

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

| | | |
|--------------------------------|---|------------------------|
| Ford Motor Credit Company, and |) | |
| Sycamore Auto Center, |) | |
| Plaintiffs, |) | |
| |) | Court No. LKA-94-0999 |
| v. |) | |
| |) | Judge Donald J. Fabian |
| |) | |
| Thomas B. Sperry dba |) | |
| Thomas B. Sperry, Inc., |) | |
| Defendant |) | |

NOTICE OF FILING

To: Mary K. Schulz, Schulz & Associates, P.C., 135 S. LaSalle St., Suite 2300, Chicago, IL 60603-4274, and Barry A. Robin, Landau Omahana Tucker Progar & Siebenhaar, L.L.C., 222 N. LaSalle St. Suite 200, Chicago, IL 60601-1005

Please take notice, that on October 19, 2001, I have filed the attached "MEMORANDUM OF LAW AS TO LACK OF JURISDICTION OF THIS COURT" with the Clerk of the Circuit Court of the Sixteenth Judicial District.

Thomas B. Sperry

CERTIFICATE OF SERVICE

I, Thomas B. Sperry, certify that I have served a copy of the above Motion by First Class Mail, postage prepaid, by depositing it in the U.S. Mail in Aurora, Illinois, before 4:00 pm on October 19, 2001.

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Thomas B. Sperry
321 North Lincolnway
North Aurora, IL 60542

Thomas B. Sperry

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| |) | |
| Thomas B. Sperry dba) |) | |
| Thomas B. Sperry, Inc.,) |) | |
| Defendant |) | |

**MEMORANDUM OF LAW AS TO
LACK OF JURISDICTION OF THIS COURT**

NOW COMES the Defendant, Thomas B. Sperry, *in pro per, sui juris*, and submits this Memorandum of Law as to Lack of Jurisdiction of this Court.

On October 9, 2001, this Court repeatedly violated the Defendant's Constitutional Rights, thus depriving this judge of his jurisdiction, if any he had, and making the purported order issued on that date void, of no legal force or effect.

The Defendant wishes to remind this court that the Petitioners, in their filing their purported "Petition For Attorneys' Fees", invoked the statutory jurisdiction of this court, pursuant to Illinois statute 815 ILCS 505/1 et seq.

The Illinois Supreme Court has established the Public Policy or Law that in an Illinois state court in which jurisdiction is based on statute, the jurisdiction of that court cannot be presumed. In re Jennings, 68 Ill.2d 125, 368 N.E.2d 864 (1977);

Zook v. Spannaus, 34 Ill.2d 612, 217 N.E.2d 789 (1966); **Gold v. Illinois Commerce Commission**, 383 Ill. 11, 48 N.E.2d 391 (1943); **Keal v. Rhydderck**, 317 Ill. 231, 148 N.E. 53 (1925); **In re Bartha**, 87 Ill.App.2d 263, 230 N.E.2d 886 (1967); **Interest of Barr**, 37 Ill.App.3d 10, 344 N.E.2d 517 (1976); **People ex Rel. Person v. Miller**, 56 Ill.App.3d 450, 371 N.E.2d 1012 (1977).

Illinois law clearly, repeatedly, and unequivocally holds that the party which claims the court holds jurisdiction has the burden to accurately prove that the court actually holds jurisdiction. **R.W. Sawant & Co. v. Allied Programs Corp.**, 111 Ill.2d 304, 489 N.E.2d 1360 (1986) (The burden of proving a valid basis for the assertion of jurisdiction rests with the party seeking to impose jurisdiction); **Bindell v. City of Harvey**, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1991) ("the burden of proving jurisdiction rests upon the party asserting it."); **Loos v. American Energy Savers, Inc.**, 168 Ill.App.3d 558, 522 N.E.2d 841 (1988); **Ballard v. Fred E. Rawlins, M.D., Inc.**, 101 Ill.App.601, 428 N.E.2d 532 (1981); **Stephens v. Northern Indiana Pub. Serv.**, 87 Ill.App.3d 961, 409 N.E.2d 423 (1980).

The attempt by this court to place the burden upon this Defendant violated Illinois Law, Federal Law, and violated this Defendant's Due Process Rights. Where a party's Due Process Rights are violated by the court, the court deprives itself of jurisdiction. The purported order, under the principle of law

stated in Armstrong v. Manzo, 380 U.S. 545 (1965); Spieser v. Randall, 357 U.S. 513 (1958), was Constitutionally invalid.

As to Federal Law, made applicable to the State of Illinois through the Fourteenth Amendment, can be cited the following: McNutt v. General Motors Accept. Corp., 298 U.S. 178 (1936); Galpin v. Page, 85 U.S. 350, 366 (1873).

It is clear and well-settled law that any action taken by a court involved in a limited jurisdiction proceeding which lacks subject-matter jurisdiction is a nullity, and either party, even the party that invoked the jurisdiction of the court, can attack jurisdiction at any time, even after judgment is rendered against him. American Fire & Casualty Co. v. Finn, 341 U.S. 6, 71 S.Ct. 534 (1950); Eckert v. Lane, 678 F. Supp. 773 (1988).

Further, depriving the Defendant of an adequate, complete, effective, fair, full, meaningful and timely access to this court violated his First Amendment Rights, a violation of which causes this Court to have lost jurisdiction. Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019 (1938); United States v. Walker, 109 U.S. 258; 3 S. Ct. 277 (1883). The Court had no lawful authority to deny the Defendant's "Motion to Demand That Plaintiff Proves That this Court Holds Jurisdiction" without holding an adequate, complete, effective, fair, full, meaningful and timely hearing. This hearing would have required the Plaintiffs to fulfil their burden of proving that this Court has jurisdiction, which the Plaintiffs

have not done nor can they do so. The record must also show that the Defendant's Constitutional Rights were not violated, which the record of this case does not show.

The allegation by the court that the court does have jurisdiction is only that, an allegation. The People v. Brewer, 328 Ill. 472, 483 (1928) ("If it could not legally hear the matter upon the jurisdictional paper presented, its finding that it had the power can add nothing to its authority, - it had no authority to make that finding."). Without proof of jurisdiction by the party claiming the Court has jurisdiction, Illinois law presumes that this Court is without jurisdiction.

The current judge must inspect the entire record of the case, i.e, a complete record of the case, especially since he has not been the judge in all phases of this purported case since its inception in 1994. Since Judge Fabian did not inspect the full and complete record of the case before making the purported order of October 9, 2001, he did not act impartially as the Law requires him to act.

Illinois law requires that an order of a judge, when issued in a statutory proceeding, must contain the jurisdictional findings prescribed by statute. In re Jennings, 68 Ill.2d 125, 368 N.E.2d 864 (1977); Zook v. Spannaus, 34 Ill.2d 612, 217 N.E.2d 789 (1966). None of Judge Fabian's orders complied with the law of the State of Illinois, and therefore have no validity.

The Defendant wishes to inform this Court that he filed with this Court an affidavit as to the lack of jurisdiction of this Court. Under Illinois law, this affidavit must be accepted as true, **Loos v. American Energy Savers, Inc.**, *supra*, especially since the Petitioners have failed to meet their burden to prove that this Court has any jurisdiction.

All Federal cases cited herein are made applicable to the State of Illinois through the Fourteenth Amendment.

The United States Supreme Court, in **Twining v. New Jersey**, 211 U.S. 78, 29 S.Ct. 14, 24 (1908), stated that "Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction."; citing **Old Wayne Mut. Life Assoc. v. McDonough**, 204 U.S. 8, 27 S.Ct. 236 (1907); **Scott v. McNeal**, 154 U.S. 34, 14 S.Ct. 1108 (1894); **Pennoyer v. Neff**, 95 U.S. 714, 733 (1877).

This Court has no jurisdiction in this matter and has violated the Defendant's Due Process Rights.

For reasons of the above law and for other law that the Plaintiffs' attorneys have a legal duty to provide this Court, pursuant to the law, and have not done so, this Court is without jurisdiction.

Thomas B. Sperry

Thomas B. Sperry
321 North Lincolnway
North Aurora, IL 60542