

In The Court Of Common Pleas, Licking County, Ohio

State of Ohio, ex rel.
Anthony J. Celebrezze Jr.,
Plaintiff,

-vs-

Case No. 83 L 76580

Hershey Equipment Co. Inc.
et al.,
Defendants.

E N T R Y

This action was filed by the State of Ohio to enforce the provisions of Chapter 6111 of the Ohio Revised Code, and Section 3767.13 of the Ohio Revised Code. Endorsed upon the Complaint is a demand for Jury Trial.

The prayer for relief as set forth in the Complaint is as follows:

"WHEREFORE, Plaintiff respectfully requests that this Court:

A. Issue a permanent injunction prohibiting Defendants from placing sewage, industrial waste, and/or other wastes, or causing such wastes to be placed, in locations where they cause pollution of waters of the state;

B. Issue a permanent injunction prohibiting Defendants from violating the terms and conditions of permits, detail plans, and plan approvals issued for Croton Egg Farms;

C. Order each of Defendants, pursuant to Ohio Revised Code Section 6111.09 to pay into the state treasury to the credit of the general revenue fund a civil penalty for the violations of Ohio Revised Code Sections 6111.04 and 6111.07 described in the Complaint of up to ten thousand dollars (\$10,000.00) per day of each violation.

D. Order Defendants to permanently abate the nuisance which exists at Croton Egg Farms and issue an injunction prohibiting Defendants from maintaining a nuisance at the farm;

E. Impose a tax upon Defendants pursuant to Ohio Revised Code Section 3767.08 for maintaining the nuisance enjoined herein;

F. Appoint a receiver pursuant to Ohio Revised Code Section 2735.01 empowered to supervise the activities of Defendants to ensure Defendants' compliance with Ohio's environmental laws and the judgment of the Court in this action;

Judge
H. M. Laughlin
345-5260

Judge
Jon E. Spahr
345-1840

Courthouse
Newark, OH 43055

G. Retain jurisdiction of this suit for the purpose of making any order or decree which it may deem at any time to be necessary to carry out its judgment;

H. Order that Plaintiff recover from Defendants the costs of this action; and

I. Grant such other relief as it may deem just."

September 6, 1983, an agreed entry was submitted granting a preliminary injunction which was approved by the Court.

September 29, 1983, in response to Plaintiff's Motion for the appointment of a receiver, an agreed order was submitted to the Court for the appointment of a special receiver to monitor the activities of the farm to assure compliance with the preliminary injunction and appointing Thomas Kaphn. The agreed Order was approved by the Court and became the order of the Court.

August 30, 1984, the Court advised the parties that this case was set for Jury Trial for October 22, 1984.

September 26, 1984, Defendants filed a Motion to dispense with the Jury Trial. Hearing on said Motion was set and heard on October 9, 1984.

Counsel agreed in the presence of the Court that Defendants would pay the tax as prayed for in paragraph E in the prayer for relief without however admitting liability for the same, but removing that issue for trial purposes.

The issue now addressed by the Court is whether the Plaintiff is entitled to a jury trial with the jury to determine the amount of the civil penalty that Defendants should pay for the violations of Sections 6111.04 and 6111.07 of the Ohio Revised Code assuming that the Plaintiff is able to prove the violations alleged.

This Court is fully aware that Plaintiff's action involves the law relative to public nuisances and violation of water pollution statutes and regulations. Further, that the law provides for both civil and criminal prosecution. In both criminal and civil actions, penalties may be imposed in money against the wrongdoer. In addition to the penalty of paying money, incarceration may be justified in criminal prosecution where the defendant is found guilty.

Plaintiff prays for a civil penalty as provided in Section 6111.09 of the Ohio Revised Code.

What is the meaning of the word, Penalty, as used in law?

It has been said, a penalty is a sum of money exacted by way of punishment for doing some act which is prohibited or for omitting to do something which is required to be done, and such act or omission may or may not be a crime.

(See 104 ALR 884; 154 ALR 1255)

A penalty is a punishment inflicted by or in right of the public, with a recovery inuring in whole or in part to the public. A penalty in its original and legal sense means a penal punishment. (See 34 O. Jur. 2d, Limitation of Actions, Sec. 18).

The term penalty is not to be confused with punitive damages. A jury awards punitive damages in those cases authorized by law. Before punitive damages can be recovered, the Plaintiff must prove some compensable actual damage, whereas in this case, there is no burden upon the Plaintiff to prove actual damages. To have the civil penalty imposed plaintiff need only prove a violation of the law.

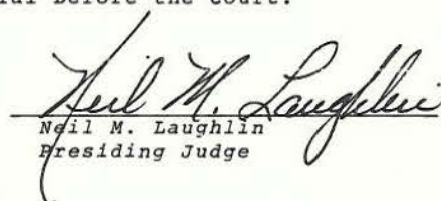
The imposition of punishment has always been the responsibility of the Court. Had the legislature intended otherwise, then they could have readily said the amount of the civil penalty shall be determined by the Jury. They did

not.

Further, this Court has considered this action in its entirety. The Plaintiff's action is one to abate a public nuisance and to stop the pollution of streams and waterways, etc. Plaintiff asked for a temporary injunction, receiver and permanent injunction, all of which come within the scope of equitable relief. The fact that Plaintiff also asks for the imposition of the civil penalty does not change the nature of this action.

Counsel have researched the issue before the Court and have been unable to find a case on point. There have been several cases in which the trial court has imposed the civil penalty but none involving a jury.

Therefore, in conclusion the Motion of Plaintiff to Dismiss the demand of Plaintiff for jury trial is sustained. This action shall proceed to trial before the Court.


Neil M. Laughlin
Presiding Judge

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