

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI ex. rel.)	
PATRICK J. O'BASUYI,)	
)	
Relator,)	
)	No. 93652
v.)	
)	
HON. DAVID LEE VINCENT, III)	
)	
Respondent.)	

On Prohibition from the Circuit Court of St. Louis County

Honorable David Lee Vincent, III, Judge

RELATOR'S REPLY BRIEF

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TABLE OF AUTHORITIES

State ex. rel. General Motors Acceptance Corp. v. Standridge, 181 SW 3d 76 (Mo banc 2006) [3, 4]

Greer v. McDonald , 232 SW 3d 671 (Mo App 2007)[3]

Strubberg v. Roethemeyer, 941 SW 2d 557 (Mo App 1997) [4]

POINT RELIED ON

THE TRIAL COURT EXCEEDED ITS JURISDICTION AND ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR SEPARATE TRIAL OF DEFENDANTS' COUNTERCLAIMS FOR MALICIOUS PROSECUTION IN THAT DEFENDANTS COUNTERCLAIMS ARE NOT COGNIZABLE UNTIL AFTER AN ADVERSE DETERMINATION OF PLAINTIFF'S UNDERLYING CLAIMS

State ex. rel. General Motors Acceptance Corp. v. Standridge, 181 SW 3d 76 (Mo banc 2006)

Greer v. McDonald , 232 SW 3d 671 (Mo App 2007)

Strubberg v. Roethemeyer, 941 SW 2d 557 (Mo App 1997)

ARGUMENT

THE TRIAL COURT EXCEEDED ITS JURISDICTION AND ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR SEPARATE TRIAL OF DEFENDANTS' COUNTERCLAIMS FOR MALICIOUS PROSECUTION IN THAT DEFENDANTS' COUNTERCLAIMS ARE NOT COGNIZABLE UNTIL AFTER AN ADVERSE DETERMINATION OF PLAINTIFF'S UNDERLYING CLAIMS

Relator's brief cites two reported Missouri cases which it contends have allowed malicious prosecution claims to be tried together with the underlying claim, and therefore, the trial court here should be permitted to do the same. Closer examination of these cases shows that the issue presented here was not raised or addressed in either of those cases, and that neither case cited this Court's ruling in *State ex. rel. General Motors Acceptance Corp. v. Standridge*, 181 SW 3d 76 (Mo banc 2006).

In *Greer v. McDonald*, 232 SW 3d 671 (Mo App 2007), although it appears the trial court allowed the malicious prosecution counterclaim to be submitted to the jury along with other claims, the Court of Appeals dismissed the appeal for lack of jurisdiction. Therefore, it never addressed how the trial court handled the trial of the various claims filed, or whether the malicious prosecution claim was

properly tried simultaneously with the underlying claims.

Strubberg v. Roethemeyer, 941 SW 2d 557 (Mo App 1997) was decided prior to this Court's ruling in *Standridge*. *Strubberg* was a judge tried case involving a dispute over title to real estate which began with claims for quiet title, followed by adverse possession and malicious prosecution. The Court of Appeals noted that, while the malicious prosecution counterclaim was tried together with the Plaintiff's claim, it was never decided by the trial court. Therefore, the issue presented here was never addressed by the *Strubberg* court.

CONCLUSION

This Court should enter a Writ Of Prohibition to prohibit Respondent from allowing Defendants' counterclaims for malicious prosecution to proceed to trial unless and until the underlying claims on which they are based are determined adversely to Plaintiff.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he mailed 2 copies of the foregoing to the Hon. David Lee Vincent, III, Circuit Judge, Div. 9 of the St. Louis County Circuit Court, at 7900 Carondelet, Clayton, MO, 63105, and Thomas Avery, Esq., Attorney for Defendants, at Blitz Bargett, 120 S Central Ste 1650, Clayton, MO 63105, on the 21st day of January, 2014.

/s/ Steven W. Koslovsky

CERTIFICATE OF COMPLIANCE WITH RULE 84.06(C)

The undersigned hereby certifies that this Brief complies with the limitations contained in Rule 86.06 (b) and contains 697 words, and that the disk filed herewith pursuant to Rule 84.06(g) has been scanned for viruses and is virus free.

/s/ Steven W. Koslovsky
