

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

STAY OH TOWER, LLC

\* CASE NO. 17CV006708

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Plaintiff,

\* JUDGE LAUREL BEATTY BLUNT

\*

-vs-

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OHIO DEVELOPMENT SERVICES  
AGENCY c/o DAVID GOODMAN,

\*

\*

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Defendant.

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**DECISION & ENTRY GRANTING DEFENDANT OHIO DEVELOPMENT SERVICES  
AGENCY’S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER  
JURISDICTION**

As the title implies, Defendant Ohio Development Services Agency (“Development”) moves to dismiss Plaintiff Stay OH Tower, LLC’s (“Stay”) Amended Complaint under Civ.Rs. 12(B)(1) and (12)(B)(6). Being fully apprised, the Court reaches the decision above pursuant to the analysis below.

**I. BACKGROUND**

Stay initiated this action on 7/26/17 by filing a “Notice of Appeal from Director’s Final Decision Pursuant to R.C. Chapters 2505 and 2506” (“Notice”). *See* docket. That document provides Stay “gives notice of its appeal on questions of law [to this Court] regarding the final decision dated June 28, 2017 of [Development] that denied [Stay’s] properly filed application for historic preservation tax credits \*\*\*\*” (Notice of Appeal at 1.) Stay described the Notice as “an administrative appeal of a final agency order.” *Id.* at 4. Hence, the case was categorized as an Administrative Appeal.

On 8/23/17, Stay filed an “Amended Complaint Seeking Declaratory Judgment and Injunctive Relief” (“Amended Complaint”).<sup>1</sup> The Amended Complaint explicitly withdrew Stay’s claims under R.C. Chapters 2505 and 2506. (Am. Cmpl. at p. 2.) Instead, it asserted claims for violations of due process and equal protection. *Id.* at 5-6. Stay sought an order declaring Development’s denial of Stay’s tax credit application to be unlawful and void and requiring Development to issue a new decision granting Stay’s application. *Id.* at 6. Subsequently, Stay filed a Motion to Reclassify the case category from “F” for “Administrative Appeal” to “H” for “All Other Cases.” The Court granted the motion, and the instant motion followed.

**II. STANDARD OF REVIEW**

Civil Rule 12(B)(1) allows dismissal for lack of subject matter jurisdiction. *Wellman v. Salt Creek Valley Bank*, 10<sup>th</sup> Dist. Franklin No. 06AP-177, 2006-Ohio-4718, P6. The issue of subject-matter jurisdiction involves “a court’s power to hear and decide a case on the merits and does not relate to the rights of the parties.” *Lowery v. Ohio Dep’t of Rehab. & Corr.*, 10<sup>th</sup> Dist. Franklin No. 14AP-730, 2015-Ohio-869, P6. The standard of review for a motion to dismiss under that rule is “whether any cause of action cognizable by the forum has been raised in the complaint.” *Washington Mut. Bank v. Beatley*, 10th Dist. No. 06AP-1189, 2008-Ohio-1679, ¶ 8.<sup>2</sup>

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<sup>1</sup> This was Stay’s attempt at amendment as a matter of course ostensibly under Civ.R. 15(A) because less than 28 days had elapsed since it filed its Notice of Appeal.

<sup>2</sup> Because the Court decides the motion on subject matter jurisdiction alone, the Court declines to set forth the standard of review for, and the parties’ arguments regarding, failure to state a claim upon which relief can be granted.

**III. ANALYSIS**

Development first notes Stay initiated this case by lodging a Notice of Appeal under R.C. Chapters 2505 and 2506. (Mot. at 6; *see also* docket.) Stay concedes it does not have the right to challenge Development’s denial of Stay’s tax credit application as an administrative appeal under those chapters or under R.C. Chapter 119 in this Court. (Opp. at 8; *see also* Amended Cmpl. at 2.) As such, Development argues the Court lacks subject matter jurisdiction to consider the appeal. Development also argues Stay cannot convert its administrative appeal into a civil action because a notice of appeal is not a pleading such that it can be amended. Thus, Development contends, the Amended Complaint is a “nullity” and this Court lacks jurisdiction. (Mot. at 1-2; Reply at 2-3.) Stay counters that Black’s Law dictionary defines pleading broadly to include the “formal allegations by the parties of the respective claims and defenses.” (Opp. at 2)(no citation given). Because the Notice of Appeal sets forth Stay’s formal allegations, Stay reasons the document qualifies as a pleading that may be amended pursuant to the highlighted definition. (Opp. at 1-2.) Stay further retorts that this Court should exercise the Court’s inherent ability to control its docket to permit Stay to continue to pursue its case. *Id.* at 2. The Court determines that Development’s contentions are more persuasive.

Civil R. 7(A) defines pleadings to include:

a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Civ.R. 14; and a third-party answer, if a third-party complaint is served.

In addition, Civ.R. 15(A) states “[a] party may amend its pleading once as a matter of course within twenty-eight days after serving it \*\*\*\*\*” In keeping with the plain language of those rules, the Tenth District held a notice of appeal is not a pleading. Fairchild v. Fairchild, 10th Dist.

Franklin No. 94APE04-597, 1994 Ohio App. LEXIS 5049, at \*5-6 (Nov. 8, 1994); *see also* Klamfoth v. Advanced Founds. Solutions, 10th Dist. Franklin No. 08AP-934, 2009-Ohio-4547, ¶ 17(differentiating between notice of appeal and pleading). As such, the Court concurs with Development that the Notice of Appeal is not a pleading subject to amendment under Fairchild, Klamfoth and Civ.Rs. 7 and 15. The “Amended Complaint” is therefore a nullity. And, because Stay concedes the Court did not have jurisdiction over the Notice of Appeal, the Court **GRANTS** Development’s Civ.R. 12(B)(1) Motion to Dismiss. In so holding, the Court declines Stay’s invitation to ignore the plain language of the civil rules and the Tenth District’s holdings in Fairchild and Klamfoth.

The Court **GRANTS** Development’s Motion to Dismiss.

**IT IS SO ORDERED.**

COPIES TO:

All counsel (electronically)

Franklin County Court of Common Pleas

**Date:** 12-26-2017  
**Case Title:** STAY OH TOWER LLC -VS- OHIO STATE DEVELOPMENT SERVICES AGENCY  
**Case Number:** 17CV006708  
**Type:** ENTRY

It Is So Ordered.

A handwritten signature in black ink, reading "Laurel Beatty Blunt". The signature is written in a cursive style. In the center of the signature, there is a circular, textured stamp or seal, which is partially obscured by the ink.

/s/ Judge Laurel Beatty Blunt

Court Disposition

Case Number: 17CV006708

Case Style: STAY OH TOWER LLC -VS- OHIO STATE  
DEVELOPMENT SERVICES AGENCY

Case Terminated: 08 - Dismissal with/without prejudice

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0067082017-10-0599980000  
Document Title: 10-05-2017-MOTION TO DISMISS -  
DEFENDANT: OHIO STATE DEVELOPMENT SERVICES AGENCY  
Disposition: MOTION GRANTED