

[Cite as *State ex rel. Moore v. Bank of Am.*, 2017-Ohio-1457.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105586

**PEOPLE OF THE STATE OF OHIO, EX REL.
CARL L. MOORE, SR. ESTATE, ET AL.**

PETITIONERS

vs.

BANK OF AMERICA, ET AL.

RESPONDENTS

**JUDGMENT:
COMPLAINT DISMISSED**

Writ of Quo Warranto
Motion Nos. 506163 and 506164
Order No. 506140

RELEASE DATE: April 19, 2017

FOR PETITIONER

Carl L. Moore, pro se
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Euclid, Ohio 44117

ATTORNEYS FOR RESPONDENTS

Bank of America, N.A.

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Cincinnati, Ohio 45202

**Judge Timothy McCormick
Magistrate Kevin Augustyn**

Michael C. O'Malley
Cuyahoga County Prosecutor
By: Nora E. Graham
Assistant County Prosecutor
The Justice Center
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Also listed:

Judge Deborah A. LeBarron
555 E. 222 Street
Euclid, Ohio 44123

ANITA LASTER MAYS, J.:

{¶1} Petitioner, Carl L. Moore, filed this quo warranto action, naming the following respondents: Bank of America; Lerner, Sampson & Rothfuss; Safeguard Properties Management, L.L.C.; Cuyahoga County Common Pleas Magistrate Kevin Augustyn; Cuyahoga County Common Pleas Judge Timothy McCormick; Gary F. Bacher, Lorain County Notary; and Euclid Municipal Court Judge Deborah A. LeBarron.¹ Although the petition is inartfully worded and the grounds are not entirely clear, petitioner appears to be attacking a foreclosure action instituted by Bank of America in the Cuyahoga County Common Pleas Court whereby the trial court judge (upon recommendation from the magistrate) granted summary judgment in favor of the bank. *See Bank of Am. N.A. v. Moore*, Cuyahoga C.P. No. CV-14-826343 (Aug. 4, 2015).

{¶2} Respondents Cuyahoga County Court of Common Pleas Magistrate Kevin Augustyn and Judge Timothy McCormick and Safeguard Properties Management, L.L.C., have moved to dismiss the action on several grounds, including petitioner's lack of standing to bring an action in quo warranto and failure to state a claim upon which relief can be granted. For the following reasons, this court grants respondents' motion dismiss

¹On March 20, 2017, petitioner filed a "Petition in the Nature of Quo Warranto," naming only five of the seven respondents. On March 28, 2017, petitioner filed an "Amended Petition," naming an additional respondent, Gary F. Bacher. Despite being titled an "Amended Petition," the document appears to be more akin to a brief in support of the petition. On April 4, 2017, petitioner filed an "Addendum for Writ for Quo Warranto," purporting to add another respondent, Euclid Municipal Court Judge Deborah A. LeBarron.

and further dismisses this quo warranto action sua sponte as to the other named respondents.

{¶3} R.C. Chapter 2733 governs quo warranto actions. The statutory provisions indicate that quo warranto can be maintained for two basic purposes: (1) to challenge a person's right to hold a public office; or (2) to determine whether a corporation or association has committed an act that would warrant the revocation of its franchise or charter. *State ex rel. Sartini v. Trumbull Twp. Volunteer Fire Dept.*, 163 Ohio App.3d 603, 2005-Ohio-4903, 839 N.E.2d 938, ¶ 5 (11th Dist.) citing R.C. 2733.01 and 2733.02. *See also* Painter & Pollis, *Baldwin's Ohio Appellate Practice*, Section 10.10, at 427 (2015-2016 Ed.) (“Quo warranto is a proceeding brought in the name of the state to oust a person from a public or corporate office or franchise to which he or she is not entitled or has abused or forfeited or to oust an association or corporation from a franchise to which it is not entitled or that it has abused or forfeited.”).

{¶4} Standing in quo warranto is given exclusively to the attorney general and county prosecutor with a single exception: persons who claim entitlement to a public office. *See* R.C. 2733.04, 2733.05, and 2733.06. As the Ohio Supreme Court has consistently held, for persons other than the Attorney General or a prosecuting attorney, “[a]n action in quo warranto may be brought by an individual as a private citizen *only* when he [or she] is claiming title to a public office.” (Emphasis added.) *State ex rel. Coyne v. Todia*, 45 Ohio St.3d 232, 238, 543 N.E.2d 1271 (1989), quoting *State ex rel.*

Annable v. Stokes, 24 Ohio St.2d 32, 32-33, 262 N.E.2d 863 (1970); *see also State ex rel. E. Cleveland Fire Fighters' Assn., Local 500, Internatl. Assn. of Fire Fighters*, 96 Ohio St.3d 68, 2002-Ohio-3527, 771 N.E.2d 251, ¶ 10.

{¶5} “Sua sponte dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if the complaint is frivolous or the claimant obviously cannot prevail on the facts alleged in the complaint.” *State ex rel. Kreps v. Christiansen*, 88 Ohio St.3d 313, 316, 725 N.E.2d 663 (2000), citing *State ex rel. Bruggeman v. Ingraham*, 87 Ohio St.3d 230, 231, 718 N.E.2d 1285 (1999).

{¶6} Aside from petitioner failing to plead facts that support an original action in quo warranto, petitioner lacks standing to bring an action in quo warranto. Petitioner makes no averment that he has any right to the offices of any of the respondents. Consequently, he, as a private citizen, cannot maintain an action in quo warranto. The petition therefore lacks merit on its face and fails to state a claim upon which relief may be granted.

{¶7} Accordingly, this court dismisses this action for quo warranto. Costs assessed against petitioner. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

{¶8} Writ dismissed.

ANITA LASTER MAYS, JUDGE

EILEEN A. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR