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COMMON PLEAS COURT

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REBECCA E BHAER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

State of Ohio ex rel. Marc Dann,	*	
Attorney General of Ohio,	*	Case No. 07 CV 556
Plaintiff	*	
	*	
v.	*	JUDGE REEVE KELSEY
	*	
Mauer Mobile Home Court, Inc.,	*	Order
Defendant	*	

The state of Ohio upon the written request of the Director of Environmental Protection has commenced an action for injunctive relief and civil penalties against Mauer Mobile Home Court ("MMHC") for violations of Ohio's Safe Drinking Water Act. MMHC has filed a motion to dismiss which has been opposed by the Ohio EPA.

For purposes of a motion to dismiss under Civ.R. 12(B)(6) – failure to state a claim upon which relief can be granted – the court must liberally construe the complaint in a light most favorable to the plaintiff. The material allegations in the complaint are deemed admitted.¹ A court shall make all reasonable inference in favor of the nonmoving party.²

¹ State ex rel. Alford v. Willoughby Civil Service Commission (1979), 58 Ohio St.2d 221, 390 N.E.2d 782; O'Brien v. University Community Tenants Union, Inc., (1975), 42 Ohio St.2d 242, 327 N.E.2d 753; and Slife v. Kundtz Properties, Inc., (1974), 40 Ohio App.2d 179, 318 N.E.2d 557.

² Stone v. North Star Steel Company, 152 Ohio App.3d 29, 2003-Ohio-1223, 786 N.E.2d 508.

A complaint must state a short, plain statement of the claim to give the defendant fair notice of the claim and the grounds for it.³ A complaint should not be dismissed unless it appears beyond a doubt that the plaintiff cannot prove a set of facts that would support his claim for relief.

A complaint should not be dismissed pursuant to Civ.R. 12(B)(6) merely because the court doubts that the plaintiff, in prosecuting its case, will prevail.⁴

Where the complaint deals with contract interpretation and the contract is attached to the complaint,⁵ the plaintiff must demonstrate that there is a reasonable construction of the contract that will support its complaint. The construction needs only be reasonable; it does not have to be the most reasonable.⁶

MMHC argues that the statute of limitations on environmental claims bars the assertion of any claim more than five years old and that the violations alleged in counts one, two, three, four, five, six, and eight relate to events or acts that are more than five years old.

R.C. 3745.31(B) sets forth the relevant statute of limitations:

(1) Except as provided in division (B)(2) of this section, any action under any environmental law for civil or administrative penalties of any kind brought by any agency or department of the state or by any other governmental authority charged with enforcing

³ Civ.R. 8(A); Slife, *supra*.

⁴ Slife, *supra*.

⁵ Civ.R. 10(D).

⁶ Slife, *supra*.

environmental laws shall be commenced within five years of the time when the agency, department, or governmental authority actually knew or was informed of the occurrence, omission, or facts on which the cause of action is based.

(2) If an agency, department, or governmental authority actually knew or was informed of an occurrence, omission, or facts on which a cause of action is based prior to the effective date of this section, the cause of action for civil or administrative penalties of any kind for the alleged violation shall be commenced not later than five years after the effective date of this section.

The effective date of this section was July 23, 2002. Therefore, the Ohio EPA had until July 22, 2007 to bring any claim under the environmental laws regardless of age. As the complaint was filed on July 16, 2007, the Ohio EPA brought these claims with a week to spare.

The court also notes that any prayer for injunctive relief is not subject to the five year limitations and that the Ohio EPA also is seeking injunctive relief along with civil penalties.

The defendant's motion to dismiss based on R.C. 3745.31 will be denied.

The defendant also argues that count 7 on its face does not state a violation of environmental laws. The count alleges that MMHC failed to keep a copy of its contract with its certified operator at the site of the MMHC's public water system. This count alleges a violation of Ohio Adm. Code 3745-7-02(B):

Owners of public water systems, sewerage systems, or treatment works may enter into a contract for the services of one or more appropriately certified operators to serve as the operator of record provided that:

(1) The contract requires that the certified operator be available to respond to emergencies, and provide the services necessary to maintain the reliable operation of the system, and the

contract is consistent with the requirements of paragraphs (C) to (E) of rule 3745-7-03 of the Administrative Code and paragraphs (C) to (E) of rule 3745-7-04 of the Administrative Code; and

(2) A copy of the contract is maintained onsite at the public water system, treatment works, or sewerage system.

MMHC first argues that it is a "transient noncommunity public water system" and thus exempt pursuant to Ohio Adm. Code 3745-7-02(B). The Ohio EPA correctly points out that this is a factual determination that is not appropriate in the context of a motion to dismiss under Civ.R. 12(B)(6). MMHC also points to Ohio Adm. Code 3745-7-02(E). However, that provision does not provide any exemptions from the obligation to maintain an onsite copy of the contract.

In addition to the statute of limitations argument made with respect to count eight, MMHC argues that not providing a copy of the sample siting plan for collecting total coliform routine samples in September 23, 1993 and June 15, 2000 somehow estops the Ohio EPA from citing that as a violation arising out of its May 16, 2007 inspection. MMHC fails to cite any cases in support of this theory of equitable estoppel. Therefore, this basis for dismissing count eight is without merit.

Count nine alleges a violation of Ohio Adm. Code 3745-95-03(A):

The supplier of water shall conduct or cause to be conducted periodic surveys and investigations, of frequency acceptable to the director, of water use practices within a consumer's premises to determine whether there are actual or potential cross-connections to the consumer's water system through which contaminants or pollutants could backflow into the public water system.

MMHC alleges that as the director has not established an acceptable frequency of such inspections, MMHC can not be held to have violated an

unknown requirement. Therefore count nine will be dismissed for failure to state a claim.

IT IS ORDERED that defendant, Mauer Mobile Home Court's motion to dismiss counts one through eight is denied.

IT IS ORDERED that defendant, Mauer Mobile Home Court's motion to dismiss count nine is granted.

IT IS ORDERED that count nine of the plaintiff's complaint is dismissed.



Judge Reeve Kelsey

CERTIFICATE

This is to certify that a copy of the foregoing Order was mailed or delivered this date to;

L SCOTT HELKOWSKI AAG
25TH FLOOR
30 E BROAD ST
COLUMBUS OH 43215 3400

MARK A DAVIS ESQ
SUITE 340
500 MADISON AVE
TOLEDO OH 43604

9-28-07
DATE

