



D130187251

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
OCT 28 2020

CITY OF MADEIRA, :
 :
 Plaintiff, :

Case No. A1802415 :
 (Judge Shanahan) :

vs. :

PHILIP DOUGLAS OPPENHEIMER, :
 :
 Defendant. :

DECISION ON MOTION FOR
JUDGMENT ON THE PLEADINGS
OR, ALTERNATIVELY, FOR
SUMMARY JUDGMENT BASED
UPON THE COMMENCEMENT OF
THIS ACTION WITHOUT LEGAL
AUTHORITY

This case is before the Court on Defendant's Motion for Judgment on the Pleadings or, Alternatively, for Summary Judgment based upon the Commencement of this Action without Legal Authority.

Defendant concisely identifies the issue as follows: Whether, under Ohio law and the Madeira City Charter, a legal action may be commenced by and in the name of the municipal corporation upon the direction and authorization of the City Manager, as opposed to the Madeira City Council. Defendant details why, in fact, the Madeira City Council is required to direct and authorize the commencement of a legal action. Starting with Article II, Section 2 of the Madeira City Charter, Defendant submits that the City Manager did not have authority to authorize filing the within lawsuit. Article II, Section 2 of the Madeira City Charter provides:

The Manager shall be responsible to Council for the proper administration of all the affairs of the municipality and the enforcement of all its laws and ordinances, ...and to that end he shall have exclusive authority to make all appointments, suspensions, and removal of employees in the departments and offices under his control....

Defendant states that this provision is simply a general assignment of being responsible to the Madeira City Council for the administration of the municipal affairs and the enforcement of the laws and ordinances, and, "to that end", the City Manager is given authority to appoint, suspend and remove employees in the departments and offices under his control. Defendant argues that, against this general provision of the Madeira City Charter, consideration must be given to provisions of state law. As a body politic and corporate, the City of Madeira is capable of suing and being sued and the manner by which such power of suing is exercised comes from Ohio Rev. Code § 715.03 that provides:

All municipal corporations have the general powers mentioned in sections 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.

Thus, according to Defendant, under state law, the authority to sue on behalf of a municipal corporation must first be given by ordinance or resolution of the legislative authority, which, in this case, is the Madeira City Council.

Defendant further notes that R.C. § 733.53 provides that:

The city director of law, when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of the city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters and controversies as he is, by resolution or ordinance, directed to prosecute...

In *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St.3d 106, 109, 524 N.E.2d 447 (1988), the Ohio Supreme Court addresses the interplay between the explicit mandates of state law and the implied authority granted by a city charter to a City Manager, holding:

The rule of charter supremacy applies only where the conflict appears by the express terms of the charter and not by mere inference. In the absence of express language in a charter showing that it conflicts with the statutes, it is the duty of the courts to harmonize the provisions of the charter with the provisions of the statute relating to the same matter.

The City of Madeira has not cited any provision that expressly grants authority to the City Manager to authorize the bringing of a civil action and there is no conflict with state law and its charter. Thus, the authorization of the legislative authority, the Madeira City Council, was required to file the within lawsuit. No such authorization, prior to the filing of the lawsuit, was established by Plaintiff.

Plaintiff reports that the Madeira City Council met soon after this Court held that the within suit was filed without authority. The Madeira City Council prepared, and counsel filed, a Motion Clarifying City Council's Authorization Regarding the Vexatious Litigator Filing, and Advising of Council's Intentions Should that Action Require an Appeal or Refiling. (Exhibit A to Notice of Supplemental Action from Plaintiff City of Madeira, filed August 16, 2019.) This Motion, voted in favor of by six Madeira City Council members on August 12, 2019, recites, among other things, that "City Council MOVES to clarify the City did, indeed, direct the Law Director to file [the within case] on behalf of the City of Madeira..." and that "any and all actions taken by the Law Director in [the within case] were authorized by the City." Further, "City Council MOVES to clarify that any steps undertaken by the Law Director as of this date (August 12, 2019) with respect to [the within case] are unambiguously ratified."

Defendant responds that, the foregoing Motion Clarifying notwithstanding, the City of Madeira again misses the mark in that the *City* does not have the authority to direct the Law Director to file the case. Rather, the *City Council* must direct the Law Director. Specifically, Defendant queries, what agent of the City of Madeira (because a municipal corporation can act only through its agents) authorized the lawsuit and was that authorization valid under state law?

The amended complaint alleges that the City "authorized the filing of this action" and refers to Exhibit 19, the Affidavit of Thomas W. Moeller, the City Manager for the City of

Madeira, in support of this allegation. In Exhibit 19, the City Manager swears that “[t]he Law Director for the City of Madeira ... had my authorization to file [this suit] on behalf of the City prior to filing the same on May 11, 2018.” Based on the law presented by Defendant, this authorization is insufficient. The City Council must, by resolution or ordinance, authorize the filing.

Ohio Rule of Civil Procedure 12(C) provides that “after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” A Civ.R. 12(C) motion presents questions of law only, and a determination of the motion is restricted solely to the allegations in the pleadings and any writings attached to the pleadings. *Peterson v. Teodosio*, 34 Ohio St.2d 161, 297 N.E.2d 113 (1973).

If the Court were to consider only the pleadings, the Court may find dismissal of the action as having been filed *ultra vires* appropriate. However, the Court has looked beyond the pleadings and the writings attached to the pleadings and finds that a judgment on the pleadings is not available to Defendant.

Alternatively, Defendant has moved for summary judgment pursuant to Rule 56 of the Ohio Rules of Civil Procedure based upon the commencement of this action without legal authority. The Court finds that there is now additional evidence in the case to suggest that the action of the Law Director was unambiguously ratified by the Madeira City Council and that summary judgment based on *ultra vires* is not warranted.¹

¹ The Court agrees with Defendant that the language in the Motion Clarifying City Council’s Authorization Regarding the Vexatious Litigator Filing, and Advising of Council’s Intentions Should that Action Require an Appeal or Refiling, is inartful. The Motion seems to use the terms *City* and *City Council* almost interchangeably. Where the *City* directed the Law Director’s filing of [the within case], *City Council* should have done so. And where “any and all actions taken by the Law Director in [the within case] were authorized by the *City*,” that authorization should have come from *City Council*. However, the Court notes that *City Council* did unambiguously ratify the action of the Law Director in filing this suit.

Recognizing that the Court prefers to decide cases on the merits where possible and, inasmuch as the Madeira City Council has established its intent to authorize on behalf of the City of Madeira the filing of the within action, the Court denies the Motion for Judgment on the Pleadings or, Alternatively, for Summary Judgment based upon the Commencement of this Action without Legal Authority.

The parties are directed to submit an Entry pursuant to Local Rule 17.


Judge Megan E. Shanahan 10/28/20

ENTERED

OCT 28 2020

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