

IN THE SUPREME COURT FOR THE STATE OF OREGON

MAX ZWEIZIG,  
Plaintiff-Adverse Party,  
vs.

TIMOTHY C. ROTE  
Defendant-Relator.

S Co. No:  
Deschutes County Case No.:  
19cv00824

PETITION FOR WRIT OR  
ALTERNATIVE WRIT OF  
MANDAMUS

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Petition from Order and Judgment Denying Change of Venue in Deschutes County  
Court by the Honorable Beth Bagley, Circuit Court Judge.

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## **STATEMENT IN SUPPORT OF PETITION FOR MANDAMUS**

### **I. Statement of Facts Material to the Request for Issuance of Mandamus**

Defendant-Relator seeks a Writ instructing the Deschutes Court to transfer case **19cv00824** to Clackamas County Court.

In January 2019 Plaintiff filed a fraudulent transfer action (**19cv01547**) in Multnomah County Court and at the same time filed two additional actions in Deschutes County Court, cases **19cv00824** and **19cn01843**. Defendant does not now nor has he ever lived in Multnomah County or Deschutes County. Plaintiff is a resident of Woodbury New Jersey and has never lived in Oregon.

Defendant moved to transfer venue of **19cv01547 (ER 15-23)** to Clackamas County from Multnomah County in January 2019. That was unopposed by Plaintiff and the case was transferred to Clackamas County where the parties litigated that fraudulent transfer action against Defendant and Defendant's spouse. Clackamas Court granted Defendant's Motion for Summary Judgment against Plaintiff in March 2021 and Defendants prevailed on appeal.

During that same period of time and in January 2019, Plaintiff filed a *lis pendens* in Deschutes County placing in effect a lien on a Sunriver rental property owned by Tanya Rote (**ER 24-25**). That *lis pendens* was filed two days before the sale of the Sunriver home was scheduled to close. Plaintiff refused to agree to alternative property forcing Defendant's to move to Strike the *lis pendens* before the sale of the property was lost (**ER 9-14**). The parties litigated the *lis pendens* in Deschutes County case **19cv00824**, where it was upheld by Deschutes County Court. The sale of the Sunriver property, exclusively owned by Tanya Rote, failed as a result of Plaintiff's failure to release the lien in favor of property of a higher value and owned by debtor Timothy Rote.

Plaintiff alleges that the **19cv00824** action was exclusively intended as a registration action only. **ER 29, lines 11-13**. See Plaintiff's Opposition to Motion to Strike *lis pendens*, dated **March 22, 2019**.

Since the Defendant prevailed on the fraudulent transfer claims brought by Plaintiff in **19cv01547**, Plaintiff conceded to removing the *lis pendens* which is on record in that case.

In **October 2019**, Defendant moved to Change Venue from Deschutes County to Clackamas County in case **19cn01843**. Plaintiff did not oppose to change of venue for **19cn01843 (ER 26-27)**, but did in the interim use the case to impose a contempt fee against defendant Rote of \$8,500 for not having a notary sign his interrogatory responses during the Covid pandemic when it was at first hard to find a notary. The case was not transferred until **December 2020**.

In the interim Plaintiff has used the 19cv00824 case to issue duplicate interrogatories, to interfere with the sale of property Defendant owns, to pursue ex-parte an indefinite order not permitting defendant to sell property of any kind and to otherwise use the sole remaining registration in Deschutes County to terrorize Defendant. Plaintiff has acknowledged that he chose Deschutes County because it has the greatest propensity of support for child predators. Plaintiff acknowledged he is a child predator in his deposition of December 21, 2020 in case **19cv01547**.

## **II. Timeliness of Petition**

This Court has original jurisdiction over this mandamus proceeding under ORS 34.120(2). Deschutes County issued a Court order denying the Defendant's Motion to Change Venue in **19cv00824** on June 23, 2022. (**ER 1**). Defendant Rote's petition for an alternative or peremptory Writ of Mandamus was timely filed in this Court on July 18, 2022.

### **III. The Motion to the Circuit Court**

The circuit court refused to grant Defendant's Motion to Change Venue on June 23, 2022 (**ER 1**).

At the same time the Deschutes County Court set aside the Deschutes County Court sale of a property held in Defendant's Irrevocable Trust, which Judge Alison Emerson of Deschutes County Circuit approved (**ER 41-46**). The Deschutes County Sheriff issued its Notice of Sale of the property under the wrong name. Defendant has sued Judge Emerson, Deschutes County Sheriff's Department and Plaintiff counsel Anthony Albertazzi for collusion in engaging in Civil Rights Violations and Racketeering. This is precisely why a Motion to Change Venue is appropriate.

### **IV. No Adequate Alternative Remedy**

The adverse discovery ruling constitutes a "special loss beyond the burden of litigation" and has certain "systemic implications," Mandamus is appropriate. *Murchison*, 289 Or at 269; *State ex rel. Anderson v. Miller*, 320 Or 316, 324 (1994).

Special losses in this case include "irreparable injury" and "irretrievable loss of information and tactical advantage" that cannot be restored on appeal. *Longo v. Premo*, 355 Or 525, 532 (2014).

## MEMORANDUM IN SUPPORT

### **I. Venue is Absolutely Guaranteed by Law**

In this case, it is undisputed that Defendant resides in Clackamas County, does not have an office for the transaction of business in Deschutes County and that has no agent authorized to receive service in Deschutes County.

The standard for determining the proper place of trial and or legal action is set out in ORS 14.080, which provides:

"(1) All other actions shall be commenced in the county in which the defendants, or one of them, reside at the commencement of the action or in the county where the cause of action arose.

"(2) For purposes of this section a corporation incorporated under the laws of this state, a limited partnership or a foreign corporation authorized to do business in this state shall be deemed to be a resident of any county where the corporation or limited partnership conducts regular, sustained business activity or has an office for the transaction of business or where any agent authorized to receive process resides. A foreign corporation or foreign limited partnership not authorized to transact business in this state shall be deemed not to be a resident of any county in this state."

The statute thus defines where a partnership "resides" for venue purposes in terms of three possibilities: (1) where the partnership conducts "regular, sustained business activity," (2) where the partnership "has an office for the transaction of business," or (3) where an agent authorized to receive service of process resides.

ORS 14.110 provides:

"(1) The court or judge thereof may change the place of trial, on the motion of either party to an action or suit, when it appears from the affidavit of such party that the motion is not made for the purpose of delay and:



"(a) That the action or suit has not been commenced in the proper county [.]"

Defendant has not filed three Motions for Change of Venue. The first in case **19cv01547**, transferred from Multnomah County to Clackamas, which was unopposed. The second in case **19cn01843**, transferred from Deschutes to Clackamas. Now the third in case **19cv00824**, where Defendant is seeking to have this case transferred from Deschutes to Clackamas. The Defendant is the same in all three actions and Plaintiff was well informed that Deschutes was not the proper venue in this or any other case involving defendant Rote.

As further argument, and notwithstanding the permissive wording of ORS 14.110(a), this court has held that defendants have a "right" to insist on proper venue under that statute. See *Rose v. Etling*, 255 Or 395, 399, 467 P2d 633 (1970). Thus, when a civil action has not been filed in the proper county, and a party files a timely motion under ORS 14.080(1)(a) to change venue that is not for the purpose of delaying the litigation, the trial court has no discretion to deny the motion; if the trial court denies the motion, a defendant may proceed by mandamus to enforce the right to change venue. See also *Roskop v. Trent*, 250 Or 397, 400, 443 P2d 174 (1968) ("the remedy for an erroneous refusal to change the venue is by way of mandamus"); *Mack Trucks, Inc. v. Taylor*, 227 Or 376, 382, 362 P2d 364 (1961) ("[T]he defendant's only remedy is a motion for change of venue. If the court rules against him and he wishes to pursue the matter further, he must then proceed by mandamus in this court to force the trial court to change the venue.").

## **II. Plaintiff Avoidance of Clackamas County is Evident**

Plaintiff first engaged in interrogatory and collection actions under 19cn01843, wherein he secured a contempt order against Defendant Rote for Rote

failing to file an interrogatory response with a notary signature. That contempt order and award was signed by **Judge Alison Emerson**.

Plaintiff, once **19cv01843** was transferred to Clackamas County, then moved his collection action activity to case **19cv00824**, where he again expected to find a Circuit that more aligns with his child predatory behavior. He sought ex-parte a no sale order on the Defendant's property, receiving again favorable support from **Judge Alison Emerson** of Deschutes County. That order was signed by **Judge Alison Emerson** on November 4, 2021. That ex-parte order was issued by Plaintiff Counsel on September 30, 2021 (**ER 47-48**). The signed order and mandate for documents was served on Defendant on or around January 28, 2022. Months had passed before Defendant even knew he was subject to that order.

In a prior response, Plaintiff alleged that case **19cv00824** was just a registration of a judgment action and upon that registration that case was closed. (**ER 29, line 11-13**). Relying on that representation, Defendant found it unnecessary to file a Motion for Change of Venue until the Plaintiff used this **19cv00824** to issue a writ to sale intangible property owned by Defendant's irrevocable trust. Until that time all collection action was carried on in case **19cn01843**.

In a January 20, 2022 hearing, Defendant objected to form of judgment on the sale of stock in Northwest Direct Homes, Inc. since he did not own the stock in that company any longer. Opposing counsel Albertazzi asked that Defendant be sworn in and, under penalty of perjury, then also swore that the stock of Northwest Direct Homes, Inc. was owned by the Rote Irrevocable Trust. Judge **Alison**

**Emerson** nonetheless allowed the sale to go through and signed the order to do so the next day, January 21, 2022 (**ER 41-46**).

During a hearing on June 16, 2022, the Court granted the Defendant's Motion to set aside the Sheriff sale of the stock in Northwest Direct Homes Inc since Deschutes County Sheriff published the stock as ownership in Northwest Homes, Inc. an entity that does not exist. The Court found that there were no bidders on the stock and the point was to sale the stock to pay the judgment not for Zweizig to take the stock (**ER 1**). On Appeal is the order allowing the sale to proceed under any circumstance since the stock in not owned by Defendant Rote.

Also, during the hearing on June 16, 2022, which Defendant attended in person in Deschutes County (traveling from West Linn), Plaintiff counsel falsely alleged that Plaintiff would need to find new counsel in Clackamas County if change of venue was granted. Counsel Albertazzi misled the Court. Albertazzi in fact represented Plaintiff Zweizig in case **19cv01547** for over a year in Clackamas County. These predatory and false statements by legal counsel Albertazzi have been endorsed repeatedly by Deschutes County Court.

## CONCLUSION

Relator Defendant asks the court for a Writ ordering Deschutes County Court to transfer case **19cv00824** to Clackamas County Court. Plaintiff was well informed years ago that he had no legal right to bring the **19cv00824** action or any other action in Deschutes County.

Dated: July 18, 2022

*s/ Timothy C. Rote*

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Timothy C. Rote

*Pro Se* Defendant-Relator

## **CERTIFICATION OF COMPLIANCE**

We certify that (1) this brief complies with the 10,000 word-count limitation in ORAP 5.05(2)(b) and (2) the word count of this brief (as described in ORAP 5.05(2)(a)) is 3,050.

We certify that the size of the type in this brief is not smaller than 14-point for both the text of the brief and footnotes as required by ORAP 5.05(2)(d)(ii) and 5.05(4)(g).

DATED: July 18, 2022

*s/ Timothy C. Rote* \_\_\_\_\_

Timothy C. Rote

*Pro Se* Defendant-Relator

## CERTIFICATE OF SERVICE

I hereby certify that on the 18<sup>th</sup> day of July, 2022, I caused to be served by email and US mail, postage pre-paid, a true copy of the Relator's Writ of Mandamus and Excerpts to the persons listed below, as follows:

Albertazzi Law  
Attn: Anthony Albertazzi,  
296 SW Columbia Street, Ste. B  
Bend, Oregon 97702  
541.317.0231  
Counsel for Max Zweizig

Deschutes County Circuit Court  
Attn: Beth Bagley  
1100 NW Bond Street  
Bend, Oregon 97702

*s/ Timothy C. Rote*

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Timothy C. Rote

*Pro Se* Defendant-Relator

**CERTIFICATE OF FILING**

I hereby certify that on the 18<sup>th</sup> day of July, 2022, I filed the original and of the foregoing Relator's Writ of Mandamus and Excerpts with the State Court Administrator at this address:

State Court Administrator  
Court of Appeals  
Supreme Court Building  
1163 State Street  
Salem, OR 97301-2563

By Certified First Class Mail.

*s/ Timothy C. Rote*  
\_\_\_\_\_  
Timothy C. Rote  
*Pro Se* Defendant-Relator

CERTIFICATION