

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION §
OF PETER KOSTYSHYN FOR A WRIT § No. 365, 2013
OF MANDAMUS §

Submitted: August 26, 2013
Decided: September 10, 2013

Before **BERGER, JACOBS, and RIDGELY**, Justices.

ORDER

This 10th day of September 2013, upon consideration of the petition of Peter Kostyshyn for an extraordinary writ of mandamus, the City of Wilmington’s response thereto, as well as Kostyshyn’s “objection” to the City’s response,¹ it appears to the Court that:

(1) The petitioner, Peter Kostyshyn, seeks to invoke the original jurisdiction of this Court, pursuant to Supreme Court Rule 43, to issue a writ of mandamus directed to the Superior Court. Among other things, Kostyshyn requests monition hearings before the Superior Court and also seeks a stay of all sheriff’s sales scheduled on properties held jointly by him and other family members. The City of Wilmington has filed a motion to dismiss Kostyshyn’s petition on the ground that there is no showing that the Superior Court has

¹ Supreme Court Rule 43(b) does not permit a reply to an answer to a petition for an extraordinary writ unless requested by the Court. We did not request a reply in this case. Nonetheless, we have chosen not to strike the reply and instead consider it in conjunction with the writ and the answer.

arbitrarily failed or refused to perform its duty in Kostyshyn's case or that Kostyshyn lacks any other adequate legal remedy.

(2) We agree with the City's position. A writ of mandamus will only be issued if the complainant can show that: he has a clear right to the performance of a duty; that no other adequate remedy is available; and that the trial court has arbitrarily failed or refused to perform its duty.² In this case, Kostyshyn has failed to establish that he has a clear right to the relief he has requested. As the City points out, Kostyshyn filed a motion to stay the sheriff's sales in the Superior Court and a hearing was held by a Superior Court Commissioner on August 8, 2013. The motion to stay was denied. To the extent Kostyshyn seeks review of the Commissioner's order, his remedy was to seek review by a judge of the Superior Court. The extraordinary writ process may not be used as a substitute for other legal remedies providing for further review.³

(3) We note that the Court recently dismissed Kostyshyn's appeal from the Commissioner's rulings for lack of jurisdiction.⁴ In that order, we reiterated our previous finding that Kostyshyn has sufficient financial means to pay the

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *See Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁴ *See Kostyshyn v. City of Wilmington*, No. 421, 2013, Ridgley, J. (Del. Aug. 29, 2013).

required court filing fees. Accordingly, the Clerk of the Court is instructed not to accept any further appeals or writs from Kostyshyn unless the filing is accompanied by the required filing fee.

NOW, THEREFORE, IT IS ORDERED that the petition for the issuance of a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice