Supreme Court of the State of Ohio

George Martens

Plaintiff/ Appellant

vs

Municipal Court et al

Defendant/ Appellee

On Appeal from the Ohio Court of Appeals

Third Appellate District

Third District Case No 05-23-12

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REPLY BRIEF

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STATUTES AND ORDINANCES

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House Bill 5 as passed by the 130th General assembly

LINK- http://archives.legislature.state.oh.us/bills.cfm?ID=130_HB_5

a. Section 6 of HB5

PREFACE-The Appellant will not merely review the extensive brief filed to this Court again but emphasize a few points. The Appellee wishes to morph the "Complaint" and states (pg 9) " He contends that the assessment and appeal procedures are not being followed, and that, as a result, the Appellees lacked jurisdiction to hear tax cases brought before the respective courts pursuant to R.C. 718.12. Id." The "Complaint"is not about the "assessment" or "appeal procedures" that they city has exclusive jurisdiction over, but about the Respondents who admit they, inter alia,act as a tax review board and usurp the municipal tax agency's ("agency") jurisdiction.

THE SIMPLICITY OF THE COMPLAINT sub judice (herein "Complaint")

The issue is very simple. The General Assembly created a statute (R.C. 718- herein"718") for municipal taxation that comprehensively grants exclusive jurisdiction to an"agency".In 718 the legislature allowed a "civil action" to be instituted only to "recover" municipal income tax (718.12). Taxpayers who file returns or taxpayers who have not filed a return can be challenged by the "agency" as to tax owed. The "agency" and the taxpayers under "718" then exhausts all their processes, procedures and appeals and a lawful tax debt is arrived at that is indisputable and actual then due and owing. The General Assembly granted the "agency" (see R.C. 718.12) the authority to invoke the jurisdiction of a court and use a "civil action" to "recover" the income tax. The "civil action" in the court would create a judgment which then would allow further collection by garnishment, attachments or such, absent any further dispute as to the tax debt.

Finally, the Legislature, **in an unusual action,** allowed city employees to commence a "civil action", and passed R.C. 1925.04(B) to recover the tax, i.e. id "If taxes are sought to be recovered". Obviously the small claims action being brought by a city tax employee is premised on the fact that the sum is indisputable ans actual when the due process in 718 was lawfully followed, ergo a summary proceeding is all that is needed to obtain a judgment that can then be collected. Obviously allowing a tax employee to commence a "civil action" was allowed because the "agency"has provided the taxpayer with all due process to dispute the "assessment".

The Respondents have, inter alia, admittedly usurped the exclusive jurisdiction of the “agency” and acts as a tax review board, and abandoned its duty to adhere to R.C. 718.12’s “civil action” to “recover”a debt, ergo they patently and unambiguously acts absent jurisdiction,i.e.

See- (using Ohio Court Humphreys v. State, 70 Ohio St. 67) the common pleas court states- Case Construction Co. v. Bd. of End 241 N.E.2d 403 (Ohio Com. Pleas 1968) - “A court has a duty to adhere to a statute as it is written and enforce its literal terms.”

Also, if it is true (and it is) a municipal court in an FE&D lacks jurisdiction if a 3 day Notice was not posted for 3 days or the complaint was filed before the 3 days expired, under R.C. 1923 , then the Respondents only have jurisdiction under 718 to hear a “civil action” when the “conditions precedent” for a judgment against a taxpayer are proffered before the said court., i.e.

See- cite: J & V Prop. Mgmt. v. Link 2019 Ohio 4232 (Ohio Ct. App. 2019) “ {¶3} On October 1, 2018, the Mount Vernon Municipal Court issued a judgment entry finding it **did not have jurisdiction to entertain** the forcible entry and detainer complaint and dismissed the writ of restitution because the notice to vacate attached to the **complaint did not contain part of the mandatory statutory language**” (Emphasis added)

See- In re Appropriation of Easement 99 Ohio App. 251 (Ohio Ct. App. 1954)- 18 American Jurisprudence, 961, Section 317: "To the maintenance of condemnation proceedings it is essential that all preliminary steps prescribed by the statute be taken, **for such steps are jurisdictional and may not be disregarded.**"(Emphasis added)

See State ex rel. Cordray v. Court of Claims, 941 N.E.2d 93, 190 Ohio App. 3d 161, 2010 Ohio 4437 (Ct. App. 2010). “{¶ 36} .. "[W]here **jurisdiction is dependent upon a statutory grant,** [parties and] courts are without authority to create jurisdiction when the **statutory language does not. Only the General Assembly can do that**." (Emphasis added)

The Respondents in their MTD (pg 8-10) and their Response sub judice (pg 16-18) affirm what they do, e.g. entertain “contested hearings", use a “proposed assessment”, use “estimate[d]” tax liability,and allow “contested hearings” ans continuances to obtain“accurate” tax demands. Under 718 the Respondents have no jurisdiction to relitigate a tax debt that should have been already determined, i.e. an actual and indisputable amount (herein “actual”) that the “agency” alone has determined. The Respondents can only exercise the jurisdiction granted to them by the legislature and when in that exercise of specific 718 jurisdiction they are required to examine the “conditions precedent” to jurisdiction, e.g. being there to “recover” a “actual” tax debt

quasi-judicially determined by the "agency's" required lawful procedures, as seen in a FE&D action, with, inter alia, an "actual" tax debt, sworn testimony and evidence of such under 718.

ARGUMENTS

THE APPEALS COURT PREJUDICIALLY VIOLATED ITS OWN RULES

The Appeals court misread and limited the basis of Martens' "Complaint"- also "MC", i.e.

The Realtor alleges that the procedure utilized by Respondents, who are judges of the Findlay Municipal and fHancock County Common pleas courts, to adjudicate municipal tax cases contrary to state statutory law (pg 1)..Specifically ***the Realtor alleges*** *that Respondents failed to obtain jurisdiction under Chapter R. C. 718 prior to hearing these cases. Relator seeks alternative and/or peremptory writs of mandamus compelling Respondents to "conform their practices to ORC 718 as codified," "to dismiss sua sponte all cases where the requirements of under 718 [sic] are not first met to obtain jurisdiction," or "****to show cause why they should not be compelled to establish jurisdiction as required under the statutory scheme of ORC 718*** *to allow or initiate proceedings pursuant to said ORC 718."* (Emphasis added)

The Appeals Court never recognized Martens' allegations that: **1)** the Respondents acted as a tax review board (i.e. "MC"pg11- *The courts and its judges are knowingly allowing a 'civil action" to be used to make an "assessment" and/or act as Income Tax Review Board (ITRB) to establish a tax amount due.*" and **2)** *that they " grant jurisdiction and entertain a "civil action", allowed only under ORC 718.12 conditions being met as applicable*. ("MC"- #17(c)- i.e. in materia to only recover of a tax debt). Under 718.12 an actual tax debt has been established by the "agency" and to consider anything else denies jurisdiction to "recover" a tax debt; **3)** " no court or judge has the discretion to disregard statutory law that enables and defines itself as regards a municipality's ability to bring an court action predicated on the statutory requirements ("MC"#17(g)(iii)); **4) "MC"**pg 14- "The CFITD in concert with the courts and its judges are treating the municipal tax as an exaction and not a tax wherewith the CFITD can declare anu amount that an alleged taxpayer owes as due & owing and obtain a judgment for it by the courts". The Realtor clearly alleged the Respondents patently and unambiguously lack jurisdiction ("MC" #17(g) et seq.) when they usurp the exclusive jurisdiction granted to the "agency" to procedurally arrive at a actual and indisputable (herein "actual") tax debt and they

use other speculated sums to "recover" a tax debt, i.e. "no jurisdiction "exits- see

State ex rel. Gray v. Kimbler, 205 NE 3d 494 - Ohio: Supreme Court 2022 {¶ 15} ..A statutory grant of exclusive jurisdiction over a specific type of case to another court, office, or agency **divests the common pleas court of jurisdiction"** (Emphasis added)

The Respondents rehearsed in their Response to this Court and to the Appeals Court facts in their MTD (though Martens is not required to allege in the complaint every fact he intends to prove in order to survive this MTD- See- State ex Rel. v. Guernsey Cty 65 Ohio St. 3d 545 (Ohio 1992) at 549). The Respondents' state, they can, inter ala, revise, reverse the "agency's" "actual" tax due and owing on "actual" records, and use "proposed assessments" and "estimate[d]" tax liability and use "contested hearings" to make a judgment.The Appeals court never considered these set of facts or understood these allegations to be true and made all reasonable inferences in favor of the Realtor,, i.e that the Respondents patently and unambiguously lack jurisdiction (herein "mo jurisdiction) when they, inter alia, **1)** usurp the exclusive jurisdiction of the "agency"and **2)** make judgments.on speculative, estimated, proposed, inaccurate amounts, **3)** do not act to "recover" an "actual" debt and **4)**use their jurisdiction to conduct a"contested hearing" and continuances on contested hearing to arrive at a new tax debt or an "accurate" tax debt.

UNDER CIV. R. 12(B) THE APPEALS COURT MUST

Ohio Courts have ruled that a dismissal should be denied if a "potential set of facts exist" (See- **Kuhlman v. City of Findlay 2013 Ohio 645 (Ohio Ct. App. 2013 at{¶7))** and it is " beyond a doubt"that the Complaint can not prove any of the facts that entitle him to recovery (See **York v. Ohio State Highway Patrol 60 Ohio St. 3d 143 (Ohio 1991** at 144)) when the allegations are accepted as true with all reasonable inference in the Plaintiff's favor (See **Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002** at 152). Under Notice pleading the sufficiency of the "Complaint" is the issue. In fact, the Appeals court used facts outside of the Complaint to make its judgment, i.e. case 05-22-05 and used it prejudicially against the Appellant, being unable to correct itself when 718 never mentions a court or ever granted jurisdiction to a court, save when

an “agency” by its discretion files a “civil action” to “recover” an “actual” tax debt..

The Respondents (absent any duty to), told this Court and the Appeals court what it does what the Realtor alleged, e.g. acts as a Tax board of reviews and does not “recover” an “actual”a tax debt as only allowed by 718.The Appeals court knew“standing”and “remedy” were irrelevant if the Respondents had “no jurisdiction”.Regardless,the Appeals court dismissed the Complaint. on standing and remedy (and a duty discussed below).The Appeals court refused to consider “no jurisdiction” apparently because it committed itself in case 05-22-05, which it quoted as support.

“RECOVER” INCOME TAX HAS NO OTHER MEANING THAN TO RECOVER an actual, indisputable amount determined by the “agency”. 718.12(G)(1-2) denies any “civil action” when an appeal is taking place or when an appeal can be yet requested. The reason a “civil action” is limited by those conditions, is that an “actual” amount has ro be determined by the “agency” to effect a judgment by a court. The Legislature determined that anything less (e.g. an “proposed assessment” or an “estimate”) can not be a basis to commence a “civil action” to “recover a tax.An assessment becomes a tax due and owing when 718’s provisions are exhausted by the taxpayer & the “agency.The Legislature provided the Respondents jurisdiction to “recover” an “actual”amount and not to “discover” what that amount should have been or use a suspected, possible or disputable sum..The Respondents may claim they act under R.C. 718’s authority but do not and admit that. This Court should believe the Respondents’ MTD and their Response to this Court, e.g.they act as a tax review board, as an arm of the “agency”and use speculated and unknown tax debts and and revise and allow tax debt revisions in their courts.

PROCEDURAL POSTURE IS NOT A “ONE OUT”

The Respondents have a “judicial posture” that they can act and do act as an “arm” of the “agency” as alleged and as seen in their willingness in their MTD & Response to this Court (herein “Response”) to declare such. The reason they, inter alia, take no sworn testimony, require no evidence of an “actual” tax debt, allow “contested hearings”, use“proposed assessments” and

"estimate[d]" tax liabilities, etc etc. because they maintain as a judicial posture that they are part of the "agency" in taxations disputes. The Respondents demonstrate in their MTD that they are part of the "agency" when they quote R.C. 718.23(C) (see MTD pg 10, ln 1-2) in "contested hearings" before them, claiming they are part of the R.C. 718.23's "agency" hearing.

FURTHER ARGUMENTS

First the power to tax, to demand hard earned money and to incarcerate a person in regards to taxation is one of the most formidable and onerous powers of a government. The General Assembly, representing the taxpayers of Ohio, limited that onerous power and said so when it passed HB5 in 2014 to prevent such abuses, i.e. Section 6-

"Section 6 of **Article XIII, Ohio Constitution, grants the General Assembly authority to restrict the power of municipal corporations to levy taxes so as to prevent the abuse of such power. Section 13 of Article XVIII, Ohio Constitution, also authorizes the General Assembly to limit the power of municipal corporations to levy taxes. In order to ensure a fair, stable, and efficient system of local taxation, and to prevent any abuse of power by municipal corporations**, the General Assembly **hereby exercises its authority under those Articles to restrict the taxing powers of municipal corporations by requiring that any income tax or withholding tax levied by a municipal corporation must be levied in accordance with this act and any provisions of Chapter 718** of the Revised Code that remain unchanged by this act."(Emphasis added)

Second, this Court has \controlled Ohio's lower courts, instructing them to use strict construction when reading tax statutes and resolve matters in favor of a taxpayer, i.e. apply a bias for a taxpayer. It is highly unusual for this Supreme court to tell lower courts to create such a bias,but it was so abuses like the one here, would be stopped in its tracks in light of such onerous and formidable taxation power- infra *Soltesiz v. Tracy* is a basic principle in courts for taxation, i.e.

See- Soltesiz v. Tracy 663 N.E.2d 1273 (Ohio 1996) at 480 "Strict construction of taxing statutes is required, and any doubt must be resolved in favor of the citizen upon whom or the property upon which the burden is sought to be imposed."

This Court used Storer Communications, Inc. v. Limbach, 37 Ohio St. 3d 193 - Ohio: Supreme Court 1988 as a basis for *Tracy* which in part states and is highlighted to make the point, i.e.

"7. **Courts have no legislative authority and should not make their office of expounding statutes a cloak for supplying something omitted from an act by the General Assembly.** …

"8. **There is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a** situation not provided for." Statutes clear in their terms need no interpretation; they simply need application. If the inquiry into language of a statute "reveals that the statute conveys a meaning which is clear, unequivocal and definite, at that point the interpretative effort is at an end, **and the statute must be applied accordingly**."(Emphasis added)

The Respondents' "[c]ourts have no legislative authority" to act as a tax review board or agency or hear speculative tax obligations. The Respondents' authority allowed by the General Assembly is **very narrow,** to "recover" and "actual" tax, not to discover tax or make judgments on, inter alia, (admittedly) "estimated" tax liabilities, or a "proposed assessment".The legislature provided an comprehensive taxation statute that provides for a final and "actual" tax debt,which is to be collectable by either a taxpayer's volitional compliance or if needed a"civil action" under R.C. 718.12. If the General Assembly wished to grant more expansive jurisdiction to the Respondents, that they claim they have, it knows how to do such. The Respondents' jurisdiction only goes to a "summary hearing", which the legislature allowed under R.C. 718.12 to "recover" the "actual"amount determined solely by the "agency". When the Respondents told the Appeals court and this Court, inter alia, it has jurisdiction on an "estimated" tax liability or a "proposed assessment", the bells should start to ring loudly. The purpose of the Legislature was to have the "agency"created a final , "actual" tax obligation that the Respondents can use for a judgment, i.e. Crown Commc'n, Inc. v. Testa 136 Ohio St. 3d 209 (Ohio 2013) " {¶ 26} Additionally, there is a **practical reason** for not applying Sun Refining in this context. It is important not only for the taxpayer but the local taxing districts for tax assessments to **attain finality: the taxpayer needs to know the extent of its obligation,** (Emphasis added)d)

The Appeals court when reading the MTD, knowing the General Assembly's purpose (supra) in passing R.C. 718 and the restriction upon the Respondents to only recover an "actual" tax debt, still claimed the Respondents unabashedly have jurisdiction, to the point they even quote a previous case of the Appellant, i.e. 05-22-05. The same Appeals court in that case even knew the nature of tax obligation and the unlawful purpose of the "civil action", i.e. Note 9 on page 21 of

05-22-05)- Emphasis added and request to take judicial Notice of 05-22-05

"Findlay **employees took prior estimated tax returns and increased the income** Martens purportedly received from $30-35,000 to $50,000. Findlay employees indicated that when they estimated income **they always increased the amount from prior taxable years in an attempt to get taxpayers to file their actual returns** so the **true number could be determined.Because the $50,000 number was not tied to evidence other than the prior estimated returns** and the employees assuming an increase, Martens contends that the number was "fraudulent""

The Appeals court knew the Respondents were exercising an alleged jurisdiction on unknown amounts falsely inflated to not "recover" a tax debt, but to "to get taxpayers to file their actual returns", which the "agency" has exclusive power to do (718.23). When Appeal court judges tell this Court what is going on in a "civil action" before the Respondents, are they to be believed?

The Appeals court unashamedly and prejudicially stated in its judgment sub judice on pg 5:

"Finally, the Court finds that this action is the latest iteration of Relator's quest to invalidate the procedure utilized by the City of Findlay to collect unpaid municipal taxes. Notably, this court has already rejected Relator's jurisdictional argument." See Findlay v. Martens, 3d Dist. Hancock No. 5-22-05, 2022-Ohio-4146, 20 fn. 6 ("[T]here is no indication that failure to comply with R.C. 718 or Findlay Ordinance 194.02 would deprive the trial court of jurisdiction over the matter.").

The Appeals Court in 05-22-05 knew the Respondents jurisdiction was used "get taxpayers to file their actual return" and that the amount was fabricated, manufactured, bogus, a sham and not an "actual" sum ever determined by the legislative processes required under R.C. 718 and in the same breath in 05-22-05 states "[T]here is no indication that the failure to comply with R.C. 718… would derive the [Respondent court[s]] of jurisdiction".Does this Court arrive at the same inconceivable conclusion?The Legislature never envisioned R.C. 718.12 such an abuse.

The Appeals court chose to justify their actions by quoting 05-22-05 in part, and referred this Court to said case (05-2205) and this Court should not ignore such and read said judgment in materia. The Appeals court is blinded by its actions in 05-22-05, and states on pg 5 of its Judgment that the Realtor's complaint, sub judice, "is the latest iteration of the realtor's quest to invalidate the procedure utilized by the City of Findlay to collect unpaid municipal taxes". The Appeals court brings into its judgment its 05-22-05's judgment and this Court dhuld consider it

as well. As incredulous as it sounds, the Appeals court has rewritten R.C. 718 and morphed it, and opposite to "*Tracy* and R.C. 718.12 provided a unlawful basis for the jurisdiction of the Respondents, i.e. to get a taxpayer's documents and use fabricated tax claims.

The Respondents have a duty to examine its jurisdiction and protect the Appellant's rights, see case law below that requires all courts, as this Court does regularly,, examine itself:

See- Clark v. Bd. of Education 367 N.E.2d 69 (Ohio Com. Pleas 1977) at 73 ' An equity court is duty bound to protect the rights of both parties, and he who seeks equity must do equity"

See- Toledo v. Frazier 10 Ohio App. 2d 51 (Ohio Ct. App. 1967) at 56- " Whatever one's view may be as to the appropriate exercise of this court's certiorari **jurisdiction,** surely it is at least our **duty to see to it** that a vital guarantee of the United States Constitution is accorded with an even hand in all the states." (Emphasis added)

See- Kerkay v. Kerkay 2023 Ohio 1479 (Ohio Ct. App. 2023) {¶ 6} , "..Although neither party raised the issue of jurisdiction, this **court has a duty to examine,** sua sponte, potential deficiencies in jurisdiction. "

See- Pal v. ABS Industries 463 N.E.2d 653 (Ohio Ct. App. 1983) .. at 157- "**A court will recognize want of jurisdiction over the subject matter, even if no objection is made by the parties.**

"718" never mentions a court and never granted the Respondents any powers to assume "agency"powers & the Respondents have unconstitutionally usurped "agency" authority to substitute its judgment for that of the"agency"and to entertain "civil actions" not "recover"a tax debt but force a taxpayer to file a return & use fabricated/bogus tax claims to make a judgment.

DUTIES OF THE RESPONDENTS- R.C. 718 established the Realtor's clear rights & duties, to follow statutory law as written in materia. The following cites support such duty, i.e.

See- State, ex Rel. Ashbrook, v. Brown 39 Ohio St. 3d 115 (Ohio 1988) " **Moreover, the court has a duty to construe statutes, if necessary, and thereafter evaluate the clear right or duty**. State, ex rel. Melvin, v. Sweeney (1950), 154 Ohio St. 223, 43 O.O. 36, 94 N.E. 2d 785. **Here, the construction accorded R.C. 3513.17 and 3513.31 establishes relators' clear right and respondents' clear duty.** Respondents have not argued, and we do not find, that relators have a plain and adequate remedy at law. **Accordingly, we grant the writ"** (Emphasis added)

See- (using Ohio Court Humphreys v. State, 70 Ohio St. 67) the common pleas court states- Case Construction Co. v. Bd. of End 241 N.E.2d 403 (Ohio Com. Pleas 1968) - **"A court has a duty to adhere to a statute as it is written and enforce its literal terms**." (Emphasis added)

See- Lang v. Dir., Ohio Dept. of Job & Family Servs.2012 Ohio 5388 (Ohio 2012)- {¶ 20} .. In [Ohio St.3d 302]Bernardini v. Conneaut Area City School Dist. Bd. of Edn., 58 Ohio St.2d 1, 4, 387 N.E.2d 1222 (1979), we stated that where language of a statute is clear and unambiguous, it **is the duty of the court to enforce the statute as written.** (Emphasis added)

The Respondents have a duty to understand any tax statute in favor of a taxpayer and no duty to understand a tax statues as they wish to understand it or an "agency" wishes to understand it,, i.e.

See- Soltesiz v. Tracy 663 N.E.2d 1273 (Ohio 1996) grants to only Martens, i.e. at 480 "Strict construction of taxing statutes is required, and **any doubt must be resolved in favor** of the citizen upon whom or the property upon which the burden is sought to be imposed"(Emp. added)

This Court knows the statutory scheme granted to agencies like R.C. 718 does, being is so comprehensive and inclusive it is understood to provide exclusive jurisdiction, i.e

See- State ex rel. Albright v. Delaware Cty. Court of Common Pleas, 60 Ohio St.3d 40, 42, 572 N.E.2d 1387 (1991), and Kazmaier Supermarket, Inc. v. Toledo Edison Co., 61 Ohio St.3d 147, 153, 573 N.E.2d 655 (1991) ("**where the General Assembly has enacted a complete and comprehensive statutory scheme governing review by an administrative agency, exclusive jurisdiction is vested within such agency**".(Emphasis added)

Such a scheme for municipal taxation is known by this Court when it rendered decisions in Athens v. McClain, 168 N.E.3d 411, 163 Ohio St. 3d 61, 2020 Ohio 5146 (2020). and Schaad v. Alder, 2024 Ohio 525 (2024). This Court has recognized in those opinions that the General Assembly has by statute preempted all municipal taxation powers and all municipalities must incorporate HB5's or HB 197's (respectively).. This Court recognized the exclusive jurisdiction of 718 and how it confers matters of, inter alia, notice, due process, lawful investigation of tax records and returns, lawful assessments. lawful appeals, lawful finality of a tax debt creating an "actual" amount due and owing. to an "agency". This Court knows that an "agency" established by the municipality must exhaust its administrative proceedings and administrative hearings in furtherance of the municipal tax ordinance before any judicial remedies can be pursued, i.e. See-

See- Walker v. Toledo, 143 Ohio St.3d 420, 2014-Ohio-5461- "{¶ 29} … Finally, we hold that Ohio municipalities have home-rule authority to establish administrative proceedings, including administrative hearings, in furtherance of these ordinances, **that must be exhausted before offenders or the municipality can pursue judicial remedies**.", (Emphasis added)

Under "718" the only judicial proceedings is when an "actual" tax debt has been finalized by the exhaustion of all quasi judicial proceedings provided for and then in 718.12 "a civil action" to "recover" said "actual" tax debt can be commenced by an employee. The Respondents are never mentioned in 718 or as part of the "agency's" proceedings or hearings. In fact, the "agency" has no duty to even involve the jurisdiction of the Respondents unless the taxpayer refuses to pay the "actual" tax debt due and owing, and even then can decide not to invoke the jurisdiction of the Respondents in a civil action but use a criminal action (R.C. 718.99) instead.

It's almost an embarrassment for the Appellant to have to review before the Respondents the limited jurisdiction granted to them under R.C. 718, e.g. to claim they are part of 718.23(C), processes to determine a tax debt and obtain records (supra).

A PATENT AND UNAMBIGUOUSLY LACK OF JURISDICTION ("NO JURISDICTION") AVOIDS ISSUES OF STANDING & REMEDY

In the "Complaint" the Respondents and and the Appeals Court argued essentially 3 issues, i.e. the Realtors' standing, available remedy and the duty the Respondents have, but never argue as to what the Respondents in fact are doing, i.e. usurping the "agency" exclusive jurisdiction and knowingly using unlawful tax obligations. They argue these three because the Appeals Court has already made up its mind (using 05-22-05) that Jurisdiction exists, fabricated tax demands are allowed, the Respondents can use their jurisdiction to force a taxpayer to file returns in a "civil action" to "recover" tax under 718.12 and Martens' "Complaint" is just the "latest iteration" of a previous case. Then the Appeals court was free to use standing and remedy to dismiss Martens "complaint" and if the Respsonnets have jurisdiction (as they had already decided in 05-22-05) there exists no duty. The Realtor argues the Respondents have a duty to use their courts of equity as required by statute, i.e. as cited above in entirety in these cites:

Clark v. Bd. of Education ; Toledo v. Frazier 10 Ohio App. 2d 51 (Ohio Ct. App. 1967); **Kerkay v. Kerkay 2023 Ohio 1479** (Ohio Ct. App. 2023) ; **Mayer v. Medancic 2008** Ohio 5531 (Ohio Ct. App. 2008) ; **Pal v. ABS Industries** 463 N.E.2d 653 (Ohio Ct. App. 1983)

All such Respondents **have a duty when exercising** the most onerous and formidable power and authority of taxation to strictly abide by statutory law (e.g cite supra *Trcay)* and i.e.

See- (using Ohio Court Humphreys v. State, 70 Ohio St. 67) the common pleas court states- Case Construction Co. v. Bd. of End 241 N.E.2d 403 (Ohio Com. Pleas 1968) - **"A court has a duty to adhere to a statute as it is written and enforce its literal terms**." (Emphasis added)

STANDING AND REMEDY-

The Appellant has standing as a municipal income taxpayer and as sounds with the public right doctrine. It is extraordinary that the Respondents or the Appeals court would allow the Respondents to usurp the power of the taxing agency when the General assembly, who has by statute restricted the rights of the Respondents to,inter alia, only "recover" a tax debt and provide exclusive jurisdiction to an agency". The Appeals Court allows the Respondents to self legislate their powers, authority and jurisdiction as a legislature.. This is aggravated by the fact 1000's of taxpayers have been wronged in the last 4 years and continuing at a rate 15-20 a week ongoing. This is seen in State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 715 N.E.2d 1062, 1999 Ohio 123 (1999), i,e.

at 474- **Indeed, it is difficult to imagine a right more public in nature than one whose usurpation has been described as the very definition of tyranny.** (Emphasis added)

The Respondents have done what is described in *Sheward* (supra) in the reverse, i.e. The Respondents decided the Legislature's statute was invalid and the whole power of General Assembly was absorbed by them, ergo the Complaint involves a public right.

In *Sheward* where a public right was allowed, i.e the General Assembly "enacted" legislation that was constitutional and the respondents treated the statue as invalid, and the "whole power of the" General Assembly would "become adsorbed" by the Respondents- see cites below

i bid at 474- If the General Assembly could, even inadvertently, reenact legislation declared unconstitutional by this court and "require the courts to treat [these laws] as valid * * * the **whole power of the government would at once become absorbed and taken into itself by the**

legislature." (Emphasis added)

at 473- The court explained that "[w]here a public right, as distinguished from a purely private right, is involved, a citizen need not show any special interest therein, but he may maintain a proper action predicated on his citizenship relation to such public right. **This doctrine has been steadily adhered to by this court over the years**"

This Court should find as in *Sheward*,a Writ should be issued to protect public rights. i.e.

Ibid- at 475 We hold, therefore, that where the object of an action in mandamus and/or prohibition is to procure the enforcement or protection of a public right, the relator need not show any legal or special individual interest in the result, it being sufficient that relator is an Ohio citizen and, as such, interested in the execution of the laws of this state.

THE RESPONDENTS INVADE THE SEPARATION OF POWERS AND A PUBLIC RIGHT IS IN PLAY UNDER *SHEWARD*

The Judicial authority of Findlay and of Hancock County is embedded in the municipal court and common pleas court, the Executive powers herein are embedded in the the City of Findlay, its mayors and its the City of Findlay Income Tax Department. The division of powers of government into these two departments and the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others.**This Court** has repeatedly affirmed that the doctrine of separation of powers is "implicitly embedded in the entire framework of those sections of the Ohio Constitution that define the substance and scope of powers granted to the three branches of state government, in *Sheward* at 462 et seq..The Respondents do invade the jurisdiction of the executive branch, who has exclusive authority to "recover" a"actual" tax debt by law.

REMEDY

As to a remedy, does the public (under a public right doctrine- if standing is premised under such), has any reasonable remedy. **First,** to require 1000s of taxpayers to each appeal tax complaints to a court who has no jurisdiction is ludicrous. Evem if the Respondents would somehow wrest jurisdiction, the clogging the court with 100's of thousand of dollars being

expended to do so, is an reasonable burden on them and courts.**Second,** an appeal to the Appeals court is a vain act when it already in its Note (supra) in 05-22-05 ruled the trail court had jurisdiction to even entertain a known fabricated sum and when the action was to obtain a tax return. **Third,** what would an appeal look like? It would look like what this Court has before it, i.e. the Respondents have "no jurisdiction" (rejected by the Appeals Court in 05-22-05 and now again). Again it would be a vain act and/or what is now before this Court. **Fourth,** an appeal by a taxpayer to an appeal court, if denied would look like this appeal to this Court, but would be discretionary and this Court might well deny it (as was the appeal to this Court in the case 05-22-05 was denied), and no relief can be assured. **Fourthly,** a remedy for unlawful tax assessment is found only in the "agency" by statute and its appeal processes, including but not limited to the tax review board and R.C. 2506 et seq. No Respondent can hear a contested tax obligation or a procedurally unlawful one, when the General Assembly has required all such be contained by the "agency". Evcn the argument that R.C. 2506 is available is spurious since it is available under "agency" provisions as to the tax debt and not the "civil action" to "recover" the tax under 718. **Fifthly,** there exists no adequate remedy to end the judicial posture of the Respondents. This case is not about a "one out" action to exact an unlawful tax obligation from Marrens but is a judicial posture of the Respondents, demonstrated by their MTD and their merit brief. **Sixthly, possibly the most important** as goes to unscalable remedy is the legal ability, resources and intellect of law needed.. No "joe six-pack" will know or could know that the Respondents have no jurisdiction or if jurisdiction even exists when summoned to appear before them, intimidating in itself. . Many claims are in the 100's of dollars and the cost of an attorney exceeds the claimed debt (also experienced by the Appellant). The intimidation by an onerous and formidable power of a tax agency in concert with the Respondents' courts, it summons in practice affords no reasonable remedy for a "joe-six pack" taxpayer. Under the public right doctrine, this is the reasonable, practical and just remedy.No Respondent should be able to rely

on the onerous and impracticable ability of a1000s of taxpayers to fight and appeal the lack of jurisdiction when as Martens has requested a Writ as a public right. **Finally,** an appeal of municipal court judgment upon jurisdiction to the common pease court is obviously a vain act, The history from case 05-22-05 (cited by the Appeals court) demonstrates the vanity of an appeal.

SPEEDY JUSTICE CANNOT BE SACRIFICED UPON THE ALTAR OF COURT RULES OF ADEQUATE REMEDY

A court rule of an "adequate remedy" should not be a technical bar for a Writ and should not overrule speedy justice & equity. Equity looks to the substance and not the shadow, to the spirit and not the letter; it seeks justice rather than technicality, truth rather than evasion, common sense rather than quibbling. It is said that it has always been recognized as the right, if not always as the absolute duty, of a court clothed with equitable jurisdiction to apply its x-rays to all masks and cover and see through to the real substanceThis Court in taxation issues must uphold the rights of taxpayers and not sacrifice them to the mere letter of questionable standing, remedy or duty, but read the legilstures' intent in 718 to stop tax abuse,The intent & spirit of this Complaint should be in equity at least and be the paramount consideration and not alleged technicalities. Taxpayers are to be protected who absent thai Court have no ability for relief.

RESPONDENTS ARGUMENTS IN THEIR BRIEF AND IN THEIR MTD

The Respondents and the Appeals Court had no concern if a "no jurisdiction" exists but essentially only argued standing & remedy,which is irrelevant if the Respondents have "no jurisdiction".Obviously the Respondents have a duty enforce the law as written,in which they are in default of (supra) and in-

Bernardini v. Conneaut Area City School Dist. Bd. of Edn., 58 Ohio St.2d 1, 4, 87 N.E.2d 1222 (1979) at 4, we stated that where language of a statute is clear and unambiguous, it is the duty of the court to enforce the statute as written.

This Court,at the least should remand the “Complaint” back to the Appeals court to comprehensively make a judgment upon all arguments made by the Appellant in his “Complaint”. Does the Appeals court find the Respondents can act upon “proposed assessments” or “estimate[d] tax liability and entertain “contested hearings”, usurp the exclusive jurisdiction of the agency, and use their courts under 718.12. to get a taxpayer to file a rerun and use tax debts created out of whole cloth, all of which they know is done?

THE RESPONDENTS HAVE A DUTY TO SOLELY RECOVER TAX

When R.C. 718 is read in materia, one fails to find any reference to the Respondents. Why? Because they have no jurisdictional role The claim by the Respondents that R.C. 718.23 applies to them is an embarrassment. No mention of a court is even found in it and it clearly applies to the “agency's” investigative powers. The mention of a “civil action” in R.C. 718.12 is the only place the Respondents can claim their courts could be involved , i.e. “to recover municipal income taxes and penalties and interest”. The Respondents are not to recover aa “assessment” , a “ proposed assessment” and “estimate[d]” tax liability, or a sum added to from year to year (supra). It would be ludicrous to claim the Ohio legislature wrote such a comprehensive statute that it never established any provisions that would determine a final, “actual’ tax debt and even more ludicrous that it established internal appeal procedures, deadlines that were jurisdictional to obtain an appeal, and that at the end of all appeals the “ actual” amount due and owing was to be again before the Respondents as a “contested hearing” as detailed by the Respondents and even by the Appeals court.The Legislature might have not provided for any “civil action” to recover a tax, e.g. and no Respondent would have any jurisdiction per statutory law, i.e. (Emphasis added)

Fawcett v. GC Murphy & Co., 46 Ohio St. 2d 245 - Ohio: Supreme Court 1976 at 249- “"* * * .But that **does not expressly provide a civil remedy.** Nor does it appear that such a remedy was intended by `clear implication.'" Similarly, here, it cannot be concluded that the General Assembly by "clear implication" intended to create a civil action for damages for the breach of

R. C. 4101.17. **This court, therefore, is disinclined to read such a remedy into that sectio**n."

The Legislature did grant SPECIFICALLY to the municipalities an avenue to "recover" an "actual" tax debt. That specificity should compel this Court to read 718 under case law of *Tracy-(*supra*)* be even more "disinclined" to read "recover" and "civil action" outside of the reading of R.C. 718 in materia. By definition, to "recover" a sum must be established upon a right to entitlement of such sum. No one can "recover" a tax debt absent entitlement to it. Who determines what the tax debt is? The Legislature gave that exclusively to the "agency" who alone has the expertise to make findings of expenses, exemptions, costs, losses, types of income, Federally adjusted income, qualified income etc.. The recovery implies a legal right to a tax debt, and a tax debt can only be such when an amount has been established by the "agency" because the Respondents **have no ability or jurisdiction** to calculate or establish a tax debt. All these concepts on the lowest shelf of the civil law bookcase.

THIS COURT'S PRECEDENT WILL BE OBLITERATED IF NOT REVERSED

The Court's ruling that allows the "Complaint" to be dismissed would undo legions of cases including:**Kazmaier Supermarket, Inc. v. Toledo Edison Co**. 61 Ohio St. 3d 147 (Ohio 1991); **State ex rel. Taft-O'Connor '98 v. Court of Common Pleas of Franklin Cty**., 83 Ohio St.3d 487 (1998); **State ex rel. Dir. Ohio Dept. of Agriculture v. Forchione,** 148 Ohio St.3d 105, 2015-Ohio-3049; **Huntsman v. State** 2017-Ohio-2622; **Rocky Ridge Develop., LLC v. Winters**, 151 Ohio St.3d 39, 2017-Ohio-7678 ; **State ex rel. Director, Ohio Department of Agriculture v. Forchione**, 148 Ohio St.3d 105, 2016-Ohio-3049, 69 N.E.3d 636; **;Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge** No. 9, 59 Ohio St. 3d 167, 572 N.E.2d 87 (1991)**; Cheap Escape Co., Inc. v. Haddox, LLC,** 120 Ohio St.3d 493, 2008-Ohio-6323**; State ex rel. Cleveland Elec. Illuminating Co. v. Cuyahoga Cty. Court of Common Pleas,** 88 Ohio St.3d 447, 450 (2000)**; State ex rel. Geauga Cty. Budget Comm. v. Geauga Cty. Court of Appeals (1982)**, 1 Ohio St.3d 110, 113, 438 N.E.2d 428. Absent this

Court's reversal of the Appeals Court's judgment or a remand, the Appeals court will set a new precedent that municipal and common pleas courts in Ohio can now, inter alia, 1) act as a proxy administrative agency, 2) act as an arm of the municipal tax agency in every city, 3) use a non-statutory required "actual" tax debt be before a court to "recover" even if it is a fabricated amount,4) allow courts to be used to force taxpayers to file tax returns in a 718 "civil action";, 5) use estimates, proposed assessments and sums speculated, fabricated and boosted to come before the Respondents, and in fact do what the Legislature tried to prohibit in R.C. 718, especially in Section 6 of HB5 of 2014 supra). In all these cases (supra), this Court agreed the exclusive jurisdiction of the agency denies all jurisdiction as regards to their powers and authority. Under 718 the same comprehensive statutory scheme exists that grants a municipal tax agency to exercise exclusive jurisdiction and allow the experts in taxation to exhaust their lawful procedures to arrive at a lawful and "actual"tax debt to be recovered.

WRIT IS LIKE ANY CIVIL ACTION AND APPELLANT IS ENTITLED TO DISCOVERY

In Mandamus the pleadings have the same effect as in civil actions. action under law (R.C. 2731.09)., i.e.must be construed, may be amended, discovery allowed nd issues of fact made by them must be tried, and further proceedings thereon had. The Appeal Court" and the Appellee never addressed or considered the argument made by the Realtor that the Respondents patently and unambiguously lack jurisdiction and under that "set of facts" it can not be dismissed upon standing or a remedy at all and a duty does exist if a court acts absent jurisdiction as detailed in the "Complaint", the Appellant's brief and herein. .

CONCLUSION

Municipal taxation under R.C. 718 requires strict adherence to its provisions (infra *Tracy*) and it is unarguable that the lawful processes were created by the General Assembly to arrive at an "actual" tax debt which is the only basis to "recover" such by a "civil action"- end of story!

It is unarguable that the Respondents are highly educated, experienced in law and that they honestly admit in their MTD what is before them and what they do and act upon. The Respondents affirm, inter alia, they act on “estimated”, “proposed assessments”, determine if a tax debt is “accurate”, grant “contested hearings” to redetermine a tax debt, grant continuances to obtain an “actual” and “accurate” tax debt, and grant further appeals of the contested tax debt to appeals court and not as required (i.e. to have been conducted only by the “agency, ergo the tax review board) . The Appeals Court confirms even more if they are to believed in their cite of 05-22-05, when read in materia.

The Appeals Court never wrote its opinion/judgment considering a patent and unambiguous lack of jurisdiction as a possible set of facts that exist but apparently dismissed the “Complaint” essentially on the basis of standing and remedy, with a duty thrown in. The Appeals court used its case 05-22-05, to which I ask this Court to take judicial notice of, and applied its ruling into this case and characterized it wrongly as an act by Martens to argue what the City od doin, when the “Complaint" was of no such nature. Case 05-22-05 clearly demonstrates the facts that the Appeals court knew of, incorporated into its judgment and demonstrates the Appellants arguments that the Respondents in fact have “no jurisdiction” if one were to consider those facts alone, i.e. use their courts to get taxpayers to file returns and used fabricated tax debts, speculative and unlawful per 718, to establish their jurisdiction. If Martens were to have claimed in his Response to the Respondents' MTD that he was not a taxpayer, the Appeals court and this Court would have used such to affirm a dismissal immediately. The words of the Respondents and the Appeals court are as significant and disposotuve in this matter before the Court.

A “joe six pack” taxpayer, not unlike the Appellant, has little ability to obtain justice if this Court can not provide for it. The Respondents have immense powers and Taxpayers have limited resources when they have to not only pay taxes to establish the courts, and attempt to pay

their taxes (as this Appellant has always done), but then have no remedy to stop a self-legislature tax system by a court. This case has great importance because the Respondents appear to be one of many like respondents in Ohio that have assumed they are an arm of the municipal tax agency.

Expertise in taxation and, inter alia, the quasi-judicial ability of an "agency" to process appeals and investigate municipal tax obligation need not clog the courts and certainly not this Court or appeals courts. That was the intent of R.C. 718 et seq.

If this Court has any ambiguity in any of these matters, the "Complaint" should proceed like any "civil action (R.C. 2731.09) and at the least a remand is appropriate and discovery will expose further facts and support the allegations in the "Complaint".

The Respondents have no jurisdiction beyond that provided by statute, i.e.

Szekely v. Young 174 Ohio St. 213 (Ohio 1963) The only right of appeal to a court with respect to a claim for workmen's compensation is such as may be provided for by statute. Industrial Commission v. Monroe (1924), 111 Ohio St. 812, 146 N.E. 213.

Wherefore, the the Realtor request again an oral argument and a Writ issued in some manner, till all the facts can be discovered as in any civil suit, when there is no question that the Respondents in fact have told this Court and the Appeals Court the scope of their judicial posture.

Respectfully submitted,

_____ George Martens, Appellant

CERTIFICATE OF SERVICE

I certify that a copy was served on or before 20th of May, 2024 electronically and/or by ordinary U.S. mail to Cooper Bowen and Linda Woeber at cbowen@mojolaw.com and lwoeber@mojolaw.com 600 Vine Street Suite 2650 Cincinnati, Ohio 45202