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FRANKLIN COUNTY COURT OF COMMON PLEAS

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Patrick Devine, Esq.	Cheryl Jeffrey/Secretary to Judge Holbrook
Michael Tarullo, Esq.	
Nicole Woods, Esq.	
Jeffrey Maloon, Esq.	
William Becker, Esq.	
Richard Makowski, Esq.	
Stanley Dobrowski, Esq.	

COMPANY:	DATE:
	10/6/10

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Entry regarding 10CVH-14432

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

If you have any questions regarding this fax, please contact Cheryl Jeffrey at 614-462-3664.

FRANKLIN COUNTY COURT OF COMMON PLEAS

FACSIMILE TRANSMITTAL SHEET

TO: Patrick Devine, Esq.
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FROM: Cheryl Jeffrey/Secretary to Judge Holbrook

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 Thank you.

This one has the termination stamp.

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

TERMINATION NO: 7
BY: 10-6-10
FINAL APPEALABLE ORDER

TRUMBULL-GREAT LAKES-
RUHLIN, a joint venture, TGR,

Plaintiff

Case No. 10CVH-14432

vs.

OHIO DEPARTMENT OF
TRANSPORTATION,

Defendants

JUDGE HOLBROOK

ENTRY

FILED
IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO
OCT-6 PM 3:54
CLERK OF COURTS

On October 4, 2010, this matter came before the Court for a consolidated hearing on Plaintiff's motion for preliminary injunction and trial on the merits of its complaint. At the close of Plaintiff's case on October 6, 2010, Defendant Ohio Department of Transportation ("ODOT") moved to dismiss the case. ODOT argued that the plaintiff lacked capacity to commence or maintain the action under an unregistered fictitious name pursuant to R.C. 1329.10. Plaintiff responded that, as a joint venture, it should be treated as a partnership under Ohio law, which allows a partnership to sue or be sued under in the name of the partnership. See R.C. 1776.37(A).

Ohio Revised Code 1329.10 specifies:

No person doing business under a trade name or fictitious name shall commence or maintain an action in the *** fictitious name in any court in this state *** in the *** fictitious name until it has first complied with section 1329.01 of the Revised Code and, if the person is a partnership, it has complied with section 1777.02 of the Revised Code, but upon compliance, such an action may be commenced or maintained on any contracts and transactions entered into prior to compliance.

R.C. 1329.10(B).

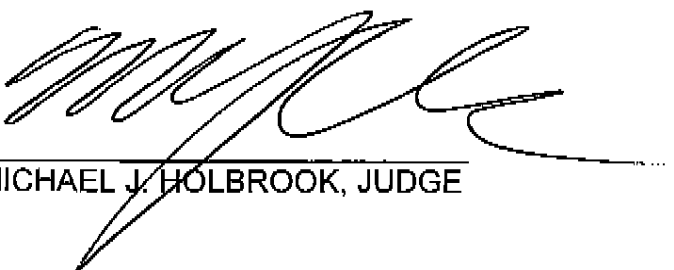
Revised Code 1329.01(D) requires that "[a]ny person who does business under a fictitious name *** shall report the use of the fictitious name to the secretary of state" on

a form provided by the secretary containing certain specified information. "Person" is defined by R.C. 1329.01(A)(3) to include any general, limited, or limited liability partnership. "Fictitious name" is defined as "a name used in business or trade that is fictitious and that the user has not registered or is not entitled to register as a trade name." R.C. 1329.01(A)(2).

There is no dispute that Plaintiff, a joint venture formed by three separate companies, has not registered a fictitious name with the Ohio Secretary of State. Thus, ODOT moved to dismiss pursuant to R.C. 1329.10 (no person doing business under a fictitious name shall commence an action in the fictitious name until the same is registered with the secretary of state) and *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision* (1997), 78 Ohio St.3d 459 ("Buckeye Foods is a fictitious name that has no capacity to litigate these complaints***."). Plaintiff argues that, as a joint venture akin to a partnership, it is permitted to sue under its joint venture name. However, the documents admitted into evidence regarding the formation and contracts of the joint venture do not designate a name by which the joint venture is to be known or is to conduct business. Thus, even if Plaintiff's contention is correct, it fails as the names and monikers "Trumbull-Great Lakes-Ruhlin" and "TGR" can only be classified as fictitious names. Therefore, the Court finds that Plaintiff lacks capacity to commence or maintain this action, which must be and therefore is hereby dismissed.

There is no just cause for delay.

IT IS SO ORDERED.



MICHAEL J. HOLBROOK, JUDGE

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