

**IN THE SUPREME COURT OF MISSOURI**

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**Supreme Court No. SC87121**

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**STATE OF MISSOURI ex rel. BROADWAY-WASHINGTON  
ASSOCIATES, LTD.**

**Relator**

**v.**

**HON. MICHAEL W. MANNERS, Circuit Judge, Sixteenth Judicial Circuit,  
Respondent**

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**ORIGINAL ACTION IN PROHIBITION TO THE  
SIXTEENTH JUDICIAL CIRCUIT,  
HON. MICHAEL W. MANNERS, PRESIDING**

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***AMICUS CURIAE* BRIEF OF DEFENDANTS DALE E. FREDERICKS, CAROL  
J. FREDERICKS, THE DALE E. FREDERICKS IRA ROLLOVER ACCOUNT  
AND  
SANGAMON ASSOCIATES, LTD.**

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Rollover Account and Sangamon Associates,  
Ltd.

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES** ..... 3

**INTRODUCTION** ..... 4

**ARGUMENT** ..... 5

**I THE TRIAL COURT CORRECTLY OVERRULED  
RELATOR’S MOTION TO DISMISS BECAUSE 99.810 RSMo.  
ESTABLISHES NO DEADLINE FOR THE CONDEMNING  
AUTHORITY TO COMPLETE THE TAKINGS PORTION OF  
THE ACTION – RESPONDING TO RELATOR’S POINT I** ..... 5

**A. Relator lacks authority to bring this Writ of Prohibition  
on behalf of The Broadway-Washington Associates, Ltd.** ..... 5

**B. Defendant Fredericks adopts Point I of Respondent’s  
Brief.** ..... 9

**II and III RELATOR’S NEWLY ASSERTED ARGUMENTS  
AND ISSUES SHOULD BE QUASHED OR DISMISSED  
BECAUSE THESE ARGUMENTS WERE NOT RAISED IN  
THE LOWER COURTS AND FURTHERMORE RELATOR’S  
ARGUMENTS ARE WITHOUT MERIT – RESPONDING TO  
RELATOR’S POINTS II AND III.** ..... 10

**A. Relator is not entitled to an Order of Prohibition in that  
the Dale E. Fredericks IRA Rollover Account is not an  
omitted party. .... 10**

**B. Defendant Fredericks adopts Points II and III of  
Respondent’s Brief..... 11**

**CONCLUSION..... 11**

**CERTIFICATE OF SERVICE..... 12**

**CERTIFICATE PURSUANT TO RULE 84.06(b)..... 14**

## TABLE OF AUTHORITIES

### Cases

<i>Sangamon Associates, Ltd. v. The Carpenter 1985 Family Partnership, Ltd.,</i> 165 S.W.3d 141 (Mo. en banc. 2005).....	9
<i>Tax Increment Financing Committee of Kansas City v. Broadway Center, Ltd.,</i> <i>f/k/a Broadway-Washington Associates, Ltd., et al</i> .....	10

### Statutes

§359.221 RSMo. 2000.....	8
§359.251(2) RSMo. 2000 .....	7, 8
§359.241 RSMo. 2000.....	8
§99.810 RSMo. 2000.....	5
§359.011(3) RSMo. 2000 .....	8

## INTRODUCTION

Defendants Dale E. Fredericks, Carol J. Fredericks, The Dale E. Fredericks IRA Rollover Account and Sangamon Associates, Ltd. (collectively “Fredericks”), are defendants in the underlying action and have an interest in both Broadway-Washington Associates, Ltd. and the real estate which forms the basis of the underlying condemnation action. Defendants Fredericks submit this short *Amicus Curiae* Brief on their behalf to raise certain issues which are important and unique to them and in all other respects adopt and reaffirm the Brief of Respondent filed herein.

## ARGUMENT

### I.

**THE TRIAL COURT CORRECTLY OVERRULED RELATOR'S MOTION TO DISMISS BECAUSE 99.810 RSMO ESTABLISHES NO DEADLINE FOR THE CONDEMNING AUTHORITY TO COMPLETE THE TAKINGS PORTION OF THE ACTION – RESPONDING TO RELATOR'S POINT I.**

**A. Relator lacks authority to bring this Writ of Prohibition on behalf of The Broadway-Washington Associates, Ltd.**

Sangamon Associates, Ltd. is the sole remaining general partner of Broadway-Washington Associates, Ltd., and it has not authorized counsel for Relator to file or pursue the instant Writ of Prohibition Petition on behalf of Relator. This Court must therefore dismiss the Petition.

Relator's Appendix contains a true copy of the Broadway-Washington Associates, Ltd. Partnership Agreement. (App. at A74-103). As this agreement shows, there were three partners at the inception of the partnership: (1) The Carpenter 1985 Family Partnership, Ltd., (2) Sangamon Associates, Ltd. ("Sangamon"),<sup>1</sup> and (3) Edgar A.

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<sup>1</sup> Sangamon Associates, Ltd. is a Missouri limited partnership wholly owned by Dale E. Fredericks and members of his immediate family. The Carpenter 1985 Family Partnership, Ltd. is also a Missouri limited partnership, owned by the late Allan Carpenter and members of his immediate family.

Carpenter. It is undisputed that Edgar A. Carpenter later sold his interests to The Carpenter 1985 Family Partnership, Ltd., thus leaving two partners.<sup>2</sup> Moreover, at the outset each partner held their interest as both general and limited partners – 99% as general and 1% as limited partners. (App. at A74, 77, 78, 85).

Management of Broadway-Washington Associates, Ltd. was entrusted to The Carpenter 1985 Family Partnership, Ltd., as “managing general partner.” (App. at A85, Article 5, paragraph 1). However, a significant limitation was placed on this role. Two of the individuals acting on behalf of their family partnerships – Allan Carpenter and Dale Fredericks – then lived in California, a “community property” state. The partnership agreement expressly set forth that the marital community of each of them would be managed by those men. However, Messrs. Carpenter and Fredericks also agreed that if either of them later became unable to discharge those duties (managing their marital community property), for any reason, then his family partnership’s interest would change and become only a limited partnership interest. Specifically, they set forth the express understanding that:

In the event such management [of marital community property] terminates for any reason....the entire interest of the affected Partner.... shall become that of a Limited Partner, and the affected partner shall thereafter exercise the rights of a Limited Partner.

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<sup>2</sup> This point is made in Relator’s Brief herein at page 10, fn. 1.

(App. A77, Article 1, paragraph 5). As discussed below, this event unexpectedly occurred when Mr. Carpenter passed away in November 2000. Thus, as a matter of law, there is but one general partner, Sangamon, that may now act on behalf of the partnership.

The death of Allan Carpenter resulted in the partnership interest of his family partnership, The Carpenter 1985 Family Partnership, Ltd., being transformed from both general and limited partner (permitted by §359.251(2) RSMo. 2000<sup>3</sup>) to that of a purely limited partner. The express language of the partnership agreement compels this result. Allan Carpenter's death necessarily resulted in termination of his role as manager of he and his wife's marital community property, and it resulted in termination of the "managing general partner" role of The Carpenter 1985 Family Partnership, Ltd., which became a limited partner. The fully relevant portion of the Partnership Agreement provides:

Each partner shall hold ninety-nine percent (99%) of its interest in the Partnership in its capacity as General Partner and one percent (1%) of such interest in its capacity as Limited Partner. To the extent the Partnership interest of any Partner is community property, management of such community property shall vest in Allan R. Carpenter or Dale E. Fredericks, as applicable. In the event such management terminates for any reason...the entire interest of the affected Partner in the Partnership shall

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<sup>3</sup> All references are to RSMo. 2000 unless otherwise indicated.

become that of a Limited Partner, and the affected Partner shall thereafter exercise the rights of a Limited Partner....

(App. at page A-77). Allan Carpenter's death was an event constituting withdrawal of the Carpenter family partnership as a general partner. §§359.011(3) and 359.241 RSMo. Sangamon, as the sole remaining general partner, succeeded to the management of Broadway-Washington Associates, Ltd. by reason of being its sole remaining general partner. (App. at A-77 and A-85 "Control in the General Partners").

The partnership agreement expressly addressed the rights and obligations of its limited partners, and granted them narrow rights. (App. at A-89, Article 5, paragraph 6). Generally, these rights relate to voting on whether to sell partnership assets, amend the partnership agreement, or dissolve the partnership. More important, the document states that "The Limited Partner(s) shall not have any right to be active in the conduct of the Partnership's business nor have any power to bind the Partnership in any contract, agreement, compromise or undertaking...."

The foregoing restriction on limited partner rights is consistent with long standing Missouri statute and case law. Under Missouri law, only general partners are empowered to act on behalf of Missouri limited partnerships unless the partnership agreement expressly grants limited partners rights beyond those afforded by statute. §§359.221 and 359.251(2), RSMo.

In the instant case, the partnership agreement does not provide for a limited partner to manage or participate in the conduct of the partnership's business. Rather, it explicitly provides the opposite: "...The Limited Partner(s) shall not have any right to be

active in the conduct of the Partnership's business....” Further, the partners negotiated and agreed in 1985 that the limited partners would have only specified voting rights. (App. at A-89).

Counsel for Sangamon represents to this Court that Sangamon has not authorized counsel for Relator, Ms. Smiley and Mr. Reeves, to file or pursue the instant Petition for Writ of Prohibition on behalf of Broadway-Washington Associates, Ltd. Sangamon believes that the interests of all the partners in Broadway-Washington Associates, Ltd. are best served by allowing the condemnation to proceed in part because the partnership has been dissolved and only liquidation and winding up remain to be completed. “Relator” thus has no continuing business purpose except for winding up its affairs. As this Court may recall from the record in the action heard last year, *Sangamon Associates, Ltd. v. The Carpenter 1985 Family Partnership, Ltd.*, 165 S.W.3d 141 (Mo. en banc. 2005), these same parties have been embroiled in litigation over this very property for more than ten years, and it continues following remand of that action.

Broadway-Washington Associates, Ltd. may hardly claim prejudice by selling its property through condemnation, as opposed to negotiated commercial sale, since at the end of the process it will receive fair value and the proceeds will be distributed to its partners through winding up. In the event the ultimate monetary award through condemnation is deemed inadequate, appeal may be taken.

**B. Defendant Fredericks adopts Point I of Respondent's Brief.**

Defendants Fredericks hereby adopt in total and incorporate by reference Point I of the Brief on Behalf of Respondent, as though fully set forth herein.

## II and III

**RELATOR'S NEWLY ASSERTED ARGUMENTS AND ISSUES SHOULD BE QUASHED OR DISMISSED BECAUSE THESE ARGUMENTS WERE NOT RAISED IN THE LOWER COURTS AND FURTHERMORE RELATOR'S ARGUMENTS ARE WITHOUT MERIT – RESPONDING TO RELATOR'S POINTS II AND III.**

- A. Relator is not entitled to an Order of Prohibition in that the Dale E. Fredericks IRA Rollover Account is not an omitted party.**

In response to Relator's allegation that The Dale E. Fredericks IRA Rollover Account was omitted as a party defendant in the Amended Petition and that this procedural defect is fatal to the jurisdiction of Judge Manners, defendant Fredericks states that he is the real party in interest and that he holds part of his interest in the real estate at issue in his IRA. The Dale E. Fredericks IRA Rollover Account is not a separate party, with separate interests and does not require to be added as a separate party, any more than any of defendant Fredericks' accounts need to be a separate party.

So there is no misunderstanding defendant Fredericks, including all of his partnership interests accounts and entities have participated in this litigation and do not contest the condemnation. Fredericks desires that the condemnation proceed to its conclusion. In the underlying case *Tax Increment Financing Committee of Kansas City v. Broadway Center, Ltd., f/k/a Broadway-Washington Associates, Ltd., et al*, The Dale E. Fredericks IRA Rollover Account, along with Sangamon Associates, Ltd., filed a motion with the court to determine the percentage of ownership and the percentage of the award

payable to interested parties. This motion served as actual and constructive notice of the involvement of The Dale E. Fredericks IRA Rollover Account. Additionally, the Dale E. Fredericks IRA Rollover Account is merely a vehicle for the ownership of Dale E. Fredericks. As such, all relevant parties had notice of the proceedings and the defect should not prove fatal.

**B. Defendant Fredericks adopts Points II and III of Respondent's Brief.**

Defendants Fredericks hereby adopt in total and incorporate by reference points II and III of the Brief on Behalf of Respondent, as though fully set forth herein.

**CONCLUSION**

For the reasons set forth herein, as well as those reasons set forth in the Brief on Behalf of Respondent, defendants Dale E. Fredericks, Carol J. Fredericks, The Dale E. Fredericks IRA Rollover Account and Sangamon Associates, Ltd., pray for an order dismissing, denying and/or quashing the Preliminary Writ and for such other relief as the Court deems appropriate.

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served this \_\_\_\_\_ day of February, 2006, on: Steven E. Mauer, Esq., Megan J. Redmond, Esq., Bryan Cave, One Kansas City Place, 1200 Main Street, Suite 2500, Kansas City, MO 64105-2100, attorney for Tax Increment Financing Commission of Kansas City; Rhonda Smiley, Esq., McDowell, Rice, Smith & Buchanan, 605 West 47<sup>th</sup> Street, Suite 350, Kansas City, MO 64112-1905, attorney for defendant Theodora D. Carpenter; W. Edward Reeves, Esq., 711 Ward Avenue, P.O. Box 169, Caruthersville, MO 63830; The Honorable Michael Manners, Circuit Court of Jackson County, Missouri, Jackson County Courthouse, 308 West Kansas, Independence, MO 64050; Oppenheimer & Co., Inc., c/o Eric J. Shane, Esq., General Counsel, 125 Broad Street, 16<sup>th</sup> Floor, New York, NY 10004; Timothy P. Price, Esq., City Attorney's Office, 2800 City Hall, 414 East 12<sup>th</sup>

Street, Kansas City, MO 64106; Lucille R. Myles, Esq., Jackson County Counselor's Office, 200 Jackson County Courthouse, 415 E. 12<sup>th</sup> Street, Kansas City, MO 64106, by sending a copy via:  U.S. Mail, postage pre-paid;  Fax;  e-mail;  Federal Express;  Hand-delivery.

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Attorney for Dale E. Fredericks, Carol J. Fredericks, the Dale E. Fredericks IRA Rollover Account and Sangamon Associates, Ltd.

**CERTIFICATE PURSUANT TO RULE 84.06(b)**

The undersigned, attorney for appellant, hereby certifies that this *Amicus Curiae* Brief complies with Mo. R. Civ. P. 55.03, the limitations contained in Rule 84.06(b), contains 2,221 words and 253 lines of type, as reported by counsel's word processing program, and that all disks and/or CDs filed or served with the brief were scanned for viruses with Norton anti-virus and are virus free according to that program.

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