

CAUSE NO. CV07404

UDO BIRNBAUM	\$	
Plaintiff	\$	IN THE COUNTY
v	\$	
	\$	COURT AT LAW
ROBERT O. DOW	\$	
Defendant	\$	OF VAN ZANDT COUNTY, TX

FIRST AMENDED ORIGINAL PETITION

COMES NOW, UDO BIRNBAUM (“Birnbaum”), for Appeal by determination de novo, upon the matter of his JP2 eviction suit for forcible entry and detainer against a ROBERT O. DOW (“Dow”).

I.
EXHIBITS

The Dow forcible entry and detainer - - - THIS complaint IN this court

1. Home invasion - - - by Dow under color of law - - - under color of tenant eviction
2. Home invasion - - - the Precinct 2 DUMPSTER bucket brigade by county inmates
3. UNLAWFUL EVICTION - - - by Dow duping the district court into doing eviction. In Texas ONLY the JP court of the precinct can do eviction. Property Code 24.004
4. WARNING TO OFFICERS - - - that this was an UNLAWFUL SEIZURE

The JP2 Justice Court proceedings - - - for appeal for de novo to this court

5. The JP2 Filing - - - Birnbaum’s *Original Petition* (less exhibits)
6. The JP2 Hearing - - - The Justice Court holds a very long hearing - - - **but never even assigns a cause number** – whence this petition for determination de novo

Notice to Vacate the Premises - - - to Dow per Texas Notice requirements

7. Notice to Vacate
8. Returned CMRR Green Card

Misc

9. Warranty Deed - - - Thibodeaux to Udo Birnbaum - - - proof of ownership

II. **DISCOVERY-CONTROL PLAN**

Plaintiff intends to conduct discovery under Level 3 of Texas Rules of Civil Procedure 190.4.

III. **PARTIES**

Udo Birnbaum (“Birnbaum”), is an individual who may be served at 119 AN County Road 2501, Tennessee Colony, Texas 75861

Robert O. Dow (“Dow”), is an individual who may be served at his place of business at 6115 Owens St Suite 201, Dallas, TX 75235, or wherever he may be found.

IV. **Re the JP2 Determination appealed from**

Birnbaum, after proper three (3) day Notice, on August 27, 2024 filed eviction suit (Exhibit 5) for forcible entry and detainer against Dow, whereupon the JP2 Justice Court, Van Zandt County, Texas, sent Notice of Hearing for September 19, 2024. (Exhibit 6)

Near the very end of this 50 minute or so very detailed hearing, however, JP2 Hon. Don Ashlock refused to take the complaint, and handed back Birnbaum’s check. Birnbaum, surprised, requested Hon. Don Ashlock to provide some sort of paper output upon today’s hearing, and JP2 Hon. Don Ashlock promised, but has not.

It is upon such “has not”, particularly by reason of the absence of even a cause number in the JP court (see Exhibit 6) to rule upon, such *de facto* constituting finality *in perpetuum*, upon which finality Birnbaum exercises his statutory Right for determination de novo.

V.
FACTS

On or about July 10, 2022, ROBERT O. DOW forcibly entered and detained upon Birnbaum's 150 acre property, such at 540 Van Zandt County Road 2916, in Van Zandt County, Texas. Such by skid steer bulldozer, tearing up internal fences, gates, pasture, and shrubbery.

Next, soon thereafter, Dow filed trespass to try title against Birnbaum in the 294th District Court of Van Zandt County, Texas, claiming superior title, and wanting Birnbaum off the property because of Dow purportedly having a chain of deeds onto him.

Finally, after a seven page docket sheet court battle in the 294th, and after an over a full year court papers battle, Dow and his lawyers on **8-17-2023** sprang a trap they had laid way back on **10-20-2022** of a fraudulent proposed Order on their fraudulent motion for summary judgment, on their fraudulent lawsuit.

And thus, on **September 21, 2023**, ROBERT O. DOW and his lawyers, under color of due process, and under color of tenant eviction, forcibly stole Birnbaum's homestead, such by eight (8) armed officers, including Van Zandt County Sheriff Joe Carter himself. (Exhibits 1-4)

Such by Dow and his lawyers by succeeding in duping 294th District Court Hon. Chris Martin into the following, all inconsistent with due process, and **VOID** *ab initio*¹ and *ad eternam*. (from the start and forever):

¹ Black's Law Dictionary, Sixth Edition, p. 1574:

Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at **any time** and at **any place directly or collaterally**. (emphasis added)

- Dow and his lawyers succeeded in getting Hon. Martin to do eviction (Exhibit 3). Eviction in Texas ONLY by the JP court of the precinct². Property Code 24.004
- Dow and his lawyers succeeded in getting Hon. Martin to deem Birnbaum, a then 86 year old in his own 42 year homestead, to be a tenant. Birnbaum was entitled to a trial³, indeed a jury trial⁴, upon this issue of fact. Birnbaum was in fact the long time owner by deed from Gwendolyn Wright Thibodeaux (Exhibit 9), and even if had not been so, simply by long time open possession⁵.

² CPRC Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. A justice court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

³ Texas Bill of Rights Sec. 15. RIGHT OF TRIAL BY JURY. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as maybe needed to regulate the same, and to maintain its purity and efficiency. Provided, that the Legislature may provide for the temporary commitment, for observation and/or treatment, of mentally ill persons not charged with a criminal offense, for a period of time not to exceed ninety (90) days, by order of the County Court without the necessity of a trial by jury. (Feb. 15, 1876. Amended Aug. 24, 1935.)

⁴ Texas Constitution. Sec. 10. TRIAL BY JURY IN CIVIL CASES. In the trial of all causes in the district courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature. (Feb. 15, 1876)

⁵ CPRC Sec. 16.030. TITLE THROUGH ADVERSE POSSESSION. (a) If an action for the recovery of real property is barred under this chapter, the person who holds the property in peaceable and adverse possession has full title, precluding all claims. Sec. 16.026. ADVERSE POSSESSION: 10-YEAR LIMITATIONS PERIOD. (a) A person must bring suit not later than 10 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

- Dow and his lawyers succeeded in getting Hon. Martin to do “**the action of ejectment**”, upon “paramount title”, i.e. a determination solely upon chain of title, and “ejectmenting” the holder of the supposedly inferior title. This common law “action of ejectment”, is by specific statute, forbidden in Texas⁶ . Dow did not even have a chain of deeds to show, transfer of title in Texas solely by deed.
- Dow and his lawyers succeeded in getting Hon. Martin to seize 150 acres as part of Martin’s “tenant eviction” (Exhibit 3). In Texas repossession of real property, i.e. land, only upon there having been dispossession of prior possession – and only by a JP court.
- Dow and his lawyers succeeded in getting Hon. Martin to dispossess Birnbaum solely upon Martin’s own opinion: “*is of the opinion* - - GRANTED *in all things*” - - as by Hon. Martin’s Order on Motion for Summary Judgment . What about Defendant Birnbaum’s absolute right to a trial, for opinion of the jury?
- Dow and his lawyers succeeded in getting Hon. Martin to not let Birnbaum have his absolute right to a jury trial, the jury fee having been paid long ago.

VI. **COUNT 1**

As detailed above, Dow’s actions was forcible entry and detainer by indeed home invasion upon Birnbaum, an elderly long time homesteader. Birnbaum is entitled to immediate relief. Birnbaum demands a jury trial.

⁶ CPRC 22.001. TRESPASS TO TRY TITLE. (a) A trespass to try title action is the method of determining title to lands, tenements, or other real property. **(b) The action of ejectment is not available in this state.** (emphasis added)

SUMMARY

Hon. Chris Martin's actions and conduct is inconsistent with due process and everything by the 294th District Court is void *ab initio* and *ad eternam*. (from the start and forever)

In Texas possession is solely upon prior possession and/or dis-possession, and only by the JP Justice Court of the precinct, that is the law, and only upon due process. Anything else is by definition "inconsistent with due process" - - and void:

Black's Law Dictionary, Sixth Edition, p. 1574:

Void judgment. One which has **no legal force or effect**, invalidity of which may be asserted **by any person** whose rights are affected at **any time** and at **any place directly or collaterally**. Reynolds v. Volunteer State Life Ins. Co., Tex.Civ.App., 80 S.W.2d 1087, 1092. One which from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. **Judgment is a "void judgment"** if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner **inconsistent with due process**. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.

PRAYER

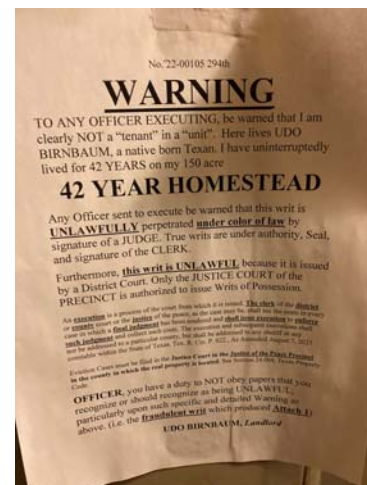
Plaintiff / Appellant UDO BIRNBAUM, as Petitioner of this complaint of forcible entry and detainer upon his 150 acre homestead, prays that this honorable Court at Law, upon determination de novo, evict Robert O. Dow, and for such damages and other relief as he may show himself to be justly entitled. Birnbaum demands a jury trial.

UDO BIRNBAUM, *Pro Se*
119 AN County Road 2501
Tennessee Colony, Texas 75861
903-922-5996
BRNBM@AOL.COM

Exhibit 01 - - THE FORCIBLE ENTRY AND DETAINER

By Robert O. Dow's lawyers duping Judge Chris Martin to seize Birnbaum's 150 acres and depriving Birnbaum of his Right to a trial.

EIGHT (8) armed officers, plus Sheriff Carter, that indeed makes it a "forcible entry and detainer" by Dow - - indeed a HOME INVASION.



Sampling of my "STUFF" – including my mother's, and now MY wheelchair

18 U.S.C. § 242 “under color of law”
150 acre land theft
County Dumpsters - “hide it quick”



“Under color of tenant eviction” - theft of 150 acre homestead.

ROBERT O. DOW and his lawyer henchmen succeeded in fooling Judge Chris Martin and Sheriff Joe Carter to do an eviction for them. (and steal them a 150 acres throw the baby out with the bathwater).

Eviction Cases must be filed in the **Justice Court in the Justice of the Peace Precinct in the county in which the real property is located.** See Section 24.004, Texas Property Code.

And in the JP court, ONLY upon right to a jury trial, such even on a traffic ticket. Something really STINKS

Exhibit 03 - - a "forcible entry and detainer" - - indeed an armed HOME INVASION - - a staged physical confrontation. Details below.

WARNING

A Writ of Possession has been issued by 294th
Judicial District Court of Van Zandt County,
Case No. 22-00105

All tenants and their personal property should be
removed from 540 Van Zandt County Road
2916, Eustace, Texas 75124 by

SEPTEMBER 07, 2023 at
9:00AM

Tenants and personal property remaining on the
premises after that date and time will be subject to
removal. The unit will be turned over to:

CSD Van Zandt, LLC

Van Zandt County Sheriffs Office
Posted by S.D. Henson

05 Day of September, 2023 at 2:54 pm

Exhibit 03 - - - "tenant" eviction by the 294th District Court.
But a district court cannot do eviction. It was by ROBERT O.
DOW and his lawyers having succeeded in duping Judge
Chris Martin into doing this. That makes it a "forcible entry
and detainer" by Dow - - indeed a HOME INVASION.

Exhibit 04 - - self explanatory - - this "eviction" by what turned out to be 8 armed officers was a setup for a mob event. NO other explanation fits. This document left posted onto front door.

WARNING

TO ANY OFFICER EXECUTING, be warned that I am clearly NOT a "tenant" in a "unit". Here lives UDO BIRNBAUM, a native born Texan. I have uninterruptedly lived for 42 YEARS on my 150 acre

42 YEAR HOMESTEAD

Any Officer sent to execute be warned that this writ is **UNLAWFULLY** perpetrated **under color of law** by signature of a JUDGE. True writs are under authority, Seal, and signature of the CLERK.

Furthermore, **this writ is UNLAWFUL** because it is issued by a District Court. Only the JUSTICE COURT of the PRECINCT is authorized to issue Writs of Possession.

An **execution** is a process of the court from which it is issued. **The clerk** of the **district** or **county** court or the **justice** of the peace, as the case may be, shall tax the costs in every case in which a **final judgment** has been rendered and **shall issue execution to enforce such judgment** and collect such costs. The execution and subsequent executions shall not be addressed to a particular county, but shall be addressed to any sheriff or any constable within the State of Texas. Tex. R. Civ. P. 622 , As Amended August 7, 2023

Eviction Cases must be filed in the Justice Court in the **Justice of the Peace Precinct in the county in which the real property is located**. See Section 24.004, Texas Property Code.

OFFICER, you have a duty to NOT obey papers that you recognize or should recognize as being UNLAWFUL, particularly upon such specific and detailed Warning as above. (i.e. the **fraudulent writ** which produced **Attach 1**)

UDO BIRNBAUM, *Landlord*

No. _____
UDO BIRNBAUM \$ IN THE JUSTICE COURT
Plaintiff
v. \$ PRECINCT 2
ROBERT O. DOW \$ VAN ZANDT COUNTY, TX
Defendant

FIRST AMENDED ORIGINAL PETITION

Comes now Plaintiff, UDO BIRNBAUM ("Birnbaum"), complaining of ROBERT O. DOW ("Dow"), of forcible entry and detainer, such upon Plaintiff's 42 year 150 acre homestead ("the premises") at 540 VZ County Road 2916, in Precinct 2 of Van Zandt County, and dispossessing him.

Plaintiff **UDO BIRNBAUM**, of residence of the premises, may be served at 119 An County Road 2501, Tennessee Colony, TX 75861, a temporary refuge, also BRNBM@AOL.COM and 903-922-5996.

Defendant **ROBERT O. DOW** may be cited at the premises at issue at which he is unlawfully detaining. (i.e. 540 VZ County Road 2916).

1. On or about **June 24, 2022** Defendant unlawfully and forcibly entered and detained upon Plaintiff's 150 acre 42 year homestead premises:

- By skid steer dozer tearing up internal fences, gates, corral, pasture
- By lock and chain locking out Plaintiff's pasture lessee from access to his cows, and ultimately running him off
- Defendant cutting Plaintiff's lock and chain and No Trespass signs
- Defendant attempting to tow off Plaintiff's car, which Plaintiff had parked behind his pasture gate, to physically block entry and exit

2. On or about **August 24, 2023** Defendant trespassed by heavy equipment upon the premises, such by unlawful civil standby, i.e. by bringing an armed public peace officer, such without a court warrant.

3. On or about September 21, 2023 Defendant unlawfully and forcibly ejectmented Plaintiff, having under color of tenant eviction, caused the 294th District Court to do “the action of ejectment”. Property Code 22.001(b): “The action of ejectment is not available in this state”.

4. Plaintiff had by this time fled the premises for his own safety and has not been back since.

PRAYER

Plaintiff prays for judicial notice, judgment of possession, writ of possession, and such other relief as the trial may show to be necessary, such trial to be by jury, the jury fee already having been tendered.

September 13, 2024

Udo Birnbaum

UDO BIRNBAUM

119 An County Road 2501

Tennessee Colony, TX 75861

903-922-5996

BRNBM@AOL.COM

attach:

“A” Notice to Vacate

“B” Signed CMRR Green Card

“C” Current Pasture lease

“D” Evidence of long term pasture lease

“E” Check \$176 – filing, jury, citation

“F” The Pitfalls of Buying Occupied Land – good law context

“G” Edom Corner vs It’s the Berryis – the district court has NO jurisdiction over eviction – THE LAW – this instruction to then 294th District Court JUDGE TERESA DRUM in 2008

Exhibit 06 - - The JP2 Justice Court holds a very long and very detailed hearing - - then hands back Mr. Birnbaum's filing fee check - - - promises to put something down upon paper - - but never does. THIS CAUSE DOES NOT EVEN HAVE A CAUSE NUMBER.

JUDGE DON ASHLOCK

JUSTICE OF THE PEACE, PRECINCT 2

VAN ZANDT COUNTY COURTHOUSE ANNEX

250 E GROVES ST., SUITE 102 * CANTON, TEXAS 75103

OFFICE: (903) 567-6569 FAX: (903) 567-4699

www.vanzandtcounty.org

Udo Birnbaum
119 AN Conty Road 2501
Tennessee Colony, TX 75861

Mr. Udo Birnbaum,

There has been a Show Cause Hearing set for **September 19, 2024, at 2:00 PM**. Please show up at 250 E. Groves St. Suite 102, Canton, TX. 75103. You are requested to be present at hearing or the Case could be Dismissed.

Thanks,



Court Clerk
PCT.2
Van Zandt County, Texas

Exhibit 07 - - NOTICE TO VACATE PREMISES

August 15, 2024

Robert O. Dow and Occupant(s) of the Property
6115 Owens St #201
Dallas, TX 75235

Delivered Via: CMRRR 9589 0710 5270 1308 9477 59

Re: Notice to Vacate Property at 540 VZ County Road 2916 Eustace, TX 75124

Dear Mr. Dow and any other Occupants of the above referenced Property:

NOTICE TO VACATE PREMISES

TO: ROBERT O. DOW AND ANY PARTIES IN POSSESSION OF THE REAL PROPERTY COMMONLY KNOWN AS 540 VZ COUNTY ROAD 2916 EUSTACE, TX 75124 (the "Premises").

YOU ARE HEREBY NOTIFIED:

Notice is hereby given and demand is hereby made that you vacate the Premises by the 3rd day after the date of receipt of this notice. Specifically, you are demanded to vacate the Premises you currently occupy. This notice is given and demand is made as provided in sections 24.005 and 91.001 of the Texas Property Code.

If you do not vacate the premises before the 3rd day after the date of receipt of this notice, I will institute a forcible entry and detainer suit against you. You are advised that, in addition to the other remedies, a judgment may be entered against you, including attorney fees and costs of suit, as provided in section 24.006 of the Texas Property Code. You are also advised that unless you vacate the premises within this period, I intend to pursue any and all legal remedies I may have against you in a court of appropriate jurisdiction.

YOU ARE REQUIRED, BEFORE THE 3RD DAY AFTER YOUR RECEIPT OF THIS NOTICE, TO VACATE AND DELIVER UP POSSESSION OF THE PREMISES TO ME, THE UNDERSIGNED, OR I WILL PROMPTLY BEGIN LEGAL PROCEEDINGS FOR POSSESSION OF THE PREMISES.

Dated: August 15, 2024



UDO BIRNBAUM

119 An County Road 2501

Tennessee Colony, TX 75861

(903) 922-5996

BRNBM@AOL.COM

3

Exhibit 08 - - RETURNED CMRR GREEN CARD

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: Robert O. Dow 6115 Owens St # 201 Dallas, TX 75235		B. Received by (Printed Name) <u>R. Dow</u> C. Date of Delivery	
2. Article Number (Transfer from service label) 9589 0710 5270 1308 9477 59		D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below:	
3. Service Type ☐ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☐ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery ☐ Signature Confirmation Restricted Delivery ☐ Collect on Delivery Restricted Delivery		restricted Delivery	

9590 9402 8400 3156 3388 05

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

9589 0710 5270 1308 9477 59

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

Dallas, TX 75235

Certified Mail Fee	\$4.85	0861 10 Postmark Here 08/15/2024
Extra Services & Fees (check box, add amount if appropriate)	\$4.10	
☐ Return Receipt (hardcopy)	\$0.00	
☐ Return Receipt (electronic)	\$0.00	
☐ Certified Mail Restricted Delivery	\$0.00	
☐ Adult Signature Required	\$0.00	
☐ Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.73	
Total Postage and Fees	\$9.68	
Sent To: <u>Robert O. Dow</u> Street and Apt. No. or PO Box No. <u>6115 Owens St #201</u> City, State, ZIP+4® <u>Dallas, TX 75235</u>		

PS Form 3800, January 2023 PSN 7520-02-000-0047 See Reverse for Instructions

WARRANTY DEED

THE STATE OF TEXAS
COUNTY OF VAN ZANDT

That I GWENDOLYN WRIGHT THIBODEAUX, of the County of Van Zandt and State of Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration to me in hand paid by UDO BIRNBAUM, as follows:

\$10.00 cash in hand paid, and other good and valuable consideration this day paid to me all in cash by the said Udo Birnbaum, the receipt and sufficiency of which is hereby acknowledged and confessed,

have GRANTED, SOLD and CONVEYED, and by these presents do GRANT, SELL and CONVEY, onto the said UDO BIRNBAUM, of the County of Van Zandt and State of Texas, all those tracts and parcels of land, totaling more or less 170 acres, described as follows, to-wit:

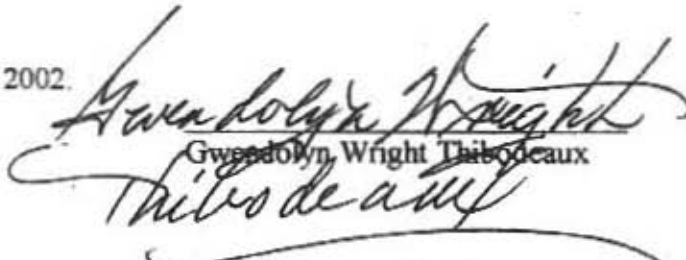
Property No. 1: That tract or parcels of land, being more or less 150 acres, more fully described in Deed of Records, Vol. 964, page 447.

Property No. 2: That tract or parcels of land, being more or less 18 acres, more fully described in Deed of Records, Vol. 997, page 807.

Property No. 3: That tract or parcels of land, being more or less 4.5 acres, more fully described in Deed of Records, Vol. 1037, page 321.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said UDO BIRNBAUM, his heirs and assigns forever, and I do hereby bind ourselves, and our heirs, executors and administrators, to Warranty and Forever Defend, all and singular the said premises unto the said UDO BIRNBAUM, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

EXECUTED this the 24th day of April, 2002.


Gwendolyn Wright Thibodeaux

THE STATE OF TEXAS
COUNTY OF VAN ZANDT

This instrument was acknowledged before me on this 29th day of April, 2002, by
GWENDOLYN WRIGHT THIBODEAUX.




Notary Public, State of Texas