

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED-1
2017 APR 12 PM 3:06
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.
MURPHY BROWN, CLERK
2017CH05276
CALENDAR/ROOM 16
TIME 00:00
Injunction

PEOPLE OF THE STATE OF ILLINOIS,)
by Kimberly M. Foxx, State's Attorney of)
Cook County,)
)
Plaintiff,)
)
v.)
)
ROGER AGPAWA, in his official)
capacity as Mayor of the City of Markham,)
)
Defendant.)

**COMPLAINT FOR QUO WARRANTO, DECLARATORY JUDGMENT,
AND INJUNCTIVE RELIEF**

The PEOPLE OF THE STATE OF ILLINOIS ("People"), by KIMBERLY M. FOXX, State's Attorney of Cook County ("State's Attorney"), through Jill V. Ferrara and Hailey M. Golds, Assistant State's Attorneys, hereby complain against Defendant, ROGER AGPAWA, as follows:

PARTIES

1. KIMBERLY FOXX is the duly elected State's Attorney of Cook County, Illinois, and is authorized to bring this action in the name of the People of the State of Illinois pursuant to 735 ILCS 5/18-102.
2. Defendant is ROGER AGPAWA who was elected to the office of Mayor for the City of Markham on April 4, 2017.

VENUE

3. Venue is appropriate in the Circuit Court of Cook County because Defendant resides in Cook County and the elected office that he holds is also located in Cook County. 735 ILCS 5/2-101.

FACTS

4. On August 30, 1999, Defendant ROGER AGPAWA was convicted in federal court of felony mail fraud. He was sentenced to thirty-six months probation, required to perform two hundred (200) hours of community service, and ordered to make restitution. *See* Exhibit A, Certified Copy of Conviction for Roger Agpawa.

5. Defendant ROGER AGPAWA has completed his sentence.

6. Defendant ROGER AGPAWA has not been pardoned by the United State President for the mail fraud conviction.

7. On April 4, 2017, Defendant ROGER AGPAWA was elected to a term as the Mayor of the City of Markham.

8. The City of Markham is incorporated under the Illinois Municipal Code, 65 ILCS 5/2 *et seq.*, and its mayor is elected pursuant to 65 ILCS 5/5-2-1, "Election of Officers."

ILLINOIS STATUTORY AUTHORITY

9. The Illinois Municipal Code, 65 ILCS 5/3.1-10.5(b), provides that a person is not eligible to take the oath of office for a municipal office if that person has been convicted of any felony.

10. The Illinois Election Code provides that "[t]he [Election Code] is the general election law of Illinois and any reference in any other Act to 'the general election law' or 'the general election law of this State' is a reference to this Act, as now or hereafter amended." 10 ILCS 5/1-1.

11. Section 5/29-15 of the Election Code prohibits any person convicted of an infamous crime from "holding any office of honor, trust, or profit, unless such person is again restored to such right by the terms of a pardon for the offense or otherwise according to law." 10 ILCS 5/29-15.

12. In Illinois, an infamous crime is one that violates commonly accepted principles of honesty and decency, or involves moral turpitude. Mail fraud has historically been deemed an infamous crime. *See People ex rel. Symonds v. Gualano*, 97 Ill. App. 2d 248, 255 (1968).

13. Thus, under both the Illinois Municipal Code, precluding felons from taking the oath of office, and the Illinois Election Code, precluding those convicted of infamous crimes from holding office, Defendant Roger Agpawa is not eligible to take the oath of office or serve as Mayor of the City of Markham.

COUNT I: QUO WARRANTO

14. Paragraphs 1 through 13 are incorporated by reference in this Count.

15. Article XVIII of Illinois Code of Civil Procedure authorizes the PEOPLE OF THE STATE OF ILLINOIS, by Kimberly M. Foxx, State's Attorney, to bring a *quo warranto* action when:

Any person usurps, intrudes into, or unlawfully holds or executes any office, or franchise, or any office in any corporation created by authority of this State.

735 ILCS 5/18-101(1).

16. Defendant ROGER AGPAWA's mail fraud conviction constitutes a felony and an infamous crime.

17. Defendant ROGER AGPAWA has not been pardoned from the conviction or restored to the right to hold office in any other manner according to law.

18. The *Quo Warranto* statute by this Complaint permits the PEOPLE OF THE STATE OF ILLINOIS, by Kimberly M. Foxx, State's Attorney, "to call upon the defendant to show by what warrant he" seeks to exercise the right to hold the office of Mayor of the City of Markham. *See 735 ILCS 5/18-103.*

COUNT II: DECLARATORY JUDGMENT

19. Paragraphs 1 through 13 are incorporated by reference in this Count.

20. The PEOPLE OF THE STATE OF ILLINOIS, by Kimberly M. Foxx, State's Attorney, seek a declaratory judgment that Defendant ROGER AGPAWA is not eligible to hold the office of Mayor of the City of Markham due to his prior felony conviction, and seek such other relief as the court deems just.

COUNT III: INJUNCTION

21. Paragraphs 1 through 13 are incorporated by reference in this Count.

22. Monetary damages are an insufficient remedy for the PEOPLE OF THE STATE OF ILLINOIS if Defendant ROGER AGPAWA is allowed to hold the office of Mayor of the City of Markham.

23. The PEOPLE OF THE STATE OF ILLINOIS will suffer irreparable harm absent an injunction.

24. The PEOPLE OF THE STATE OF ILLINOIS, by Kimberly M. Foxx, State's Attorney, seek an order enjoining Defendant ROGER AGPAWA from taking the oath of office of Mayor of the City of Markham, and seek such other relief as the court deems just.

WHEREFORE, the People respectfully request that this Court, pursuant to 735 ILCS 5/18-101(1), require Defendant ROGER AGPAWA to show by what authority he seeks to hold the office of Mayor of the City of Markham. Should Defendant ROGER AGPAWA be unable to do so, the People respectfully request that this Court enter a judgment barring Defendant ROGER AGPAWA from taking the oath and holding the office of Mayor of the City of Markham pursuant to 735 ILCS 5/18-103, together with such other and further relief as this Court deems appropriate.

Respectfully submitted,

KIMBERLY M. FOXX
State's Attorney of Cook County

By: Jill V. Ferrara
Jill V. Ferrara, an attorney for the
People of the State of Illinois

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