

TO BE FILED

**In the
Supreme Court of Texas**

JAMES ALLEN MCGUIRE,

Petitioner,

v.

FANNIE MAE A/K/A FEDERAL NATIONAL MORTGAGE

ASSOCIATION,

Respondent.

On appeal from cause no. 02-11-00312-CV
Second District Court of Appeals
Fort Worth, Texas

PETITION FOR REVIEW

**Draft version, page numbering and reference to be
amended before filing.**

Exhibits will be added for filing.

Respectfully submitted,

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PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

Petitioner, James Allen McGuire, pursuant to Texas Rule of Appellate Procedure, respectfully submits this Petition for Review seeking review of the Second District Court of Appeals' opinion in this matter. As set forth below, this Honorable Court should grant this Petition.

I. STATEMENT OF THE CASE

Nature of the case: This dispute began as a forcible detainer action initiated by a party not having lawful standing to invoke a trial court's jurisdiction. Petitioner (Appellant) filed a general denial and a Motion to Dismiss for want of standing to invoke the court's jurisdiction. The justice court opined in favor of Appellee. The court without jurisdiction awarded possession of real property to Appellee. Appellant timely appealed the judgment to the County Court at Law One, Tarrant County, Texas. This court also lacking jurisdiction also awarded possession of real property to Appellee relying upon an unproven Substitute Trustee Deed unlawfully filed of recorded by Appellee as the sole evidence to grant possession. The Appellant then timely perfected an Appeal to the Second Court of Appeals at Fort Worth, Texas. Appellant noticed in written letter (Appendix, Tab C) the Appellate Court that the trial courts records where inaccurate, this inaccuracy would have shown that the trial court was aware that the evidence may have been tainted, but such was removed from the record supplied to the Court of Appeals. Upon notice being sent by Appellee of such error to the Court of Appeals, the appeal court then requested a response from Appellee concerning the incorrect trial court's record who objected to a true and correct copy of the record be proved up. The appeal court sided

with Appellee (Appendix, Tab D); therefore Appellant's could only rely upon a non-true and non-correct copy of the trial court's record and as such, Appellee was denied a guaranteed constitutional right.

Opinion of the panel: The panel that decided the case and affirmed the trial court was composed of Justices Livingston, C.J., Gardner and Gabriel, JJ. Upon the court of appeals rendering judgment issued in opinion on 22 March 2012. On March 27, 2012, Appellant was left with no option but to appeal to the Texas Supreme Court for the benefit of all citizens of Texas as the side effect of the appeals court's civil ruling would create havoc in regards to "*TEXAS CODE OF CRIMINAL PROCEDURE, Title 1.*"

II. STATEMENT OF JURISDICTION

1. The Supreme Court has jurisdiction over this appeal under Texas Government Code §22.001(a)(6) because the court of appeals has committed errors of law of such importance to the state's jurisprudence that they should be corrected. *See* Tex. Gov't Code §22.001(a)(6); Tex. R. App. P. 56.1(a)(5), (6); *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 643 (Tex.1995)

2. The Supreme Court has jurisdiction over this appeal under Government Code §22.001(a)(2) because the court of appeals decision conflicts with this Court's decision in the following:

(A) "These statutes created a right not existing at common law and prescribed a remedy to enforce the right. Thus, the courts . . . [only have jurisdiction according to the rules] provided by the statute

which created the right." *See, e.g., Bullock v. Amoco Production Co.*, 608 S.W.2d 899, 901 (Tex. 1980).

(B) "Statutory provisions are mandatory and exclusive and must be complied with in all respects." e.g. *Employees Ret. Sys. of Tex. v. Blount*, 709 S.W.2d 646, 647 (Tex. 1986).

(C) Subject-matter jurisdiction is fundamental and may be raised for the first time on appeal. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex.1993).

(D) Subject-matter jurisdiction is a question of law, subject to de novo review. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex.2004)

(E) *Texas Catastrophe Property Insurance Association v. Council of Co-Owner of Saida II Towers Condominium Association*, 706 S.W.2d 644 (Tex. 1986). ("because relevant cause of action derives from statute, not common law, statutory provisions are mandatory and exclusive and must be complied with in all respects")

III. ISSUES PRESENTED FOR REVIEW

1) The Second Court of Appeals committed an error of such magnitude, such order as written has the potential for the citizens of Texas to be deprived of constitutional rights and loss of faith in the judicial system.

The Preamble to the Texas Judicial Canons states in part:

"Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the

precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system.

Courts that rely “Rice v Piney” and its derivatives defy in logic what is lodged into law¹ and potentially could provide that the state is liable for actions of an individual acting in an official capacity to take such property, but I would rather fathom such justice(s) would be held easier accountable in their personal capacity:

Where a citizen is prohibited from filing a criminal complaint due to law enforcement not willing to accept such criminal complaint, one is deprived of a guaranteed constitutional right. All facts report that only law enforcement officials can file, i.e. AO-91, criminal complaint with the federal courts.

***“TEX CR. CODE ANN. § 47.01a : Texas Statutes - Article 47.01A:
RESTORATION WHEN NO TRIAL IS PENDING***

*(a) If a criminal action relating to allegedly stolen property is not pending, a district judge, county court judge, statutory county court judge, or justice of the peace having **jurisdiction** as a magistrate in the county in which the property is held or a municipal judge having jurisdiction as a magistrate in the municipality in which the property is being held may hold a hearing to determine the right to possession of the property, upon the petition of an interested person, a county, a city, or the state....*

*Added by Acts 1977, 65th Leg., p. 2034, ch. 813, Sec. 1, eff. Aug. 29, 1977.
Amended by Acts 1987, 70th Leg., ch. 548, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993; Subsec. (a) amended by Acts 1995, 74th Leg., ch. 184, Sec. 3, eff. May 23, 1995.”*

2) The Second Court of Appeals did commit a grave error when not opining on all points appellant raised, including facts filed of court record

¹ Appellant does not address property that has a per se government mandated licensing requirement such as for automobile.

that a fraud has been committed against a trial court, not by testimony, but by admission into the courts record and such admission was by the Appellee; the public could only view this non-addressing of an issue as a criminal act to conceal a fraud and as such Article V, §1-a (6) A of the Texas Constitution would come to bear as well as violation under 18 USC. Petitioner will not speculate as to why notice of such criminal actions was not addressed. Again, such actions have the potential for citizens to lose faith in the judicial system. Failure to properly opine in accordance to law in this instant suit could only be seen as a violation of the Texas Judicial Canons, amongst others, and the record provides no escape from:

*“TEX CR. CODE ANN. § 38.18 : Texas Statutes - Article 38.18:
PERJURY AND AGGRAVATED PERJURY*

(a) No person may be convicted of perjury or aggravated perjury if proof that his statement is false rests solely upon the testimony of one witness other than the defendant.

(b) Paragraph (a) of this article does not apply to prosecutions for perjury or aggravated perjury involving inconsistent statements.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 973, ch. 399, Sec. 2(A), eff. Jan. 1, 1974.”

In referencing “Respondent State of Texas’s Brief on the Merits” that is before this court in Larry York D/B/A York Tank Trucks (Petitioner) v State of Texas (Respondent) as Cause No. 09-0905 submitted by Greg Abbott, Attorney General Abott of Texas appears to be acting for the best interest of the citizens of Texas as noting the opinion authored by the Second Court of Appeals is in error.

When the Texas Attorney General steps forward to protect the interest of millions of Texas citizens from errors made by appellate courts, it could only be thought of that faith in the court is in dire state of distrust. Many a learned in the legal profession has said always hold your cards tight to the vest. Maybe it makes legal sense but logically it lacks, as an author, I

have released hundreds of writings which explain the civil and criminal fraud surrounding today's financial fiasco. Some in academia have made notice to the public that such writings might be of interest to readers. At last extrapolation, the number of readers is in the million with half of readership being that of foreign nationality.

III. STATEMENT OF FACTS

The court of appeals identifies the issue incorrectly as a forcible detainer action begun by a lawful entitled party. As the court itself opined, "*In a forcible detainer action, the only issue the trial court determines is whether the party seeking to obtain possession is entitled to actual and immediate possession, and the merits of whether a party has title shall not be determined. See Tex. R. Civ. P. 746; Black v. Wash. Mut. Bank, 318 S.W.3d 414, 416 (Tex. App.-Houston [1st Dist.] 2010, pet. dismiss'd w.o.j.); Williams v. Bank of N. Y. Mellon, 315 S.W.3d 925, 927 (Tex. App.-Dallas 2010, no pet.), herein, "**is entitled**", this short partial fact alone provides that only an **entitled** party is permitted to file a forcible detainer. In this instant suit, there is currently and never again will be a party **entitled**.*

The court further opined in error: "*To the extent that McGuire complains of defects in the foreclosure process, he may pursue that complaint in district court, but it may not be considered in this action. See Shutter, 318 S.W.3d at 471; Williams, -315 S.W.3d at 927 (citing Scott, 127 Tex. at 35,90 S.W.2d at 818-19).*" Appellant argued as per the opinion: "*he disputes, in essence, only whether the seller had the authority to sell the property to Fannie Mae in the first place.*" Herein, the court's opinion conflicts with criminal prosecution under Title 47 of the Criminal Code:

Thus, Chapter 47 requires both (1) a determination whether there is probable cause that the item was illegally obtained and... [Then Step 2]

This twisting of words and truth add to the disdain of the people to have faith in the judicial system. As this instant suit was civil in nature, the opinion rendered by the Court of Appeals has a byproduct of upending decades of criminal law in essence saying a thief in possession of stolen

property cannot be prosecuted until the unlawful seller is under prosecution and until such time, a criminal has right to possession. By the time an innocent party could retrieve the receipts to prove a crime, the cake would spoil and such the lawful owner would have been deprived of what he legally owned. Herein, the rights of the cake thief exceed the rights of the lawful owner. Where a court refuses to hear evidence presented by an owner proving theft deprives the owner of a constitutional rights that ownership grants. If such court is restricted from hearing such evidence, then constitutional rights of owners have been violated. This court has the authority and the duty to the people to see that laws are written in a constitutional manner and the lower courts follow constitutional rights the people are entitled too. Herein, this instant suit, the rights granted under the constitution and by due process of law were violated.

IV.SUMMARY OF THE ARGUMENT

This dispute began as a forcible detainer action by a party not lawfully entitled to possession filing a suit for forcible detainer. Petitioner (Appellant) filed a general denial. The judgment of the justice court signed a judgment in favor of the Appellee. The court awarded possession of real property to Appellee. The Appellant timely appealed the judgment to the County Court at Law One, Tarrant County, Texas. This court also awarded possession of real property to Appellant relying upon a false Substitute Trustee Deed filed of recorded by Appellant. The Appellant then timely perfected an Appeal to the Second Court of Appeals at Fort Worth which found trial court decision was not in error, Texas and timely files with the Texas Supreme Court. If such party had a lawful right to file suit for forcible detainer then such order by the court may have been found valid, but this is not the facts in this case.

Many of the background facts written in the opinion are based on allegations and not of evidence introduced. The fact is, tortuous acts were committed by the alleged seller of the real property. It is unfortunate that the Appellee was not aware of the precise legal issues. However, Appellee was aware of other issues and thus can not claim a right of being an innocent purchaser. The Court of Appeals did correctly notice that Appellee has legal remedies available to pursue under other legal action, a right to clear the clouds appearing upon title to property. This factor alone, despite Appellee's reliance upon *Rice v Piney*, should have been sufficient to prevent Appellee from taking property that rightfully belongs to the Appellant.

The court of appeals neglected to take into account that the jurisdiction of the appellate court is contingent upon the jurisdiction of the trial court and that the trial court's jurisdiction is contingent upon the jurisdiction of the justice court. *Crumpton v. Stevens*, 936 S.W.2d 473, 476 (Tex.App.-Fort Worth 1996, no writ) (The appellate jurisdiction of a statutory county court is confined to the jurisdictional limits of the justice court, and the county court has no jurisdiction over an appeal unless the justice court had jurisdiction.) As the Appellate Court was limited in taking legal actions which should have been reversing the lower court's ruling and dismissing the case for want of jurisdiction. The Second Court of Appeal failed in its duty to follow law, violated Appellant Constitutional Rights which led to this appeal being brought forward to this court.

V. ARGUMENT & AUTHORITIES

1: The petitioner hereby incorporates by reference petitioner's appeal brief submitted to the Second District Court of Appeals (Appendix Tab A), petitioners reply brief submitted to the Second District Court of

Appeals (Appendix Tab B), and petitioner's Reply brief submitted to the Second District Court of Appeals (Appendix Tab C), Appellant's motion to strike Appellee's reply brief (Appendix Tab D) and the Second District Court of Appeals Opinion (Appendix Tab E).

The court of appeals overrules the petitioner's first issue as if the petitioner had argued a claim to title. The court of appeals' misread the facts presented and penned an opinion that appeared to be based upon an argument not raised by Appellant.

"The demand for possession must be made in writing by a person **entitled** (emphasis added) to possession of the property and must comply with the requirements for notice to vacate under Section 24.005." Tex. Prop. Code Ann. §24.002(b) (Vernon 2000). The word "entitled" creates or recognizes a condition precedent, Tex. Gov't Code §311.016(3).

In the instant case the Appellee did not satisfy conditions precedent prior to the filing of the forcible detainer action in the justice court; secondly, Appellee would never be able to satisfy the conditions precedent.

2: The court of appeals did not address the challenge to the jurisdiction of the trial court to convene a hearing or trial on the issue of possession. See Tex. R. App. P. 47.1 Tex. R. Civ. P. 21, 21a, 753 Issue 1 and Issue 2 are indeed challenges to the jurisdiction of the lower courts but that is where the similarity ends. The justice court and the trial court did not acquire subject matter jurisdiction as discussed above. Tex. Prop. Code §24.005(f). The trial court convened the trial or hearing in the complete absence of jurisdiction. See Tex. R. Civ. P. 21, 21a.

VI. PRAYER

For the reasons stated in this petition, petitioner, James Allen McGuire, respectfully asks this Honorable Court to grant this petition for review. Petitioner also requests this court order law enforcement to investigate all criminal activity that is presented in the Appellant's Briefs and concealment of fraud covered up by the opinion penned by the Second Court of Appeals.

Lest of pray that this court has not lost sight of rights found in the United States Constitution:

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

For if sight is lost; then faith is lost.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of petitioner's Petition for Review to the Texas Supreme Court (Cause No. 02-11-00312-CV in the Second District Court of Appeals) was served on respondents, Fannie Mae through counsel of record, Janna W. Clarke, whose address is 309 West 7th Street, Suite 1000, Fort Worth 77102, by USPS on March ____, 2012.