

EXHIBIT 3

SANDRA KURT

2020 MAR 12 AM 11:39

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

K. HOVNANIAN FOREST LAKES, LLC)

Plaintiff,)

vs.)

AQUA OHIO, INC., *et al.*)

Defendants.)

CASE NO. CV-2020-02-0740

JUDGE ALISON BREAUX

STIPULATED AMENDED ORDER
GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING
ORDER

Upon application of the Plaintiff, this Court granted Plaintiff's Motion for a Temporary Restraining Order on February 25, 2020. Thereafter, Defendants entered an appearance and on March 2, 2020, filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction, to which Plaintiff has not had opportunity to respond, and a ruling has not been made.

Upon the stipulation of the parties by and through their respective counsel, this Court's previous Order granting Plaintiff's Motion for Temporary Restraining Order is hereby amended as follows:

It is **ORDERED, ADJUDGED AND DECREED** that the Defendants' Motion to Dismiss will be addressed and decided by this Court prior to a hearing being conducted on the Preliminary

Injunction, and that meanwhile the Temporary Restraining Order will remain in effect as to the property which is the subject of this lawsuit only until further Order of this Court. Should Defendant's Motion to Dismiss not be granted, a hearing on the Preliminary Injunction will be set by this Court as soon as practicable; and

It is further **ORDERED, ADJUDGED AND DECREED** that no requirements regarding ductile iron will be placed on Plaintiff or any affiliates of Plaintiff regarding the project that is the subject to this lawsuit so long as the Temporary Restraining Order or a preliminary injunction is in effect or until the matter is resolved.

It is further **ORDERED, ADJUDGED AND DECREED** that Plaintiff will not use PVC on the project that is the subject to this lawsuit and/or any other project in Aqua Ohio service districts until a final decision is made by Judge Breaux or her Magistrate on the issuance of a preliminary injunction; and

It is further **ORDERED, ADJUDGED AND DECREED** that all other terms of this Court's February 25, 2020 Order granting a Temporary Restraining Order not amended as contained herein remain unchanged.

IT IS SO ORDERED, ADJUDGED AND DECREED.

3/10/2020
DATE

Alison Breaux
JUDGE ALISON BREAUX

Approved by:

/s/ Erik L. Walter
Erik L. Walter (#0078988)
Richard N. Selby II (#00589996)
DWORKEN & BERNSTEIN CO., L.P.A.
Attorneys for Plaintiff

/s/ Matthew M. Ries
Matthew M. Ries (#0083736)
Alan D. Wenger (#0009369)
HARRINGTON, HOPPE & MITCHELL, LTD.
Attorneys for Defendant

EXHIBIT 4

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

K. HOVNANIAN FOREST LAKES, LLC)	CASE NO.: CV-2020-02-0740
)	
Plaintiff)	JUDGE ALISON BREAUX
-vs-)	
)	
AQUA OHIO, INC.)	<u>ORDER</u>
)	
Defendant)	

- - -

On February 25, 2020, Plaintiff K. Hovnanian Forest Lakes, LLC filed a Complaint naming Aqua Ohio, Inc. and Jacob Flanary as Defendants which set forth the following claims: 1) Injunctive Relief; 2) Request for Declaratory Judgment; and 3) Tortious Interference with a Business Relationship/Expectancies.

This matter comes before the Court on several motions: 1) Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary’s Motion to Dismiss for Lack of Subject Matter Jurisdiction; 2) Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary’s Motion to Strike Inadmissible Hearsay Portions of Plaintiffs’ Opposition and Paragraph 6 of Affidavit of Michael Mercier; 3) Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary’s Motion for Leave to File *Instante* a Reply in Support of Their Motion to Dismiss for Lack of Subject Matter Jurisdiction; 4) Plaintiff K. Hovnanian Forest Lakes, LLC’s Motion to Strike Defendants’ Motion for Leave to File *Instante* a Reply in Support of Their Motion to Dismiss; and 5) Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary’s Motion to Stay Discovery Pending Resolution of their Motion to Dismiss.

FACTS

According to the Complaint, K. Hovnanian Northern Ohio Division, LLC f/k/a/ K. Hovnanian of Ohio, LLC entered into a purchase agreement for 50.93 acres of property it was

set to develop for residential use. *See* Complaint, ¶6. On February 20, 2020, K. Hovnanian Northern Ohio Division, LLC assigned all of its rights, duties, and obligations under that purchase agreement to Plaintiff K. Hovnanian Forest Lakes, LLC (hereinafter “Forest Lakes”). *Id.* The sale was to be finalized at the closing scheduled for March 2, 2020. *Id.* at ¶6.

Defendant Aqua Ohio, Inc. (hereinafter “Aqua”) manages and oversees the water supply to the property being developed for residential use. Prior to the closing on March 2, 2020, Plaintiff Forest Lakes retained an engineer to prepare preliminary drawings for the development of the lots. *Id.* at 8. On October 21, 2019, those plans were sent to Defendant Aqua and Defendant Jacob Flanary (hereinafter “Flanary”) for review and comment. *Id.* at ¶9. Between October 30, 2019 and January 23, 2020, Plaintiff and Defendant Aqua exchanged comments and revised plans. *Id.* at ¶10-17.

Beginning February 6, 2020, Plaintiff Forest Lake’s engineer began contacting Defendant Aqua to request installation specifications as to types of piping required for projects overseen by Defendant Aqua. *Id.* at ¶19. Plaintiff Forest Lakes alleges it was advised there were no written specifications and confirmed other divisions of Defendant Aqua exclusively used PVC piping in projects. *Id.* at ¶ 20-21. However, on February 11, 2020, Defendant Flanary sent correspondence to Plaintiff that under O.A.C. 4901:1-15-30(E) Defendant Aqua has the right to require use of CL 52 ductile iron pipe. *Id.* at ¶22. By requiring the use of only ductile iron instead of PVC piping on the project, Plaintiff Forest Lakes alleges the cost of the project would increase by over \$900,000. *Id.* at ¶29. Plaintiff reached out to Defendant Flanary and Defendant Aqua seeking the “legal and logical rationale” behind the requirement to exclusively use ductile iron on the project rather than PVC. *Id.* at ¶25-27.

On February 25, 2020, Plaintiff Forest Lakes filed the instant action, setting forth claims for: 1) injunctive relief to enjoin Defendants from requiring the exclusive use of ductile iron

on the project; 2) declaratory judgment seeking a declaration that Defendant Aqua's requirement for exclusive use of ductile iron be deemed unlawful; and 3) tortious interference with a business relationship/expectancies for interfering with Plaintiff's agreement to purchase the subject land by requiring the exclusive use of ductile iron in the project. That same day, Plaintiff filed a Motion for Temporary Restraining Order, which the Court granted.

On March 2, 2020, Defendant Aqua and Defendant Flanary jointly filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Plaintiff responded in opposition.

Subsequently, the parties entered into a Stipulated Amended Order Granting Plaintiff's Motion for Temporary Restraining Order on March 12, 2020.

Defendant Aqua and Defendant Flanary filed a Motion for Leave to File Reply *Instante* to a Reply in Support of Their Motion to Dismiss for Lack of Subject Matter Jurisdiction on March 17, 2020. Plaintiff responded by filing a Motion to Strike Defendants' Motion for Leave to File Reply *Instante* on March 19, 2020. Defendants responded in opposition. No reply was filed.

Additionally, on March 17, 2020, Defendants filed a Motion to Strike Inadmissible Hearsay Portions of Plaintiff's Opposition and Paragraph 6 of Affidavit of Michael Mercier. Plaintiff responded in opposition. No reply was filed.

Subsequently, on May 6, 2020, Defendants filed a Motion to Stay Discovery Pending Resolution of their Motion to Dismiss. Plaintiff responded in opposition and Defendants filed a reply.

The Court considers these matters to be fully briefed and ripe for consideration.

LAW AND ANALYSIS

Before addressing the merits of Defendants' Motion to Dismiss, this Court will first consider Defendants' Motion to Strike, Defendant Motion for Leave to File *Instante* Reply, and Plaintiff's Motion to Strike.

I. Defendant Aqua and Defendant Flanary's Motion to Strike

On March 17, 2020, Defendant Aqua and Defendant Flanary filed a Motion to Strike Inadmissible Hearsay Portions of Plaintiff's Opposition and Paragraph 6 of Affidavit of Michael Mercier. Plaintiff responded in opposition on March 18, 2020. No reply was filed.

Defendants request this Court strike Paragraph 6 of the Affidavit of Michael Mercier (attached as an Exhibit in support of Plaintiff's brief in opposition to Defendants' Motion to Dismiss) as well as any reference to same in Plaintiff's brief arguing the paragraph contains statements which are inadmissible hearsay pursuant to Evid.R. 801 and 802. Meanwhile, Plaintiff argues the statements are not hearsay per Evid.R. 801(D)(2)(c) and are thus permissible¹. In the alternative, Plaintiff Forest Lakes contends if these statements are found to be hearsay, they qualify under Evid.R. 803(1) as an exception to the hearsay rule. Last, Plaintiff Forest Lakes argues no Ohio court has determined hearsay evidence cannot be considered when considering a motion to dismiss on jurisdictional grounds.

Evid.R. 801 defines hearsay as "a statement, other than one by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *See* Evid.R. 801(C). "The theory of the hearsay rule is that, when a human utterance is offered as evidence of the truth of the fact asserted in it, the credit of the asserter becomes the basis of

¹ Defendants cite to Evid.R. 803(D), however, the language included in the brief references Evid.R. 801(D)(2) which sets forth statements that are not hearsay. As Evid.R. 803(D) does not exist, this Court will review Defendants' argument as based upon Evid.R. 801(D)(2).

our inference, and therefore the assertion can be received only when made upon the stand, subject to the text of cross-examination.” *State v. Lewis* (1970), 22 Ohio St.2d 125, 232 citing VI Wigmore of Evidence (3 Ed.), 177, Section 1766. Hearsay is not admissible unless otherwise permitted by the United States Constitution, the Ohio State Constitution, by statute or by the Rules of Civil Procedure. *See* Evid.R. 802.

Evid.R. 801(D)(2) sets forth statements that are not hearsay and reads, in pertinent part:

Admission by party-opponent. The statement is offered against a party and is...(c) a statement by a person authorized by the party to make a statement concerning the subject...

Evid.R. 801(D)(2)(c).

Here, the statement Defendants seek to strike is contained in the affidavit of Michael Mercier, who is in-house counsel for Plaintiff Forest Lakes. *See* Plaintiff’s Brief in Opposition, Exhibit B, ¶2. The statement reads:

6. In this regard, on February 6, 2020, I personally contacted the Public Utilities Commission of Ohio (hereinafter referred to as the “PUCO”) about Aqua’s mandate of only using ductile iron on a water project in Green, Ohio, and was informed by the PUCO that it (the PUCO) had no control or authority over the specifications required by Aqua.

Id. at ¶6. The Court finds Mr. Mercier fails to specify the PUCO representative to which he spoke, nor is it averred that Defendants authorized the PUCO to speak on their behalf or that there is some relationship that would allow the PUCO to speak on behalf of Defendants. This Court further finds the statement of the PUCO concerning its control or authority with regard to Defendant Aqua is an out of court statement offered for the truth of the matter asserted; therefore, that statement is hearsay. Accordingly, this Court finds the statement contained in paragraph 6 of Mr. Mercier’s affidavit, insofar as it relates to the information provided by the PUCO, is hearsay pursuant to Evid.R. 801.

Having determined the statement is in fact hearsay, the Court now turns to whether it can be admitted pursuant to an exception. Evid.R. 803 carves out a number of exceptions to the inadmissibility of hearsay, and Plaintiff Forest Lakes contends the subject statement falls under the present sense impression exception.

Evid.R. 803 reads, in pertinent part:

Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.

Evid.R. 803(1). The present sense impression exception to hearsay originated as part of the older *res gestae* (spontaneous exclamations) hearsay exception. *State v. Lester*, 9th Dist. No. 16691, 1994 WL 700084, 1; *See* Evid.R. 803(1) Staff Notes. “Fabrication and faulty recollection are precluded by the fact that present sense impressions are limited to only those statements directly describing or explaining an event made while or immediately after the declarant perceives the event.” *Lester*, *supra*.

The present sense impression hearsay exception is an allowed exception for certain reasons—reasons that do not exist here. Here, the statement in question involves the response of an unidentified representative of the PUCO to an inquiry made by Plaintiff’s counsel. The Court finds there is no “event” or “condition” for the declarant to perceive and then explain or describe—rather, the statement Plaintiff seeks to introduce is a response to a question as to whether an agency (the PUCO) has authority over an entity (Defendant Aqua). This Court finds the response to be an opinion of the PUCO. The present sense impression exception to the hearsay rule does not include the recounting of an opinion. *See State v. Hartman*, 9th Dist. Nos. 10 CA 0026-M and 10 CA 0031-M, 2012-Ohio-745, ¶19 (declarant’s comments to a 911 dispatcher regarding another individual’s mental health, relationship status, drug use, and prior threats to police were not admissible as a present sense impression where the declarant making

those comments was not relating what she had just perceived and were, instead, based upon her opinion of the individual from previous interactions); *State v. Foster*, 11th Dist. No. 97-T-0094, 1998 WL 684834, *5 (declarant's statement that another individual told him a third party "was going to do something" was a prediction in the nature of an inadmissible opinion and therefore not a present sense impression exception to hearsay). Therefore, this Court finds any part of the statement contained in paragraph 6 of Mr. Mercier's affidavit relating to information relayed to him by the PUCO does not meet the exception set forth in Evid.R. 803(1).

Plaintiff Forest Lakes next argues no Ohio court has held hearsay evidence cannot be considered by courts when reviewing a motion to dismiss on jurisdictional grounds. Plaintiff relies upon *Benjamin v. KPMG Barbados* to support its position. See *Benjamin v. KPMG Barbados*, 10th Dist. No. 03AP-1276, 2005-Ohio-1959. In *Benjamin*, the trial court excluded an affidavit and attached business records when it considered a motion to dismiss based upon jurisdictional issues. The Tenth District Court of Appeals upheld the trial court's decision, noting that while no Ohio court has passed upon the specific question or whether the rules of evidence (specifically Evid.R. 803(6)) apply to a motion to dismiss, the admission of evidence is within the discretion of the court. It found the business records in that case, along with an affidavit, failed to meet the basic foundational requirements for admissibility set forth in R.C. §2317.40.

This Court finds Plaintiffs reliance upon *Benjamin* misplaced as it is easily distinguished from the instant action. First, in *Benjamin*, the court's analysis concerned Evid.R. 803(6) rather than Evid.R. 803(1). Evid.R. 803(6) concerns records of regularly conducted activity, and reads:

A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business

activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Evid.R. 803(6). Here, the statement at issue is not one which was kept in the regular course of business, but rather an answer purportedly given by a representative of the PUCO to a question. Therefore, the Court finds Evid.R. 803(6) does not apply to the instant action. Second, unlike in *Benjamin*, the affidavit at issue does not identify the individual who made the statement or his/her position in the PUCO. The Court finds Plaintiff has failed to provide any argument for the admissibility of a hearsay statement where the declarant is not identified. Finally, the *Benjamin* court ultimately determined the affidavit at issue in that matter was excluded on foundational issues pursuant to R.C. §2317.40, which sets forth the requirements for a record to be considered evidence. R.C. §2317.40 reads, in pertinent part:

As used in this section "business" includes every kind of business, profession, occupation, calling, or operation of institutions, whether carried on for profit or not.

A record of an act, condition, or event, in so far as relevant, is competent evidence if the custodian or the person who made such record or under whose supervision such record was made testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition, or event, and if, in the opinion of the court, the sources of information, method, and time of preparation were such as to justify its admission.

R.C. §2317.40. Here, the statement fails to meet the requirements set forth in R.C. §2317.40 as it is not the record of an act made in the regular course of business. Therefore, this Court finds Plaintiff Forest Lakes has failed to provide any basis for admissibility of the statement purportedly made by the PUCO, and it is not persuaded the rules of evidence are suspended to

such a degree as to allow the statement in question to be considered as part of a motion to dismiss.

Based upon the foregoing, Defendants' Motion to Strike Inadmissible Hearsay Portions of Plaintiff's Opposition and Paragraph 6 of Affidavit of Michael Mercier is hereby GRANTED. Paragraph 6 of Michael Mercier's affidavit, as well as portions of the brief referencing same, are STRICKEN from the record insofar as they reference a statement made by the PUCO, and will not be considered by this Court when rendering a decision on Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction.

II. Defendant Aqua and Defendant Flanary's Motion for Leave and Plaintiff's Motion to Strike

On March 17, 2020, Defendants filed a Motion for Leave to File *Instante* a Reply in Support of Their Motion to Dismiss for Lack of Jurisdiction. Plaintiff responded on March 18, 2020 by filing a Motion to Strike Defendants' Motion for Leave to File *Instante* a Reply in Support of Their Motion to Dismiss. Defendants responded in opposition on March 25, 2020. No reply was filed.

Defendants move this Court to grant leave to file a reply in support of their Motion to Dismiss for Lack of Subject Matter Jurisdiction, arguing a reply is necessary to correct legal and factual inaccuracies in Plaintiff's opposition to that motion. Plaintiff requests this Court strike Defendants' request for leave as the local rules do not include an opportunity to file a reply.

Pursuant to Civ.R. 6(C), responses to written motions may be served within seven (7) days after service of a response. *See* Civ.R. 6(C)(1). Although this Court's Loc.R. 7.14(A) is silent as to replies, the Court notes a local rule that is inconsistent with the Ohio Rules of Civil Procedure is invalid and unenforceable. *See* Civ.R. 83(A).

A review of the docket in this matter shows Plaintiff's opposition to Defendants' Motion to Dismiss was filed March 11, 2020. Thus Defendants' Motion for Leave to File a Reply *Instante* was filed within the time permitted by Civ.R. 6(C)(1); therefore, Defendants' motion is deemed MOOT and Plaintiff's Motion to Strike Defendants' Motion for Leave to File *Instante* a Reply in Support of Their Motion to Dismiss is hereby DENIED. Accordingly, the reply filed in combination with Defendants' motion is deemed filed as of March 17, 2020 and will be considered by this Court in rendering its decision.

III. Defendant Aqua and Defendant Flanary's Motion to Dismiss

On March 2, 2020, Defendant Aqua and Defendant Flanary jointly filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. Plaintiff responded in opposition on March 12, 2020. Pursuant to this Court's order earlier in this decision, Defendants' reply is deemed filed on March 17, 2020.

Defendants argue Plaintiff's Complaint should be dismissed pursuant to Civ.R. 12(B)(1) as utility issues and claims, such as those asserted by Plaintiff, are subject to the exclusive jurisdiction of the PUCO. Plaintiff Forest Lakes, on the other hand, countered the PUCO does not have jurisdiction as: 1) this matter is one that does not involve an issue requiring the PUCO's administrative expertise, nor it is it manifestly service related; and 2) Plaintiff is seeking relief (namely declaratory judgment, injunctive relief, and damages stemming from tortious interference with a business relationship) which requires the exercise of judicial power vested in the court, which is outside the authority conferred upon the PUCO by statute.

Civ.R. 12(B) governs motions to dismiss and reads, in pertinent part:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over

the subject matter...A motion making any of these defenses shall be made before pleading if a further pleading is permitted...

Civ.R. 12(B)(1). “Civ.R. 12(B) gives the trial court authority to consider evidence outside of the pleadings when determining its own jurisdiction under Civ.R. 12(B)(1).” *Kettering v. City of Akron*, 9th Dist. No. 18815, 1998 WL 469895, *1.

There is no dispute that Defendant Aqua Ohio is a regulated public utility pursuant to R.C. §4905.03(G) and therefore regulated by the PUCO. R.C. §4905.04 governs the power to regulate public utilities, and states:

The public utilities commission is hereby vested with the power and jurisdiction to supervise and regulate public utilities and railroads, to require all public utilities to furnish their products and render all services exacted by the commission or by law, and to promulgate and enforce all orders relating to the protection, welfare, and safety of railroad employees and the traveling public, including the apportionment between railroads and the state and its political subdivisions of the cost of constructing protective devices at railroad grade crossings.

R.C. §4905.04. When considering the issue of jurisdiction where a dispute arose over whether municipalities and other public authorities could be required to pay the costs of requiring public utilities to relocate lines, the Ohio Supreme Court has stated the PUCO’s jurisdiction arises from statute and noted:

[the PUCO] has exclusive jurisdiction over various matters involving public utilities, such as rate and charges, classifications, and service, effectively denying to all Ohio courts (except this court) any jurisdiction over such matters.

State ex rel. Columbus S. Power Co. v. Fais, 117 Ohio St.3d 340, 2008-Ohio-849, ¶19 (citations omitted). The common pleas courts “retain limited subject matter jurisdiction over tort and some contract claims involving utilities regulated by the commission.” *State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 447, 450, 2000-Ohio-379.

When determining whether a cause of action is manifestly service related (and therefore subject to the exclusive jurisdiction of the PUCO), courts have utilized a two (2) step process.

Pacific Indem. Ins. Co. v. Illuminating Co., 8th Dist. No. 82074, 2003-Ohio-3954, ¶15.

First, is PUCO's administrative expertise required to resolve the issue in dispute? Second, does the act complained of constitute a "practice" normally authorized by the utility? If the answer to either question is in the negative, courts routinely find that those claims fall outside PUCO's exclusive jurisdiction.

Id. "[T]he determination of issues related to 'applicable laws and regulations, industry practices and standards,' 'is best accomplished by the commission with its expert staff technicians familiar with the utility commission provisions.'" *Miles Management Corp. v. FirstEnergy Corp.*, 8th Dist. No, 2005-Ohio-1496, ¶17 (citations omitted).

Here, although pled as requests for declaratory judgment, injunctive relief, and an action in tort, the questions before the Court are: 1) whether Defendant Aqua improperly interpreted O.A.C. 4901:1-15-30 (and Defendant Aqua's own tariff) by requiring the exclusive use of ductile iron in the project; and 2) whether such a requirement is unlawful under O.A.C. 4901:1-15-30(F) as the use of PVC piping, not ductile iron, is a generally accepted utility engineering practice.

O.A.C. 4901:1-15-30 governs situations where a waterworks company, such as Defendant Aqua, enters into a main extension agreement. O.A.C. 4901:1-15-30 sets forth the requirements of the agreement, including the materials to be used (O.A.C. 4901:1-15-30(E)) and that the design shall be "in accordance with generally accepted utility engineering practices" (O.A.C. 4901:1-15-30(F)).

This Court finds the questions before it are squarely within the jurisdiction of the PUCO as they require a determination as to the applicable regulations and industry practices, and such decisions fall within the practice of the PUCO as contemplated by O.A.C. 4901:1-15-30.

Therefore, pursuant to R.C. §4905.04, the matters before the Court are within the exclusive jurisdiction of the PUCO, and this Court lacks subject matter jurisdiction. Accordingly, Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction is hereby GRANTED.

IV. Defendant Aqua and Defendant Flanary's Motion to Stay Discovery

On May 6, 2020, Defendants filed a Motion to Stay Discovery Pending Resolution of Their Motion to Dismiss. Plaintiff responded in opposition on May 11, 2020 and Defendants filed a reply on May 13, 2020.

In light of this Court's ruling granting Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, the Court declines to address Defendants' Motion to Stay Discovery Pending Resolution of Their Motion to Dismiss.

CONCLUSION

WHEREFORE, the Court **ORDERS** the following:

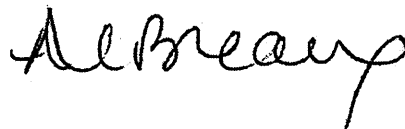
1. Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary's Motion to Strike Inadmissible Hearsay Portions of Plaintiff's Opposition and Paragraph 6 of Affidavit of Michael Mercier is hereby **GRANTED**. The Court further **ORDERS** Paragraph 6 of Michael Mercier's affidavit attached to Plaintiff's Opposition to Defendants' Motion to Dismiss, as well as portions of the brief referencing same, are **STRICKEN** from the record insofar as they reference a statement made by the PUCO.
2. Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary's Motion for Leave to File *Instantly* a Reply in Support of Their Motion to Dismiss for Lack of Subject Matter Jurisdiction is deemed **MOOT**.
3. Plaintiff's Motion to Strike Defendants' Motion for Leave to File *Instantly* a Reply in Support of Their Motion to Dismiss is hereby **DENIED**.

4. Defendant Aqua Ohio, Inc. and Defendant Jacob Flanary's Motion to Dismiss for Lack of Subject Matter Jurisdiction is hereby **GRANTED**.
5. In light of this Court's ruling granting Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, the Court **DECLINES** to address Defendants' Motion to Stay Discovery Pending Resolution of Their Motion to Dismiss.

This is a final appealable order. There is no just reason for delay.

The Clerk of the Summit County Common Pleas Court shall serve upon all parties not in default for failure to appear a notice of this Judgment and its date of entry upon the journal.

IT IS SO ORDERED.



JUDGE ALISON BREAUX

CC: ATTORNEY ERIK L. WALTER
ATTORNEY RICHARD N. SELBY, II
ATTORNEY MATTHEW M. RIES
ATTORNEY ALAN D. WENGER

JLP