

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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OTTAWA OH, LLC, PETITIONER

v.

PANDORA DISTRIBUTION, LLC; GENESEE & WYOMING, INC.; PHILIPS ELECTRONICS  
NORTH AMERICA CORPORATION; DBI PARTNERS, LLC; FIRST AMERICAN TITLE  
INSURANCE COMPANY, RESPONDENTS

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A  
WRIT OF CERTIORARI**

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To the HONORABLE BRETT M. KAVANAUGH, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Petitioner, Ottawa OH, LLC (“Ottawa”), respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit for sixty days until and including September 1, 2023. The United States Court of Appeals for the Sixth Circuit issued the judgment and opinion that Petitioner seeks to appeal on January 20, 2023, and petitioner’s timely request for rehearing *en banc* was denied on April 4, 2023. *Order Denying Rehearing filed April 4, 2023, attached at Apx. 0001; Judgment filed January 20, 2023, attached at Apx. 0002; Opinion filed January 20, 2023, attached at Apx. 0003-12.* Without the requested extension, the time for filing the petition will conclude on July 3, 2023. This application is timely because it has been submitted more than ten days prior to the date on which the time for filing the petition is to expire. Petitioner Ottawa OH, LLC is not owned by a parent corporation, and no publicly owned corporation owns 10% or more of its shares.

This case presents important questions about the rights to due process and ownership of property protected by the Fifth and Fourteenth Amendments to the United States Constitution. The Sixth Circuit panel ruled that Petitioner Ottawa had purchased bridges between two warehouses over a railroad despite the stated recognition that Ottawa had entered into “no agreement concerning ownership or removal of the bridges.” *Apx. 0004.* Indeed, Ottawa had only purchased one of the warehouses, and the record of title to this property made no reference to the bridges.

*Id.* There was simply no way that Ottawa could have known or discovered that it would be burdened with the bridges by purchasing the warehouse property.

May a court foist ownership over property—along with any attendant liabilities arising from that property—upon a landowner who was never given notice of the potential for that ownership and liability during the purchase process? Is such a ruling consistent with this nation’s deeply-rooted history and traditions pertaining to the ownership of land? Does the Fifth and Fourteenth Amendments protect a fundamental right to avoid ownership of property that a buyer has no reason to believe they have purchased? This case also presents an issue as to whether the Court of Appeals properly granted summary judgment on petitioner’s ownership and liability on appeal based on disputed evidence and without oral argument. The court’s holding therefore departs from the accepted and usual course of judicial proceedings calling for an exercise of this Court’s supervisory powers. This Court’s jurisdiction is derived from 28 U.S.C. § 1254(1).

As justification for the requested extension, counsel for Petitioner Ottawa have been and will be engaged in substantial briefing and other commitments during the months following issuance of the 6th Circuit’s denial of rehearing and heading into the busy days around Independence Day on July 4th. Between May 3 and 22, 2023, Paul W. Flowers and Louis E. Grube initiated an original action seeking a writ of mandamus and engaged in emergency motion practice before the Supreme Court of Ohio in *State ex rel. Panzeca v. Highland Cty. Court of Common Pleas, Gen. Div.*, S.Ct. Ohio No. 2023-0582. On May 16, 2023, they submitted a brief to the Supreme

Court of Ohio in a civil merits case, *State ex rel. Levitin v. Indus. Comm.*, S. Ct. Ohio No. 2022-1187. On May 24, 2023, they submitted an opening brief to the Ohio Eighth District Court of Appeals in *State v. Azali*, Cuyahoga County Case No. CA-23-112299, challenging the defendant-appellant's conviction for murder. On June 5, 2023, they filed a brief to the Supreme Court of Ohio in a civil merits case, *Ramos v. Fresh Mark Canton*, S. Ct. Ohio No. 2022-1446. On June 20, 2023, they will file an opening brief in the United States Court of Appeals for the Sixth Circuit on behalf of the appellants in *Bray v. Bon Secours Mercy Health, Inc.*, 6th Cir. No. No. 23-3357. During this period, they have also submitted jurisdictional briefing in new discretionary appeals to the Supreme Court of Ohio, which require preparation of memoranda arguing for or against acceptance, in the following matters: *Coon v. OhioHealth Corp.*, S. Ct. Ohio No. 2023-0458 (memorandum opposing jurisdiction docketed May 8, 2023); *Facemyer v. Patch*, S. Ct. Ohio No. 2023-0731 (memorandum in support of jurisdiction docketed June 8, 2023); *State v. Head*, S. Ct. Ohio No. 2023-0753 (memorandum in support of jurisdiction docketed June 12, 2023). Moreover, Louis E. Grube has accepted an appointment to represent the defendant-appellant before the Ohio Fourth District Court of Appeals in *State v. Wagner*, Pike County Case No. 23CA919, for which he has been diligently reviewing the approximately 19,000-page transcript of the 103-day trial proceedings as it has been transcribed periodically since April 2023.

## CONCLUSION

For the foregoing reasons, Petitioner Ottawa respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit for sixty days until and including September 1, 2023.

Respectfully Submitted,

*/s/ Paul W. Flowers*

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