-defendant **Parrish** then **filed** two insufficient affidavits ... .

***

Counter-defendant **Parrish** subsequently **provided** a copy ... Strong. **Strong** ... **inquired of** the counter-defendant **Parrish** as to the "legal jargon" ... . Counter-defendant **Parrish failed** ... .

IV

Strong avers that **Parrish** is **guilty** ... .

... Strong ... relied upon the **representations/misrepresentations ... of** counter-defendant **Parrish** ... .

... Strong would aver that counter-defendant **Parrish failed ... and mislead** her and deceived her ... . Said acts [of LEP] were ... result of ... losses and damages ... .

Strong ... aver ... a **breach of the contract** entered into between the parties as Exhibit B to the original Complaint. Said **breach of contract** caused Strong ... damages.

Strong avers that ... counter-defendant **Parrish** is **guilty** ... .

Strong avers that counter-defendant **Parrish** is **guilty** ... .

***

Counter-defendant **Parrish as plaintiff** has alleged in **his** [LEP] original Complaint that Strong does not have a cause of action for **legal malpractice**. To the extent he has made such allegations and joined said issue, under T.C.A. § 28-1-114 this Counter-Complaint is timely filed.

Further, Strong would aver that the counter-defendant **Parrish** is **estopped** to rely upon the statute of limitations under the Doctrine of Equitable Estoppel based on **his** [LEP] deceptive misconduct, unfair and deceptive act and violations of the Code of Professional Responsibility.

Counter-defendant **Parrish** in **violation** of the Code of Professional Responsibility failed to communicate with Strong about the likelihood of losing the matter under the issue of expert testimony, which was then appealed and the trial court's position of dismissal by Summary Judgment was affirmed on March 31, 2008. Said deception and conduct were **misleading and misrepresented** Strong's position, **extends** the

> **statute of limitations** during the period of time of the conduct of **deception** and **failure to communicate**.
>
> WHEREFORE from the foregoing Strong prays for the following relief:
>
> ***
>
> The Court finds that counter-defendant **Parrish** is **guilty ... .**
>
> That the Court find that the statute of limitations has not expired based on the **misconduct and deception of** the counter-defendant **Parrish** ... .
>
> That the counter-plaintiff ... **recover** as **damages** all attorney's fees paid to counter-defendant **Parrish** ... .
>
> That the counter-plaintiff have and **recover of** counter-defendant **Parrish** for ... as counter-defendant **Parrish deviated ... .**
>
> That the counter-plaintiff recover ... damages ... of the counter-defendant [LEP] ... . (emphasis added).

The so-called "counter-complaint" can be examined by the finest magnifying device known to mankind, and never once will there be found even an allusion to Applicant in the so-called "counter-complaint."

On May 17, 2016, the trial court entered what is titled "Order Denying Petitioner's Motion To Strike" (RoA TR Vol. VII at 993) which reads as follows:

> THIS CAUSE came on to be heard on the 18th day of April 2016.
>
> ***
>
> Therefore, the Petitioner's Motion to Strike is hereby denied.

The Opinion, of the motion to strike, says only as follows (2018 WL 6843402, at *2):

> Ms. Strong filed an answer to the complaint as well as a counter-complaint. The Corporation responded with a motion to strike Ms. Strong as a party.
>
> ***
>
> [at *4]
>
> The Corporation first argues that the trial court erred by its entry of the May 17, 2016 order denying LEP's May 4, 2009 **motion to strike.** In this section of the Corporation's brief, which represents the heart of its appeal, LEP **rehashes** the same argument that this court rejected in the 2011 appeal, namely that **Ms. Strong is not a party** to these *in rem* proceedings.
>
> For reasons not clear to this court, on April 19, 2016, LEP sought a ruling on its **motion to strike Ms. Strong as a party**--a motion it initially made **on May 4, 2009**, in response to Ms. Strong's answer to LEP's original petition in this case. In a succinct order denying LEP's motion to strike, the trial court stated: 'The Tennessee Court of Appeals ruled that Ms. Strong is a necessary party to the instant action in their Opinion rendered September 29, 2011.' (emphasis added)

In light of the Opinion's characterizations of the strike motion, the error of the characterizations, requires Applicant to provide an explanation.

The strike motion has nothing to do with Appellee's status as a party. The strike motion has nothing to do with the merits of the so-called "counter-complaint." The strike motion seeks a dismissal only as to the "in personam claims" fruitlessly sought to be pled in the so-called "counter-complaint." Rule 12.06, in its entirety, reads as follows:

> Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon **motion** made by a party **within 30 days** after the service of the pleading upon the party or upon the court's own initiative at any time, the court may **order stricken** from any pleading any insufficient defense or any redundant, **immaterial,** impertinent or scandalous **matter.** (emphasis added).

Buried in the so-called "counter-complaint" were claims which, in substance, were an assertion of a claim of interest in and to the *Res* contrary to the claim filed by Applicant in the initiating Sworn In Rem Complaint. In substance, the claim of interest the so-called "counter-complaint" stated is that the admitted assignment was negated by unconscionability. The strike motion carved out these claims of interest in the *Res* and explicitly and affirmatively stated that the there was no request that these claims of interest be stricken.

The strike motion only requested that the claims the so-called "counter-complaint" attempted to make against a person who had never made an appearance and never filed any claims of any kind (namely, LEP) be stricken as "immaterial."

The strike motion served the purpose of putting Appellee on notice, on the record, that Appellee had, apparently, made a mistake: indeed, a very fixable mistake readily curable by a third-party complaint, which Applicant presumed would be forthcoming. Instead, Appellee resisted the strike motion (RoA Vol. II p. 191) and reiterated Appellee's intention to proceed as the so-called "counter-complaint" read, i.e., with the one and only culpable person named being LEP.

On May 28, 2013, Appellee filed (RoA TR Vol. V at 561-572) what was to be the final so-called "counter-complaint," Appellee made even more certain that the claims for relief, as had been the case in the original so-called "counter-complaint," re-asserted and clarified that Appellee's claims for relief were being made by accusations against LEP (and LEP alone), and were not claims for relief against Applicant.

On July 31, 2014, three weeks before trial, Appellee filed what is titled "Respondent's Request for Specific and/or Special Jury Instructions" (RoA TR Vol. 5 at 625), in part pertinent to the instant appeal, reading as follows (RoA TR Vol. 5 at 625-26):

> Comes now the respondent, Nancy J. Strong (Hereinafter Ms. Strong) ... hereby requests the Honorable Court give the jury instructions for the following reasons.
>
> The **Petitioner Larry E. Parrish (Hereinafter Parrish) has asserted breach of contract** as a cause of action. **In his complaint** the petitioner Parrish has admitted there was a valid contract (Retainer Agreement dated 12/29/04) created **between** Larry E. Parrish, **PC [Corporation] and** respondent Nancy J. **Strong**.
>
> ***
>
> The Respondent Ms. **Strong has** properly asserted **breach of contract** as a cause of action. (Respondents Answer and Counter complaint, p. 10, para. VI) as **elements** of that cause of action include 1) **breach** of **fiduciary duty**, 2) breach of ethical duty of an attorney, and 3) breach standard of care. Consequently, Ms. Strong respectfully requests the following instructions be given to the jury at the close of all proof. (emphasis added).

Thus, Appellee continued, on July 31, 2014, to assert that **LEP is the "Petitioner"** and that **LEP "has asserted breach of contract"** and that "In his complaint the **Petitioner Parrish** has admitted ... ." Of course, the objective reality is that LEP, as an adversary, filed no "complaint" nor any other document admitting or not admitting anything.

To further crystalize the line of demarcation for the trial court, Appellee and Applicant filed competing motions for summary judgment (hereinafter "**MSJs**"). The Court heard oral argument on all matters November 3, 2009. *See* 2011 Appeal, 2011 WL 4529607, at *7).

On March 23, 2010, the trial court entered an order concluding that the assignment was not unconscionable (RoA Vol. III p. 326, 333) as follows:

> This Court cannot say that in analyzing the facts and circumstances of the contract and how it came to be that the facts and circumstances are not so one-sided that Ms. Strong was denied the opportunity to make a meaningful choice. She had the opportunity to make a meaningful choice. She had other people to turn to between the time she was presented the document and the time that she signed it. It is **not patently unconscionable** that an individual would enter into a chose in action to pay less money in attorney fees than was owed.

> The contract is **not unconscionable** as a matter of law and Parrish **PC's claim to $50,000 plus interest must be sustained.** (emphasis added).

The trial court entered a Final Judgment (RoA Vol. III p. 365), on May 18, 2010, reading as follows:

> The Court further finds upon review of the "Chose" that the portion awarding attorney's fees and interest was **not unconscionable** and find that the plaintiff, Parrish, P.C. **[Applicant]** is **entitled to $50,000.00 plus interest.**
>
> ***
>
> ORDERED that the Court further finds upon review of the "Chose" that the portion awarding **attorney's fees and interest was not unconscionable** and find that the plaintiff, Parrish, **P.C. is entitled to $50,000.00 plus interest.** (emphasis added)

Appellee (not Applicant) appealed the trial court's adjudication. The COA reversed the MSJs **holding nothing more than** that there existed **genuine disputes** as to material facts and, because of this, the case was remanded for a plenary trial of the issues. Parrish v. Dodson, 2011 WL 4529607 (Sept. 29, 2011) pet. reh. den. Oct. 14, 2011 (hereinafter "**2011 Appeal**").

The COA **holding** reversing the MSJs is encased in an opinion laced with ***dicta*** that plagued the trial court's disposition of this case after the remand. *Dicta* is not law of the case and to be ignored in determining what law of the case is derived from a COA adjudication. The only law of the case is the holding. The trial court refused to distinguish between (RoA Vol. VII p. 1076 n. 32 ; Vol IX p. 1155-57) the holding from the *dicta*; therefore, the trial court attempted to give holding effect to pure *dicta*. This became the basis for many erroneous decisions of the trial court unnecessary to be discussed in this Application.

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because of this, the case was remanded for a plenary trial of the issues. Parrish v. Dodson, 2011 WL 4529607 (Sept. 29, 2011) pet. reh. den. Oct. 14, 2011 (herein "**2011 Appeal**").

The COA **holding** reversing the MSJs is encased in an opinion laced with ***dicta*** that plagued the trial court's disposition of this case after the remand. *Dicta* is not law of the case and to be ignored in determining what law of the case is derived from a COA adjudication. The only law of the case is the holding. The trial court refused to distinguish between the holding from the *dicta*; therefore, the trial court attempted to give holding effect to pure *dicta*. This became the basis for many erroneous decisions of the trial court unnecessary to be discussed in this Application.

On May 16, 2009, exactly two (2) months after filing the March 16, 2009 Sworn In Rem Complaint and forty-seven (47) days after the March 30, 2009 so-called "counter-complaint," Applicant initiated an *in personam* lawsuit (RoA Vol. II at 202-05), with a Sworn Statement of Account (RoA Vol. II at 208-22), making *in personam* claims for relief against Appellee, providing Appellee a forum and procedure to file a Rule 13 *in personam* counterclaim against Applicant, but Appellee never filed a counterclaim against Applicant, just as Appellee never filed any counterclaims against Applicant in the March 30, 2009 so-called "counter-complaint" nor anytime thereafter March 30, 2009. Applicant's *in personam* claims against Appellee were nonsuited and never refiled.

Seventeen (17) months after the March 16, 2009 Sworn In Rem Complaint and the March 30, 2009 so-called "counter-complaint," on August 13, 2010, Appellee filed in Circuit Court what is titled "Complaint For Legal Malpractice" (hereinafter "**Circuit Court Compliant**") (RoA TR Vol. IV at 421, 426). The style of the Circuit Court Complaint is as follows:

> Nancy J. Strong (plaintiff) vs. Larry E. Parrish, P.C. a Tennessee Corporation and Larry E. Parrish, individually

Notably, Appellee's August 13, 2010 Circuit Court Complaint, unlike the March 30, 2009 so-called "counter-complaint," filed 17 months earlier, names Applicant as a party-defendant.

In part pertinent to the instant appeal, the Circuit Court Complaint reads, in all particulars material to the instant appeal, exactly like the so-called "counter-complaint," filed 17 months earlier, and the Circuit Court Complaint so states by the following words (RoA TR Vol. VI at 426):

> This Complaint was originally filed as a counter-claim [the so-called "counter-complaint"] in Case No. 13039 wherein a **non-suit [by Appellee]** was entered [almost 5 months after the March 30, 2009 so-called "counter-complaint] August 18, 2009. (emphasis added).

Reading Appellee's Circuit Court Complaint, it is objectively observable that the claims made are not simply "malpractice" claims but, instead, all of the claims stated in the so-called "counter complaint" against LEP, are properly stated in a Rule 3 complaint with an issued and Rule 4-compliant service of the issued summons, against Applicant, except in two respects: (1) the consumer protection claims are missing and (2) Applicant, unlike in the so-called "counter-complaint, is defendant.

On August 13, 2010, three (3) months and nine (9) days after the Circuit Court Complaint was filed, on November 22, 2010, Circuit Court entered what is entitled "Order Of Dismissal" (hereinafter "**Nov. 22, 2010 Nonsuit With Prejudice**") (RoA TR Vol. IV at 427-28).

The November 22 Nonsuit With Prejudice reads, in its entirety, as follows:

> Came [Appellee] the Plaintiff Party and with proper notice to the opposing party moved the Court to dismiss the complaint and the Court, having heard statement of counsel and the entire record as a whole, is of the opinion that the complaint should be dismissed.
>
> **IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED** by the [Circuit] Court that the [August 13, 2010] compliant for legal malpractice be and the same is hereby dismissed with prejudice and costs are assessed against the plaintiff [Appellee], and her sureties, for which execution may issue, if necessary.

The Circuit Court Complaint, once nonsuited, on November 22, 2010, was never refiled, i.e., the 1-year savings statute of limitation (***Tennessee Code Annotated*** § 28-1-105) expired on November 22, 2011, and the *in personam* claims (which never, before the Circuit Court Complaint, had been filed against Applicant) were not refiled, on or before November 22, 2011 or any other time.

On March 27, 2012, the trial court entered an order (RoA TR Vol. V at 549-551) denying the Applicant's February 13, 2012 MSJ (RoA TR Vol. IV at 385-533) asserting that, by not refiling the nonsuited Circuit Court Claims against Applicant before expiration (on November 22, 2011), Appellee was precluded by the 1-year savings statute of limitations, from relief from Applicant for the claims stated in the Circuit Court Complaint.

See the following excerpt from the COA oral argument. Mr. Ishii argued for Appellee, and the undersigned argued for Applicant. The attached sworn but unofficial transcript of the oral argument reflects the following exchange (Exhibit 1 hereto):

> **Judge Clement:** What do you say in response to Mr. Parrish's' assertion that the Corporation [i.e., Applicant] and or he individually were never served there were no charging documents I believe was his term.
>
> **Timothy Ishii:** Well, let's look it up on the record. It's in the first volume technical record. The answer filed by John Rice names, in the style of the case, Larry E. Parrish, P.C. … ?
>
> **Judge Clement:** I hear none [i.e., questions], Mr. Ishii.
>
> **Timothy Ishii:** Alright, thank you, Your Honor.
>
> **Judge Clement:** Thank you, sir. Mr. Parrish.
>
> **Larry Parrish:** Yes, Your Honor? Mr. Ishii just said something that I 100% agree with. Look at what is called the answer and counterclaim. You will never see Larry E. Parrish [P.C., i.e., Applicant] in that answer at all. None. Period.

> **Judge Clement:** And, by that you mean individually? Larry E. Parrish, individually or?
>
> **Larry Parrish:** No, Larry Parrish, individually, appears on line after line after line after line after line. Larry E. Parrish, P.C., the Corporation appears not on any line. And the judgment is against Larry E. Parrish, P.C. and, so, there was not ever even a charge.

When directly confronted by the COA judge, rather than offer an explanation, Appellee stated what Appellee's counsel is quoted above as saying. Why so?

While Appellee stated on the record that Applicant [Larry E. Parrish, P.C.] is named in the so-called "counter-complaint," as a matter of objective and irrefutable fact, there is not even an iota of basis for Appellee's statement to the COA judge.

To the contrary, Appellee restated and reaffirmed, up to the trial date, that the claims for relief were and were intended to be against the person of LEP and, explicitly, not against Applicant. Appellee never filed a motion to have the trial court declare that references in the so-called "counter-complaint" to LEP, a non-party, to be a misnomer intended to mean Applicant or any person other than the named person (i.e., LEP).

The record reflects that, starting with the above-quoted May 4, 2009 Motion To Strike (RoA TR Vol II at 121), the objective fact that the so-called "counter-complaint" made no mention of Applicant being pointed out *ad nausem.*

The record will also reflect that not once did Appellee comment on or even acknowledge this objective inescapable reality, much less dispute the reality. The trial court never commented on or about this inescapable objective fact, even in ruling on the issue when the reality was directly presented; instead, the trial court found an excuse to deny relief sought by the Motion To Strike without dealing with the substance of the objective fact.

On December 28, 2018, the Opinion was filed, and the Opinion can be read and there never be found therein word one that would even hint that Applicant's name never appears in any part of the so-called "counter-complaint." An unknowing reader would read the Opinion and come away shocked, thereafter, to be told that that Applicant's name never appears in any part of the so-called "counter-complaint."

The following quotation from the Opinion illustrates (2018 WL 6843402, at *12):

> There are **no pleadings to bring Mr. Parrish in as a third party.**
>
> ***
>
> All that should remain in the instant action is the determination of the appropriate amount of punitive damages to be assessed **against Larry E. Parrish, P.C [Applicant].** (emphasis added)

This is only one of similar parts of the Opinion that would illustrate the point made by these words, particularly "against" Applicant.

If a careful reader pensively read the quoted words from the Opinion, is there even a remote possibility that the reader would know the actuality that Applicant [Larry E. Parrish, P.C.] was not ever named, impliedly, directly, by allusion or otherwise, in the so-called "counter-complaint," as a person from whom Appellee had any intention to seek *in personam* or any other kind of relief?

Needless to say, the answer to the rhetorical question is "no." But, what is more, the reader would reasonably take away that Applicant [Larry E. Parrish, P.C.] was the only "counter-defendant" named in the so-called "counter-complaint."

The objectively observable record on appeal reveals exact opposite. The only person named in the so-called "counter-complaint" as an ostensible counter-defendant is a non-party [Larry E. Parrish].

Said another way, the only reed propping up the Opinion is the factual presupposition that has not an iota of factual support to be found in the record on appeal or anywhere else. All one

need do is read the so-called "counter-complaint" and objectively observe that Applicant's name nor Applicant's identity (by any words) is not to be found. In other words, the reed propping up the Opinion is a nonexistent belief that a fact that cannot be found in the record on appeal or anywhere else.

What would be the expected, if the careful and pensive reader, after reading the above-quoted paragraph from the Opinion, were told that Applicant [Larry E. Parrish, P.C.] was not a counter-defendant in the so-called "counter-complaint?" Bewilderment might be an expected reaction.

Larry E. Parrish, P.C. [Applicant] and Larry E. Parrish [LEP] are two persons, not one person. Respectfully stated, the Opinion, effectually (though seeming to state the contrary), has conflated Larry E. Parrish, P.C. [Applicant] and Larry E. Parrish [LEP] into one person.

See ***Collier v. Greenbrier Developers, LLC,*** 358 S.W.3d 195, 200 (Tenn. Ct. App. 2009):

> Tennessee recognizes the 'presumption that a corporation is a distinct legal entity, wholly separate and apart from its shareholders, officers, directors, or affiliate corporations. *'See, e.g., Boles v. National Dev. Co., Inc.,* 175 S.W.3d 226, 244 (Tenn.Ct.App.2005). This Court has warned that, because "a corporation is presumptively treated as a distinct entity," a corporations's identity should be disregarded only 'with great caution and not precipitately.' *Schlater v. Haynie,* 833 S.W.2d 919, 925 (Tenn.Ct.App.1991); *see also Widdicombe v. McGuire,* 221 Tenn. 601, 429 S.W.2d 815, 817–18 (1968)."

By necessity, on remand, the plenary trial of the conscionability question was, as it had to be, a bench trial. ***Taylor v. Butler***, 142 S.W.3d 277, 284-85 (Tenn. 2004); ***Maxwell v. Motorcycle Safety Foundation, Inc.***, 404 S.W.3d 469, 476 (Tenn.Ct.App. 2013) perm. app. den. June 13, 2013; ***Whitton v. Hoover***, 313 S.W.3d 262, 264-65 (Tenn.Ct.App. 2009) perm. app. den. May 20, 2010; ***Skaan v. Federal Express Corporation***, No. W2011-01807-COA-R3-CV, 2012 WL 6212891 (Tenn.Ct.App. 2012); ***Bennett v. CMH Homes, Inc.***, No. 3:08-01212, 2013 WL 146034,

*3 (M.D.Tenn. 2013); ***Johnson v. Volvo Truck Corporation***, No. 2:07-CV-277, 2008 WL 4982450, *4 (E.D.Tenn. 2008); ***Tennessee Code Annotated*** § 47-2-302.

The question, on remand for a bench trial, could not have been simpler. If the assignment was unconscionable, Applicant's claim of entitlement to the *Res* would be denied, and Appellee's claim of entitlement would be granted. Case closed. Likewise, if the assignment was not unconscionable, Applicant's claim of entitlement to the *Res* would be granted, and Appellee's claim of entitlement to the *Res* would be denied. Case closed.

On December 2, 2013, over nine (9) months prior to the August 2014 trial, Applicant filed its pretrial memorandum including the following:

> The question is answered by the technical record in this [trial] Court in this case, i.e., Strong [Appellee] has made **no** breach of contract **claim against P.C. [Applicant],**
>
> ***
>
> Strong has filed **no** breach of contract **claim against P.C.** So, musing about how a breach of contract claim would be decided, if a breach of contract claim had been filed against P.C. not only is an idle gesture, it invites reversible error into the record.
>
> ***
>
> Strong has made no **claims** for relief **against P.C.** Strong has stated that Parrish violated Strong's rights, but the Court has no *in personam* jurisdiction attached to Parrish.
>
> ***
>
> [S]trong ... asserts to be the "Final" counterclaim, filed May 24, 2013, makes **no claim** for relief **against P.C.,** and there is no persons, other than P.C. and Strong, who/which has made an appearance before the Court seeking any relief.
>
> ***
>
> The **only issue** to be decided by the Court is whether Strong, on August 26, 2006, assigned to P.C. all of Strong's right, title and

interest to have possession and ownership of a certain $50,000 plus accruing interest.

***

Strong has made **no claims for relief for torts or breach of contract by P.C.** (emphasis added)

At the start of the August 2014 trial, the transcript includes the following (TE Vol. 12 at p. 3 lines 18-23; p. 4 lines 5-12; p. 5 lines 2-9; p. 6 lines 6-7; p. 9 lines 2-5):

[p. 3 lines 18-23]

The Court: I am glad that finally came up. I have been waiting for that.

Mr. Weaver: Talking a little bit about the order [sequence] - -

The Court: You [Applicant] are putting on the ***Res*** **case**, R-E-S.

[at p. 4 lines 5-12]

The Court: It's very uniquely postured, isn't it? So what do you [Applicant] say you do? What is your position?

Mr. Weaver: I think we [Applicant] would put on our –

The Court: **Claim for** the ***Res*** first?

Mr. Weaver: Right. Right.

[p. 5 lines 2-9]

The Court: So then the question to them [Appellee] would be: Do they have to respond in any other defense that they have to the ***Res***, R-E-S, **action** simultaneously while putting on their other [***in personam***] claim. I think all that balls together. I am hoping it does. Do y'all see it like that, gentleman?

[p. 5 lines 12-14]

The Court: Let's talk about that. The person with the **claim to** the ***Res*** will and make an opening statement.

[p. 5 lines 20-22]

> **The Court**: ... But you [Applicant] have a burden, as it relates to the **claim, for** the ***Res.***
>
> [p. 6 lines 6-7]
>
> **The Court**: I do believe you have it correctly. you put the ***Res*** **claim** on first.
>
> [p. 9 lines 2-5]
>
> **The Court**: ... [E]ven if I allow for that and opening statements to be made, and you [Applicant] put on the **case for** the ***Res***, that is going to be a full day at minimum. (emphasis added)

On August 5, 2014, Applicant filed what is titled "Petitioner's (Larry E. Parrish, P.C.) Position Clarification Statement" including the following (RoA Supp. Vol. I pp. 5-11):

> **COMES NOW** petitioner, Larry E. Parrish, P.C. (hereinafter "**P.C.**"), and, because of the "Petitioner's Superseding Jury Instructions," submitted to the Court, but not filed, Tuesday, August 5, 2014, and because of the open-court pretrial conference, on the record and taken by a court reporter, P.C. must clarify P.C.'s positions to avoid any possibility that either P.C.'s proposed superseding jury instructions or statements on the record on August 5, 2014 be misinterpreted as a modification, change or consent, express or implied, referenced in ***Tennessee Rules of Civil Procedure***, Rule 15.02, with respect to the positions of P.C. stated in what P.C. filed on December 2, 2013, entitled "Plaintiff/Claimant, Larry E. Parrish, P.C.'s, Trial Memorandum."
>
> **It being conceded by Ms. Strong and agreed by the Court that Larry Parrish is not a party (claimant/plaintiff/respondent/defendant/counterdefendant)** in **the instant case**, it is the **position of P.C. that there are no unconscionability, breach of fiduciary duty or any other claims made by Ms. Strong against the only party (P.C.)** other than Ms. Strong; on the face of the counterclaim, it is objectively observable that **Ms. Strong has made no claim of any kind for any alleged wrongdoing against P.C**.
>
> **Again, Ms. Strong has made no claim that P.C. has breached a fiduciary duty. Larry Parrish is not a party.**
>
> ***

> **Because there are no claims for any relief against P.C.,** it is the position of P.C. that there is no alternative but a pretrial (i.e., as soon as the Court call the case for trial but before evidence-taking begins) directed verdict against all of the ***in personam*** **claims** for recovery that Ms. Strong has made, i.e., the claims are stated but **accuse no party of being liable.**
>
> Because of ***Tennessee Rules of Civil Procedure***, Rule 15.02, it is vitally important to P.C. that **P.C. not be misinterpreted as giving "express or implied consent"** that, in effect, amends the counterclaim **to treat the allegations** by Ms. Strong, in the counterclaim, **against Larry Parrish as if** those allegations are accusations **against P.C.**; thus, explicitly and unequivocally, P.C. is **reiterating that P.C. is not consenting (neither expressly or impliedly); rather, P.C. is explicitly and unequivocally objecting to Ms. Strong's counterclaims being deemed to have been amended by changing the claims made against Larry Parrish, who is not a party, to claims made against P.C., thus, making possible a judgment against P.C.**
>
> This is **particularly important in view of the fact** that P.C.'s superseding proposed jury instructions, based on P.C.'s assumption that the **Court** already has **determined** that the **claims** made by Ms. Strong **in** her **counterclaim** will be submitted to the jury, proposed that the **jury be instructed that P.C.** is the **party against whom Ms. Strong's claims are made**. This, very easily, **could be misinterpreted** as a Rule 15.02 **"express... .consent" by P.C.** that the counterclaim be deemed to be amended by **changing each allegation against Larry Parrish to an allegation against P.C.**; such a misinterpretation would grossly prejudice P.C.'s, in the face of **P.C. explicit objection to the contrary**. (emphasis added).

The bench trial was conducted. At the close of Applicant's case in chief, the trial court granted Applicant's motion for directed that the assignment is not unconscionable, but agreed to consider the proof in Appellee's case in chief. At the end of Appellee's case in chief, the trial court directed a verdict that the assignment is not unconscionable. The details of record pertaining to the directed verdict are of record in **Petitioner's** Response In Opposition To Respondent's Motion To Alter Or Amend Judgment And **Memorandum** In Support Of Petitioner's Motion To **Enter Directed Verdict,** filed March 22, 2016 (RoA Vol. I, 2d Supp. p. 4, No. 53; Vol. VIII p. 991).

The status of the *Res* (i.e., the ownership rights in and to the *Res*) were adjudged, and this status was then and is now binding on every person in the entire world, exactly the same as an *in rem* judgment by a probate court as to the status of property of a probate estate or a bankruptcy court's *in rem* judgment as to the status of the property of a bankruptcy estate. The same is true about the status of "property" alleged to be contraband. The same is true about maritime property.

The instant appeal raises no issue concerning the trial court's directed verdict that the assignment is not unconscionable. That directed verdict remains intact and unappealed.

Question Two Facts

The only words in the Opinion on point read as follows (2018 WL 6843402*5 n. 1):

> The Corporation, in its brief, misapprehends the significance of *Landers v. Jones* and **conflates personal jurisdiction and subject matter jurisdiction.** Subject matter jurisdiction cannot be waived. *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994). Personal jurisdiction, however, may be waived. *Id.* Personal jurisdiction may be obtained by service of process or by a party's **voluntary general appearance** in a case. *Dixie Sav. Stores, Inc. v. Turner*, 767 S.W.2d 408, 410 (Tenn. Ct. App. 1988). (emphasis added)

Applicant respectfully suggests that the immediately above quotation from the Opinion is based on two erroneous presuppositions that are of case-dispositive significance.

The **first erroneous presupposition** is that a court can acquire *in personam* jurisdiction of and over a person (to enable the court to order the person to pay money to another person) without **either** the court ever **issuing** a summons ordering the person to appear and defend **or** the person initiating an *in personam* case (e.g., a plaintiff) filing suit and, thereafter, a summons **issues** ordering the defendant-person to appear and defend.

The latter alternative occurs when a plaintiff files an *in personam* case. If the plaintiff seeking an *in personam* judgment files a complaint and, thereafter, there is the **issuance** of a

summons directed to the identified prospective defendant, the plaintiff has made himself/herself/itself subject to a Rule 13 counterclaim (i.e., a Rule 7.01 pleading) without the necessity of the court **issuing** a summons to be served on the plaintiff.

A person designated, in a Rule 3 *in personam* complaint or counterclaim, to be a defendant or counter-defendant can never be or become an *in personam* defendant without first there being **issued** a summons directing the identified prospective defendant to defend.

With the **issuance** of the summons, the court acquires subject matter jurisdiction over the dispute (i.e., the subject of the subject matter jurisdiction) sufficient to **issue** a summons to hail the so identified prospective defendant into court to defend the claims for relief stated in the Rule 3 complaint or Rule 13 counterclaim.

The subject matter jurisdiction, insofar as adjudicating the dispute, is completely spent, by the **issuance** of the summons, and, after the summons is **issued**, the subject matter jurisdiction is or is the same as nothingness. Until the issued summons is used to attach the *in personam* jurisdiction of the court to the complaint/counterclaim-identified prospective defendant/counter-defendant, it is sophistry to speak of the court as having subject matter jurisdiction; at most, the court has the contingency of reactivating spent subject matter jurisdiction.

Once a summons is **issued**, Rule 4 comes into play giving the plaintiff the authority to have the **issued** summons **served** on prospective defendant. A Rule 4-compliant **service** of the **issued** summons is an absolute prerequisite for the summons-**issuing** court to be able to exercise the jurisdiction over the subject dispute.

It is undebatable that, after a court, by **issuance** of a summons, acquires the potential of reactivated spent jurisdiction over the subject dispute, the **service** of the **issued** summons can be

waived and, thereby, the prerequisite Rule 4-compliant **service** is overridden by the waiver, and the waiver reactivates the theretofore spent subject matter jurisdiction.

Undebatable is the fact that a waiver can be effectuated by prospective defendant, in an *in personam* case, without a Rule 4-compliant **service** of the **issued** summons, voluntarily coming to the summons-**issuing** court, by a general appearance, and responding to the claim for *in personam* relief stated in the Rule 3 complaint.

The missing elements, making the case-dispositive presuppositions on which the Opinion is platformed false presuppositions, are (1) Applicant did not file *in personam* claims for relief (2) if Applicant had filed *in personam* claims for relief, the claims were futile (for lack of the issuance of a summons) or, by operation of law, were rendered the same as if never filed by a subsequent nonsuit and (3) the Sworn In Rem Complaint did not invoke or seek to invoke any *in personam* attachment of the court's jurisdiction; rather, the Sworn In Rem Complaint invoked only the *in rem* jurisdiction of the court, which, because of the doctrine of *in custodia legis,* requires no summons nor any other court process.

With consummate respect, Applicant suggests that the conflation, spoken of in the Opinion, is an improper conflation by the Opinion. That is, the Opinion conflates the right of a potential *in personam* defendant to **waive** the Rule 4 **service** of an **issued** summons with a **waiver of** the **issuance** of a summons.

The novelty of a rule that a person identified as a prospective defendant in a Rule 3 complaint having the capacity to **waive the issuance** of a summons and, thereby, vesting a court with *in personam* jurisdiction is belied by the far-fetched consequences of such a never-before-existing rule. See discussion in the reasons for review section.

The **second erroneous presupposition** is that Applicant made a "voluntary general appearance." The opposite is objective irrefutable fact of the matter. Reference to the May 4, 2009 Motion To Strike (RoA TR Vol II at 121) clarifies the issue.

Question Three Facts

On March 22, 2009, Applicant filed what is titled "Memorandum In Support Of *Sworn In Rem Complaint* To Trace And Recover *Res* ... " detailing, **with authorities,** what *in rem* jurisprudence is and how it functions (RoA TR Vol. I at 31-99). Included, as Exhibit A thereto (RoA TR Vol I at 64-69), is a Memorandum Opinion, in an actual case, copiously citing the Tennessee on-point precedent, showing how *in rem* jurisprudence works in a tracing case. Without redundantly reciting, Applicant incorporates by reference the authority cited in the Memorandum In Support (RoA TR Vol. I at 31-99) and the Memorandum Opinion (RoA TR Vol I at 64-69). *See also* RoA Vol. VIII pp. 1031-33, 1069-71, 1058 n. 18 re *Res'* **status**; Vol. IX pp. 1177-78 re *Res'* **status** 1184-86, 1260-61, 1275-77, 1281-85 re ***in custodia legis.***

The Memorandum Opinion (RoA TR Vol I at 64-69) involves a case about the theft of money by a lawyer from clients; the Sworn In Rem Complaint states predicate facts concerning a theft by a client from a lawyer. The Memorandum Opinion catalogs a client of the thieving lawyer who, by an in rem proceeding, traced the money from the lawyer's hand to those to whom the lawyer-thief distributed it (to pay the lawyer's bills for rent, for taxes, for electricity, water and such). The money stolen by the lawyer was the *Res.*

The Sworn In Rem Complaint is tracing $50,000 plus interest in property Applicant claims right to because the money is contraband, i.e., money owned by Applicant and stolen from Applicant (RoA Vol. II at 202-05, paragraphs 6 –16). Appellee, on March 30, 2009, filed a claim to the *Res* (buried in the so-called "counter-complaint") alleging that Appellee assigned (i.e.,

transferred ownership) the money to Applicant by an assignment which was negated by unconscionability.

The simplicity of the proceedings initiated by the Sworn In Rem Complaint is easily observable. There is nothing complicated about *in rem* proceedings. This is the law's way, without a writ of attachment, of putting property (which, thereby becomes the *Res*) in the hands of a court, by the simple expedient of an *Sworn In Rem Complaint*. Any person, without the necessity for a summons, is free to present, to the *Res*-holding court, a claim of right, with a plea to the *Res*-holding court to turn over the *Res* to the claimant. While the claims presented to the court might be competing claims, the claimants who present competing claims are not adversaries (plaintiffs and defendants) vying "against" one another, as is the case with *in personam* jurisprudence

The issue, below, was simply whether the assignment of the chose-in-action was or was technically correct and, if technically correct, whether the transfer effectuated by the assignment was conscionable or unconscionable.

This issue was exclusively a question to be resolved by a bench trial. Not a whit of evidence not in existence the day the Sworn In Rem Complaint was filed had any bearing on the outcome of this issue. If there had been any need for any expert testimony, the testimony would be related to nothing other or more than the office of an assignment.

Question Two: Reasons Supporting Review

In Appellant's Brief (pp. 115 - 116), Applicant cited the following authorities on point:

> ***McNeary*** *v. Baptist Memorial Hospital*, 360 S.W.3d 429, 436 (Tenn. Ct. App. 2011). ***Turner*** *v. Turner*, 473 S.W.3d 257, 271 (Tenn. 2015); ***Watson*** *v. Garza*, 316 S.W.3d 589, 593 (Tenn. Ct. App. 2008); perm. app. den. Nov. 7, 2008; ***Ramsey*** *v. Custer*, 387 S.W.3d 566, 568 (Tenn. Ct. App. 2012) perm. app. den. Nov. 26, 2012); ***Cline*** *v. Lazy Eights Flight Center*, 1989, WL 155936 *1-*2, *4 (Tenn. Ct. App. 1989); ***Citizens Bank*** *v. Jarvis*, 1996 WL 159647 *2 (Tenn. Ct, App. 1996) (copy attached); ***Christenberry*** *v.*

Christenberry, 2016 WL 158091 *2, *4-*5 (Tenn. Ct. App. 2016) perm. app. den. May 6, 2016; ***Clark*** *v. McClung*, 2003 WL 22994304 *3, *5 (Tenn. Ct. App. 2003); ***Webb*** *v. Werner*, 163 S.W.3d 716, 718 (Tenn. Ct. App 2004) perm. app. den. Mar. 7, 2005. ***Yousif*** *v. Clark*, 317 S.W.3d 240, 245 (Tenn. Ct. App. 2010) perm. app. den. June 16, 2010; ***Catalano*** *v. Woodcock*, 2016 WL 3677342* 5 (Tenn. Ct. App. 2016); ***Cash America International, Inc.*** *v. Geico General Insurance Co.*, 2016 WL 3476845* 5 (Tenn. Ct. App 2016).

Additionally, on point, precedent is explained by the following *stare decisis* precedent in Tennessee:

Tennessee Constitution, Article 6, Section 1 provides in pertinent part:

> The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery, and other Inferior Courts **as the Legislature** shall from time to time, **ordain** and establish; in the judges thereof, and in justices of the peace. (emphasis added)

Watson v. Garza, 316 S.W.3d 589, 593 (Tenn. Ct. App. 2008):

> The Tennessee Rules of Civil Procedure govern the service of process, and the Supreme Court has held that the **Rules of Civil Procedure are 'laws' of this state,** in full force and effect, until such time as they are superseded by legislative enactment or inconsistent rules promulgated by the Court and adopted by the General Assembly." *Estate of McFerren v. Infinity Transport, LLC,* 197 S.W.3d 743, 747 (Tenn. Workers Comp. Panel 2006) (citing *State v. Hodges,* 815 S.W.2d 151, 155 (Tenn.1991)). "Service of process must strictly comply to Rule 4 of the Tennessee Rules of Civil Procedure." (emphasis added)

Turner v. Turner, 473 S.W.3d 257, 269–70 (Tenn. 2015):

> The concepts of subject matter jurisdiction and personal jurisdiction are fundamentally different. *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 701–03, 102 S. Ct. 2099, 72 L.Ed.2d 492 (1982); *270 *Landers,* 872 S.W.2d at 675. Subject matter jurisdiction confines judicial power to the boundaries drawn in constitutional and statutory provisions. *Ins. Corp. of Ireland,* 456 U.S. at 702, 102 S. Ct. 2099; *Word,* 377 S.W.3d at 674; *Northland Ins. Co. v. State,* 33 S.W.3d 727, 729

(Tenn.2000). As a result, "[a] party's consent, silence, waiver, entered plea, or appearance before the court, is not sufficient to confer subject matter jurisdiction." *Estate of Brown,* 402 S.W.3d at 198 (citing *In Re Estate of Trigg,* 368 S.W.3d 483, 489 (Tenn.2012); *Caton v. Pic–Walsh Freight Co.,* 211 Tenn. 334, 364 S.W.2d 931, 933 (1963)). *See also* Tenn. R. Civ. P. 12.08 (stating that subject matter jurisdiction may not be waived). As a result, subject matter jurisdiction may be challenged at any time and may be raised by a court on its own motion, even if the parties have not raised the issue. *Johnson v. Hopkins,* 432 S.W.3d 840, 844 (Tenn.2013).

Nashville Bank v. Ragsdale, 7 Tenn. 296, 298 (1823):

> This point the Court settled in the case of Cheatham v. Trotter, at Charlotte, June term, 1823. That in order to fix the cause in Court, **something should be seized** on which the Court could proceed, either by being taken by the sheriff, or so disclosed by the garnishee that an order could be made upon him, or upon such estate as, by his disclosures, the law would hold liable to answer the demand. And that to take judgment prior to the seizure by the sheriff, or ascertainment of funds in the hands of the garnishee, would **render the whole proceedings as much void as to take judgment before service** of an original writ. (emphasis added)

Ridgeway v. Bank of Tennessee, 30 Tenn. 523, 524 (1851):

> In the first place, it is very evident, that **if the party was not summoned,** and did not appear in the suit at law, the **court had no jurisdiction of his person**, and its judgment against him, would be, for that reason, merely void. This principle is founded in natural justice and is of universal application. Borden v. Fitch, 15 Johns. 140; Bigelow v. Stearns, 19 Johns. 40; Buchanan v. Rucker, 9 East, 192. A judgment thus obtained, without notice or defence, and without a day in court to make defence, is an injury to the rights of the party for which he should not be without remedy. Now, has he any remedy at law? (emphasis added)

McNeary v. Baptist Mem'l Hosp., 360 S.W.3d 429, 435 (Tenn. Ct. App. 2011) (hereinafter "**McNeary**"):

> Plaintiffs cannot rely on the holding in *Calaway v. Schucker,* 193 S.W.3d 509 (Tenn.2005) to assert that the action was commenced on or before December 9, 2005, when Plaintiffs **failed to reissue summons** and serve process in compliance with Rules 3 and 4 of the Tennessee Rules of Civil Procedure... . (emphasis added)

McNeary at 437:

> This Court has recognized that Tennessee Rules of Civil Procedure 3 and 4 should be read together. *Richards v. Newby,* Shelby Law No. 20, 23583, 1991 WL 163541, * 3 (Tenn. Ct. App. Aug. 27, 1991). In *Richards,* we also explained that "the term '**process' in Rule 3 refers to a summons,** and the word 'summons' in Rule 4 is the process in Rule 3." *Id.* (emphasis added)

McNeary at 437–38:

> While commencement of an action is not dependent upon whether process is issued, served, or returned, the **Rules provide that a summons will forthwith issue** for service upon the filing of a complaint. (emphasis added)

Applicant, on November 29, 2018, pursuant to ***Tennessee Rules of Civil Procedure***, Rule 27(d), submitted the following additional authorities:

> On November 7, 2018 the Court heard oral argument in the above case. At the oral argument, the following exchange occurred (as evidenced by the transcript of the oral argument, filed herein, on November 28, 2018, as Exhibit A to "Affidavit of Larry E. Parrish Concerning Oral Argument Transcript"):
>
> > **Judge Clement:** Even if the party makes an appearance in that court?
> >
> > **Larry Parrish:** It does not engage the jurisdiction. The court has to issue a summons --
> >
> > **Judge Clement:** That's not the way I understand it, but I'll do more research --
> >
> > **Larry Parrish:** You can start on page 117 of my brief, if you want to, that's where the McNeary case, McNeary versus Baptist Hospital. You can waive

> service, but you cannot waive the issuance of a summons, and, so, there's just nothing that can be done without the summons.

The following are additional authorities, not cited in any prior briefing. The following authorities are responsive to the statement of Judge Clement above-quoted.

- ***Castle v. David Dorris Logging, Inc.***, 2013 WL 500780 (Tenn. Ct. App. 2013) (at *8 Indeed, it is well-settled that the court does not gain jurisdiction through the consent of the parties. 'Subject matter jurisdiction differs fundamentally from personal jurisdiction in that the latter can be conferred by express or implied consent,' while subject-matter jurisdiction cannot be conferred 'by **appearance**, plea, consent, silence, or waiver.' " Landers v. Jones, 872 S.W.2d 674, 675 (Tenn.1994);

- ***Coleman v. Coleman***, 2013 WL 5308013 (Tenn. Ct. App. 20130) (at *33 "while subject-matter jurisdiction cannot be conferred 'by **appearance**, plea, consent, silence, or waiver.' "Thus, despite the parties' apparent consent ..., the consent order ... did not operate to confer jurisdiction on the trial court");

- ***Miljenovic v. Miljenovic***, 2013 WL 6665051 (Tenn. Ct. App. 2013) (at *2 "The concept of subject matter jurisdiction implicates a court's power to adjudicate. Parties cannot confer subject matter jurisdiction on a court by **appearance**, plea, consent, silence, or waiver.;

- ***Taylor v. McClintock***, 2014 WL 3734894 (Tenn. Ct. App. 2018) (at *5 "The concept of subject matter jurisdiction implicates a court's power to adjudicate ... . Parties cannot confer subject matter jurisdiction on a court by **appearance**, plea, consent, silence, or waiver.);

- ***Reguli v. Board of Professional Responsibility of Supreme Court of Tennessee***, 2014 WL 514807 Tenn. Ct. App. 2014) (at *4 "The concept of subject matter jurisdiction implicates a court's power to adjudicate ... . Parties cannot confer subject matter jurisdiction on a court by **appearance**, plea, consent, silence, or waiver. Id. at 542 (citations omitted);

- ***Kaur v. Singh***, 2017 WL 445149 (Tenn. Ct. App. 2017) (at

*6 "The concept of subject matter jurisdiction implicates a court's power to adjudicate … . Parties cannot confer subject matter jurisdiction on a court by **appearance**, plea, consent, silence, or waiver.");

- ***In re Courtney R.***, 2017 WL 1548241 (Tenn. Ct. App. 2017) (at *3 "For a court to have jurisdiction … must have jurisdiction over … the subject matter of the proceeding. State ex rel. Whitehead v. Thompson, No. 01A01–9511–CH–00538, 1997 WL 749465, at *2 (Tenn. Ct. App. Dec. 5, 1997). Subject matter jurisdiction concerns a court's power to adjudicate … . Toms v. Toms, 98 S.W.3d 140, 143 (Tenn. 2003); Northland Ins. Co. v. State, 33 S.W.3d 727, 729 (Tenn. 2000). … . The parties involved in a controversy cannot bestow subject matter jurisdiction on a court "by **appearance**, plea, consent, silence, or waiver." Dishmon v. Shelby State Cmty. Coll., 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999). To enter a valid, enforceable order, a court must have subject matter jurisdiction. Brown v. Brown, 281 S.W.2d 492, 497 (Tenn. 1955); SunTrust Bank v. Johnson, 46 S.W.3d 216, 221 (Tenn. Ct. App. 2000).");

- ***Fichtel v. Fichtel***, 2018 WL 1778606 (Tenn. Ct. App. 2018) (at *2 "As a threshold matter, … this Court [needs] to determine whether we have subject matter jurisdiction to adjudicate this appeal. See Jones v. Jones, No. W2015–01304–COA–R3–CV, 2016 WL 4009716, at *1 (Tenn. Ct. App. July 22, 2016). Litigants cannot confer subject matter jurisdiction on a trial or appellate court by **appearance**, plea, consent, silence, or waiver … .);

- ***Vaughn v. R.S. Lewis & Sons Funeral Home***, 2018 WL 4191892 (at *1 "Subject matter jurisdiction refers to "a court's power to adjudicate … ." Benson v. Herbst, 240 S.W.3d 235, 238-39 (Tenn. Ct. App. 2007) (citing Osborn v. Marr, 127 S.W.3d 737, 739 (Tenn. 2004); Toms v. Toms, 98 S.W.3d 140, 143 (Tenn. 2003); First Am. Trust Co. v. Franklin-Murray Dev. Co., 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001). Subject matter jurisdiction may not be conferred "on a trial or an appellate court by **appearance**, plea, consent, silence, or waiver. If subject matter jurisdiction is lacking, the court must dismiss the case. Dishmon v. Shelby State Cmty. Coll., 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999).");

- ***SunTrust Bank, Nashville v. Johnson***, 46 S.W.3d 216

(Tenn. Ct. App. 2000) (at p. 221 "A court's subject matter jurisdiction ... . It [subject matter jurisdiction] does not depend upon the conduct or the agreement of the parties, Shelby County v. City of Memphis, 211 Tenn. 410, 413, 365 S.W.2d 291, 292 (1963). Thus, the parties cannot confer subject matter jurisdiction on a court by **appearance**, plea, consent, silence, or waiver. Caton v. Pic–Walsh Freight Co., 211 Tenn. 334, 338, 364 S.W.2d 931, 933 (1963); Dishmon v. Shelby State Cmty. Coll., 15 S.W.3d at 480. Without subject matter jurisdiction, a court cannot enter valid, enforceable orders. Brown v. Brown, 198 Tenn. 600, 610, 281 S.W.2d 492, 497 (1955); Riden v. Snider, 832 S.W.2d 341, 343 (Tenn.Ct.App.1991).");

- ***Talley v. Board of Professional Responsibility***, 358 S.W.3d 185 (Tenn. 2011) (at 192 "subject matter jurisdiction cannot be conferred by waiver or consent. McCarver v. Insurance Co. of Penn., 208 S.W.3d 380, 383 (Tenn.2006); Meighan v. U.S. Sprint Commc'ns Co., 924 S.W.2d 632, 639 (Tenn.1996).");

- ***McCarver v. Insurance Co. of State of Pennsylvania***, 208 S.W.3d 380 (Tenn. 2006) (at *383 "Although the motion to amend came late, subject matter jurisdiction cannot be conferred by waiver or consent, and parties to a proceeding may raise the issue of subject matter jurisdiction at any time in any court. In re Southern Lumber & Mfg. Co., 141 Tenn. 325, 210 S.W. 639, 640 (1919); Metro. Gov't v. Tenn. Solid Waste Disposal Control Bd., 832 S.W.2d 559, 561 (Tenn.Ct.App.1991).");

- ***Landers v. Jones***, 872 S.W.2d 674 (Tenn. 1994) (at 676 "Subject matter jurisdiction" differs fundamentally from "personal jurisdiction" in that the latter [personal jurisdiction] can be conferred by express or implied consent, i.e., subject matter jurisdiction cannot be waived, but ... personal jurisdiction may be waived ... by "general **appearance**;

- ***In re Adoption of Hatcher***, 16 S.W.3d 792 (Tenn. Ct. App. 1999) (at 795 "They also concede that a judgment rendered by a court without subject matter jurisdiction is void, see New River Lumber Co. v. Tennessee Ry. Co., 141 Tenn. 325, 210 S.W. 639 (1919), and that subject matter jurisdiction cannot be conferred by waiver or consent, see Riden v. Snider, 832 S.W.2d 341 (Tenn. Ct. App.1991).);

- ***Phillips v. Northwest Correctional Complex***, 2012 WL 6726691 (Tenn. Ct. App. 2012) (at *5 "subject matter jurisdiction cannot be conferred by waiver or consent. McCarver v. Insurance Co. of Penn., 208 S.W.3d 380, 383 (Tenn.2006); Meighan v. U.S. Sprint Commc'ns Co., 924 S.W.2d 632, 639 (Tenn.1996)");

- ***Johnson v. South Cent. Correctional Facility Disciplinary Bd.***, 2013 WL 4803565 (Tenn. Ct. App. 2013) (at *5 "subject matter jurisdiction cannot be conferred by waiver or consent. McCarver v. Insurance Co. of Penn., 208 S.W.3d 380, 383 (Tenn. 2006); Meighan v. U.S. Sprint Commc'ns Co., 924 S.W.2d 632, 639 (Tenn.1996)"):

- ***Duckworth Pathology Group, Inc. v. Regional Medical Center at Memphis***, 2014 WL 1514603 (Tenn. Ct. App. 2014) (at *5 "subject matter jurisdiction cannot be conferred by waiver;

- ***Farmer v. Tennessee Department of Correction***, 2017 WL 384246 (Tenn. Ct. App. 2017) (at *2 "subject matter jurisdiction cannot be conferred by waiver or consent. McCarver v. Insurance Co. of Penn., 208 S.W.3d 380, 383 (Tenn. 2006); Meighan v. U.S. Sprint Commc'ns Co., 924 S.W.2d 632, 639 (Tenn. 1996).");

- ***Metz v. Metropolitan Government of Nashville and Davidson County***, 547 S.W.3d 221 (Tenn. Ct. App. 2017) 384246 (at 227 "subject matter jurisdiction cannot be conferred by waiver or consent. McCarver v. Insurance Co. of Penn., 208 S.W.3d 380, 383 (Tenn. 2006); Meighan v. U.S. Sprint Commc'ns Co., 924 S.W.2d 632, 639 (Tenn. 1996).");

- ***Meighan v. U.S. Spring Commc'ns Co.***, 924 S.W. 632 (Tenn. 1996) (at 639 n. 4 "Personal jurisdiction, by contrast to subject matter jurisdiction, relates to the ability to bring the parties before the court. Young v. Kittrell, 833 S.W.2d 505 (Tenn.App.), perm. to appeal denied, (Tenn. 1992). Unlike subject matter jurisdiction, it [personal jurisdiction] may be waived by consent or by failure to object. Landers v. Jones, 872 S.W.2d 674, 675 (Tenn.1994).").

- *See also*, ***Caton v. Pic-Walsh Freight Co.***, 364 S.W.2d 931, 933 (Tenn. 1963) citing ***Felty v. Chillocothe Realty***

> ***Company,*** 134 S.W.2d 153, 154 (Tenn. 1939) ("The want of subject matter jurisdiction ... cannot be cured by **appearance**, by plea, by consent, or any other way whatever; but the judgment is and must remain to all intents and purposes absolutely null and void."); ***Turpin v. Connor Bros. Excavating Co.,*** 761 S.W.2d 296, 297 (Tenn. 1988); ***Brown v. Brown,*** 281 S.W.2d 492, 497 (Tenn. 1950) ("if judgment ... is void for want of jurisdiction, it can bind no one and disobedience of it would not be a contempt.").

Anytime a court enters a two million, plus *in personam* judgment based on a so-called (but, in actuality, not) "counter-complaint," naming as a counter-defendant a person who is neither a plaintiff nor a party in any other capacity in the lawsuit, no claim for relief is ever initiated and the filing, by any tag (e.g., "counter-complaint"), legally, is a non-event (i.e., of zero legal significance, to be ignored or, as often said by courts of such non-events, an idle gesture.)

When such an idle gesture/non-event, with no summons nor any other court process ever **issuing** to direct any person to appear and defend, and the idle gesture is parlayed into a two million dollar, plus, *in personam* judgment against (not against the person named in the filed "counter-complaint") but a person not even mentioned one time, by allusion or otherwise, something equivalent to the justice system being on fire has occurred, threatening the very foundations of all administration of justice in Tennessee.

Respectfully, if something as bizarre as what has happened in this case can remain unreversed when presented to this Court for reversal, a message echoes through the entire justice system that makes the recurrence of such an event more possible than if the occurrence is reversed.

There is nothing as foundational to the existence of any justice system as making certain that ostensible orders, over the imprimatur of a court (i.e., signed by a judge) are orders of a court and not mere ostensible "orders" signed by a "jurisdictionless judge." The term "jurisdictionless

judge" is an oxymoron for no judge at all. The signature of a jurisdictionless judge is a misrepresentation to the public-at-large with consequences far beyond the ostensible "order" itself.

Such ostensible "orders" are void, *ab initio*, as orders of a court (rather than mere papers signed by a jurisdictionless judge). Legally speaking, the ostensible "orders are nothingness. But, though the ostensible "orders" are legally nothingness, the ostensible orders are nothingness, they present a threat to society-at-large and to all individuals who are directly or collaterally impacted.

On the misrepresented "authority" of such ostensible "orders," innocent citizens risk being forced, against their will, by the power of the State of Tennessee to be required to do or not to do something against their interest.

Unreversed ostensible "orders" signed by a "jurisdictionless judge" are equivalent to the even greater force than an improvidently issued arrest warrant, i.e., the potential of causing the State of Tennessee to imprison a person so "ordered," indefinitely, for civil contempt.

As far as the public interest is concerned, if ostensible "orders" by a "jurisdictionless judge," when presented to this Court, can remain unreversed, the sacred guarantee of the Tennessee to be "let alone" by a government with no authority to interfere, is left in shambles. The lesson from such an unreversed ostensible void *ab initio* "orders" is an invitation for the government, at the whim and caprice of a jurisdictionless judge, to ostensibly have the power not to "let alone" any citizen, even though the citizen has a constitutional right to be "let alone."

As far as the public interest is concerned, if ostensible "orders" by a "jurisdictionless judge," when presented to this Court, can remain unreversed, the reliability of Tennessee's justice system as a place where judges are constrained by their jurisdiction is rocked at its foundation. The "law," in such a justice system, in rule of "law," is reduced to what any judge, irrespective of lack of jurisdiction, says the "law," on any given day, in any given case, is, and the protection of an

appeal becomes ephemeral and theoretical, in addition to desecrating rule of law, reducing the confidence the public can put in courts to a problematic level.

If courts in Tennessee can adjudicate an in personam disagreement, without the court attaching the power (jurisdiction) to control the acts/omissions of the disagreeing persons (which can only occur by the issuance of a summons), judges will have been reduced to arbitrators without an arbitration agreement, i.e., mediators at best.

The longstanding cornerstone of Tennessee jurisprudence that no court can attach *in personam* jurisdiction to a person, by agreement of the disagreeing "parties" and the court, will be reduced to irrelevant to the administration of justice in Tennessee. The crumbling of this cornerstone will wreak havoc to the justice system in Tennessee for centuries.

The inveterate rule of law in Tennessee that *in personam* jurisdiction of a court is nonexistent absent the issuance of a summons has been a reliable a cautionary firewall to protect Tennessee's justice system from corruption. If jurisdictionless judges can sign the imprimatur of a court (i.e., the signature of the State of Tennessee) to an ostensible "order," without expectation of a near-certain reversal, the temptation to corrupt the power of the State of Tennessee is endless. If permission to appeal this case is denied, the denial will not be an adjudication that the in personam ostensible "judgment" below or the affirmance of it by the Opinion of the COA is not an ostensible "judgment" which is void *ab initio*. Therefore, this will require Applicant to initiate *in rem* Rule 60 proceedings to set aside the ostensible *in personam* "judgment" as void *ab initio*. There is no time limit after which void *ab initio* judgments are not subject to being set aside. This case could become one of those litigations which the Court described in ***Barger v. Brock***, 535 S.W.2d 337, 341-42 (Tenn. 1976) as "litigation that knows no end.

Question Three: Reasons Supporting Review

There is no doubt that lack of *in personam* jurisdiction, below, emanated from the misunderstanding of *in rem* jurisprudence.

This misunderstanding or, more likely, no understanding of the bench and bar in Tennessee of Tennessee's *in rem* jurisprudence is so rampant that the bizarre proceedings below are sure to repeat unless and until the Court, in 2019, restates and clarifies *in rem* jurisprudence for the Tennessee bench and bar. This clarification, Applicant, respectfully suggests, is imperative for efficient administration of justice in Tennessee, and an appeal to the Court in this case gives opportunity to restate and clarify this area of the law. In the October 17, 2017 open court hearing, the trial court described the proceedings in the instant case as a "legal tragedy of epic proportions." With this observation, Appellant, wholeheartedly, agrees (RoA TE Vol. XX at 58, 63).

What is so tragic is that there is no good reason why this case should have taken more than six (6) months to reach a final judgment concerning the status of the *Res*. The 2011 COA Opinion includes observations which provide insight as to what caused the morass and tragedy. In the 2011 COA Opinion, this Court observed as follows (2011 WL 4529607 *1):

> The former attorney of a client filed a seldom used 'Sworn In Rem Complaint to trace and recover *Res*' to prosecute a chose-in-action . . . .
>
> ***
>
> [at *3 n. 4]
>
> During oral argument, in response to a statement of the panel commenting on the uniqueness of the initial pleading Mr. Parrish on behalf of the Corporation, Mr. Parrish's attorney stated that Mr. Parrish often 'thinks out of the box.' No one disputed this statement.
>
> ***
>
> [at 10]

> Accordingly, the trial court in this action would have had no power and no jurisdiction to grant the Corporation [Applicant] the relief it sought in paragraphs 8, 9, 10, 11, and 12 of its [In Rem] Complaint unless Ms. Strong was a party to the action. The Corporation **[Applicant],** however, **failed to prepare** a **summons** for Ms. Strong [Appellee], **thereby thwarting the issuance or service** of summons on her. (emphasis added).

In the 2011 Appeal, the COA accused Applicant of misconduct for not causing a summons to be issued, implying that Applicant tricked or attempted to trick Appellee.

Summonses are not part of *in rem* jurisprudence. The doctrine of in custodia legis supplants the need for a summons or any other court process for the seizure referred to in. A knowledgeable court asked to issue a summons in an *in rem* case would not accede to the request because issuance of such process would be redundant and an idle gesture.

The point here is not to criticize the quoted words but to use this as evidence for why clarification of Tennessee's *in rem* jurisprudence is needed.

On October 17, 2017, at the last open court hearing in the trial court, the trial court commented that *in rem* jurisprudence either be either abolished or exceptions created requiring the issuance of a summons to engage a court's jurisdiction in an *in rem* case (RoA TE Vol XX p. 39 lines 5-16; p. 52 lines 5-20; p. 54 lines 1-18).

Another example of the misunderstanding of *in rem* jurisprudence is illustrated by the following exchange between counsel a the COA at the November 7, 2018 oral argument (Trans. filed November 28, 2018 and attached hereto as part of Ex. 1 hereto):

> **Judge Clement:** What about the **persons** or Corporations who claim an **interest in** that property or the ***Res***?
>
> **Larry Parrish**: They have the **right to come in and make a claim**. Everybody [can be], claimants to the property. There's the initiating party who says I claim a right, an interest, to this property. And, then, everybody else who wants to come in may come in and say no I claim an interest, but we're all standing equal to each other – not

over each other making adverse claims to the court. And, the court then has to decide the status of the property. That property is this, that, or the other

Judge Clement: So, **you're saying the court does not have jurisdiction** over the **plaintiffs** and the defendants and third-party plaintiffs and counter defendants?

Larry Parrish: Everybody is a claimant. The initiating claimant could walk –

Judge Clement: The **Court** could have **jurisdiction over everybody who's a claimant**?

Larry Parrish: Not – no –

Judge Clement: So, people are appearing before the court, and the **court has no jurisdiction over it**?

Larry Parrish: Well, the court has to decide if they [claimants] have standing. They can walk out. They can say "I don't want to do this anymore."

Judge Clement: They can certainly walk out <u>unless the court orders them to do something.</u> Does the court have jurisdiction to **order them** to do something?

Larry Parrish: No.

Judge Clement: Like answer interrogatories?

Larry Parrish: No.

Judge Clement: <u>You're kidding</u>?

Larry Parrish: I don't think so.

Judge Clement: <u>You seriously believe that</u>?

Larry Parrish: I seriously believe there's no ---

Judge Clement: You seriously believe that a claimant who makes an appearance in a court to claim a right to a *Res* – to property – is not **subject to the jurisdiction** of that court.

Larry Parrish: That claimant, yes, I agree. **I believe that is the state of the law** because the judge declares what's a status --

Judge Clement: The **order** that goes down has **no bearing on** that **claimant**.

Larry Parrish: Well the status that is adjudicated --

Judge Clement: It's a simple question, yes or no. The order that goes down **has no bearing** on any of the claimants.

Larry Parrish: That is that not true —no. The **answer to that is no.**

Judge Clement: Well, how could, how can a court put down an **order compelling somebody to do something** who the court does not have jurisdiction over?

Larry Parrish: It doesn't compel them to do something. They – the status of the property or *Res* is adjudicated, and the rights of everybody is (sic) are determined by the status of that *Res*.

Judge Clement: Thus, the courts order **has no bearing** on those parties.

Larry Parrish: Has no bearing on those parties it. Well, excuse me. I did say it has a bearing, and **it does have a bearing on** what rights thereafter the claimants can make to the property.

Judge Clement: And, under what jurisdiction or concept does the court have a bearing over the plaintiffs?

Larry Parrish: The court has **plenary control over the property** and the **court can say** this **property** [can **be] destroyed**, therefore, those who made **claimants all are born on by that status**. They can't come back later and say no that's my contraband. Or that's –

Judge Clement: What if one of those parties **has possession** of the property?

Larry Parrish: In an *in rem* proceeding, the **court has possession, *in custodia legis*** by virtue of the case that is filed. If its physically held somewhere else, it is the court's. Just as in this case, the court said, Mr. Rice you hold this property as trustee for the court. And then when he [Mr. Rice] said I don't want to hold it [the property] anymore, he [the Chancellor] said, well, give it to the clerk. And, so,

> the clerk then **held it for the court** but the court has plenary 100% control of the property.(emphasis added).

All courts, all of the time have inherent jurisdiction to maintain order and administer the business of justice . To the extent that the inherent power of a court is invoked, courts may order persons to do or not to do something. Thus, all of the questions of the COA must be considered not to be asking about the inherent jurisdiction of courts.

That said, the questions from the COA evidence a misunderstanding of *in rem* jurisprudence. Applicant suggests that this misunderstanding is the driving force behind the Opinion. Respectfully, the misunderstandings expressed by the COA questions are the same misunderstandings expressed by the trial court. Applicant suggests that the Court probably could take judicial notice that these misunderstandings are not limited to the courts below.

Two factors contribute to this widespread misunderstanding. First, Applicant respectfully suggests that it would not be a stretch to estimate that 95% of the bench and bar in Tennessee, for many decades, have enjoyed law school experience and long successful professional careers and, to their knowledge, have never ventured outside the *in personam* jurisprudence world. Just the mention of *in rem* jurisprudence will draw a puzzled "what are you talking about" look.

To the relatively few members of the bench and bar who are sufficiently familiar with civil forfeiture, with administration of probate or bankruptcy estates, with admiralty, the in rem jurisprudence concepts are familiar but may never have used the term "*in rem*" or *"in custodia legis"* or know what a "*Res"* is, even though they operate in the center of those worlds day-in-and-day-out. ***Tennessee Rules of Civil Procedure***, Rule 60.02 would be thrown in doubt because Rule 60.02 proceedings are *in rem*, with the judgment to be set aside as the *Res*. Rule 60.02 exists as the modern-day replacement for writs *coram nobis* and bills of review, each of which, for centuries, were common law *in rem* proceedings; these are carried forward today by Rule 60.

Maritime and admiralty law, without *in* rem jurisprudence, would be shaken at its foundation. The list could go on and on. So, the word "seldom," as used by the COA, is only appropriate if their lack of familiarity with what, frankly, is commonplace and in use, probably, thousands of times a day throughout the United States. The instant case is tailor-made for *in rem* jurisprudence and, Applicant humbly suggests, is tailor-made for this Court to eliminate the misunderstanding of the bench and bar.

Add to the lack of familiarity that, unlike the federal rules of procedure, Tennessee has never had necessary rules of procedure which apply to the unique requirements *in rem* jurisprudence. This shows at least two problems.

The rule makers apparently have never been aware of the need the federal rule makers understood to require special rules of procedure uniquely for *in rem* jurisprudence. Too, the absence of special rules of procedure *in rem* cases causes bench and bar to be baffled attempting to apply *in personam* rules of procedure to *in rem* cases. This leads to all the frustrations of attempting to pound a square peg into a round hole, and, respectfully, Applicant suggests that, wading through the record on appeal, would lead a reasonable to conclude such frustrations.

For reasons stated below, Applicant, respectfully, suggests that the recommendation of the trial court to abolish in rem jurisprudence or modify it, if necessary, to require a summons to initiate an *in rem* case, no doubt, is well-intentioned but overlooks consequences of implementation. The problem is not rules of law that control *in rem* jurisprudence. Those rules are, as they are designed to be, simple, straightforward and simple to understand. The problem is not following those simple rules.

Applicant respectfully suggests that abolishing *in rem* jurisprudence and/or changing *in rem* jurisprudence to require a summons, majorly, would handicap the administration of justice.

The *in rem* procedure, in substance, is seen as **"seldom" used** only by practitioners and adjudicators who have not seen *in rem* proceedings like those below or who have routinely dealt with *in rem* proceedings without the tag "*in rem*." To one who has routinely used *in rem* proceedings, since 1969, the word **"seldom used"** is foreign. Could it be that the in rem remedy is seldom used, not because it is not a perfectly viable and useful remedy, but because it is so misunderstood or, even, unknown to the bench and bar?

To abolish or create the exception the trial court recommends would have a devastating and far reaching effect on the administration of justice.

With few exceptions, jurisprudence in probate matters are *in rem*, even though the term "*in rem*" is not often used. The same is true with bankruptcy. Civil forfeitures would be virtually eliminated by the abolishment. Divorce proceedings, until recently, have been *in rem* and, because divorce proceedings were *in rem* for so long, the trappings of *in rem* jurisprudence continue to surround divorce proceedings, with the marriage being the *Res*.

Abolishment would highly complicate contraband law. Imposing a summons requirement is tantamount to abolishment. The lack of necessity for a summons in an *in rem* proceeding is of linchpin significance.

The trial court, from the moment in time, on March 16, 2009, had *in rem* (in stark contrast to zero *in personam*) jurisdiction.

Jurisdiction which is *in rem* requires the **issuance** of no summons.

Jurisdiction which is *in rem* requires no **service** of a summons.

Jurisdiction which is *in rem* vests no court with no jurisdiction over no person; thus, in a case which invokes only the *in rem* jurisdiction of a court does not provide the *in rem* court with

the opportunity to issue a summons because the *in rem* "complaint" presents the court with no person to whom to issue a summons; thus, a summons is process foreign to *in rem* jurisdiction.

Jurisdiction which is ***in rem*** is 100% about property and is 100% **not about persons**.

Jurisdiction which is *in rem* gives a court zero jurisdiction of or over any person; only *in personam* jurisdiction vests a court with jurisdiction of and over a person.[2]

Jurisdiction which is *in personam* empowers a court to order a person to do or not to do something.

Jurisdiction which is *in rem* does not empower a court to order a person to do or not to do anything (e.g., pay money to another person).

CONCLUSION

Applicant, for the reasons stated above, urges the Court to grant the instant permission to appeal and accept the Brief Of Appellant, filed herewith, as Applicant's initial briefing.

PARRISH LAWYERS, P.C.
Counsel for Applicant

By: _____

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[2] All courts all of the time have inherent power to maintain order in the operation of the court, and, to the extent this requires the court to order any person to do or not do something, all courts have the inherent power to so act. The instant case involves nothing about the inherent jurisdiction of any court.

CERTIFICATE OF SERVICE

I, Larry E. Parrish, do hereby certify that I have forwarded a true and exact copy of this **APPLICATION FOR PERMISSION TO APPEAL** via True-File and United States Mail, postage prepaid to:

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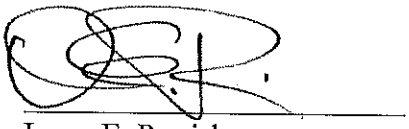

Larry E. Parrish

on the 13th day of May 2019.