

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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| CITY OF MADEIRA, | : | Case No. A1802415 |
| Plaintiff, | : | (Judge Shanahan) |
| vs. | : | <u>DECISION ON MOTION TO</u> |
| PHILIP DOUGLAS OPPENHEIMER, | : | <u>DISMISS BASED UPON THE</u> |
| Defendant. | : | <u>FILING OF THE COMPLAINT</u> |
| | | <u>WITHOUT LEGAL AUTHORITY</u> |

This case is before the Court on Defendant's Motion to Dismiss based upon the filing of the Complaint without Legal Authority. For the reasons stated herein, the Motion is granted.

Defendant argues that the Complaint was filed without the authorization of the Madeira City Council and therefore, the filing is *ultra vires*.

The City of Madeira is a municipal corporation, capable of suing and being sued. R.C. § 715.01. "All municipal corporations have the general powers mentioned in §§ 715.01 to 715.67, inclusive, of the Revised Code, and the legislative authority of such municipal corporations may provide by ordinance or resolution for the exercise and enforcement of such powers." R.C. § 715.03.

Defendant states that the only action taken by Plaintiff to authorize the filing of this lawsuit was the passage of Proclamation No. 18-01 in which the Madeira City Council proclaimed its "intention to direct Law Director Brian W. Fox to explore the filing of a civil action, pursuant to Ohio Revised Code § 2323.52, to have Mr. Philip Douglas Oppenheimer

declared a vexatious litigator.” As Proclamation No. 18-01 was not an ordinance or resolution, Defendant argues there was no authorization to file this lawsuit and the case should be dismissed.

Plaintiff responds that Proclamation 18-01 “was never intended to satisfy some procedural pre-condition to initiate the lawsuit – none was needed.” Plaintiff acknowledges that Proclamation 18-01 is no different than “declaring ‘National Payroll Week’ or acknowledging a citizen with ‘John Doe Day’.” Plaintiff contends that for at least three reasons, the motion should be denied.

First, Plaintiff argues that, pursuant to R.C. § 2323.52, the City Law Director has express statutory authority to file a vexatious litigator lawsuit without any procedural preconditions or legislative enactments.

R.C. 2323.52(B) states that:

A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

Plaintiff argues that by virtue of this statute the City Law Director had the authority to file this lawsuit on behalf of the City of Madeira. However, the Court notes, and the case law supports, that it is the City Law Director, acting in his capacity as City Law Director, that is authorized to file the suit. Here, the City Law Director filed the suit on behalf of the City of Madeira rather than in the name of the City Law Director. The Court finds that Plaintiff's

argument that the City Law Director was authorized to file the lawsuit in the name of the City of Madeira based on the authority set forth in R.C. § 2323.52(B) is unpersuasive.

Additionally, Defendant notes that “a person” may bring an action under R.C. § 2323.52(B) and that the City of Madeira, as a municipal corporation, is considered a person. However, in filing the lawsuit in its own name, the City of Madeira must be authorized by its legislative body to file the lawsuit. Defendant argues there is no evidence of that authorization.

Second, Plaintiff states that Ohio courts look to a city’s charter for authority on whether an action requires council approval and that Ohio courts have rejected the notion that city council must first pass an authorizing ordinance before a city law director can take action.

Article II of Madeira’s City Charter provides:


Under this charter the municipality shall have home rule and all the powers of local self-government and all other powers possible for it to have under the Constitution of the State of Ohio, and all powers that now are or may hereafter be granted it by the laws of Ohio....

Plaintiff notes that Article IV, Section 2 of the Charter describes the City Manager’s ability to act without the consent of City Council: “[t]he Manager shall be responsible ...for the proper administration of all the affairs of the municipality....” Plaintiff maintains that initiating a lawsuit, in light of City Council’s desire to explore filing one, falls within “the affairs of the municipality.” And, Article V, Section 3 provides that “[t]he Law Director...shall represent the municipality in all litigation to which it may be a party....” Thus, according to Plaintiff, the power vested in the City Manager to provide for the “proper administration” of the City’s affairs, coupled with the provision requiring the Law Director to represent the City in all litigation, permits the Law Director, at the City Manager’s instruction, to initiate a lawsuit under R.C. § 2323.52. Yet, Plaintiff has not shown that authorization to file the lawsuit was given by the City Manager. While Plaintiff argues that the Court can infer that the City Manager did give the

authority to initiate a lawsuit under R.C. § 2323.52, the Court will not do so when Plaintiff could have shown that the City Manager did, in fact, authorize the filing of the lawsuit but chose not to do so.

Third, Plaintiff argues that Defendant's arguments in support of his motion are contradicted by common sense and Ohio legal authorities. The Court disagrees.

The Court finds that the suit was filed without authority and should be dismissed without prejudice. The parties are directed to submit an Entry pursuant to Local Rule 17.


7/29/19
Judge Megan E. Shanahan

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ENTERED

JUL 29 2019