

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

DOUGLAS P. LABORDE, ET AL.,	:	CASE NO. 12-CV-8517
	:	
PLAINTIFFS,	:	
	:	
V.	:	JUDGE COCROFT
	:	
THE CITY OF GAHANNA, ET AL.,	:	
	:	
DEFENDANTS.	:	

**DECISION AND ENTRY**  
**GRANTING THE DEFENDANTS' MOTIONS TO STRIKE**

**AND**  
**GRANTING THE PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

**AND**  
**GRANTING IN PART AND DENYING IN PART THE PLAINTIFFS' MOTION FOR**  
**SUMMARY JUDGMENT**

**AND**  
**GRANTING IN PART AND DENYING IN PART THE DEFENDANTS' MOTIONS FOR**  
**SUMMARY JUDGMENT**

**I. Introduction and Background**

This matter arises from an action initiated by the plaintiffs, Douglas and Karla Laborde, against the defendants, the City of Gahanna, Jennifer Teal, and Regional Income Tax Authority (RITA), seeking a determination as to the correct interpretation Gahanna City Code §161.18(a), as well as reimbursement and damages for the taxes that have allegedly been over-collected from them as a result of the defendants erroneous implementation of this code section. Specifically, the plaintiffs assert the following claims in their complaint: Count One – Declaratory Judgment as to Gahanna City Code §161.18; Count Two – Declaratory Judgment as to Form 37; Count Three – Declaratory Judgment as to Gahanna City Code §161.05; Count Four – Taking Under the Ohio Constitution; Count Seven – Injunctive Relief; Count Eight – Unjust Enrichment; and

Count Nine – Strict Liability Under Ohio Revised Code §9.39. The federal claims included in the complaint were removed and dismissed by the federal court. The case was then remanded back to this Court for disposition of the remaining state law claims.

Under Gahanna City Code (GCC) §161.01, Gahanna has an income tax rate of 1.5%. The main code section at issue in this case, GCC §161.18, sets forth the calculation for a credit allowed for residents of Gahanna who receive income from another municipality. This section states:

Every individual taxpayer who resides in the City, but who received net profits, salaries, wages, commissions, distributions from associations, or other compensation for work done or services performed or rendered outside the City, if it is made to appear that he has paid a municipal income tax or excise tax based on income, or such net profits, salaries, wages, commissions, distributions from associations, or other compensation in another municipality, shall be allowed a credit of eighty-three and one-third percent (83-1/3%) of the amount so paid by him or in his behalf in such other municipality to the extent of the tax assessed by this chapter, by reason of such net profits, salaries, wages, commissions or other compensation earned in such other municipality where such tax is paid. In no instance shall the allowable credit for tax paid another municipality exceed the amount of tax imposed by this chapter...”

The plaintiffs assert that, based upon a plain reading of this section, as residents of Gahanna who work in Columbus, they should be entitled to a credit of 83-1/3% of the income tax paid to the City of Columbus but, that credit cannot exceed the tax that would be owed to Gahanna under its 1.5% tax rate. To support this assertion, the plaintiffs provided the following hypothetical:

1. Taxpayer resides in Gahanna, but works in Columbus, Ohio.
2. Gahanna imposes a 1.5% tax on income; Columbus imposes at 2.5% tax on income.
3. Taxpayer has income of \$100,000; taxpayer has paid taxes of \$2,500 (i.e., \$100,00000 x 2.5%) to Columbus and \$0 to Gahanna.

4. Under §161.18, the taxpayer is entitled to full a Tax Credit of \$1,500 against the \$1,500 tax liability to Gahanna, calculated as follows:

- a.  $83\frac{1}{3}\% \times \$2,500 = \$2,083$ ;
- b. Limited to \$1,500 (“to the extent of the tax assessed by this chapter” = the tax owed to Gahanna of \$1,500).

However, the plaintiffs claim that the operation of the prescribed Gahanna city income tax form, Form 37, does not comport with the plain reading of §161.18, resulting in taxpayers not receiving the full tax credit to which they are entitled. This alleged discrepancy is explained by the plaintiffs as follows:

1. Taxpayer resides in Gahanna, but works in Columbus, Ohio.
2. Gahanna imposes a 1.5% tax on income; Columbus imposes a 2.5% tax on income.
3. Taxpayer has income of \$100,000; taxpayer has paid taxes of \$2,500 (i.e.,  $\$100,000 \times 2.5\%$ ) to Columbus and zero (-0-) to Gahanna.
4. Under Form 37, taxpayer is entitled to a credit of 83 1/3% against the lesser of:
  - a. The workplace tax withheld (i.e. \$2,500) or;
  - b. The amount of wages earned times the Gahanna rate of 1.5% (i.e. \$1,500).
5. Accordingly, under Form 37, taxpayer receives a credit of only \$1,250.00 ( $\$1,500 \times 83\frac{1}{3}\%$ ) and still owes the City of Gahanna \$250.00, instead of receiving a full tax credit outlined in the former hypothetical.

The plaintiffs allege that, as a result of this discrepancy, when preparing their returns, their credits were understated by \$347 in the year 2009, \$438 in the year 2010, and \$473 in the year 2011.

In their depositions, Lora Gischel, Chief Director for RITA, and Jennifer Teal, Director of Finance for the City of Gahanna, both confirmed that the defendants interpret and apply GCC §161.18(a) in the manner set forth in the second hypothetical and that, regardless of whether a taxpayer uses the prescribed Form 37 or has a professional prepare their returns, the return will only be accepted if the credit is calculated in accordance with the defendants' interpretation. (Teal Depo., pp. 42-43, 53, 68-77; Gischel Depo., pp.53-57).

The plaintiffs are seeking a declaratory judgment as to the construction of §161.18 and their rights under that section, and a declaratory judgment that Form 37 does not properly calculate the appropriate tax credit allowed by §161.18. The plaintiffs further seek to maintain this action as a class action on behalf of all Gahanna residents who also had understated credits on their tax returns, and who are entitled to receive a refund for those amounts overpaid as a result of understated tax credits. This matter is now before the Court on the plaintiffs' amended motion for class certification, the plaintiffs' motion for partial summary judgment and supplemental motion for summary judgment, the motions for summary judgment of the defendant, City of Gahanna and Jennifer Teal, the motion for summary judgment of the defendant RITA, and the defendants' motions to strike the affidavits of Allan Samansky and James Pierson.

Throughout their motions, the defendants' consistently assert that, as political subdivisions, they are entitled to immunity under R.C. Chapter 2744; that the plaintiffs' sole remedy is found in R.C. §2723.01 and they have failed to meet the requirements set forth in that section; and that the plaintiffs' claims should be dismissed, as they failed to exhaust their administrative remedies. These defenses are asserted in response to the

plaintiffs' motion for class certification, as well as in support of and in opposition to motions for summary judgment. Accordingly, before addressing the various motions which have been filed, it is important to address these assertions. Upon review, the Court does not find these arguments by the defendants to be well taken.

R.C. Chapter 2744 provides immunity to political subdivisions from claims against them which sound in tort. In fact, Ohio courts have consistently held that the immunity provided by R.C. Chapter 2744 "is only a defense to tort claims seeking monetary damages, and not to claims seeking declaratory relief." *Parker v. City of Upper Arlington*, 2006-Ohio-1649, ¶9, 2006 Ohio App. LEXIS 1431 (10th Dist. 2014). Furthermore, R.C. §2744(B)(5) specifically provides, as an exception to immunity, that political subdivisions may be held liable for loss to person or property when civil liability is expressly imposed by a section of the Revised Code.

Here, the plaintiffs are seeking a declaratory judgment as to their rights under the GCC, as well as a refund of amounts over-collected. The refunds sought by the plaintiffs are specifically provided for in R.C. §718.12. Furthermore R.C. §9.39 holds public officials strictly liable for public money received or collected by them under color of office. Accordingly, to the extent that the plaintiffs are seeking a declaration as to their rights under the GCC and a refund for overpaid taxes, as well as holding the defendants strictly liable for the funds collected by them, the immunity set forth in R.C. Chapter 2744 does not apply.

The defendants further contend that the plaintiffs' single remedy is found at R.C. §2723.01 and that they have not complied with the requirements of this provision.

R.C. Chapter 2723 allows for claims challenging the collection of illegal taxes. The plaintiffs, however, have stated several times that they are not bringing their claims under Chapter 2723, but rather under R.C. §718.12 and R.C. §2721.03, and that they are not challenging the tax as illegal, but are merely seeking a determination as to how the code should be applied. Accordingly, the defendants' arguments regarding the plaintiffs' failure to satisfy the requirements of R.C. §2723.01 does not apply to this matter.

Finally, the defendants argue that the plaintiffs have failed to exhaust their administrative remedies since they did not first bring this issue to the attention of the City of Gahanna Tax Administrator or Board of Tax Appeals. Ohio courts, though, have held that an action for a declaratory judgment may be maintained even when an alternative administrative remedy exists. *Herrick v. Kosydar*, 44 Ohio St.2d 128, 339 N.E.2d 626 (1975). The Supreme Court of Ohio has further stated that "failure to exhaust administrative remedies is not a jurisdictional bar to a declaratory judgment action." *Ameigh v. Baycliffs Corp.*, 81 Ohio St.3d 247, 690 N.E.2d 872 (1997).

This Court is persuaded by the plaintiffs' assertions that at least one potential class member has unsuccessfully brought this matter to the attention of the Gahanna Board of Review already, and that resolving these claims in one action is a superior method of resolution, as opposed to subjecting the Board to myriad tax appeals. Therefore, this Court finds the defendants' argument that the plaintiffs failed to exhaust their administrative remedies is without merit.

## **II. Motions to Strike**

Each defendant has moved to strike the affidavits of Allan Samansky and James Pierson based on the plaintiff's failure to disclose these expert witnesses in a timely

manner. Upon review of the motions, the Court finds the defendants' arguments to be well taken. This matter has been pending for nearly two years and the plaintiffs failed to disclose these witnesses by the deadline set for disclosure of witnesses. While the case was stayed pending the resolution of the claims removed to federal court, the plaintiffs never sought or requested an amended deadline for discovery or disclosure of witnesses when this Court set a new case schedule. Accordingly, for good cause shown, the defendants' motions are **GRANTED**. The affidavits of Allan Samansky and James Pierson are stricken and will not be considered for purposes of the parties' motions for summary judgment.

### **III. Plaintiffs' Motion for Class Certification**

The plaintiffs have moved to certify a potential class for this action, to be appointed as class representatives, and to request their counsel be appointed as class counsel. In order to maintain an action in accordance with Civ. R. 23, the following seven requirements must be met:

- (1) an identifiable class must exist and the definition of the class must be unambiguous;
- (2) the named representatives must be members of the class;
- (3) the class must be so numerous that joinder of all members is impracticable;
- (4) there must be questions of law or fact common to the class;
- (5) the claims or defenses of the representative parties must be typical of the claims or defenses of the class;
- (6) the representative parties must fairly and adequately protect the interests of the class; and
- (7) one of the three Civ. R. 23(B) requirements must be met.

The party seeking certification under Civ. R. 23 must prove by a preponderance of the evidence that the proposed class meets each of these seven requirements. When determining whether to certify a class, a trial court must conduct a rigorous analysis and may grant certification only after finding that all of the requirements are satisfied. *Cullen v. State Farm Mut. Auto Ins.*, 137 Ohio St.3d 373.

### **Identifiable Class with Unambiguous Definition**

In their motion, the plaintiffs define the purported class as “[a]ll individual taxpayers who resided in the City of Gahanna, had taxes withheld or paid to a municipality other than Gahanna at a tax rate greater than 1.5%, and who filed a municipal tax return with Gahanna on or after July 3, 2008.”

In support of their motion, the plaintiffs cite the deposition of Lora Gischel, Chief Director for RITA. Ms. Gischel stated that the identity of the taxpayers to be included in the proposed class would be contained within RITA’s records, and RITA could prepare a report that would show the class members’ names, addresses, and contact information. (Gischel Depo, p.110). Additionally, Ms. Gischel identified an exhibit prepared by RITA that listed the cities in which Gahanna residents worked, those cities’ tax rates, the residents’ wages and earnings in those cities, and the amount of taxes withheld in those cities. (Id., p. 119). Additionally, RITA stated in its discovery responses that there would be more than 12,000 class members under this definition. (Pl. Ex. G).

Upon review, the Court finds the plaintiffs argument for class certification to be well-taken. The definition provided by the plaintiffs is unambiguous as it identifies specifically those residents of Gahanna which would have been entitled to a tax credit under GCC §161.18 and who may have overpaid as a result of the defendants’



interpretation of that section. Moreover, this class is easily identified, as Ms. Gischel conceded in her deposition that RITA has the ability to provide the names and contact information of Gahanna residents who worked or earned wages in a different city and had taxes withheld in those cities.

Additionally, RITA admitted that there would be several thousand residents in this potential class. Accordingly, this Court finds that the plaintiffs have satisfied the requirements that there be an unambiguous class definition, that the members of the class be readily identifiable, and that the class be so numerous that joinder is impossible.

**Party Representatives as Class Members**

The plaintiffs further satisfy the requirement that they, as representatives, are also members of the class. The parties do not dispute the fact that both of the plaintiffs lived in Gahanna, yet worked in the City of Columbus. They filed returns for the years at issue and their credits under §161.18 were calculated in accordance with the calculation required by the defendants. With their claims, the plaintiffs are seeking a declaration as to the correct interpretation and application of the code section providing their tax credit, as well as a refund of the amounts they overpaid, if this Court finds that the plaintiffs' interpretation is correct. Presumably, the members of the potential class would also seek a declaration as to their rights under the GCC to determine the amount of credit to which they are entitled, as well as a refund of any amount of money they may have overpaid.

The defendants argue that the plaintiffs do not qualify as class members and that their claims and defenses are not typical of the class, as they had a professional prepare their return and did not use Form 37. However, as previously discussed, the definition proposed by the plaintiffs does not require the use of Form 37. Additionally, the

defendants' witnesses acknowledged any return that was submitted, whether using Form 37 or whether prepared by a professional, would be denied, if the calculation did not match up with the defendants' interpretation of §161.18. (Teal Depo., pp. 42-43, 53, 68-77; Gischel Depo., pp.53-57; Depo. of Mark Taranto, p.26).

The defendants further argue that the plaintiffs do not fairly and adequately represent the interests of the class, as some members of the potential class would not agree with the plaintiffs' philosophies, or may feel that they actually benefited from the City services funded by their overpayment. The Court does not find this argument persuasive. If any potential class member disagrees with the plaintiffs' position, then Civ. R. 23(C)(3) allows them to request exclusion from the class. Furthermore, the plaintiffs' counsel and proposed class counsel are experienced, knowledgeable attorneys who have already pursued this action in the interest of all potential class members for the past two years.

As such, this Court finds the plaintiffs have proven that they satisfy the prerequisites for class certification outlined in Civ. R. 23(A).

**Civil Rule 23(B)**

Under Civ. R. 23(B)(3), an action may be maintained as a class action if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

As explained earlier, common questions of law predominate over any questions affecting individual class members because the primary issue is the correct interpretation

of GCC §161.18. Furthermore, because the class size is so large, a single class action to resolve a common question of application of the GCC is superior to several thousand actions by those who could be included in the class. Accordingly, this Court finds that the plaintiffs have satisfied the requirements of Civ. R. 23(B)(3).

Additionally, it is important to note that Supreme Court of Ohio has determined that “class action treatment is appropriate where the claims arise from standardized forms or routine procedures.” *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 83, 694 N.E.2d 442 (1998). In the present case, the plaintiffs’ claims arise from the standardized tax forms and tax code application utilized by the defendants.

Therefore, because the plaintiffs have proven that all seven requirements of Civ. R. 23 have been satisfied, the plaintiff’s motion for class certification is **GRANTED**.

#### **IV. Motions for Summary Judgment**

Each party filed a motion for summary judgment on all of the claims that remain pending before this Court and the respective arguments will be discussed in the order that each issue is raised in the complaint.

Summary judgment may be granted only when the moving party demonstrates that no genuine issue of fact exists, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to one conclusion being adverse to the party against whom the motion is made when the evidence is construed in a light most favorable to the non-moving party. *Meadows v. Freedom Banc, Inc.*, 10th Dist. No. 03AP1145, 2005-Ohio-1446. The initial burden is on the moving party to inform the trial court of the basis for the motion and identify those portions of the record that demonstrate the absence of a genuine issue of material fact on an essential element of the nonmoving party’s claims when seeking summary judgment on the

ground that the nonmoving party cannot prove its case. *Currie v. The Big Fat Greek Restaurant, Inc.*, 10 Dist. No. 12AP-440, ¶9, 2012-Ohio-6168, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once the moving party meets this burden, the nonmoving party must set forth specific facts showing there is a genuine issue for trial. *Id.*

### **Declaratory Judgment Issues**

In Counts One, Two, and Three of their complaint, the plaintiffs request a declaratory judgment by this Court that, when correctly interpreted and applied, GCC §161.18 allows for a tax credit that can satisfy a taxpayer's Gahanna tax obligations in full, that Form 37 fails to comport with GCC §161.18(a), and that they are entitled to a mandatory refund under §161.05(f).

Under R.C. §2721.03, any person whose rights, status or other legal relations are affected by a municipal ordinance may have determined any question of construction or validity arising under the ordinance and obtain a declaration of rights, status, or other legal relations under it. Moreover, when determining the correct interpretation of a statute, a court must first look at the language of the statute and, if the Court finds the statute to be clear, unequivocal, and definite, the statute must be applied accordingly. The words and phrases in the statute should be read in context and construed according to their plain, ordinary meaning. *Kelly v. Accountancy Bd. Of Ohio*, 88 Ohio Ap.3d 453, 624 N.E.2d 292 (10th Dist. 1993).

Here, the language of GCC §161.18, when applying the plain, ordinary meaning to its language, is clear and definite. The section states that any resident who received wages or salaries in another municipality "shall be allowed a credit of eighty-three and one-third percent (83-1/3%) of the amount so paid by him or in his behalf in such other municipality." A plain reading of this section implies that a resident who earns wages and paid taxes in another

municipality is entitled to a credit of 83-1/3% of the taxes paid to that other municipality. The section goes on to say that, “[i]n no instance shall the allowable credit for tax paid to another municipality exceed the amount of tax imposed by this chapter.” This sentence clearly means that the credit of 83-1/3% can never exceed the amount of tax imposed by this chapter or, owed to the defendants.

The defendants insist that, in construing this section, the plaintiffs have ignored the portion of the statute that allows the credit of 83-1/3% of the amount paid “to the extent of the tax assessed by this chapter” and, therefore, their interpretation is incorrect. However, in making this argument, the defendants, themselves, ignore the sentence which states that the allowable credit shall in no instance exceed the amount of tax imposed by the chapter. Thus, if the Court were to accept the defendants’ interpretation of this section, then that sentence would not make sense because, under the defendants’ formula, the credit would never exceed the tax imposed by the chapter. Accordingly, the most a taxpayer could receive as a credit would be 83-1/3% of the tax imposed by the GCC (83-1/3% of 1.5% of the taxpayers’ wages), making this sentence unnecessary. Even Ms. Teal admitted that, under the defendants’ interpretation, this second sentence would not and could not apply. (Teal Depo., p. 82).

Furthermore, if the City wanted to limit the allowed credit to 83-1/3% of the tax that would be owed if the taxpayer worked or earned wages in Gahanna, then they could have simply changed the wording to state that the resident would be entitled to a credit in the lesser amount of the tax paid to another municipality, or 83-1/3% of the tax assessed by this chapter. In fact, the plaintiffs have provided evidence that §161.18 at one point contained this “lesser of” language, but the section was amended to specifically remove such language. Pl. Ex. G.

Finally, under GCC §161.05, the credit calculated under §161.18 requires an automatic offset against a taxpayer's tax liability to the City, which the defendants do not seem to dispute.

Accordingly, this Court finds that no genuine issue of material fact exists and, upon a plain reading of the relevant code sections, the plaintiffs' interpretation of GCC §161.18 is correct. The plaintiffs' motion for summary judgment as to its claims for declaratory judgment in Counts One, Two, and Three is **GRANTED**. This Court finds that the application proposed by the plaintiffs is the correct application of GCC §161.18. Therefore, to the extent that Form 37 requires the incorrect application of §161.18 previously applied by the defendants, it should no longer be used or should be amended to reflect this Court's determination. Consequently, Count Seven of the plaintiffs' complaint will be **DENIED** as moot, since the Court has ruled in favor of the plaintiffs as to Count Two and already ordered that the form no longer be used or be modified consistent with this Court's determination. Finally, in accordance with GCC §161.05 and R.C. §718.12, which provides for civil claims for refund of municipal taxes, the members of the class are entitled to a refund of those amounts they overpaid as a result of the defendants' incorrect interpretation of §161.18. The exact amount due will be determined at a hearing which will be set following this decision and order.

### **Unconstitutional Taking**

In Count Four, the plaintiffs next assert that the overpayments constitute a taking under Article 1, §19 of the Ohio Constitution. Conversely, the defendants argue that the plaintiffs' claim fails because the plaintiffs have not pursued a writ of mandamus. Furthermore, a tax credit is not a property interest contemplated by Article 1, §19.

Ohio courts have consistently held that a writ of mandamus is the appropriate remedy when an involuntary taking of private property is alleged. *State ex. Rel. Shemo v. City of*

*Mayfield Heights*, 95 Ohio St. 3d 59, 765 N.E.2d 345 (2002). Moreover, in considering R.C. §5701.09, the United States District Court for the Southern District of Ohio reasoned that a government's act of taxation is not a per se taking of private property and that the Ohio Revised Code does not define a municipal tax credit as a property interest that would protected by the Fifth Amendment's takings clause. *Laborde v. City of Gahanna*, 946 F.Supp.2d 725, 2013 U.S. Dist. LEXIS 70989.

Therefore, for good cause shown, the defendants' motions for summary judgment as to Count Four are **GRANTED**.

### **Unjust Enrichment**

In Count Eight, the plaintiffs contend that the defendants have been unjustly enriched by the amounts that they have over-collected through their incorrect application of §161.18(a). The defendants, however, aver that an unjust enrichment claim cannot be maintained against a political subdivision.

Ohio courts have consistently held that political subdivisions cannot be held liable upon theories of implied or quasi contract. See *Schmitt v. Educ. Serv. Ctr.*, 2012-Ohio-2210, 2012 Ohio App. LEXIS 1945 (8th dist. 2012); *Wright v. City of Dayton*, 158 Ohio App.3d 152, 2004-Ohio-3770, 814 N.E.2d 514 (2nd Dist. 2004). On the other hand, the plaintiffs argue that the Supreme Court of Ohio and the Tenth Appellate District have allowed actions for unjust enrichment to proceed against a governmental entity. Yet, the cases cited by the plaintiff relate to actions brought against the state, not a political subdivision of the state. Accordingly, for good cause shown, the defendants' motions for summary judgment as to Count Eight are **GRANTED**.

**Strict Liability under §9.39**

Finally, in Count Nine, the plaintiffs argue that the defendants should be held strictly liable, as Ms. Teal failed to certify the amounts collected in accordance with GCC §161.18(c).

R.C. §9.39 states that public officials will be held strictly liable for all public money received or collected by them or their subordinates under color of office. In this case, GCC §161.18(c) states that “the tax proceeds, collected under the provisions of subsection (a) hereof, as those proceeds are certified by the Finance Director, shall be exclusively reserved or expended for capital improvements and equipment” in the categories of safety, streets, and stormwater maintenance. Additionally, GCC §161.20 states that “[t]he funds collected under the provisions of this chapter except as defined in §161.18 shall be deposited in the General Fund” and applied to various other purposes not specified in §161.18(c). When reading these sections in concert, it seems apparent that the funds collected under §161.18(a) are not to be deposited into the General Fund and are to be specifically spent on safety, streets, and stormwater maintenance, rather than those areas identified in §161.20.

In her deposition, Ms. Teal stated that she did not certify the amounts collected; however, she also explained that the funds collected were deposited into the General Fund and spent on the areas identified by the code section. Teal Depo., pp. 136-145.

While the plaintiffs’ have not proven necessarily that the funds were misused, the defendants’ have also not provided any evidence that the funds collected under §161.18(a) were specifically set aside and applied to safety, streets, and stormwater maintenance as contemplated by the GCC. Accordingly, this Court finds that a genuine issue of material fact remains as to the plaintiff’s claims for strict liability and the parties’ motions for summary judgment as to this claim are **DENIED**.



**V. Conclusion**

The defendants' motions to strike are **GRANTED**.

The plaintiffs' amended motion for class certification, appointment of class representatives, and appointment of class counsel is **GRANTED**.

The plaintiffs' motion for summary judgment as to Counts One, Two, and Three of the complaint is **GRANTED**.

The defendants' motions for summary judgment as to Count Four of the complaint are **GRANTED**. The plaintiffs' claim set forth in Count Four is dismissed with prejudice.

The plaintiffs' motion for summary judgment as to Count Seven of the complaint is **DENIED** as moot.

The defendants' motions for summary judgment as to Count Eight of the complaint are **GRANTED**. The plaintiffs' claim set forth in Count Eight is dismissed with prejudice.

All of the motions for summary judgment as to Count Nine of the complaint are **DENIED**.

An order will follow setting this matter for a hearing on the remaining issue of strict liability and the amount of damages and restitution that the plaintiffs are entitled to recover.

**IT IS SO ORDERED.**

**Copies to all parties.**

Franklin County Court of Common Pleas

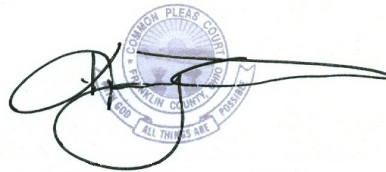
**Date:** 09-11-2014

**Case Title:** DOUGLAS P LABORDE -VS- GAHANNA CITY  
ET AL

**Case Number:** 12CV008517

**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a circular blue seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge Kimberly Cocroft

Court Disposition

Case Number: 12CV008517

Case Style: DOUGLAS P LABORDE -VS- GAHANNA CITY  
ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 12CV0085172014-08-0599980000  
Document Title: 08-05-2014-MOTION TO STRIKE  
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 12CV0085172014-08-0199980000  
Document Title: 08-01-2014-MOTION TO STRIKE  
Disposition: MOTION GRANTED
3. Motion CMS Document Id: 12CV0085172014-06-1399870000  
Document Title: 06-13-2014-MOTION FOR SUMMARY  
JUDGMENT  
Disposition: MOTION GRANTED IN PART
4. Motion CMS Document Id: 12CV0085172014-06-1399940000  
Document Title: 06-13-2014-MOTION FOR SUMMARY  
JUDGMENT  
Disposition: MOTION GRANTED IN PART
5. Motion CMS Document Id: 12CV0085172014-06-1399960000  
Document Title: 06-13-2014-MOTION FOR SUMMARY  
JUDGMENT  
Disposition: MOTION GRANTED IN PART

6. Motion CMS Document Id: 12CV0085172014-05-0299980000  
Document Title: 05-02-2014-MOTION  
Disposition: MOTION GRANTED
  
7. Motion CMS Document Id: 12CV0085172013-10-1799980000  
Document Title: 10-17-2013-MOTION FOR PARTIAL SUMMARY  
JUDGMENT  
Disposition: MOTION GRANTED
  
8. Motion CMS Document Id: 12CV0085172013-10-1699950000  
Document Title: 10-16-2013-MOTION TO FILE AMENDED  
COMPLAINT  
Disposition: MOTION IS MOOT