

As a research aid for those who might benefit from the employment of the "clean hands" defense in a judicial foreclosure, folks might want to read the cited text and the underlying cases shown below. Each of these cases is available for FREE viewing at the LexisOne website:

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"However, in order to invoke the equitable doctrine of laches, "it is fundamental that he who comes into equity must come with clean hands." *Christman v. Christman* (1960), 171 Ohio St. 152, 154, 168 N.E.2d 153. This maxim "requires only that the plaintiff must not be guilty of reprehensible conduct with respect to the subject-matter of his suit." *Kinner v. Lake Shore & Michigan S. Ry. Co.* (1904), 69 Ohio St. 339, 69 N.E. 614, 1 Ohio L. Rep. 853, [*11] paragraph one of the syllabus. See, also, *Goldberger v. Bexley Properties* (1983), 5 Ohio St.3d 82, 85, 5 Ohio B. 135, 448 N.E.2d 1380; *North Coast Cookies, Inc. v. Sweet Temptations, Inc.* (1984), 16 Ohio App.3d 342, 16 Ohio B. 391, 476 N.E.2d 388, paragraph two of the syllabus (the "clean hands" doctrine concerns grossly inequitable behavior in the underlying transaction which is the subject matter of the suit); *Ohio Engineering Co. v. Hardin Quarry Co.* (Sept. 12, 1980), *Hardin App. No. 6-80-2*, 1980 Ohio App. LEXIS 11124, unreported (quoting Ohio Jur. 2d p. 148, Equity, para. 70 (a party in equity "who founds his cause upon a transaction in respect of which he is himself guilty of unconscionable conduct cannot have any relief whatsoever, for he is personally barred.")). Thus, for the doctrine of unclean hands to apply, the offending conduct must constitute reprehensible, grossly inequitable, or unconscionable conduct, rather than mere negligence, ignorance, or inappropriateness." *Wiley v. Wiley*, CASE NUMBER 9-06-34, COURT OF APPEALS OF OHIO, THIRD APPELLATE DISTRICT, MARION COUNTY, 2007 Ohio 6423; 2007 Ohio App. LEXIS 5622, December 3, 2007, Date of Judgment Entry.

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"The doctrine of unclean hands states the following: "he who seeks [*11] equity must come with clean hands.' 'Equity is based upon what is perceived as just under the circumstances of each case and, when both parties are guilty of injustice, a court of equity will leave them as they are.'" *Patterson v. Blanton* (1996), 109 Ohio App.3d 349, 354, 672 N.E.2d 208."
Nelson v. Nelson, CASE NO. 2007-G-2758, COURT OF APPEALS OF OHIO, ELEVENTH APPELLATE DISTRICT, GEAUGA COUNTY, 2007 Ohio 6246; 2007 Ohio App. LEXIS 5484, November 21, 2007, Decided.

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"The doctrine of unclean hands states the following: "[h]e who seeks equity must come with clean hands. Equity is based upon what is perceived as fair under the circumstances of each case and, when both parties are guilty of injustice, a court of equity will leave them as they [*5] are." *Patterson v. Blanton* (1996), 109 Ohio App.3d 349, 354, 672 N.E.2d 208.

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Equity requires that, whenever a party takes the initiative to set in motion the judicial machinery to obtain some remedy but has violated good faith by his or her prior-related conduct, he will be denied the remedy. *Marinero v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450. To bar a party's claims, that party must be

found to be at fault in relation to the other party and in relation to the transaction upon which the claims are based. Trott v. Trott, Franklin App. No. 01 AP-852, 2002 Ohio 1077."

Seitz v. Kozma, No. 86922 , COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY, 2006 Ohio 3591; 2006 Ohio App. LEXIS 3540, July 13, 2006, Date of Announcement of Decision.

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"The doctrine of "clean hands" is an equitable doctrine. See, generally, *Basil v. Vincello* (1990), 50 Ohio St. 3d 185, 190, 553 N.E.2d 602; *Brosky v. Brosky* (Mar. 28, 2001), 9th Dist. No. 00CA007662, 2001 Ohio App. LEXIS 1426, citing *Marinaro v. Major Indoor Soccer League* (1991), 81 Ohio App. 3d 42, 45, 610 N.E.2d 450. This doctrine prescribes that when "a party takes the initiative to set in motion the judicial machinery to obtain some remedy but has violated good faith by his prior-related conduct, the court will deny the remedy." *Marinaro*, 81 Ohio App. 3d at 45. "The maxim, 'he who comes into equity must come with clean hands,' requires only that the plaintiff must not be guilty of reprehensible conduct with respect to the subject matter of [the] suit." *Id.*" *City of Wooster v. Entm't One, Inc.*, C.A. No. 03CA0043 , COURT OF APPEALS OF OHIO, NINTH APPELLATE DISTRICT, WAYNE COUNTY, 158 Ohio App. 3d 161; 2004 Ohio 3846; 814 N.E.2d 521; 2004 Ohio App. LEXIS 3446, July 21, 2004, Decided.

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"In the context of a mortgage, the requirement that the mortgage funding check becomes paramount. "A mortgage is a security interest which rests upon the underlying debt." *Citizens Loan & Savings Co. v. Stone* (1965), 1 Ohio App.2d 551, 556, 206 N.E.2d 17; see, also, *Division of Aid for Aged, Dept. of Pub. Welfare v. Huff* (1960), 110 Ohio App. 483, 486, 168 N.E.2d 316 (stating that "[a] mortgage is a lien for a debt and something more. It is a transfer of the title as security and to be void on payment."). Thus, if the check transferring the funds that give rise to the underlying debt is dishonored, it is only logical that the mortgage likewise fails." *Lanco Title Agency v. Mortgage Plus*, Case No. 03CA6 , COURT OF APPEALS OF OHIO, FOURTH APPELLATE DISTRICT, JACKSON COUNTY, 2004 Ohio 2267; 2004 Ohio App. LEXIS 2029, April 30, 2004, Filed [A very NICE case showing correspondent relationships...]

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"It is also a fundamental rule of equity that he who seeks equity must do equity. *Id.* As explained in *Trott v. Trott* , Franklin App. No. 01AP-852, 2002 Ohio 1077: "The clean hands doctrine of equity [*6] requires that whenever a party takes the initiative to set in motion the judicial machinery to obtain some remedy but has violated good faith by his or her prior-related conduct, the court will deny the remedy. *Marinaro v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450. Thus, in order for the doctrine to bar a party's claims, the party must be found to be at fault in relation to the other party and in relation to the transaction upon which the claims are based."

Moreover, "the maxim, 'He who seeks equity must come with clean hands,' requires

only that the party must not be guilty of reprehensible conduct with respect to the subject matter of his suit." Basil v. Vincello (1990), 50 Ohio St.3d 185, 190, 553 N.E.2d 602."

Parmatown Spinal & Rehab. Ctr., Inc. v. Lewis, No. 81996 , COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY, 2003 Ohio 5069; 2003 Ohio App. LEXIS 4571, September 25, 2003, Date of Announcement of Decision.

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"The doctrine of clean hands is based on the maxim of equity that provides "he who comes into equity must come with clean hands." *Marinaro v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450."

Seminatore v. Climaco, Climaco, Lefkowitz & Garofolia Co., LPA, NO. 81568 , COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY, 2003 Ohio 3945; 2003 Ohio App. LEXIS 3513, July 24, 2003, Date of Announcement of Decision , Discretionary appeal not allowed by *Seminatore v. Climaco, Climaco, Lefkowitz & Garofoli Co.*, L.P.A., 799 N.E.2d 187, 2003 Ohio LEXIS 3240 (Ohio, Nov. 26, 2003)

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"R.C. 3105.011 states that a judge in a domestic relations action has "full equitable powers *** appropriate to the determination of all domestic relations matters." An equitable defense can be raised against a statutory remedy and, therefore, the equitable doctrine of unclean hands can be employed, where appropriate, in a divorce action. n16 Equity requires that whenever a party takes the initiative to set in motion the judicial machinery to obtain some remedy but has violated good faith by his or her prior-related conduct, he will be denied the remedy. n17 To bar a party's claims, that party must be found to be at fault in relation to the other party and in relation to the transaction [*32] upon which the claims are based. n18

----- Footnotes -----16

Safranek v. Safranek, Cuyahoga App. No. 80413, 2002 Ohio 5066.17

Marinaro v. Major Indoor Soccer League (1991), 81 Ohio App.3d 42, 45, 610 N.E.2d 450. 18

Trott v. Trott, Franklin App. No. 01 AP-852, 2002 Ohio 1077.

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"Equity refuses to lend its aid in any manner to one seeking its active interposition, who has been guilty of unlawful or inequitable conduct in the matter with relation to which he seeks relief. *** If the alleged wrongful conduct of the complainant 'appears not to have injured, damaged, or prejudiced the defendant, the maxim may not be successfully invoked.'" n19

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Shampton v. City of Springboro (Nov. 13, 2001), Warren App. No. CA2000-08-080, CA2000-09-081, 2001 Ohio App. LEXIS 5105.

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Offenberg v. Offenberg, Nos. 78885, 78886, 79425, 79426 , COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY, 2003 Ohio 269; 2003 Ohio App. LEXIS 283, January 23, 2003, Date of Announcement of Decision , Appeal after remand at *Glassman v. Offenberg*, 2006 Ohio 3837, 2006 Ohio App. LEXIS 3801 (Ohio Ct. App., Cuyahoga County, July 27, 2006).

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"Briefly stated, the clean-hands doctrine provides that a party cannot come to the court seeking equity where that party has engaged in reprehensible conduct with respect to the subject matter of the action. See *Marinaro v. Major Indoor Soccer League* (1991), 81 Ohio App.3d 42, 610 N.E.2d 450. The doctrine of "clean hands" is an equitable doctrine. See *Basil v. Vincello* (1990), 50 Ohio St.3d 185, 190, 553 N.E.2d 602; *Marinaro* at 45."

O'Brien v. Ohio State Univ., CASE NO. 2004-10230 , COURT OF CLAIMS OF OHIO, 139 Ohio Misc. 2d 36; 2006 Ohio 4346; 859 N.E.2d 607; 2006 Ohio Misc. LEXIS 129, August 2, 2006, Filed , Judgment entered by *O'Brien v. Ohio State Univ.*, 2006 Ohio 4737, 2006 Ohio Misc. LEXIS 130 (Ohio Ct. Cl., Aug. 18, 2006)

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Bear in mind that these cases were selected SOLELY because they touched upon the clean hands doctrine AND they were available for FREE at the LexisOne site, as they are less than five years old. But anyone litigating OUGHT TO BE looking for cases that are as directly ON POINT as to the facts in their case as reasonable practicable. So this is NOT intended to be anything other than a survey introduction to the topic to STIMULATE discussion and research, NOT a statement as to the law or its applicability to anyone's case!

There are no doubt excellent Ohio case digests and experienced Ohio lawyers which should be consulted in developing your litigation strategy!