[Cite as *E. Ohio Gas Co. v. Strahler*, 2025-Ohio-1285.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

EAST OHIO GAS COMPANY DBA ENBRIDGE GAS OHIO,	:	
	:	
	Plaintiff-Appellant,	Case No. 24CA14
	:	
	v.	
	:	
KEN STRAHLER,		DECISION AND JUDGMENT ENTRY
	:	
	Defendant-Appellee.	

APPEARANCES:

Stephen J. Pruneski, Cuyahoga Falls, Ohio, for appellant.

Matthew C. Carlisle and Cameron B. Cantley, Marietta, Ohio, for appellee.

CIVIL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED:4-3-25
ABELE, J.

{¶1} This is an appeal from a Marietta Municipal Court judgment that dismissed a complaint filed by The East Ohio Gas Company dba Enbridge Gas Ohio, plaintiff below and appellant herein. Appellant assigns the following errors for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT ERRED IN DETERMINING PLAINTIFF'S COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR NEGLIGENCE UPON WHICH RELIEF MAY BE GRANTED."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN DETERMINING THE TWO (2) YEAR STATUTE OF LIMITATIONS FOR PROPERTY DAMAGE IN R.C. 2305.10(A) APPLIES TO DAMAGES TO A NATURAL GAS LINE WHICH IS CONSIDERED REAL PROPERTY UNDER OHIO LAW AND SUBJECT TO THE FOUR (4) YEAR STATUTE OF LIMITATIONS SET FORTH IN R.C. 2405.09."

{¶2} On June 3, 2024, appellant filed a complaint against appellee, Ken Strahler. The complaint alleged that appellant is a public utility and that on November 12, 2020, appellee "negligently struck and damaged Dominion's natural gas line." Appellant asserted that, as a result of appellee's negligence, it incurred $1,251.64 in damages.

{¶3} On July 10, 2024, appellee filed a motion to dismiss and asserted that the complaint fails to state a claim upon which the court could grant relief. Appellee claimed that the complaint did not allege that appellant had "any interest in the damaged property." Instead, appellee argued, the complaint stated that the damaged gas line belonged to "Dominion." Appellee thus contended that the complaint failed to state a claim upon which the court could grant relief to appellant (i.e., The East Ohio Gas Company dba Enbridge Gas Ohio).

{¶4} Appellee further argued that the two-year statute of limitations for injuring personal property, R.C. 2305.10(A), applied to appellant's cause of action. Appellee contended that the cause of action involved damage to a gas line and that the gas line is a "business fixture." Appellee asserted that Ohio law considers business fixtures to be personal property, not real property. Appellee therefore contended that R.C. 2305.10(A), the two-year statute of limitations for injuring personal property, applied to appellant's cause of action.

{¶5} Appellee further claimed that the complaint did not allege any facts to indicate that the gas line is a fixture of the real estate so as to bring appellant's cause of action outside of R.C. 2305.10(A). Appellee contended that nothing in the complaint suggested that the "gas line is intended to benefit the real estate, rather than the business conducted thereon, that being the transport of natural gas using the line."

{¶6} In response, appellant asserted that appellee damaged its natural gas line. Appellant further argued that natural gas lines are considered real property and that its complaint based upon the damage to the gas line thus is subject to the four-year statute of limitations contained in R.C. 2305.09(D).

{¶7} Appellant further pointed out that it is subject to a tariff that requires "East Ohio" to repair and replace a service line. Appellant indicated that the tariff further provides that appellant may pursue the party that caused the damage. Appellant asserted that the tariff reads as follows:

> "In the event a service line must be repaired or replaced as the result of damage to the service line caused by the property owner, customer or another party, East Ohio will repair or replace the service line at the expense of the property owner, customer or other party. Damages caused by a contractor working on behalf of a party shall be deemed to be the responsibility of that party."

{¶8} Appellee countered that appellant's complaint nonetheless failed to state a claim upon which the court could grant relief. Appellee maintained that the complaint failed to specifically allege that appellant owned the damaged gas line, but simply claimed that appellee damaged Dominion's gas line without alleging any facts to link appellant with Dominion. Appellee argued that the complaint "shows that another entity owns the gas line and that another entity was allegedly damaged." Appellee thus contended that the complaint failed to establish that appellant sustained any injury.

{¶9} On July 22, 2024, the trial court agreed with appellee's arguments and granted the motion to dismiss. The court determined that appellant failed to allege an injury. The

court noted that the complaint alleged that appellee damaged a gas line that Dominion owned, but further observed that the complaint did not allege that appellant had any interest in the damaged gas line.

{¶10} The trial court also determined that the gas line is personal property and, "more specifically, a business fixture under [R.C.] 5701.03(B)." The court thus concluded that appellant's cause of action alleging damage to the gas line is subject to the two-year statute of limitations contained in R.C. 2305.10(A). The court noted that the complaint indicated that appellant's cause of action accrued on November 12, 2020, but appellant filed the complaint four years later. The court therefore concluded that, in addition to the complaint failing to allege that appellant sustained an injury, the two-year statute of limitations barred appellant's cause of action. Consequently, the court dismissed appellant's complaint. This appeal followed.

I

{¶11} In its two assignments of error, appellant essentially argues, in essence, that the trial court improperly granted appellee's motion to dismiss. For ease of discussion, we first set forth the appellate standard of review and the legal

standard to evaluate a Civ.R. 12(B)(6) motion to dismiss.

{¶12} "Appellate courts conduct a de novo review of trial court decisions that grant or deny a Civ.R. 12(B)(6) motion to dismiss." *Student Doe v. Adkins*, 2021-Ohio-3389, ¶ 17 (4th Dist.), citing *Alexander Local School Dist. Bd. of Edn. v. Albany*, 2017-Ohio-8704, ¶ 22 (4th Dist.); *e.g., Valentine v. Cedar Fair, L.P.*, 2022-Ohio-3710, ¶ 12, citing *Alford v. Collins-McGregor Operating Co.*, 2018-Ohio-8, ¶ 10. We therefore afford no deference to the trial court's decision, but instead, independently review the trial court's decision. *Struckman v. Bd. of Edn. of Teays Valley Local School Dist.*, 2017-Ohio-1177, ¶ 18 (4th Dist.).

{¶13} Civ.R. 12(B)(6) allows a party to file a motion to dismiss a complaint for failing to state a claim upon which relief can be granted. "[A] Civ.R. 12(B)(6) motion to dismiss tests only the sufficiency of the allegations." *Volbers-Klarich v. Middletown Mgt., Inc.*, 2010-Ohio-2057, ¶ 9, citing *Assn. for the Defense of the Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116, 117 (1989); *accord State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548 (1992) (explaining that a Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of the complaint). A court that considers a Civ.R.

12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted must presume that all factual allegations contained in the complaint are true and must construe all reasonable inferences in favor of the nonmoving party. *E.g., State ex rel. Talwar v. State Med. Bd. of Ohio*, 2004-Ohio-6410, ¶ 5; *Perez v. Cleveland*, 66 Ohio St.3d 397, 399 (1993). A trial court may grant a motion to dismiss for failure to state a claim only if it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus; *e.g., LeRoy v. Allen, Yurasek & Merklin*, 2007-Ohio-3608, ¶ 14; *Maitland v. Ford Motor Co.*, 2004-Ohio-5717, ¶ 11; *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144 (1991).

{¶14} "Thus, to survive a motion to dismiss for failure to state a claim upon which relief can be granted, a pleader is ordinarily not required to allege in the complaint every fact he or she intends to prove . . ." *State ex rel. Hanson*, 65 Ohio St.3d at 549, citing *York*, 60 Ohio St.3d at 144–145. A complaint must, however, "'contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial.'" *Schlenker Ents., L.P. v.*

Reese, 2010-Ohio-5308, ¶29 (3d Dist.), quoting *Fancher v. Fancher*, 8 Ohio App.3d 79, 83 (1st Dist. 1982). "Consequently, 'as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss.'" *Cincinnati v. Beretta U.S.A. Corp.*, 2002-Ohio-2480, ¶ 29, quoting *York*, 60 Ohio St.3d at 145.

II

{¶15} In its first assignment of error, appellant contends that the trial court erred by determining that the complaint failed to adequately allege that appellant sustained an injury.

{¶16} In response, appellee maintains that nothing in the complaint establishes that appellant, as opposed to Dominion, sustained an injury. Appellee contends that the complaint fails to allege facts to indicate that appellant is connected to Dominion. Appellee further faults appellant for not seeking to amend the complaint to resolve the issue.

{¶17} In its reply brief, appellant contends that The East Ohio Gas Company has registered Enbridge Gas Ohio, Dominion Energy Ohio, and Dominion East Ohio as trade names with the Ohio Secretary of State. Appellant asserts that this court can take judicial notice of these trade names because they are easily

accessible via the Ohio Secretary of State's website. Appellant thus argues that Dominion is not a separate entity, but is one of the trade names under which it has operated. Appellant therefore contends that the complaint adequately sets forth a claim upon which the court can grant relief.

{¶18} "Before an Ohio court can consider the merits of a legal claim, the person or entity seeking relief must establish standing to sue." *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶ 7, quoting *Ohio Pyro, Inc. v. Ohio Dept. of Commerce, Div. of State Fire Marshal*, 2007-Ohio-5024, ¶ 27. The essential question "is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.'" *Racing Guild of Ohio, Local 304 v. Ohio State Racing Comm.*, 28 Ohio St.3d 317, 321 (1986), quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962). "Under traditional standing principles, a plaintiff must show, at a minimum, that he has suffered '"(1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief."'" *State ex rel. Walgate v. Kasich*, 2016-Ohio-1176, ¶ 18, quoting *ProgressOhio.org*, 2014-

Ohio-2382, at ¶ 7, quoting *Moore v. Middletown*, 2012-Ohio-3897, ¶ 22.

{¶19} At the pleading stage, a plaintiff "is 'not required to establish its standing beyond the allegations of the [c]omplaint.'" *Wells Fargo Bank, N.A. v. Horn*, 2015-Ohio-1484, ¶ 13, quoting *Chase Home Fin., L.L.C. v. Mentschukoff*, 2014-Ohio-5469, ¶ 20 (11th Dist.). Instead, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss [courts] 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992), quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889 (1990); *accord State ex rel. Walgate*, 2016-Ohio-1176, at ¶ 47, citing *Defenders of Wildlife*, 504 U.S. at 561.

{¶20} In the case at bar, the complaint contains adequate general factual allegations to show that appellant sustained an injury that resulted from appellee's conduct. The complaint alleged that (1) appellee "negligently struck and damaged Dominion's natural gas line," and (2) "[a]s a direct and proximate result of [appellee]'s negligence, [appellant] incurred damages in the amount of" $1,251.64." Although the

factual allegations do not explicitly establish a direct connection between Dominion and appellant, the general allegations that appellant sustained an injury as a result of appellee's negligence embrace the specific facts necessary to support appellant's claim. *Lujan*, 504 U.S. at 561. At this juncture and under a Civ.R. (B)(6) analysis, the complaint's factual allegations sufficiently allege that appellant has standing so as to survive a motion to dismiss. Consequently, we believe that the trial court incorrectly determined that the complaint failed to adequately allege that appellant sustained an injury.

{¶21} Accordingly, based upon the foregoing reasons, we sustain appellant's first assignment of error.

III

{¶22} In its second assignment of error, appellant asserts that the trial court incorrectly determined that the allegations in the complaint establish that the statute of limitations bars its cause of action. Appellant contends that the complaint alleges damage to real property and is subject to the R.C. 2305.09(D)[1] four-year statute of limitations not the R.C.

[1] R.C. 2305.09(D) states that an action for "an injury to the rights of the plaintiff not arising on contract nor

2305.10(A)[2] two-year statute of limitations that applies to injury to personal property.

{¶23} "A court may dismiss a complaint as untimely under Civ.R. 12(B)(6) only when, after accepting the factual allegations as true and making all reasonable inferences in favor of the plaintiff, the complaint shows conclusively on its face that the action is time-barred." *Schmitz v. Natl. Collegiate Athletic Assn.*, 2018-Ohio-4391, ¶ 11; *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 379 (1982). A trial court errs by granting a Civ.R. 12(B)(6) motion to dismiss "based upon the bar of the statute of limitations . . . where the bar is not conclusively demonstrated on the face of the complaint." *Cox v. Ohio Dept. of Transp.*, 67 Ohio St.2d 501, 513, fn. 4 (1981).

{¶24} In the case sub judice, the trial court determined that appellant's cause of action is subject to the two-year statute of limitations for injuring personal property. The

---

enumerated in sections 1304.35, 2305.10 to 2305.12, and 2305.14 of the Revised Code" "shall be brought within four years after the cause thereof accrued."

[2] R.C. 2305.10(A) provides, in relevant part, that "an action for . . . injuring personal property shall be brought within two years after the cause of action accrues."

court determined that the gas line is personal property under the standard set forth in *Teaff v. Hewitt*, 1 Ohio St. 511 (1853), and "more specifically, a business fixture under [R.C.] 5701.03(B)."

{¶25} In *Teaff*, the court identified three criteria for determining whether an item is a fixture (real property) or personal property:

> (1) actual annexation to the realty or something appurtenant thereto, (2) appropriation to the use or purpose of that part of the realty with which it is connected, and (3) the intention of the party making the annexation to make a permanent accession to the freehold.

Funtime, Inc. v. Wilkins, 2004-Ohio-6890, ¶ 12, citing *Teaff*.

{¶26} In the case at bar, the complaint does not contain any facts to allow for any determination whether the gas line is a fixture or personal property under the *Teaff* criteria. Appellant's complaint seeks damages for injury to a natural gas line located at 627 Front Street in Marietta, Ohio. The complaint does not contain any other information about the nature of the property or the use of the gas line. Thus, the complaint does not show conclusively on its face that the two-year statute of limitations for injuring personal property bars

appellant's action.

{¶27} We further note that the trial court in the case sub judice found that the gas line is a "business fixture." *Teaff* did not, however, differentiate between business fixtures and ordinary fixtures. Instead, R.C. 5701.03(B), a provision contained in Ohio's taxation statutes, defines "business fixture" as follows:

> "Business fixture" means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. "Business fixture" includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. "Business fixture" does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises.

R.C. 5701.03(A) classifies business fixtures as personal property for taxation purposes.

{¶28} In the case at bar, assuming, arguendo, that the definitions contained in Ohio's taxation statutes apply to a complaint seeking damages to a natural gas line, nothing in the complaint allows for any determination that the gas line is a "business fixture" under R.C. 5701.03(B). The facts alleged in the complaint reveal nothing about whether the gas line "primarily benefits the business conducted by the occupant on the premises and not the realty." *Id.* Instead, the complaint simply alleges that the gas line is located at 627 Front Street in Marietta, Ohio. The complaint does not include any information about the character of the property. The complaint does not, therefore, allow for any conclusion that the gas line is a business fixture under R.C. 5701.03(B).

{¶29} Thus, neither the *Teaff* criteria nor the "business fixture" definition in R.C. 5701.03(B) conclusively establishes that the natural gas line is personal property so as to make appellant's cause of action subject to the two-year statute of limitations set forth in R.C. 2305.10(A). Consequently, the complaint does not conclusively establish that the statute of limitations bars appellant's cause of action.

{¶30} Although appellant asserts that the gas line is

considered real property and that the injury to the gas line thus is subject to the four-year statute of limitations in R.C. 2305.09(D), the question on appeal is whether the trial court correctly dismissed appellant's complaint based upon a determination that the factual allegations in the complaint conclusively establish that the statute of limitations bars the cause of action. The complaint does not contain sufficient facts to allow any determination whether the gas line is a fixture (i.e., real property) or personal property. We therefore decline appellant's invitation to conclusively state that its cause of action is subject to the four-year statute of limitations contained in R.C. 2305.09(D).[3] Instead, these issues require further development and may be appropriate for summary judgment consideration.

{¶31} Accordingly, based upon the foregoing reasons, we sustain appellant's second assignment of error, reverse the trial court's judgment, and remand for further proceedings consistent with this opinion.

JUDGMENT REVERSED AND
REMANDED FOR FURTHER

[3] We further note that in its response to appellee's motion to dismiss, appellant referred to a tariff. Appellant's complaint does not, however, assert a cause of action based upon the existence of this tariff.

PROCEEDINGS CONSISTENT WITH THIS OPINION.

JUDGMENT ENTRY

It is ordered that the judgment be reversed and this cause remanded for further proceedings consistent with this opinion. Appellant shall recover of appellee the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Marietta Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.