

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION**

NIKOLAY IZMERLI,
Petitioner,

CASE NO.: 22-CA-8917

v.

The honorable CINDY STUART,
in her official capacity as the CLERK
OF THE CIRCUIT COURT
OF HILLSBOROUGH COUNTY,
Respondent.

DIVISION: F

_____ /

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

THIS CAUSE is before the Court on Petitioner Nikolay Izmerli’s Petition for Writ of Mandamus (hereinafter the “Petition”), filed on October 24, 2022, seeking a writ to compel Cindy Stuart, Clerk of the Circuit Court of Hillsborough County (hereinafter, “the Clerk”), to transfer a lien from real property to other security and record a certificate showing the transfer of the lien to the security in the court registry in accordance with section 55.10(5), Florida Statutes. The Court denies the Petition because Petitioner has not demonstrated a clear legal right to the requested relief. Mandamus is unavailable to compel the Clerk to make and record a certificate showing the transfer of the lien where the amount required to do so under section 55.10(5), Florida Statutes, was not deposited into the court registry.

FACTS AND PROCEDURAL HISTORY

On August 4, 2022, a final judgment was entered against Petitioner in the amount of \$25,954.30 as principal and \$1,232.30 in interest in *U.S.A. Motors Group, LLC v. Nikolay Izmerli*, Case No. 21-CC-077189, in which Petitioner is the defendant and judgment debtor. Petitioner

appealed this judgment to the Second District Court of Appeal on September 2, 2022.

On August 31, 2022, Petitioner asked the Clerk to calculate the amount of money required to be submitted into the court registry to transfer the judgment lien pursuant to section 55.10(5), Florida Statutes. The Clerk provided Petitioner with a Computation Form for Transfer of Judgment F.S. 55.10, which indicated that Petitioner was required to deposit \$31,736.85¹ into the court registry to transfer the judgment lien.

On September 14, 2022, the Clerk calculated the amount to satisfy the judgment as \$27,334.80, plus costs, and the escrow agent for Petitioner, Peer Title Inc., deposited \$27,334.80 into the court registry on the same day. The Clerk then filed a satisfaction of judgment. On September 15, 2022, Plaintiff filed an emergency motion in *U.S.A. Motors* for an Order Directing Clerk to Prepare and Record Certificate of Transfer of Lien. U.S.A. Motors Group LLC filed a Motion to Disburse Funds Held in Registry on September 16, 2022. A hearing was held on these motions on December 14, 2022, but the Court has not yet entered an order.

STANDARD OF REVIEW

Mandamus lies to compel a public official to perform a ministerial duty. *See Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000). (citing *Smith v. State*, 696 So. 2d 814 (Fla. 2d DCA 1997)). Before a court may issue the writ, a petitioner must first establish that he has a clear legal right to the performance of the requested act, that the public official has an indisputable legal duty to act, and that the petitioner has no other adequate remedy at law. *See Smith v. State*, 696 So. 2d 814, 815 (Fla. 2d DCA 1997). If a petition for writ of mandamus is not facially sufficient, a court may dismiss it. *See Radford v. Brock*, 914 So. 2d 1066, 1067 (Fla. 2d DCA 2005).

DISCUSSION

¹ The computation form calculated that amount to be \$31,736.5456, which is properly rounded up to \$31, 736.85.

In the performance of her duties as the court's record keeper, the clerk is a ministerial officer of the court devoid of discretion. *Phillips v. Pritchett Trucking, Inc.*, 328 So. 3d 380, 382 (Fla. 1st DCA 2021) (citing *Times Publ'g Co. v. Ake*, 645 So. 2d 1003, 1005 (Fla. 2d DCA 1994)). Accordingly, mandamus is appropriate when the Clerk fails to carry out her statutory duties. Petitioner claims that the Clerk violated her duties by failing to make and record a certificate of transfer of a judgment lien, pursuant to section 55.10(5), Florida Statutes. Instead, she satisfied the judgment while the judgment was being appealed. Under section 55.10(5), a judgment lien may be transferred from real property to other security by either depositing in the clerk's office a sum of money or filing in the clerk's office a bond executed as surety by a surety insurer. Section 55.10(5) further provides that

[s]uch a deposit or bond shall be made in an amount *equal to the amount demanded in such claim of lien plus interest thereon at the legal rate for 3 years plus \$500* to apply on any court costs which may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment, order, or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded and costs plus \$500 for court costs. *Upon such a deposit being made or such bond being filed, the clerk shall make and record a certificate showing the transfer of the lien...*"

§55.10(5), Fla. Stat. (emphasis added).

A review of the appendix shows that Petitioner was required to deposit \$31,736.85 into the court registry to transfer the judgment lien (Izmerli Ex. 2). However, Peer Title Inc., Petitioner's escrow agent, deposited \$27,334.80 into the court registry, which was the amount required to satisfy the judgment. (Izmerli Ex. 7). Petitioner has not asserted that he deposited an amount equal to the amount required to transfer the judgment lien. Under section 55.10(5), the Clerk has a ministerial duty to record a certificate showing the transfer of the lien only "upon such a deposit being made." Because Petitioner has not shown that he deposited an amount equal to the amount required to transfer the judgment lien, he has failed to establish that he has a clear legal right to

have the Clerk make and record a certificate showing the transfer of the lien under section 55.10(5).

Petitioner also argues that by refusing to correct the record by recording the certificate showing the transfer of the lien, the clerk violated her ministerial duty to correct imperfectly or erroneously recorded records under section 695.12, Florida Statutes. Section 695.12 provides that the Clerk shall record any instrument anew “[w]henver any instrument authorized or required by law to be recorded...either has been or may be so imperfectly or erroneously recorded as to require a new record.” As stated before, the clerk was not required by law to record a certificate showing the transfer of the lien because Petitioner failed to tender the amount required. Accordingly, Petitioner does not have a clear legal right to an error correction.

Petitioner’s request for declaratory relief fails for the same reason. Petitioner is not entitled to have a certificate showing transfer of the lien from the real property to the security in the court registry because he has not shown that he deposited the amount necessary to transfer the judgment. By failing to do so, Petitioner failed to meet the condition precedent of the statute and thus, he cannot state a cause of action. Accordingly, Petitioner’s request for declaratory relief is hereby **DISMISSED with prejudice.**

It is therefore **ORDERED AND ADJUDGED** that the Petition for Writ of Mandamus is hereby **DENIED** in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge’s signature.

Electronically Conformed 2/13/2023
Jennifer Gabbard

JENNIFER GABBARD, Circuit Judge

Electronic copy provided through JAWS