

Writ of Coram Vobis

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 14 2010

GREGORY C. LANGHAM
CLERK

Including Refusal for Cause

08-MC-0066 *File this original*

US clerk

Opinion of federal judge Robert BLACKBURN is hereby refused for cause as it is in error.

This case jacket is an evidence repository and I petitioned the federal court for assistance enforcing the perfected \$20M lien evidenced within. The clerk of court converted my case file (I paid \$39 for it) into a civil suit in error, and I admit when being scheduled for trial I submitted a civil cover sheet to assist in correcting that error. Nothing changes the fact that this action is a *waiver of tort*. As far as I can see, the clerk, Magistrate MIX and judge BLACKBURN avoid the term in any of their filings.

This lien is based in the facts.

The only purpose of a judgment would be judicial review of the facts. That is unnecessary, as I have been establishing the facts in the evidence repository.

It would seem that the clerk, MIX and BLACKBURN all work off a 1938 premise called *One Form of Action* which blends the principles of law and equity. I am not bound to that form as it is a resetting of the common law I am accustomed to. My premise is a diversity of citizenship between public and private and in the public arena there is a separation of powers between legislation and judiciary. My foundation extends to pre-*Swift v. Tyson* (1842) error against the Tenth Amendment of the Court with the 'saving to suitors' clause of 1789. Justice Louis Dembitz BRANDEIS overturned the error in 1938 invoking a new brand of *stare decisis* widely upheld in the private courts with *One Form of Filing*.

Regardless of the facts of the history, I obviously never intended for the lien itself to be misconstrued as a complaint in a civil action. It is waiver of tort and stands upon the facts in the evidence repository. My limited participation was only to convene a jury but Magistrate MIX misdirected the lien to be read into this *one form*.

Interestingly, this one form of filing can be found here in the Colorado laws from 1935, indicating that supplanting the county courts with the Bar Association (private bench legislation) was a precedent for the federal rules to follow. See the attachments.

Regards,

(Handwritten signature)


73

The Colorado Bar Association

January 18, 1933.

Governor Edwin C. Johnson,
State House,
Denver, Colorado.

Dear Governor Johnson:

In accordance with your request I appointed a Committee to consider the question of the abolishment of County Courts. The report of that Committee, prepared by a sub-committee is enclosed herewith.

You recall that when we conferred with you an explanation was made regarding the difficulties encountered in attempting to change one branch of the judiciary without a complete revision of the whole system.

It appears to the Committee that a Legislative Commission should be created to study the subject thoroughly and submit a plan to the next legislature. In accordance with this recommendation I have caused a heading for a bill to be introduced providing for the appointment of such a commission. With your approval this bill will be prepared and an attempt made to have it passed.

(1 OF 2 PAGES)

(2 OF 2 PAGES)

I am advised that such a Commission could be created by joint resolution. The Commission of course would work without compensation altho it should have a small allowance for secretarial work. My own opinion is that this Commission should consist of a Supreme Court Judge, a District Court Judge, a County Judge, several members of the legislature and some representatives of The Colorado Bar Association.

May I assure you that The Colorado Bar Association would be pleased to cooperate in this work in which it is deeply interested, and to which it has given much attention.

I would be pleased to discuss the matter more fully with you at your convenience.

Respectfully yours,

Ernest L. Roads

COLORADO STATE ARCHIVES 1313 Sherman, Room 1B-20 • (303) 866-2358 Denver, CO 80203		No 023007
		RECEIPT
RECEIVED FROM	<u>JACK TRAVIS</u>	DATE <u>9/3</u> 19 <u>96</u>
THE SUM OF	<u>Seven & $\frac{50}{100}$</u>	DOLLARS \$ <u>7.50</u>
FOR	<u>97-723 Pull & COPIES</u>	
AMOUNT OF ACCOUNT	\$ <u>7.50</u>	
AMOUNT PAID	\$ <u>7.50</u>	
BALANCE DUE	\$ _____	
<input checked="" type="checkbox"/> CASH <input type="checkbox"/> CHECK <input type="checkbox"/> M.O.	Thank You! <u>[Signature]</u>	



This rare collection is found in the Mason Library in Colorado Springs, Colorado.

Code of Civil Procedure

CHAPTER I.

Civil Actions and Parties Thereto.

SEC.	SEC.
1. One Form of Action.	12. Non-Consenting Plaintiff Made Defendant.
2. Designation of Parties.	13. Action against Parties Jointly and Severally Liable.
3. Action by Real Party in Interest.	14. Action against Associates under Common Name.
4. Action by Assignee without Prejudice, Except.	15. Action Shall Not Abate.
5. Action by Executor, Administrator or Trustee—Express Trust Defined.	16. Court May Bring in New Parties.
6. Married Women May Sue and Be Sued.	17. New Parties, How Brought in.
7. Infant Appears, How.	18. Substitution of Parties.
8. Appointment of Guardian.	19. Successive Actions on Same Contract.
9. Action for Injury or Death of Child—Who May Maintain.	20. Consolidation of Actions.
10. Parties Plaintiff.	21. Suit by Debtor.
11. Parties Defendant.	22. Intervention of Parties.
	23. Intervention by Petition.
	24. Intervention—When Decided.

§ 1. One form of action.—The distinction between actions at law and suits in equity, and the distinct forms of actions and suits heretofore existing, are abolished, and there shall be in this state but one form of civil action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which shall be the same at law and in equity, and which shall be denominated a civil action, and which shall be prosecuted and defended as prescribed in this act [L. '87, p. 97, § 1, Code '03, § 1.]

- I. In General.
- II. Forms and Nature of Actions.

I. IN GENERAL.

Practice under the code does not apply to special statutory proceedings.—Thus, if the proceeding is a special statutory one, the special statute (see vol. 4, ch. 105) itself governs, where it provides a procedure full and complete in itself. *Hultquist v. People*, 77 Colo. 310, 116, 236 P. 995.

Thus practice under the "Town Site" act is not controlled by the code.—Pleadings and proceedings in actions to determine the right to receive a conveyance under the "Town Site" act are controlled by the "Town Site" act, as modified by that act and not by the civil code. *Rice v. Goodwin*, 2 Colo. App. 267, 30 P. 330.

The "Town Site" act is a special statute, and its provisions relating to practice are not repealed by implication by the civil code, which is general. *Id.*

Code does not modify or repeal the statutes of limitations.—There is nothing in the code to indicate that it was the intention of the legislature by its enactment to modify or repeal any of the provisions of the statutes of limitations which were then in force in this state. *Harrison v. Harrison*, 10 P. 71, 73.

An execution against the body is a civil action. *Jahl v. Lewis*, 37 Colo. 109, 111, 139 P. 1113.

Audita querela, co. nomis, and bills in equity have been abolished by this section. *Peterson v. Vandenberg*, 36 Colo. 130, 135, 273 P. 607, citing *Investors Finance Co. v. Tuxford*, 84 Colo. 519, 221 P. 625.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn

Civil Case No. 09-cv-03001-REB-KLM

DAVID MERRILL,

Petitioner,

v.

STATE OF COLORADO CAPITAL FINANCE CORPORATION,

Respondent.

ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Blackburn, J.

The matters before me are (1) the **Recommendation of United States Magistrate Judge** [#20]¹ filed March 15, 2010; and (2) plaintiff's **Objection** [#27] filed March 24, 2010. I overrule the objections, adopt the recommendation, deny plaintiff's petition, and dismiss this case.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and have considered carefully the recommendation, objections, and applicable caselaw. Moreover, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. *See Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Andrews v. Heaton*,

¹ "[#20]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management system (CM/ECF). I use this convention throughout this order.

483 F.3d 1070, 1076 (10th Cir. 2007); *Hall v. Belmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)). The recommendation is detailed and well-reasoned. Contrastingly, plaintiff's objections are imponderous and without merit.²

I concur with the magistrate judge that action should be dismissed on both procedural and substantive grounds. Procedurally, whether considered individually or collectively, the papers filed by plaintiff fail to satisfy even the liberal requirements of pleading under Fed. R. Civ. P. 8. Substantively, the papers filed by plaintiff fail to state any claim on which relief may be granted.

Therefore, I find and conclude that the arguments advanced, authorities cited,

² Plaintiff apparently believes that this action has erroneously been filed as a civil action. He now suggests that the matter should have been docketed as a petition for a writ of *coram nobis*. See *United States v. Denedo*, – U.S. –, 129 S.Ct. 2213, 2220-21, 173 L.Ed.2d 1235 (2009) (describing the origins of the writ). Putting aside the fact that the first mention of the writ of *coram nobis* appears in plaintiff's objection, there are at least three problems with his arguments and concomitant objection.

First, there is but one form of non-criminal action in the district courts of the United States, a civil action, which is commenced by the filing of a complaint. FED.R.CIV.P. 2 & 3. Thus, assuming *arguendo* that plaintiff may be entitled to a writ of *coram nobis*, or any other relief for that matter, he must commence a civil action and file a complaint to secure that relief. (Neither plaintiff's current Petition for Writ of Enforcement nor his various evidentiary filings – which he refers to variously as "billing process" and an "evidentiary repository" – constitute a complaint sufficient to commence a civil action in this district court.)

Second, *coram nobis* is not the appropriate remedy for the injury of which plaintiff appears to complain, that is, payment of a judgment or debt owed. "[C]oram nobis is but an extraordinary tool to correct a legal or factual error." *Denedo*, 129 S.Ct. at 2221. Nothing in plaintiff's prolix filings suggests that he seeks to correct any such error in a prior proceeding. Moreover, *coram nobis* is an "extraordinary remedy" and, thus, "may not issue when alternative remedies . . . are available." *Id.* Again, nothing in plaintiff's papers indicates that the relief he seeks is anything more extraordinary (except perhaps in amount) than monetary damages or that such relief cannot be secured through the more pedestrian, but usually efficacious, form of a civil action.

Third, the court's power to issue a writ of *coram nobis* pursuant to the All Writs Act, 28 U.S.C. § 1651, presupposes an independent basis of federal subject matter jurisdiction. See *id.* at 2222. Nothing in plaintiff's pleadings regarding the alleged debt suggests that any claim herein arises under federal law. See 28 U.S.C. § 1331 (federal question jurisdiction). Additionally, although plaintiff styles his action as one involving a foreign judgment, it appears that he and all the individuals and entities implicated herein are located in Colorado, thereby, providing no apparent basis for diversity jurisdiction. See *id.* § 1332.

and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the Recommendation of United States Magistrate Judge [#20] filed March 15, 2010, is **APPROVED AND ADOPTED** as an order of this court;

2. That the objections stated in plaintiff's Objection [#27] filed March 24, 2010, are **OVERRULED**;

3. That plaintiff's Petition for Writ of Enforcement [#20] filed December 28, 2009, is **DENIED**; and

4. That this action is **DISMISSED**.

Dated April 6, 2010, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge

Orders on Motions

1:09-cv-03001-REB-KLM Merrill v. State of Colorado Capital Finance Corporation
ALLMTN, MAGR

U.S. District Court

District of Colorado

Notice of Electronic Filing

The following transaction was entered on 4/6/2010 at 1:53 PM MDT and filed on 4/6/2010

Case Name: Merrill v. State of Colorado Capital Finance Corporation

Case Number: 1:09-cv-03001-REB-KLM

Filer:

Document Number: 28

Docket Text:

ORDER. The Recommendation of United States Magistrate Judge [20] filed 03/15/2010, is APPROVED AND ADOPTED as an order of this court. The objections stated in plaintiffs Objection [27] filed 03/24/2010 are OVERRULED. Plaintiffs Petition for Writ of Enforcement [20] filed 12/28/2009, is DENIED. This action is DISMISSED. By Judge Robert E. Blackburn on 04/06/2010.(sah,)

1:09-cv-03001-REB-KLM Notice has been electronically mailed to:

1:09-cv-03001-REB-KLM Notice has been mailed by the filer to:

David Merrill
115 East Vermijo
#202
Colorado Springs, CO 80903

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1071006659 [Date=4/6/2010] [FileNumber=2421802-0]
[1954243bcac7564f9cff9f10b265da0899b8248f6f75cb81d71ac632b8d1c39d3861
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-03001-REB-KLM

DAVID MERRILL,

Petitioner,

v.

STATE OF COLORADO CAPITAL FINANCE CORPORATION,

Respondent.

JUDGMENT

Pursuant to the Order *overruling* Objections *to* and Adopting
Recommendation of the United States Magistrate Judge [#28] entered by Judge
Robert E. Blackburn on April 6, 2010, which order is incorporated by reference,

IT IS ORDERED as follows:

1. The **Petition for Writ of Enforcement** [#20] filed December 28, 2009, is **DENIED**; and
2. That this action is **DISMISSED**.

DATED at Denver, Colorado this 7th day of April, 2010.

FOR THE COURT:

GREGORY C. LANGHAM, CLERK

s/ Edward P. Butler
Edward P. Butler, Deputy Clerk

Other Orders/Judgments

1:09-cv-03001-REB-KLM Merrill v. State of Colorado Capital Finance Corporation
ALLMTN

U.S. District Court

District of Colorado

Notice of Electronic Filing

The following transaction was entered on 4/7/2010 at 3:41 PM MDT and filed on 4/7/2010

Case Name: Merrill v. State of Colorado Capital Finance Corporation

Case Number: 1:09-cv-03001-REB-KLM

Filer:

WARNING: CASE CLOSED on 04/07/2010

Document Number: 30

Docket Text:

JUDGMENT by Clerk. The Petition for Writ of Enforcement [20] filed 12/28/2009 is DENIED. This action is DISMISSED. Signed on 04/07/2010. (sah,)

1:09-cv-03001-REB-KLM Notice has been electronically mailed to:

1:09-cv-03001-REB-KLM Notice has been mailed by the filer to:

David Merrill
115 East Vermijo
#202
Colorado Springs, CO 80903

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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