No. 22-1228

In the
Supreme Court of the United States

JOSEPHINE M. TRIPODI AND GERI CARR TRIPODI,

Petitioners,

v.

NORTH COVENTRY TOWNSHIP, PENNSYLVANIA,

Respondent.

On Petition for a Writ of Certiorari to the Commonwealth Court of Pennsylvania

BRIEF IN OPPOSITION

ERIC M. BROWN
Counsel of Record
SIANA LAW LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
(610) 321-5500
Embrown@sianalaw.com

Counsel for Respondent

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

1. Whether the Court should review a decision holding Petitioners in civil contempt to "clarify" that the state court has adhered to the dictates of Due Process?

2. Whether the Court should review a decision concerning the ramifications of a finding of contempt on Petitioner Geri Carr Tripodi when this Court considered the same question in prior Petition filed by Petitioners?

3. Whether this case is a proper vehicle for review?

STATEMENT OF RELATED PROCEEDINGS

N. Coventry Township v. Josephine Tripodi and Geri Carr, No. 1054 CD 2022 (Pa. Cmwlth. June 14, 2023) (appeal quashed) (petition for allowance of appeal pending)

N. Coventry Township v. Josephine Tripodi and Geri Carr, No. 1357 CD 2022 (Pa. Cmwlth. June 14, 2023) (appeal quashed) (petition for allowance of appeal pending)

N. Coventry Township v. Josephine Tripodi and Geri Carr, No. 248 CD 2023 (Pa. Cmwlth. June 14, 2023) (appeal quashed) (petition for allowance of appeal pending)

N. Coventry Township v. Josephine Tripodi and Geri Carr, No. 453 CD 2023 (Pa. Cmwlth. June 14, 2023) (appeal quashed) (petition for allowance of appeal pending)

N. Coventry Township v. Josephine Tripodi and Geri Carr, No. 606 CD 2023 (Pa. Cmwlth.) (appeal pending)

There have been two prior Petitions for Writ of Certiorari filed with this Court:

Josephine Tripodi and Geri Carr v. North Coventry Twp., filed December 21, 2021, Docket No. 21-944, Petition Denied, February 28, 2022.

Josephine Tripodi v. North Coventry Twp., filed May 25, 2012, Docket No. 11-1439, Petition Denied, October 1, 2012.

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STATEMENT OF THE CASE

The subject of this Petition is a September 8, 2020 Order entered by the trial court imposing sanctions against Petitioners Josephine Tripodi and Geri Carr Tripodi after previously finding them in civil contempt of two prior Orders. The September 8, 2020 Order, *inter alia*, directs the appointed Master to engage a realtor to effect the sale of Petitioner Josephine Tripodi's property, a 27-unit apartment/townhome complex known as Kline Place, in a commercially reasonable manner so that the property can be rehabilitated and brought into compliance with all applicable laws, codes and regulations after years of neglect.

Respondent North Coventry Township initiated the litigation as a code enforcement action against Petitioners on November 14, 2007. At a preliminary injunction hearing on February 29, 2008, the parties agreed to a work schedule to correct the property's code violations, and this agreement was adopted by Order dated April 25, 2008. The Township later filed petitions for contempt on October 8, 2008 and January 16, 2009. On February 6, 2009, a hearing on the contempt petitions was held, at which time the parties agreed that Tripodi was to sell the property to her daughter, Petitioner Geri Carr Tripodi. The parties also agreed to the appointment of a Master to arrange for inspection and access to the property, approve a contractor to perform work on the property and resolve any disputes about the scope of the work. The trial court entered an Order on February 26, 2009, and attached the parties' agreement to it.

On March 6, 2009, the Township filed another petition for contempt. On June 12, 2009, the trial court appointed the Master. Contrary to the representations made by the Petitioners in their Petition, they did not correct the code violations and wait for reinspection by the Master. On June 26, 2009, the Township was forced to file another petition for contempt because of the Petitioners failure to cooperate with the Master and for not allowing the inspections of the property. A rule to show cause was issued requiring an answer to the petition, but Petitioner Josephine Tripodi did not file an answer. Petitioner Tripodi advised the trial court that she would not appear at the hearing, despite receiving notice of the hearing.

An evidentiary hearing was held on the contempt petition on August 14, 2009. The trial court entered an order on August 26, 2009 finding Petitioner Tripodi in contempt. The trial court specifically held, *inter alia*, that Petitioner Tripodi failed to cooperate with the Master per her prior agreement in open court to bring the property into compliance; failed to hire or engage contractors to bring the property into compliance with applicable codes; failed to convey the property to her daughter Petitioner Geri Carr Tripodi as previously agreed; and failed to provide the keys to access the property to the Master. Petitioner Josephine Tripodi did not appeal the August 26, 2009 Order, but did seek reconsideration, which was denied on May 20, 2010. Petitioner Josephine Tripodi appealed the trial court's denial of reconsideration to the Pennsylvania Commonwealth Court, which ultimately affirmed the trial court's order. See *N. Coventry Twp. v. Tripodi* (Pa. Cmwlth. No. 1214 C.D. 2010, filed Mar. 24, 2011).

On September 9, 2016, the Township once again had to petition seeking an order requiring an inspection of the property. In response, the Petitioners were afforded time to answer the petition but failed to do so within the time provided. An evidentiary hearing was held on January 19, 2017, which resulted in the trial court's April 26, 2017 Order finding that the Petitioners failed to cooperate in making the property available for inspection.

On July 9, 2019, following a status conference, the trial court issued three Orders. The first order directed the establishment of a fund to inspect and remediate the property and pay cost and fees, and placed Petitioners on notice that the failure to comply may result in the sale of the property and/or a finding of contempt against them. The second order denied Petitioners' Motion for New Trial/Hearing. The third order directed Petitioners to deliver to the Master either: (1) a $500,000.00 check; or (2) personal financial information. The third order also directed how the Master would use the $500,000.00, including for the payment to satisfy prior awards entered by the trial court to satisfy fees incurred by the Master and the Township. The third order further specified how the remaining money was to be used. Specifically, if Petitioners decided to provide financial information to the Master rather than make the $500,000.00 deposit, the Order set forth what information must be submitted. Petitioners unsuccessfully appealed from the trial court's July 9, 2019 orders. See *N. Coventry Twp. v. Tripodi* (Pa. Cmwlth. No. 1073 C.D. 2019, filed Mar. 9, 2021), *appeal denied* (Pa. No. 161 MAL 2021,

filed Oct. 1, 2021); *Cert. Denied*, Docket No. 21-944, Feb. 28, 2022.

Upon ordering and receiving a report from the Master to address the Petitioners compliance with the July 9, 2019 Orders, with said report having been served on the parties, the trial court entered an Order on October 17, 2019 directing Petitioners to attend a hearing on November 14, 2019 to show cause why Petitioners should not be held in contempt and/or show cause why the property should not be sold. On November 14, 2019, the trial court held a hearing and found Petitioners in contempt of the trial court's July 9, 2019 orders. However, the trial court did not immediately file the transcript record of that hearing or enter an order until January 6, 2020 to provide Petitioners additional time to comply with the Orders of July 9, 2019. Petitioners took no action to comply with the Orders.

Following the dismissal of the appeal challenging the trial court's July 9, 2019 Orders, by order dated March 19, 2020, the trial court again allowed Petitioners to purge the finding of contempt by directing that they inform the Court within twenty (20) days of the date of filing of the Order whether they have complied with the Court's July 9, 2019 Orders. (1a) On July 10, 2020, only after the Petitioners failed to respond to the May 19, 2020 Order and the opportunity to purge it afforded, did the trial court proceed with the scheduling of a hearing on the imposition of sanctions. (3a-4a) Following a hearing on August 27, 2020, the trial court entered the September 8, 2020 Order imposing sanctions for the

civil contempt arising from the Orders of July 9, 2019 and August 29, 2009.

REASONS FOR DENYING THE PETITION

I. THE HOLDING OF PETITIONERS IN CIVIL CONTEMPT CONFORMED TO THE DICTATES OF DUE PROCESS.

A. Petitioners were afforded notice and an opportunity to be heard and demonstrated the volition and wrongful intent required under state law to establish contempt.

First, this Court should reject Petitioner's request that certiorari be granted to "clarify that federal due process at a minimum requires compliance with state law requirements for civil contempt…" Petition, p. 11. No clarification of Pennsylvania state law is necessary especially when the undisputed facts show that the trial court complied with state law.

State law requires that a complainant must prove:

> (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed; (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent.

Commonwealth v. Honore, 150 A.3d 521, 526 (Pa. Cmwlth. 2016) (quoting *Epstein v. Saul Ewing, LLP*, 7 A.3d 303, 318 (Pa. Super. 2010)).

The are also procedural requirements that must be met:

> [I]n order for a trial court to hold a party in contempt, a five-step process must first be completed....That process includes: [(]1) a rule to show cause . . . ; [(]2) an answer and hearing; [(]3) a rule absolute; [(]4) a hearing on the contempt citation; and [(]5) an adjudication of contempt.
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> *Cleary v. Dep't of Transp.*, 919 A.2d 368, 372 (Pa. Cmwlth. 2007). 'Fulfillment of all five factors is not mandated, however. '[W]hen the contempt proceedings are predicated on a violation of a court order that followed a full hearing, due process requires no more than notice of the violations alleged and an opportunity for explanation and defense." *Wood v. Geisenhemer-Shaulis*, 827 A.2d 1204, 1208 (Pa. Super. 2003) (quoting *Diamond v. Diamond*, 792 A.2d 597, 601 (Pa. Super. 2002))[.]

Honore, 150 A.3d at 526 (quoting *W. Pittston Borough v. LIW Invs., Inc.*, 119 A.3d 415, 421 n.10 (Pa. Cmwlth. 2015) (emphasis added)).

The record is clear that the Petitioners were afforded notice and an opportunity to be heard before each instance of the trial court's finding of contempt. In 2009, the Petitioners did not answer the contempt petition or appear at the evidentiary hearing. In 2019, they received the Master's Report addressing their non-compliance with the trial court's July 9, 2019 Orders and were given notice of the November 14th hearing to

present their case. The trial court exercised restraint by withholding entry of written order and record for almost two months to afford Petitioners additional time to comply. Before the imposition of sanctions for the contempt, the trial court placed the Petitioners on notice of the hearing, scheduled the hearing and afforded them an opportunity to respond at the hearing.

There is also clear and unrefuted evidence in the record to demonstrate the Petitioners contempt has been volitional and that they have acted with wrongful intent. Petitioners refused to attend the contempt hearing in 2009. The repeated behavior over the course of the 17-year litigation is probative of their volition and wrongful intent to establish the legal standard of contemptuous conduct.

B. Petitioners were allowed to purge civil contempt.

The record also undercuts Petitioners contention that they have been deprived of the ability to purge the civil contempt and that such failure violates the notions of due process. The trial court purposefully delayed the contempt finding made from the bench at the November 14, 2019 hearing until entering the Order on January 6, 2020 to provide Petitioners additional time to comply with the July 9, 2019 Orders and purge the contempt.

Following the dismissal of the Petitioners appeal of the July 2019 Orders, the trial court again afforded Petitioners the opportunity to purge the contempt finding. By Order of March 19, 2020, the trial court

directed the Petitioners to inform the court of the steps taken to comply with the July 9, 2019 Orders within twenty (20) days. The Petitioners failed to respond. Had the Petitioners been willing to comply with the Orders, or if they could not comply with any aspect of the Orders for some reason, this would have been the opportunity to advise the trial court. Instead, Petitioners chose to ignore the Order. After almost four (4) months without a response from the Petitioners, by Order dated July 10, 2020 the trial court proceeded with the scheduling of a hearing to address the question of sanctions.

Moreover, the argument that Petitioners now raise about the lack of an ability to purge contempt is a new argument raised for the first time in their Petition to this Court. "This Court 'has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim 'was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.' " *Hemphill v. New York*, 142 S. Ct. 681, 689 (2022) (quoting *Howell v. Mississippi*, 543 U.S. 440, 443 (2005) (*per curiam*). " 'No particular form of words or phrases is essential' " for satisfying the presentation requirement, so long as the claim is " 'brought to the attention of the state court with fair precision and in due time.' " *Id.* (quoting *Street v. New York*, 394 U.S. 576, 584 (1969). In this case, Petitioners did not raise whether the purported lack of the ability to purge the contempt (or their alleged inability to comply) implicates their due process rights. Petitioners rely on *Shillitani v. United States*, 384 U.S. 364, 370-71 (1966) for the proposition that the justification for coercive

imprisonment as applied to civil contempt depends on the ability of the contemnor to comply with the court's order. (Petition, p. 8, 9, 10). They posit that when the contemnor no longer has a chance to purge himself of the contempt, confinement of a civil contemnor violates due process. (Petition, p. 8-9).

First, *Shillitani* is inapposite because this case is not an imprisonment or confinement case. This case involves the sale of property after the property owner has demonstrated over 17 years a refusal to abate building code violations that implicate the public health, safety and welfare. However, the jurisdictional objection is that Petitioners did not invoke this argument or the line of legal authority now-presented through *Shillitani* in the state court, thereby depriving the state court of an opportunity to consider the issue. See (21a-27a). The argument raised before the state court was the alleged compliance with the procedural and substantive requirements to impose civil contempt and whether adherence with those requirements satisfied Due Process. The new theory presented – whether the ability to purge a contempt or whether the contemnor alleged inability to comply with a contempt order violates Due Process - should be rejected because Petitioners try to raise it for the first time in this Petition.

II. THE DUE PROCESS RAMIFICATIONS OF THE CONTEMPT FINDING AGAINST PETITIONER GERI CARR TRIPODI HAS ALREADY BEEN CONSIDERED BY THIS COURT.

On December 21, 2021, Petitioners filed a Petition for Writ of Certiorari in this Court, docketed under 21-944, which sought review of essentially the same question presented in the instant Petition.

> Does the Due Process Clause limit a state court's power to impose obligations and liabilities upon an intervening party?

See Question Presented No. 2 of Petition – docketed under 21-944, Filed Dec. 21, 2021.

This Petition was denied by Order Dated February 28, 2022. Accordingly, Petitioners attempt to relitigate the same question should be rejected.

III. THIS CASE IS NOT A PROPER VEHICLE FOR REVIEW.

This case remains ongoing with five (5) appeals pending before the Pennsylvania Commonwealth Court. In addition, the case involves a fact-intensive inquiry unique to the parties involving almost 17 years of litigation and 20 appeals. These facts have been scrutinized many times by all three levels of the Pennsylvania court system and certiorari has been previously considered and denied by this Court twice. Petitioners do not present a clear question of federal law that has allegedly been applied in error, or a circuit split that requires resolution. Petitioners request this

Court "clarify" that the Pennsylvania courts have adhered to dictates of due process when administering state law civil contempt proceedings against Petitioners. This request is not worthy of certiorari. Respondent North Coventry Township asks the Court to refrain from intervening in the case under the circumstances presented.

CONCLUSION

For these reasons, certiorari should be denied.

Respectfully submitted,

ERIC M. BROWN
Counsel of Record
SIANA LAW LLP
941 Pottstown Pike, Suite 200
Chester Springs, PA 19425
(610) 321-5500
Embrown@sianalaw.com

Counsel for Respondent

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APPENDIX 1

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY

NO. 2007-10957-IR
CIVIL ACTION

[Filed March 19, 2020]

NORTH COVENTRY TOWNSHIP,	)
Plaintiff,	)
	)
V.	)
	)
JOSEPHINE M. TRIPODI	)
and GERRI CARR TRIPODI,	)
Defendants,	)
	)

ORDER

AND NOW, this 19th day of March, 2020, with all appeals of the Orders of July 9, 2019 having been resolved, it is hereby ORDERED and DECREED that counsel for Defendants shall inform the Court within twenty (20) days of the filing of this Order whether Defendants have complied with the Court's Orders of July 9, 2019 in order to purge the finding of contempt entered of record on January 6, 2020.[1]

[1] The Court found Defendants in contempt of its Order of July 9, 2019 in record proceedings held on November 4, 2019. During

BY THE COURT:
/s/ William P. Mahon
William P. Mahon, J.

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those proceedings, the Court ruled from the bench, finding Defendants in contempt of its prior Orders. The record of those proceedings were not filed with the Prothonotary until January 6, 2020.

APPENDIX 2

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY

NO. 2007-10957-IR
CIVIL ACTION

[Filed July 10, 2020]

NORTH COVENTRY TOWNSHIP,	)
Plaintiff,	)
	)
V.	)
	)
JOSEPHINE M. TRIPODI	)
and GERRI CARR TRIPODI,	)
Defendants,	)
	)

Lawrence Sager, Esquire, Attorney for Plaintiff
Josephine M. Tripodi, Defendant
Geri Carr Tripodi, Defendant
John A. Koury, Jr., Esquire, Master

ORDER

AND NOW, this 10th day of July, 2020, having failed to receive information from Defendants regarding their compliance with the Court's Orders of July 9, 2019, it is hereby ORDERED and DECREED that the parties shall appear before the Court on Friday, August 7, 2020 at 9:30 a.m. for the imposition of sanctions as a

result of the Court's finding of contempt on June 6, 2020.

BY THE COURT:
/s/ William P. Mahon
William P. Mahon, J.

APPENDIX 3

IN THE SUPREME COURT OF PENNSYLVANIA

No. ____

[Filed October 5, 2022]

JOSEPHINE M. TRIPODI and GERI CARR, Petitioners
v.
NORTH COVENTRY TOWNSHIP, Respondent

PETITION FOR ALLOWANCE OF APPEAL

On Petition for Allowance of Appeal from the September 7, 2022 Decision of the Commonwealth Court of Pennsylvania, No. 1023 C.D. 2020, Affirming the September 8, 2020 Order of the Court of Common Pleas of Chester County, No. 2007-10957-IR

MICHAEL CONFUSIONE, ESQ.
I.D. No. 92576
HEGGE & CONFUSIONE, LLC
P.O. Box 366
Mullica Hill, NJ 08062-0366
(800) 790-1550; mc@heggelaw.com

Counsel for Petitioners

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I. REFERENCE TO THE OPINION BELOW

The opinion that the Commonwealth Court issued on September 7, 2022 is attached as Exhibit A.

The Order that the Court of Common Pleas issued on September 8, 2020 and its January 25, 2022 Opinion per Pa.R.A.P. 1925(a) are attached as Exhibit B.

II. THE ORDER IN QUESTION

The September 8, 2020 Order of the Court of Common Pleas (1) imposed the ultimate penalty upon Josephine Tripodi by compelling the sale of her real property (the Kline Place townhouses), and (2) entered sanctions and imposed other obligations on Geri Carr (Josephine's daughter), even though Geri does not own the property at issue and has no legal responsibility for it, with the Order providing, "AND NOW, this 8th day of September, 2020, having found Defendants to be in civil contempt of the Court's Orders of July 9, 2019 and Defendants remaining adamant in refusing to comply with Orders of this Court, including this Court's Order of August 26, 2009, it is hereby ORDERED and DECREED as follows:"[the September 8, 2020 Order is attached in full as Exhibit B]

III. QUESTIONS PRESENTED FOR REVIEW

1) Did the Court of Common Pleas contravene the substantive and procedural requirements for a finding of contempt in entering the September 8, 2020 Order?

2) Did the Court of Common Pleas abuse its discretion in ordering the ultimate penalty for

contempt: the compelled sale of Josephine's real property?

3) Did the Court of Common Pleas violate fundamental due process in imposing sanctions and other obligations against Geri Carr Tripodi – who neither owns nor has any legal obligations for the property?

IV. CONCISE STATEMENT OF THE CASE

This litigation is part of a long-standing dispute between North Coventry Township and Josephine Tripodi over real property that Josephine has owned for many years called Kline Place, which consists of 27 townhouse units.

The dispute initially involved the Township's charge that the property was not compliant with maintenance, plumbing, and electrical codes, as discussed in several prior Commonwealth Court decisions, N. Coventry Twp. v. Tripodi (Pa. Cmwlth., No. 1214 C.D. 2010, filed March 24, 2011), N. Coventry Twp. v. Tripodi (Pa. Cmwlth., No. 2075 C.D. 2010, filed June 15, 2011), and N. Coventry Twp. v. Tripodi, No. 851 C.D. 2017, 2018 WL 2470645 (Pa. Commw. Ct. June 4, 2018).

In or around 2019, the parties' dispute turned to "mold issues" that the Township claimed existed in 12 of the 27 vacant townhomes (the Township made this charge despite the fact that the appointed Master, not Josephine, had been overseer of the property for the past ten years). The Township and Master demanded payment from not only Josephine, but from non-owner Geri, to remediate the mold so inspections could take place. Defendants objected, stressing (among other

objections) that mold is not a code violation and there are no federal, state, or municipal laws for mold and no laws for governing an owner's or landlord's duty to inspect or remediate mold, and that the court violated due process by sanctioning non-owner Geri (whose only responsibility and participation in the case was to help her mother). Despite defendants' objections, Judge Mahon announced that he was going to order the sale of Josephine's property "and that sale will be a fire sale" with his July 9, 2019 Orders setting the stage:

> Within sixty (60) days from the date of this Order, Josephine M. Tripodi and Gerri Carr Tripodi, Defendants, shall deliver to John A. Koury, Jr., Esquire the Court appointed Master in this matter, at his offices at 41 East High Street, Pottstown, Pennsylvania, EITHER of the following:
>
> a. A check, payable to the order of "John A. Koury, Jr., Esquire, Master," in the amount of Five Hundred Thousand Dollars ($500,000.00), under, subject to, and otherwise in accordance with the provisions of Paragraph 2 of this Order; OR
>
> b. Personal financial information for each of the Defendants, subject to, and otherwise in accordance with, the provisions of Paragraph 3 of this Order.

Defendants appealed the July 9 Orders, stressing again that there were no laws they were alleged to have violated including with regard to mold and mold remediation before inspections could take place (it was

recently found that inspections did take place with mold and mold did not need to be remediated, in fact), but the Commonwealth Court affirmed, ruling that Judge Mahon did not err in establishing a fund to inspect and remediate for mold, and rejecting Geri's argument that it was unlawful to enforce real property requirements against a non-owner, N. Coventry Twp. v. Tripodi, 252 A.3d 695 (Pa. Commw. Ct. 2021), appeal denied, No. 161 MAL 2021, 2021 WL 4487679 (Pa. Oct. 1, 2021), and cert. denied, 212 L. Ed. 2d 216, 142 S. Ct. 1208 (2022).

The Township, Master, and Judge Mahon meanwhile pressed toward the involuntary "fire sale" of Josephine's real property. When the defendants appeared before Judge Mahon on November 4, 2019 to "show cause why Defendants should not be held in contempt of this Court's Orders entered July 9, 2019, and/or show cause why the real property involved should not be sold," Judge Mahon summarily announced that defendants were in contempt: "THE COURT: Okay. All right, so finding that they concede that the -- that defendants did not comply with my order of July 9th of [2019] that required either the provision of financial information or a check in the amount of $500,000 to the Master, Mr. Koury, in this matter and in response to my order of October 17th of this year, I called this hearing in order to -- for the Defendants to show cause of why they shouldn't be held in contempt of their noncompliance of that order. And Defendants, choosing not to present any testimony or evidence in this matter, I find them in contempt. And the Defendants are to report to Chester County Prison by November 25th at 4:30 p.m. unless they purge the

contempt by providing the check in the amount of $500,000 to the Master, Mr. Koury, in compliance with my prior orders of July 9th. I'll give them three weeks to gather the money." 118a. (The November 4, 2019 hearing was the first day after defendants hired a new attorney, Frank Turner Esq., who wanted more time to assess the case but was denied by the judge; he was supposed to speak for the defendants and give evidence to Judge Mahon because defendants were no longer pro se at that point).

Defendants moved for Judge Mahon to "Vacate the Judgment Ordering $500,000.00 be paid into a fund to remediate mold," explaining that defendants did not have the assets to pay the "exorbitant" amount that "was not based on any actual maintenance needs of the property"[1] but Judge Mahon said that $500,000 was not an "unreasonable amount." 207a. Though Judge Mahon acknowledged that defendants offered to pay "monies now in the amount of $336,330.78"– which would have paid the bill in full - that was "of little solace now," Judge Mahon said. 211a. "Because, again, with the history of the Tripodis in this litigation, it does not resolve the code violation issues or the remediation issues. All it does is to pay the expenses that have been incurred as a result of the Tripodis contemptuous conduct of the orders of this Court, and their persistent

[1] In a Motion to Vacate that defendants subsequently filed before Judge Mahon, defendants stressed that the Lewis Environmental letter advising of the alleged mold and need for remediation was first provided to defendants "on or about the 28th day of July 2020" (Record 14a) and, beyond its late disclosure, did not establish a need for $500,000 demanded of defendants.

desire to litigate in this matter." 211a. On this ground Judge Mahon confirmed that he was ordering the sale of Josephine's property. "It will be sold as is." 214a (At the time of the contempt hearing, neither the Township nor Master revealed that inspections in 2017 did take place, in fact, as they did not docket the Yerkees inspections site reports in court or give a copy of the Yerkees inspections site reports to the defendants).

Judge Mahon issued the September 8, 2020 Order, at issue here, affirming his finding that defendants were in contempt of the July 9, 2019 orders, and decreeing that Master Koury should move forward to sell the property. Judge Mahon again addressed defendants' offer to make the $336,330.78 payment:

> During the August 27, 2020 proceeding, Defendants offered to pay the amount of $336,330.78 to satisfy all outstanding monies owed which include the amount estimated by Lewis Environmental to remediate the mold issues at the Property. This is the first offer by Defendants to comply with any of the Court's prior orders over the last thirteen (13) years. However, the offer would not resolve the code compliance issues that have existed for the past thirteen (13) years. The Court is not inclined to again engage with Defendants in the same contemptuous and dilatory conduct for the next thirteen (13) years. In addition, Defendant, Geri Carr Tripodi, offered during the hearing to buy the Property. However, she was obligated to buy the Property by a February 26, 2009 Court ordered agreement with which she never

> complied. Her purchase of the Property would not resolve any of the remediation and code compliance issues that have existed for the last thirteen (13) years." (Ex A to Appellant's Brief).

Judge Mahon set forth his ruling further in his 1925(a) Opinion, stating that – despite the express language of his September 8, 2020 Order – it "does not make a finding of contempt, but rather imposes reasonable commercial conditions to effectuate the trial Court's prior Orders."

> The Order of August 26, 2009 required the sale of the Property in a reasonable commercial manner conditioned upon the buyer remediating the Property and bringing it into compliance with the Township's codes and was further premised upon findings of contempt of prior trial Court Orders of April 25, 2008, February 26, 2009 and June 12, 2009. The trial Court had also ordered the payment of the Township's attorney's fees and costs, and the master's fees, costs and expenses. On September 22, 2010, the trial Court again found Appellant Josephine Tripodi in contempt for deliberate and willful refusal to obey prior Court Orders including the payment of the Township and master's fees and costs. This was the first of a series of Orders appealed to the Commonwealth Court and affirmed. *See Pa. Cmwlth., No. 1214 C.D. 2010 (filed March 24, 2011). See also No. 2075 C.D.2010, appeal denied (Pa., No. 502 MAL 2011, filed February 28, 2012); Nos. 831 C.D.*

2012 and 832 C.D. 2012; Pa. Cmwlth. No. 1869 C.D. 2012. [Ex. B]

Judge Mahon acknowledged McMahon v. McMahon, 706 A.2d 350 (Pa. Super. Ct. 1998) and the requirements for finding civil contempt but said that the September 8 Order "does not find Defendants to be in civil contempt. Rather, the Order imposes reasonable sanctions for eleven (11) years of contemptuous conduct commencing with the Court's first finding of contempt of August 26, 2009 (also finding Appellants in contempt of three (3) prior trial Court Orders); and the trial Court's Order of September 22, 2010 finding Appellants in contempt for her deliberate and willful refusal to obey prior Orders; and the Court's Order of April 25, 2017 and the finding of contempt on January 6, 2020 of the Court's July 9, 2019 Orders." Ex. A4.

Judge Mahon said that the "July 9, 2019 Orders were the result of the Appellants' failure to comply the prior Order of this Court of April 25, 2017" (In the April 25, 2017 Order, prior Judge Nagle had ordered the Master to supply a Yerkees inspection report with recommendations before requesting funds and before requesting legal fees, but the Master did not supply that to the court or to the defendants, asking instead for $500,000.00, an amount that was unnecessary with no paperwork to verify it), and that the July 9 order "was not the only Order that Appellants have not complied with since the inception of this litigation. "Appellants have failed to comply with two agreements placed on the record and adopted as Orders of the trial

Court dated April 25, 2008 and February 26, 2009." Judge Mahon stated,

> Despite entering into those agreements to settle the litigation at that point, Appellants never complied with those agreements or the Court Orders. As a result, the trial Court issued another Order dated August 26, 2009 finding Appellants in contempt of three prior Orders as well as an additional Order of June 12, 2009, concluding then that the conduct of the Appellants required the sale of the Property in a reasonable commercial manner. The Township then filed its fifth contempt petition resulting in the trial Court issuing an Order on September 22, 2010 finding the Appellants "deliberate and willful refusal to obey the prior Orders" of the trial Court. Appellants response to all these Orders were non-compliance and unsuccessful appeals to the Commonwealth Com. In response to a status hearing, the trial Court eventually issued the Order of April 25, 2017 which entered judgments for monies owed by Appellants. The April 25, 2017 Order was followed by the undersigned's July 9, 2019 Orders. The trial Court found Appellants in contempt of the July 9, 2019 Orders from the bench on November 4, 2019 (however the transcript of that finding was filed of record on January 6, 2020). [Ex. B]

Judge Mahon said that "[a]ll of the forgoing resulted in the" September 8, 2020 Order … The September 8, 2020 Order resulted from the January 6, 2020

contempt finding and imposed reasonable commercial conditions for the sale of the Property that had been imposed by Order dated August 26, 2009." Ex. A9. Judge Mahon said that the September 8 Order "compelled the involuntary sale of the Property in a reasonable commercial manner, just as the trial Court's Order of August 26, 2009 had ordered, some eleven (11) years earlier."

Defendants' Appeal of the September 8 Order in the Commonwealth Court

Defendants argued that Judge Mahon disregarded the procedural and substantive requirements for contempt, abused his discretion in ordering the ultimate penalty of a compelled sale of Josephine's real property, and violated fundamental tenets of due process by imposing legal obligations upon Geri Carr, who neither owned nor had legal responsibility for the property.

But the Commonwealth Court rejected defendants' arguments and affirmed the September 8 Order.

With regard to the requirements for contempt, the court said that the September 8 Order "did not include a contempt finding, "but rather imposed sanctions for Appellants' failure to obey its August 26, 2009 contempt finding, from which Appellants did not appeal, and its November 4, 2019 contempt finding, the appeal from which this Court dismissed, the trial court did not contravene the substantive and procedural requirements for a contempt ruling against Appellants." "Even assuming, arguendo, that the trial court's imposition of new/additional sanctions for the

prior contempt rulings is an independent contempt order, because the trial court's September 8, 2020 order was predicated on violations of the trial court's previous contempt orders, "due process requires no more than notice of the violations alleged and an opportunity for explanation and defense" (citing Commonwealth v. Honore, 150 A.3d 521, 526 (Pa. Commw. Ct. 2016), Wood v. Geisenhemer-Shaulis, 2003 PA Super 224, 827 A.2d 1204, 1208 (2003)).

> Here, the trial court held a hearing on August 7, 2020, for the imposition of sanctions as a result of its November 4, 2019 contempt ruling. See Reproduced Record (R.R.) at 122a-145a (Notes of Testimony (N.T.) Aug. 7, 2020). Although Appellants had notice of the hearing, they did not attend, having filed an unsubstantiated motion the previous afternoon alleging that they were self-quarantining due to COVID-19 symptoms. See R.R. at 123a-126a; see also R.R. at 1a-2a (Emergency Motion for Continuance). The trial court ordered them to appear the following Monday, August 10, 2020, and informed Appellants' counsel that warrants would issue for Appellants' arrest if they did not comply. See R.R. at 137a-139a. Neither Appellants nor their counsel appeared at the August 10, 2020 hearing. See R.R. at 147a-149a (N.T. Aug. 10, 2020). The trial court offered them a final opportunity to appear before it on August 27, 2020. On August 27, 2020, Appellants and their counsel participated in the hearing by video. See R.R. at 151a-226a (N.T. Aug. 27, 2020). Thus, Appellants had ample

> notice "and an opportunity for explanation and defense."*Honore, 150 A.3d at 526* (*quoting Wood, 827 A.2d at 1208*). Accordingly, even if the imposition of new/additional sanctions for the trial court's prior contempt rulings is considered an independent contempt order, the trial court did not contravene the substantive and procedural requirements for declaring Appellants in contempt.

With regard to the forced sale of Josephine's real property, the Commonwealth Court cited Judge Mahon's claim that the order "was entered to effect remediation of the [] Property which Appellants repeatedly failed to do and [sic] failed to cooperate with the Master and [the] Township to inspect and remediate." (In 2007, the Township refused to reinspect. Throughout the case, the Master refused to reinspect despite the August 2009 court order prescribing reinspection; in April 2017, Judge Nagle ordered Yerkees to reinspect the 2007 code violations, but the Township/Master did not submit the reinspection site reports to the court or to the defendants). The court said that this showed that the trial court's judgment was not "manifestly unreasonable or [that] the law [wa]s not applied or [that] the record shows that the action is a result of partiality, prejudice, bias or ill will" (citing Com. v. Bowden, 576 Pa. 151, 838 A.2d 740, 762 (2003), Com. v. Shaffer, 551 Pa. 622, 712 A.2d 749, 751 (1998)). "Accordingly, the trial court did not abuse its discretion in compelling the Property's sale."

With regard to the propriety of imposing sanctions and obligations on the non-owner, Geri Carr, the Commonwealth Court noted it had rejected a similar argument that defendants raised in their earlier appeal in North Coventry Township v. Tripodi (Pa. Cmwlth. No. 1073 C.D. 2019, filed Mar. 9, 2021), appeal denied (Pa. No. 161 MAL 2021, filed Oct. 1, 2021). "Here, this Court similarly holds that the trial court did not abuse its discretion by sanctioning Carr," noting, "This holding is especially proper in light of the fact that Carr again proposed purchasing the Property at the August 27, 2020 hearing. See R.R. at 201a (N.T. Aug. 27, 2020) (wherein Carr stated "I want to tell [my counsel] that I have a court order that I'm supposed to buy it. I can buy it immediately.")."

Petitioners now filed this Petition for Allowance of Appeal and respectfully ask the Court to correct the rulings entered against them below and clarify the following areas of Pennsylvania law.

V. CONCISE STATEMENT OF REASONS RELIED UPON FOR ALLOWANCE OF APPEAL

A. The Court should clarify the procedural and substantive requirements for entry of a finding of contempt against a civil litigant.

The Commonwealth Court claimed that the September 8 Order "did not include a contempt finding, "but rather imposed sanctions for Appellants' failure to obey its August 26, 2009 contempt finding, from which Appellants did not appeal, and its November 4, 2019

contempt finding, the appeal from which this Court dismissed, the trial court did not contravene the substantive and procedural requirements for a contempt ruling against Appellants." That disregards the express language of the September 8 Order providing, "AND NOW this 8th day of September, 2020, **having found … Defendants to be in civil contempt** of the Court's Orders of July 9, 2019 and the Defendants remaining adamant in refusing to comply with Orders of this Court, including this Court's Order of August 26, 2009" (emphasis added).

The Commonwealth court said, "Even assuming, *arguendo*, that the trial court's imposition of new/additional sanctions for the prior contempt rulings is an independent contempt order, because the trial court's September 8, 2020 order was predicated on violations of the trial court's previous contempt orders, "due process requires no more than notice of the violations alleged and an opportunity for explanation and defense" (citing Honore, 150 A.3d at 526, Wood, 827 A.2d at 1208).

The Court should clarify that Pennsylvania law requires more than that for a finding of contempt – a serious finding that, in this case, compels the involuntary sale of a private party's substantial real property. Though the Commonwealth Court in this case and in Honore said that only notice and an opportunity to be heard is required, other Pennsylvania caselaw provides that "mere noncompliance with a court order is insufficient to prove civil contempt." Bold v. Bold, 207 Pa. Super. 365, 939 A.2d 892 (2007). To sustain a finding of civil contempt, the complainant

must prove certain distinct elements: (1) that the contemnor had notice of the specific order or decree which he is alleged to have disobeyed;] (2) that the act constituting the contemnor's violation was volitional; and (3) that the contemnor acted with wrongful intent. Epstein v. Saul Ewing, LLP, 2010 PA Super 190, 7 A.3d 303, 318 (2010); Lachat v. Hinchcliffe, 769 A.2d 481, 489 (Pa. Super. Ct. 2001). To find a party in contempt, a five-step process is required. Cleary v. Com., Dep't of Transp., 919 A.2d 368, 372 (Pa. Commw. Ct. 2007).

Judge Mahon did not follow those requirements: (1) a rule to show cause; (2) an answer and hearing; (3) a rule absolute; (4) a hearing on the contempt citation; and (5) an adjudication of contempt. McMahon, 706 A.2d at 356; Crislip v. Harshman, 243 Pa. Super. 349, 365 A.2d 1260, 1261 (1976); Lachat v. Hinchcliffe, 769 A.2d 481, 488–89 (Pa. Super. Ct. 2001). Judge Mahon did not even cite the standard for contempt or assess the required mental intent of the party being charged. Judge Mahon simply pronounced both defendants to be in contempt, stating at the November 4, 2019 hearing: "THE COURT: Okay. All right, so finding that they concede that the -- that defendants did not comply with my order of July 9th of [2019] that required either the provision of financial information or a check in the amount of $500,000 to the Master, Mr. Koury, in this matter and in response to my order of October 17th of this year, I called this hearing in order to -- for the Defendants to show cause of why they shouldn't be held in contempt of their noncompliance of that order. And Defendants, choosing not to present any testimony or evidence in this matter, I find them in contempt. And the Defendants are to

report to Chester County Prison by November 25th at 4:30 p.m. unless they purge the contempt by providing the check in the amount of $500,000 to the Master, Mr. Koury, in compliance with my prior orders of July 9th. I'll give them three weeks to gather the money." 118a.

Judge Mahon did not find that *each* defendant, separately, "acted with wrongful intent" as is required for a finding of contempt, this Court should clarify, Marian Shop, Inc. v. Baird, 448 Pa. Super. 52, 670 A.2d 671, 674 (1996). The evidence showed there was no willful intent; only an inability to pay the massive $500,000 demanded (all without defendants ever seeing the Yerkees bills and paperwork; defendants demanded to see the Yerkees inspection report and bills to understand what they were paying for – continually inquiring of Judge Mahon why Josephine, as property owner, could not clean the mold herself at far less cost).

Significantly, defendants offered, at the August 27, 2020 proceeding, to make a $346,198.50 payment "immediately" to cover the attorneys' fees claimed owed to the Township and to Master Koury, and to cover the "mold remediation estimate from Lewis [of] $146,198.50." Also during the August 27, 2020 proceeding, defendants stated that Geri Carr was ready and able to now buy the Property from her mother (as Judge Mahon acknowledges in his 1925(a) Opinion, Ex. B). All of this undercuts a conclusion that either defendant acted with the willful intent required for civil contempt, yet the Commonwealth court disregarded these critical requirements of what, this Court should clarify, Pennsylvania law requires before

a finding of civil contempt, out of the presence of the court, may be entered.

B. The Court should grant this Petition to clarify the limits of a court's power to hold a party in contempt – here, employing a contempt sanction to force a private party to sell her long-held real property.

Judge Mahon claimed that his September 8 Order "was entered to effect remediation of the [] Property which Appellants repeatedly failed to do and [sic] failed to cooperate with the Master and [the] Township to inspect and remediate." The Commonwealth court said that this showed that the trial court's judgment was not "manifestly unreasonable or [that] the law [wa]s not applied or [that] the record shows that the action is a result of partiality, prejudice, bias or ill will" (citing Bowden, 838 A.2d at 762, Shaffer, 712 A.2d at 751).

But the "purpose of civil contempt is to compel performance of lawful orders[.]" Gunther v. Bolus, 2004 PA Super 8, 853 A.2d 1014, 1018 (2004); Cecil Twp. v. Klements, 821 A.2d 670, 675 (Pa. Commw. Ct. 2003); Commonwealth v. Honore, 150 A.3d 521, 526 (Pa. Commw. Ct. 2016). A lower court has discretion in fashioning a remedy for contempt, but the remedy must be tethered to the lawful goal of contempt: to compel the party to comply with the court's order allegedly being disobeyed. Mulligan v. Piczon, 739 A.2d 605, 611 (Pa. Cmwlth. 1999), aff'd, 566 Pa. 214, 779 A.2d 1143 (2001).

A court is not supposed to use contempt to punish a civil litigant beyond what is necessary to compel

compliance with the court order – or as pretext to obtain something else. Yet that is exactly what Judge Mahon did with his September 8 order compelling a "fire sale" of Josephine's property that she owned for many years and has substantial worth. Compelling Josephine to comply with the mold remediation that the Township demands and is reflected in the prior July 9, 2019 Orders can be accomplished well short of this ultimate penalty on the civil litigant. A forced sale of the real property in question is *the* most drastic remedy a court can employ in this case *even if* Judge Mahon's finding of civil contempt was properly made.

Ordering elderly Josephine to participate in a forced sale of her property she has owned for so many years is particularly suspect in light of the record evidence indicating how the claimed "code" and now "mold" problems the Township has been pounding Ms. Tripodi with for so many years began in the first place:

> 1. In July 2007, a Township representative verbally advised Josephine Tripodi to sell Kline Place to the Township or she would get code violations.
>
> 2. Tripodi did not sell Kline Place.
>
> 3. October 2007, Tripodi got code violations for Kline Place.
>
> 4. November 2007, Township did not return to reinspect the corrected code violations but, instead, started a court case for injunctive relief to stop Tripodi from renting and use of her property.

With the September 8 order, the Township has finally obtained what it threatened all those years ago. We implore the Court to grant this Petition and stress again that this is not how justice works in our Commonwealth.

C. The Court should clarify the legal obligations of an intervenor to a civil action.

A person who does not own real property, and has no legal obligation to maintain it, cannot be compelled to do so by a court.

The Commonwealth Court said that Judge Mahon did not abuse his discretion by sanctioning Ms. Carr "especially … in light of the fact that Carr again proposed purchasing the Property at the August 27, 2020 hearing." So what? That Ms. Carr offered to buy her mother's property does not transform her into an owner, or impose legal obligations for the property on her – not until and unless she acquires it, or legally assumes some responsibility for it.

Geri Carr's intervention into this civil action does not mean that the Court of Common Pleas can saddle her with a property owner's legal responsibilities either – another core concept that the Court should clarify by granting Allowance. "Intervention is a procedural tool by which a person not originally a party can participate in a given action." Appeal of Municipality of Penn Hills, 519 Pa. 164, 168, 546 A.2d 50 (1988). It is a mechanism to enable a person with rights potentially impacted by a lawsuit to participate in it and assert those rights. This is consistent with the Court's statement in Appeal

of Municipality of Penn Hills, 519 Pa. at 168, that "once intervention is allowed the intervenor is afforded all the rights of a party to the action."

This Court did not say and has never said that the intervenor, in addition to acquiring rights to participate in the action, is also saddled with the same obligations of the named parties, or assumes the same legal obligations that a party has with regard, here, to property the party owns but the intervenor does not. Intervention does not mean that the intervening party assumes legal duties that, before intervention, the party did not have under state or federal law. Geri Carr does not own the real property and has no legal responsibility for it. Only her mother, Josephine, does. Geri did not become legally obligated for the property because she offered to buy it, or because she was made an intervening party in this action in light of her offer to buy. The courts below contravened fundamental precepts of due process by imposing upon Geri Carr obligations for this real property that she does not own or control and for which she has no responsibility legally. Cf. Walker v. Eleby, 577 Pa. 104, 113, 842 A.2d 389 (2004) "Because the Borough did not own the street … the Borough was not liable.") The Court should grant this Petition to correct the improper rulings the courts made below and to clarify this area of law affecting a person's rights and responsibilities as an intervenor in a civil action.

CONCLUSION

For these reasons, the Petition for Allowance of Appeal should be granted.

Dated: October 5, 2022

/s/ Michael Confusione
MICHAEL CONFUSIONE, ESQ.
I.D. No. 92576
HEGGE & CONFUSIONE, LLC
P.O. Box 366
Mullica Hill, NJ 08062-0366
(800) 790-1550; mc@heggelaw.com
Attorney for Petitioners