

IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO
GENERAL DIVISION

2007 AUG 15 AM 9:53

CLERK OF COURTS

TERESA MOLLETTE, et al,

Plaintiffs,

CASE NO. 04CIH06110

VS

PORTSMOUTH CITY COUNCIL, et al,

JUDGMENT ENTRY

Defendants.

- This matter comes before the Court upon Portsmouth/Defendant's Motion for Summary Judgment filed March 12, 2007, and Plaintiff's Memorandum Contra and Cross Motion for Summary Judgment filed May 3, 2007.

The Court having once again reviewed the entire file herein finds that the Defendant claims that the Complaint submitted by the Plaintiffs with their July 26, 2005, Motion for Leave is barred by the statute of limitations and did not relate back to May 28, 2004, the date of Plaintiff's filing of their original Complaint. The Defendant also claims that they are entitled to Summary Judgment because of claims set forth in Plaintiff's Complaint are moot. The City Ordinance, which was the subject of Plaintiffs' original Complaint, was declared void by this Court. Thereafter, the City entered into a new transaction with the Marting's Foundation.

The City further moves for Summary Judgment on its counterclaims that under Section 4 of the Portsmouth City Charter, it is subject to all duties, requirements and privileges of The Sunshine Law, Ohio Revised Code Section 121.22.

The first issue to be decided by this Court is whether the Plaintiffs' Proposed Amended Complaint of July 26, 2005, relates back to the Plaintiffs' original Complaint. Inasmuch as this Court has originally found, we are dealing with a two (2) year statute of limitations contained in Revised Code Section 121.22. In order for the Plaintiffs' Proposed Amended Complaint filed with the Court on July 26, 2005 to satisfy the statute of limitations, it must fulfill the requirements of Ohio R. Civ. P. 15(C) regarding the relation back of amendments changing the party against whom a claim is asserted. The Court finds that the Proposed Amended Complaint arose from the exact same events which are the basis of the original complaint. The parties brought in by the amendments within the period provided by law for commencing the action received such notice of the institution of the action, and that they were not prejudiced in maintaining a defense based upon the following facts:

On June 1, 2004, the City of Portsmouth received actual notice of a lawsuit as Plaintiffs served the Portsmouth City Council by serving a copy of the complaint upon David Kuhn, Portsmouth City Solicitor, Portsmouth City Building, 728 2nd Street, Portsmouth, Ohio 43062.

The Court further finds that in *Cecil v. Coltrill* (1993), 67 Ohio St.3d, 367, the Supreme Court of Ohio determined that a second amended complaint correcting the name of an incorrectly named defendant is valid and the action properly commenced under Ohio R. Civ. P 3(A) notwithstanding the fact that the correctly named defendant was not served until approximately fifteen (15) months after the filing of the original complaint, when the naming of the party defendant in the original complaint was a misnomer.

Furthermore, in *Fields v. Dailey* 1990, 68 Ohio App.3d 33, the Court of Appeals determined that a deficiency in the Plaintiff's complaint naming a city agency, a non-entity, as a party defendant is merely technical and does not prejudice the Defendants, when the appropriate party, the city, is adequately represented by the city attorney.

Based upon the forgoing the Court finds that Plaintiffs' Amended Complaint relates back to the Plaintiffs' original Complaint.

This Court further incorporates its previous findings in that Defendant violated the Ohio Sunshine Law in adopting ordinance number 63-02. Therefore, pursuant to and as mandated by Ohio Revised Code Section 121.22 (I)(2)(A), Plaintiffs are entitled to reasonable attorney fees, all court costs herein, and a civil forfeiture of \$500.00 to be paid to the Plaintiffs herein.

Further, Section 4 of the Charter of the City of Portsmouth provides "all meetings of the council and of the committees thereof shall be open to the public, and the rules of the Council shall provide that citizens of the City shall have a reasonable opportunity to be heard at any such meeting in regard to any matter considered thereat." The provision of the current Charter requiring open meetings is mandatory inasmuch as Section 4 of the Charter unambiguously requires that "all meetings shall be open to the public".

Based upon the foregoing the Court finds there remain no genuine issues as to any material facts and the Plaintiffs are entitled Judgment as a matter of law. This matter shall come on for a hearing to the Court regarding the issue of attorney fees.

The Court further finds that until the Portsmouth City Charter is amended by popular vote that all meetings shall be open to the public.

SO ORDERED.



William T. Marshall

CC: David Kuhn, City Solicitor
Lawrence Barbieri, Attorney for Defendants