

IN THE FRANKLIN COUNTY MUNICIPAL COURT
COLUMBUS, OHIO

RITTER COMPANY, LTD.,

Plaintiff,

v.

SCOTT CLARK, ET AL.,

Defendants.

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Case No. 1999 CVG 30891

DECISION

This matter came before the court on the defendant's Motion to Dismiss the instant action on the bases that plaintiff is not the real party in interest, plaintiff has failed to join indispensable parties to the action and because the plaintiff, as a limited liability company, failed to appear through counsel. For the following reasons, defendants' Motion to Dismiss is granted, and the complaint is dismissed without prejudice.

Plaintiff's business entity, The Ritter Company, Ltd., has identified itself as a limited liability company through the use of the designation "Ltd." See R.C. 1705.05. Further, this court has previously recognized The Ritter Company, Ltd. as a limited liability company. See *Ritter Co., Ltd. v. Adkins* (May 5, 1999), Franklin Cty. M.C. No. 1998 CVG 14824, *unreported*. Plaintiff has failed to respond to both defendants' motion to dismiss and defendants' counterclaims, and as such this court is without benefit of the plaintiff's statement as to the current legal status of The Ritter Co., Ltd. Therefore, this court will recognize The Ritter Company as a limited liability company, according to plaintiff's own designation.

Because plaintiff is a limited liability company, the individual members of the company may escape personal liability from the debts, obligations and liabilities of the limited liability company itself. The creation of this company, pursuant to R.C. Chapter 1705, established a separate and distinct legal entity. The establishment of this separate and distinct legal entity deprives William Ritter of the right to represent The Ritter Co., Ltd. *pro se*.

R.C. 4705.01 states in pertinent part:

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules.

The complaint in this case was signed by William Ritter, who at this time has not provided any evidence to suggest that he is an attorney licensed to practice in Ohio. The Supreme Court of Ohio has held that a corporation cannot maintain litigation or appear in court through an officer of the corporation who is not admitted to the practice of law. See *Union Savings Assn. v. Home Owners Aid* (1970), 23 Ohio St.2d 60. See also *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, 160-161; *In re Lawson* (1994), 98 Ohio App.3d 456, 465 ("Although an individual party may represent himself, such right of self-representation does not extend to parties who are not natural persons."), citing *Tubalcain Trust v. Cornerstone Constr., Inc.* (May 26, 1994), Franklin App. No. 93APE12-1701, *unreported*; *Sheridan Mobile Village, Inc. v. Larsen* (1992), 78 Ohio App.3d 203, 203-204. Moreover, The Ritter Co., Ltd. and William Ritter, in particular, have previously been the plaintiff in cases which have been dismissed *on these exact grounds*. See *Ritter Co., Ltd. v. Adkins* (May 5, 1999), Franklin Cty. M.C. No. 1998 CVG 14824, *unreported*.

The Ohio Supreme Court has stated that any filing by a non-attorney on a corporation's behalf is a "nullity" and "may be stricken from the record." *Alliance Group, Inc. v. Rosenfield* (1996), 115 Ohio App.3d 380, 387; *Union Savings Assn. v. Home Owners Aid* (1970), 23 Ohio St.2d 60. See also *Palmer v. Westmeyer* (1988), 48 Ohio App.3d 296. However, "there is some question as to the legal effect of such a complaint in the situation where a counterclaim has been filed." *Alliance Group, Inc. v. Rosenfield* (1996), 115 Ohio App.3d 380, at 387. In *Washington Cty. Dept. of Human Serv. v. Rutter* (1995), 100 Ohio App.3d 32, the court held that the proper remedy for a complaint filed by a non-attorney is dismissal, which would imply that the complaint is subject to dismissal, but perhaps valid in the interim.

This issue was directly addressed by the Hamilton County Court of Appeals in *Alliance Group, Inc. v. Rosenfield* (1996), 115 Ohio App.3d 380, at 388. The Hamilton County court stated:

Complaints that are validly filed but do not confer subject-matter jurisdiction over the action are voidable—they can be dismissed, or any defect in the complaint may be corrected by an amended complaint. Civ.R. 12(B)(1). However, a null and void complaint cannot be corrected—it is null and void. The only way to correct this defect is the filing of an entirely new complaint. We believe that the supreme court's reference to the complaint as a 'nullity' to be dicta, and not intended to be a rule in a case such as ours. If a complaint is void, then the action is never legally commenced *by that complaint*. Even if the complaint were void rather than voidable, we see no reason that a 'validly filed counterclaim' in this unique situation cannot serve as a complaint initiating the action. Civ.R. 3(A). A counterclaim, properly filed and served prior to the dismissal of the complaint, that serves a legally sufficient basis to confer jurisdiction on the court survives the dismissal. Civ.R. 41(A)(1)(a); *Holly v. Osleisek* (1988), 40 Ohio App.3d 90.

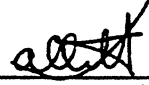
Alliance Group, Inc. v. Rosenfield (1996), 115 Ohio App.3d 380, at 387–388.

A counterclaim, like a complaint, need only contain a short and plain statement of the claim, showing that the party is entitled to relief. Civ.R. 8(A)(1). Defendants have submitted such a

counterclaim, and this counterclaim will become, upon dismissal, the complaint in this case. See *Alliance Group, Inc. v. Rosenfield* (1996), 115 Ohio App.3d 380, at 388.

Because the complaint was signed by a non-attorney, the complaint is stricken and the case dismissed without prejudice. See *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 85 Ohio St.3d 156, at 160; *Sheridan Mobile Village, Inc. v. Larsen* (1992), 78 Ohio App.3d 203, at 204. Defendant's counterclaims will survive the dismissal of plaintiff's action.

February 2, 2000



JUDGE POLLITT

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