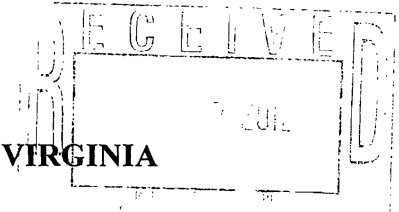


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO.: 12-0546



**Cavalry SPV I, LLC; Cavalry SPV II, LLC, and  
Cavalry Investments, LLC,**

PLEADING FILED  
WITH MOTION

**Defendants Below, Petitioners**

v.

**Civil Action No.: 10-C-994  
Kanawha County Circuit Court**

**Darrell V. McGraw, Attorney General,**

**Plaintiff Below, Respondent**

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**PETITIONER CAVALRY SPV I, LLC's; CAVALRY SPV II, LLC's; CAVALRY  
INVESTMENTS, LLC's; and CAVALRY PORTFOLIO SERVICES, LLC'S  
REPLY BRIEF**

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**ARGUMENT**

The points of disagreement between the parties have been thoroughly briefed, and Petitioners will not tax judicial resources by restating them here. They would simply note that, throughout his brief the Attorney General ignores the fact that the fatal flaw in the temporary injunctive relief issued by the Circuit Court is that it grants part of the final relief requested before a determination of the merits of the case has been reached. While he repeatedly asserts that the order does not destroy the status quo or permanently deprive the Petitioners of their rights to real property, he never addresses how causing liens to be dissolved does not work such deprivation. As discussed in Petitioners brief, it does. With liens dissolved, debtors can freely transfer property, thereby permanently depriving Petitioners of their rights thereto, and even where the property remains in the debtor's hands, Petitioner's priority therein has been lost. Such relief would be appropriate if and when the Circuit Court were ever to make a final

determination on the merits that the liens had been illegitimate. It is not appropriate before such time, especially where, as here, that relief works an irreparable harm.

While the Attorney General correctly notes, and Petitioners freely acknowledged in their brief, that the standard for issuing temporary relief is lower under West Virginia Code § 46A-7-110, there is nothing in that statute that would allow a court to award final relief before a determination on the merits, and nothing in this Court's decision in State ex rel McGraw v. Imperial Marketing, 196 W.Va. 346, 472 S.E.2d (1996) to suggest that the Attorney General is somehow entitled to an injunction that would violate such a settled tenant of injunctive relief. Indeed, there could not be, since awarding final relief before a determination on the merits would violate a defendant's right to due process of law.

The fact that Petitioners have insisted on their due process rights by resisting the order to dissolve their judgment liens cannot bar them from relief under the doctrine of unclean hands. Their conduct has not been fraudulent, malicious or born of bad faith. . See 4 A.L.R. 44, He Who Comes in Equity Must Come With Unclean Hands (noting that the doctrine applies to "reprehensible" conduct); Hale v. Hale, 62 W.Va. 609, 59 S.E.1056 (1907) (refusing to apply the doctrine in absence of fraud). Indeed, their compliance with all other portions of the Order despite their vehement disagreement therewith evinces their good faith. The only portion with which they have not complied is that which would permanently deprive them of property rights. Such conduct hardly merits the invocation of the doctrine of unclean hands. Nor, even if it did, could that doctrine trump the constitutional right to due process of law.

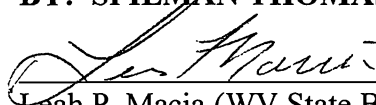
### CONCLUSION

Wherefore, Petitioners respectfully request this Honorable Court reverse the Circuit Court's denial of Petitioners' Motion to Dissolve or in the Alternative Modify Temporary

Injunctive Relief and order that the Temporary Injunction be dissolved, or in the alternative, modified as described above.

**CAVALRY SPV I, LLC; CAVALRY SPV II, LLC; and  
CAVALRY INVESTMENTS, LLC**

**BY: SPILMAN THOMAS & BATTLE, PLLC**



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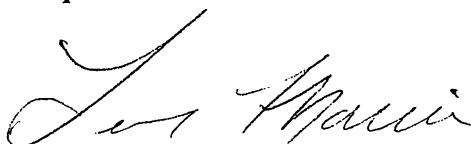
Darrell V. McGraw, Attorney General,

Plaintiff Below, Respondent

**CERTIFICATE OF SERVICE**

I, Leah P. Macia, hereby certify that service of the foregoing *Petitioners SPV I, LLC's; Cavalry SPV II, LLC's and Cavalry Investments, LLC's Reply Brief*, has been made via U.S. Mail, on this 17<sup>th</sup> day of October, 2012, addressed as follows:

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