



Court of Common Pleas

Columbiana County, Ohio

C. Ashley Pike
Judge

Scott A. Washam
Judge

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Subject Matter: State of Ohio v. Q & L Salvage, LLC
* 10-CV-248 - copy of court's last opinion

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ORIGINAL

IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO
CASE NO. 2010-CV-248
JUDGE C. ASHLEY PIKE

FILEDCOLUMBIANA COUNTY
COURT OF COMMON PLEAS

JUN - 7 2011

STATE OF OHIO , ex rel. }
MIKE DeWINE }
OHIO ATTORNEY GENERAL }

Plaintiff }

-VS- }

A & L SALVAGE, LLC, et al. }

Defendants }

ANTHONY J. DATTILIO
CLERK (RMH)

JUDGMENT ENTRYI. Matters Before the Court

Defendants Amato Properties, LLC; Jack Amato; The Amato Family Trust; and Jeffrey Aldrich, (hereafter referred to as Amato Defendants), filed a Motion for Summary Judgment on March 17, 2011. They seek an order granting them judgment on all Counts of the Plaintiff's Amended Complaint. The State has filed a Memorandum in Opposition to the Amato Defendants' Motion for Summary Judgment and its own motion for Partial Summary Judgment. The Amato Defendants have filed a Memorandum in Opposition to the State's Motion and each side has filed a Reply in Support of their own motion.

The Amatos filed a Motion to Strike the State's Motion for Partial Summary judgment as being out of time in contravention of the Court's Scheduling Order. The State filed a Response in which it pointed out that

the dispositive Motion filing deadline was extended when the Court granted a continuance of the previously scheduled May 31, 2011 jury trial by entry of April 7, 2011. At the outset, the Court hereby **overrules** the Motion to Strike.

The Plaintiff, State of Ohio, filed its Motion for Partial Summary Judgment on April 4, 2011. By that Motion, the State is seeking a Court finding that Defendants Jack Amato and Jeffrey Aldrich are "owners" of the construction and demolition debris (C & DD) facility located at 11225 S.R. 45, Lisbon, Ohio. The Court will grant that motion by separate entry filed herewith.

II. Criteria for Summary Judgment

Summary judgment under Civ.R. 56(C) is properly granted where the moving party demonstrates the following:

"(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds could come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party."¹

In the event the moving party meets this initial burden, the opposing party bears a reciprocal burden in responding to the motion.² Under Civ. R. 56(E), "a nonmovant may not rest on the mere allegations or denials of his

¹ *Welco Industries, Inc. v. Applied Cos.* (1993), 67 Ohio St.3d 344, 346, quoting *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327

² *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112

pleading but must set forth specific facts showing there is a genuine issue for trial."³ The nonmoving party must produce evidence on any issue for which that party bears the burden at trial.⁴

Because it is a fairly drastic means of terminating litigation, a court must grant summary judgment with caution, resolving all doubts against the moving party.⁵ Nevertheless, summary judgment is appropriate if, after construing the evidence in a light most favorable to the opposing party, there exists no genuine issue of material fact and reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law.⁶ The evidentiary materials listed in Civ.R. 56(C) include "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any."

III. De Novo Review by Appellate Court

In reviewing a summary judgment, trial and appellate courts use the same standard. Ohio Civil Rule 56. In fact, the appellate court's analysis is conducted under a de novo standard.⁷

³ *Chaney v. Clark Cty. Agricultural Soc., Inc.* (1993), 90 Ohio App.3d 421, 424

⁴ *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293; and *Celotex v. Catrett* (1986), 477 U.S. 317, 322

⁵ *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 333

⁶ *State ex rel. The V. Cos. V. Marshall* (1998), 81 Ohio St.3d 467, 473

⁷ *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. *Real et al v. Society National Bank* (1999), 133 Ohio App.3d 844, 846 (Seventh District)

IV. Discussion

By their Motion for Summary Judgment, the Amato Defendants are seeking a complete dismissal of the Complaint. Any arguments to the effect that Jack Amato and Jeffrey Aldrich are not owners of the property will not be addressed here as they are moot. The Court has granted a Motion for Default Judgment against A & L Salvage, LLC and the State's Motion for Partial Summary Judgment finding that Jack Amato and Jeffrey Aldrich are among the owners of the A & L Salvage construction and demolition debris (C & DD) facility in accordance with a certain section of the Ohio Administrative Code.

The Amato Defendants make various other claims. The Court is satisfied that the Amato Defendants were not operators of the facility at issue. The Court declines to pass further on the propriety of other named Defendants since it appears that further discovery on that issue remains to be concluded.

V. The Ruling

The Court finds that none of the named Amato Defendants participated in the operation of the salvage facility at issue in this case; that the roles of the Amato Defendants did not directly consist of any activity which resulted in the contamination of air, water, or land; and finally that the role of the Amato Defendants, *at most*, involved their

leasing real estate to the salvage facility, thus making the lessors part-owners of the facility as provided by law.

Since the Court's rulings on the pending motions do not fully adjudicate the case, the rulings are entered pursuant to Civil Rule 56(D) as not being genuine issues of material fact or otherwise matters of law.


C. ASHLEY PIKE, JUDGE *

DATED: June 6, 2011/kam

cc: File
All Counsel of Record

ORIGINAL

**IN THE COURT OF COMMON PLEAS
COLUMBIANA COUNTY, OHIO**

**STATE OF OHIO, ex rel.
MIKE DeWINE
OHIO ATTORNEY GENERAL,**

Plaintiff,

v.

A&L SALVAGE, LLC, et al.,

Defendants.

Case No. 2010 CV 248

Judge Pike

FILED

**COLUMBIANA COUNTY
COURT OF COMMON PLEAS**

JUN - 7 2011

**ANTHONY J. DATTILIO
CLERK (RMH)**

ENTRY AND ORDER

Upon the application of the Attorney General of the State of Ohio, Mike DeWine, and pursuant to Civil Rule 55 of the Ohio Rules of Civil Procedure, and for good cause shown, it is the Order of this Court that judgment by default be entered against Defendant A&L Salvage LLC ("A&L"). It is further ordered that:

1. Pursuant to R.C. 3714.11(A) and (B), Defendant A&L is permanently enjoined to comply with R.C. 3714 and the rules promulgated thereunder.
2. Pursuant to R.C. 3734.11(A), Defendant A&L is permanently enjoined to comply with R.C. 3734 and the rules promulgated thereunder.
3. Pursuant to R.C. 6111.07(B), Defendant A&L is permanently enjoined to comply with R.C. 6111 and the rules promulgated thereunder.
4. Pursuant to R.C. 3704.06(B), Defendant A&L is permanently enjoined to comply with R.C. 3704 and the rules promulgated thereunder.
5. Pursuant to R.C. 3714.11(A) and (B), Defendant A&L is enjoined to pay all outstanding disposal fees, including late payment penalties in accordance with R.C. 3714.07.

6. Pursuant to R.C. 3714.11(A) and (B), Defendant A&L is enjoined to either conduct post-closure care at the A&L Salvage C&DD Landfill that is the subject of this case or forfeit its post-closure care bond to Ohio EPA for post-closure care activities.

7. Pursuant to R.C. 3714.11(A) and (B), Defendant A&L is enjoined to pay any and all payments, signing bonus' and royalties received from the A&L Salvage C&DD Landfill that is the subject of this case, including but not limited to oil/gas and mineral royalties, directly to Ohio EPA for deposit into the fund established by R.C. 3734.281.

8. Pursuant to R.C. 3714.11(A) and (B) Defendant A&L is enjoined to reimburse any of the out-of-pocket monies spent by Ohio EPA in the process of performing closure of the A&L Salvage C&DD Landfill including, but not limited to, all costs associated (both in the past and in the future) with the disposal of leachate within sixty (60) days of Ohio EPA sending Defendant A&L the request for reimbursement.

9. Defendant A&L and its agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through any corporate or other device, and those acting in concert and participation with Defendant A&L directly or indirectly, are permanently enjoined from engaging in the acts or practices of which Plaintiff complains.

10. Defendant A&L is ordered to pay all the costs of this action, including Plaintiff's attorneys' fees and other extraordinary litigation costs.

11. Defendant A&L is ordered to pay into the Treasury of the State of Ohio, pursuant to R.C. 3714.13(B), a civil penalty for violations of R.C. Chapters 3714 and 3734 and the rules promulgated and adopted thereunder, as described in the Complaint, in the amount of ten

thousand dollars (\$10,000.00) for each day of each violation, including each day subsequent to the filing of the Complaint.

12. Defendant A&L is ordered to pay into the Treasury of the State of Ohio, pursuant to R.C. 3704.06(C), a civil penalty for violations of R.C. Chapter 3704 and the rules promulgated and adopted thereunder, as described in the Complaint, in the amount of twenty-five thousand dollars (\$25,000.00) for each day of each violation, including each day subsequent to the filing of the Complaint.

13. Defendant A&L is ordered to pay into the Treasury of the State of Ohio, pursuant to R.C. 3767.08, a tax of three-hundred dollars (\$300.00) for the violation set forth in Count Twenty-One (21).

This Court shall retain jurisdiction of this suit for the purpose of making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendant A&L's compliance with, and to carry out, this Court's judgment.

To determine the appropriate civil penalty to be assessed against Defendant A&L, a hearing will be held on as further order, 2011.

IT IS SO ORDERED

6/6/2011
DATE

C. A. Pike
JUDGE PIKE

cc: Copies to all attorneys of record
File

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**ANTHONY J. DATTILIO
CLERK (RMH)**

**ORDER GRANTING PLAINTIFF STATE OF OHIO'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

After consideration and for good cause shown, Plaintiff's Motion for Partial Summary Judgment is hereby GRANTED. Therefore it is **ORDERED, ADJUDGED, AND DECREED** that Defendant Jack Amato and Defendant Jeffery Aldrich are "owners" of the A&L Salvage Construction and Demolition Debris ("C&DD") Facility located at 11225 State Route 45, Lisbon, Columbiana County, Ohio, in accordance with OAC 3745-400-01(EF).

IT IS SO ORDERED.

6/6/2011
Date

C. Ashley Pike
Judge C. Ashley Pike
Columbiana County Court of Common Pleas

cc: All Counsel of Record
File