

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO**

LAURA ROSENBERGER, *et al.*,

Plaintiffs,

-VS-

ROBERT A PADUCHIK, *et al.*,

Defendants,

Case No. 21 CV 7443

Judge Page

## DECISION AND ENTRY ON DEFENDANTS' MOTION TO DISMISS

This case is before the Court on Defendants the Ohio Republican Party (ORP), Robert Paduchik (Paduchik), and David Johnson’s (Johnson) (together “Defendants”) motion to dismiss pursuant to Civ.R. 12(B)(6). The issues before the Court are: (1) whether Plaintiffs’ original complaint presents a justiciable controversy; (2) if so, whether Plaintiffs’ original complaint presents any set of facts entitling them to relief; (3) whether Plaintiffs are entitled to leave to file their first amended verified complaint; and (4) whether Plaintiffs’ first amended verified complaint, filed on February 22, 2022, should be struck for failure to first obtain leave.

For the reasons set forth in this opinion, the Court grants Defendants' motion to dismiss.

## I. FACTS

Plaintiffs Laura Rosenberger, JoAnn Campbell, Mark Bainbridge, Joe Miller, and Denise Verdi (hereafter “Plaintiffs”) are elected members of the state central Committee (SCC) for the ORP. They were appointed to several standing committees in 2020 pursuant to the Republican State Central and Executive Committee of Ohio Permanent Rules (hereafter the “Bylaws”).

In May of 2021, Plaintiffs voiced their concern to Paduchik, Johnson, and other SCC members over the accuracy of the ORP's finances and that financial support had been provided to unendorsed candidates. Plaintiffs asked the ORP to perform an audit to determine the veracity of

their allegations. Plaintiffs' complaint alleges that instead of investigating their claim, Paduchik removed Plaintiffs from their standing committee positions and appointed himself as the chairman of the Fiscal Review Committee.

Plaintiffs filed their original complaint on November 29, 2021 containing the following claims: (1) two separate claims for breach of contract against Paduchik; (2) for inspection of books and records under R.C. 1702.15 against the ORP; (3) for accounting and an audit against the ORP; (4) for an interlocutory injunction against all Defendants; (5) for breach of fiduciary duty against Paduchik; and (6) for attorney fees and expenses against all Defendants.

## II. LEAVE TO AMEND

On February 9, 2022 Plaintiffs filed their motion to amend. Defendants have opposed the motion and argue that it must be denied because: (1) no support was offered as to why the Court should grant leave for the amendment; and (2) no proposed amended complaint was filed with the motion that would allow the Court to determine its merit. Plaintiffs later filed their first amended and verified complaint on February 22 without leave of Court.

Civ.R. 15(A) allows the amendment of pleadings under certain circumstances, and states:

**Amendments.** A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, *a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires.* Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within fourteen days after service of the amended pleading, whichever is later.

(Emphasis added.). Plaintiff's request was made outside of twenty-eight (28) days after the Defendants served its motion to dismiss on December 29, 2021, and thus requires leave of the

Court or the opposing party's consent. Since Defendant has not consented to Plaintiff's motion to amend, the Court's leave is required.

The decision of whether to grant or deny a motion to amend is within the trial court's discretion. *Lundeen v. Graff*, 2015-Ohio-4462, 46 N.E.3d 236, ¶ 25 (10<sup>th</sup> Dist.). The court shall freely give leave when justice so requires. Civ.R. 15(A); *Amend v. Morgan*, 5<sup>th</sup> Dist. Ashland No. 14-COA-041, 2015-Ohio-3185, ¶ 19. The burden to present operative arguments to the court to persuade it that justice requires an amendment rests with the proponent of the motion to amend. *Hollinghead v. Bey*, 6<sup>th</sup> Dist. Lucas No. L-99-1351, 2000 Ohio App. LEXIS 3234, \* 20; *See also Charles v. Conrad*, 10<sup>th</sup> Dist. Franklin No. 05AP-410, 2005-Ohio-6106, ¶ 17-19 (Holding that where the movant fails to present operative facts in support of the new allegations, a court does not abuse its discretion in denying a motion to amend.); *See also Grenga v. Youngstown State Univ.*, 10<sup>th</sup> Dist. Franklin No. 11AP-165, 2011-Ohio-5621, ¶ 14-15 (Finding no abuse of discretion in denying motion to amend the complaint where the proponent did not explain the basis of his motion, indicate whether he was adding additional claims or new parties, or whether the amended complaint would correct any errors in its predecessor.).

Here, Plaintiffs' motion includes no information about whether Plaintiffs seek to include new claims, add parties, or shore up deficiencies in the original complaint. Their motion includes nothing other than a recitation of Civ.R. 15(A) and an acknowledgement that leave is required. Plaintiffs also did not include a proposed amended complaint with their motion that would allow the Court to determine whether the amendment should be allowed.

Instead, Plaintiffs filed their first amended and verified complaint with their reply to their motion to amend, after Defendants opposed the motion to amend, thus denying Defendants the opportunity to challenge the support offered by Plaintiffs in favor of their proposed amendment.

Not only did this deviation from the procedure described in Civ.R. 15(A) violate the above precedent requiring support for a proposed amendment to be included in a party's motion to amend, but it prevented Defendants from challenging the substance of Plaintiffs' proffered support. Therefore, Plaintiffs' motion to amend is **DENIED**.

### **III. DEFENDANTS' MOTION TO STRIKE**

Defendants' motion to strike argues that Plaintiffs' first amended and verified complaint is a nullity because it was filed without leave of Court. The Court agrees.

A determination on a motion to strike is within the court's broad discretion and will not be reversed absent an abuse of that discretion. *State ex rel. Ebbing v. Ricketts*, 133 Ohio St. 3d 339, 2012-Ohio-4699, 978 N.E.2d 188, ¶ 13. "When leave is required to file an amended complaint, and a party files or serves the amended complaint without leave of court, the amended complaint is without legal effect." *Hunter v. Shield*, 10th Dist. Franklin No. 18AP-244, 2019-Ohio-1422, ¶ 17.

Here, leave was required for Plaintiffs to file their amended verified complaint. No leave was given prior to its filing on February 22, 2022. Therefore, Plaintiffs' first amended and verified complaint is a nullity, and is stricken from the record.

### **IV. DEFENDANTS' MOTION TO DISMISS**

Defendants have motioned to dismiss each of Plaintiffs' claims within the original complaint for the reasons that they do not state a claim upon which relief may be granted pursuant to Civ.R. 12(B)(6), and because the internal disputes of a state political party are not justiciable.

#### **A. LEGAL STANDARD**

"A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) tests the sufficiency of the complaint." *Brown v. Levin*, 10<sup>th</sup> Dist. Franklin

No.11AP-349, 2012-Ohio-5768, ¶ 15. A Civ.R. 12(B)(6) motion allows the court to consider only evidence or allegations within the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 6800 N.E.2d 985 (1997).

In reviewing whether a motion to dismiss should be granted, the court must accept all factual allegations in the complaint as true, and it must appear beyond doubt that the plaintiff can prove no set of facts entitling him/her to relief. *Brown* at 15. As long as there is a set of facts consistent with plaintiff's complaint which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss. *State ex rel. Jones v. Hogan*, 10th Dist. Franklin No. 20AP-319, 2021-Ohio-526, ¶ 17. "The court need not, however, accept as true any unsupported and conclusory legal propositions advanced in the complaint." *Id.*

## **B. JUSTICIABILITY**

Defendants argue that the Court has no authority to interfere in the internal affairs of a political party and that Plaintiffs' claims are not justiciable.

Ohio courts of common pleas have original jurisdiction over all justiciable matters as may be provided by law. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, [REDACTED] citing Ohio Constitution, Article IV, Section 4(B). Where a court has subject matter jurisdiction over a case, it shall refuse to hear a case that is not justiciable. *Barrow v. New Miami*, 2016-Ohio-340, 58 N.E.3d 532, ¶ 12 (12th Dist.), citing *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 11.

In the absence of applicable and controlling legislation, courts of the United States have a history of not interfering in the internal affairs of political parties. *State ex rel. McCurdy v. De Maioribus*, 9 Ohio App. 2d 280, 224 N.E.2d 353, \* 281 (8th Dist.1967); *State ex rel. Pfeifer v. Stoneking*, 80 Ohio App. 70, 74 N.E.2d 759, \* 74 (5th Dist.1946). Where a dispute within a

political party is strictly political, and not legal, a court will not interfere. *See Jenkins v. Porter*, 22 Ohio Misc. 48, 257 N.E.2d 914, \* 53 (Cuyahoga C.P. 1969) (Holding that the decision by a political party to endorse a candidate for a non-partisan election presents a purely political issue non justiciable in nature.) *and De Maioribus* at 288 (Denying writ to remove the elected chairman of the Republican County Central Committee in the absence of a specific legislative command.).

Here, Defendants frame Plaintiffs’ allegations as purely political because they are entirely governed by the ORP SCC Bylaws. Plaintiffs argue that their claims are justiciable because political organizations formed under R.C. Chapter 35 are unincorporated nonprofit associations as defined by R.C. Chapter 1745. This argument fails by the plain meaning of R.C. 1745.05, which states

“Unincorporated nonprofit association" means an unincorporated organization, consisting of two or more members joined by mutual consent pursuant to an agreement, written, oral, or inferred from conduct, for one or more common, nonprofit purposes. "Unincorporated nonprofit association" does not include any of the following:

\* \* \* \*

(3) An organization that is formed under any other statute that governs the organization and operation of unincorporated associations;

R.C. 1745.05(M)(3). R.C. 3517.01(A)(1) sets forth the definition of a “political party” and R.C. Chapter 35 governs the organization and operation of a political party such as the ORP, including the SCC. *See State ex rel. Ames v. Geauga Cty. Republican Cent. & Exec. Comms.*, 11th Dist. Geauga No. 2021-G-0004, 2021-Ohio-2888, ¶ 33 (R.C. 3517.01 governs the existence of a political party for the purposes of Title 35.). Therefore, Defendants, who are being sued in their official capacity as officers or committee members of the SCC of the ORP, are excepted from

Plaintiffs' arguments involving R.C. 1745.05 or any other portion of R.C. Chapter 1745.

Additionally, most of the allegations against Paduchik are based on violations of the Bylaws, not on violations of any legislative enactment governing political parties. The only allegation involving a legislative enactment within Plaintiffs' complaint, is that for breach of a fiduciary duty pursuant to R.C. 1702.30. Plaintiffs fail to explain how R.C. Chapter 1702, governing nonprofit corporations, applies to a political organization governed by R.C. Chapter 35 such as the SCC of the ORP. Therefore, the Court finds that Plaintiffs' claims against Paduchik are not justiciable and must be dismissed.

Conversely, Plaintiffs' allegations involving Johnson reference R.C. Sections 3517.10 and 3517.081. (Complaint, ¶ 53-54). Interestingly, none of Plaintiffs' enumerated claims are against Johnson. Nonetheless, Plaintiffs' count three, entitled "INSPECTION OF BOOKS AND RECORDS UNDER OHIO REV. CODE ANN. § 1702.15 (Against Defendant ORP)," seems most related to the factual allegations involving Johnson's conduct. (Compare Complaint, ¶ 104-123 to Complaint, ¶ 52-62). Though Plaintiffs' complaint mentions R.C. 3517.10, which requires a campaign committee that made an expenditure in connection with the nomination or election of a candidate to file an itemized statement, Plaintiffs' complaint does not allege that Johnson or the ORP failed to do so. R.C. 3517.081 is not applicable to this case because it applies only to candidates, not to political committees. Compare R.C. 3517.01(A) to R.C. 3517.01(B)(3) and R.C. 3501.01(H). Since Plaintiffs have not alleged that Johnson engaged in any violations of relevant and applicable legislative enactments, as opposed to violations of the Bylaws, the Court finds that any claims asserted against him are not justiciable.

A further review of Plaintiffs' count three and four against the ORP does not reveal any alleged violations of legislative enactments except for those under R.C. Chapter 1702, which the

Court has already determined are not applicable. Just like for any claims against Johnson, these claims against the ORP are not justiciable.

Defendants also argue that Plaintiffs lack standing to assert claims “on behalf of all aggrieved Donors and Members of the Ohio Republican Party ex rel. The Ohio Republican Party.” (Complaint, pg. 2).

Prior to an Ohio court’s considering the merits of a legal claim, the person or entity seeking relief must establish standing to sue. *Ohioans for Concealed Carry, Inc. v. City of Columbus*, \_\_ Ohio St.3d \_\_, 2020-Ohio-6724, ¶ 12. “Standing is defined as a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *State ex rel. Butler Twp. Bd. Of Trs. v. Montgomery County Bd. Of Comm’rs*, 124 Ohio St.3d 390, 2010-Ohio-169, 922 N.E.2d 945, ¶ 19. To find that a party has standing, the court must examine the rights of the individual parties bringing the action and determine whether they have asserted a personal stake in the outcome of the action. *In re T.S.*, 10th Dist. Franklin No. 18AP-270, 2019-Ohio-886, ¶ 4. Common-law standing requires the litigant to demonstrate that he or she has suffered: (1) an injury; (2) that is fairly traceable to the defendant’s allegedly unlawful conduct; and (3) that is likely to be redressed by the requested relief. *Ohioans* at 12. Standing may also be conferred by statute. *Id.* Although standing is required to invoke the jurisdiction of the court of common pleas over a particular action, lack of standing does not affect the subject-matter jurisdiction of the court. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 3, paragraph three of the syllabus.

Ohio courts have also recognized the concept of organizational standing, which allows an association to bring a lawsuit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the



participation of individual members in the lawsuit. *LULAC v. Kasich*, 10th Dist. Franklin No. 10AP-639, 2012-Ohio-947, ¶ 19.

Here, Plaintiffs' complaint does not seek organizational standing, *i.e.* the ORP making a claim on behalf of its members, but instead attempts to bring claims of all ORP members through the named Plaintiffs. This ostensibly resembles a pleading for a class action lawsuit. However, Plaintiffs' pleadings do not, other than in the caption of their complaint, express any intent that their claims are designed to be a class action. Importantly, Plaintiffs' complaint does not allege any of the prerequisites of Civ.R. 23(A) or (B), nor does it contain any facts that support these factors.

On these pleadings, the Court finds that the named Plaintiffs' claims sought to be plead, "being filed on behalf of all aggrieved Donors and Members of the Ohio Republican Party ex rel. The Ohio Republican Party" are defective because Plaintiffs' pleadings do not satisfy the requirements of Civ.R. 23. (Verified Complaint, pg. 2). Thus, any such claims are dismissed pursuant to Civ.R. 12(B)(6).

### **C. BREACH OF CONTRACT**

Assuming *arguendo* that Plaintiffs have presented justiciable claims and demonstrated standing, the Court will measure each of their claims under the Civ.R. 12(B)(6) standard.

Defendants argue Plaintiffs' breach of contract claim must be dismissed because there was no contract between any Plaintiff and any Defendant. To prevail on a breach of contract claim, a plaintiff must prove: (1) the existence of a contract, (2) performance by the plaintiff, (3) breach by the defendant, and (4) damages or loss resulting from the breach.). *Clarix, Ltd. v. Hotel Dev. Servs., LLC*, 2018-Ohio-2602, 104 N.E.3d 1076, ¶ 28 (10th Dist.). The elements required for the formation of a contract are an offer, acceptance, contractual capacity, consideration, a

manifestation of mutual assent, and legality of purpose. *Campbell v. 1 Spring, LLC*, 2020-Ohio-3190, 155 N.E.3d 186, ¶ 5.

Defendants argue that there is no support for Plaintiffs' conclusory statement, "Plaintiffs and Paduchik consented to the terms of the Bylaws, and thus, a valid contract exists." (Complaint, ¶ 65). Specifically, Defendants argue that Plaintiffs have not alleged any facts to support the consideration element.

A contract is not binding unless it is supported by consideration. *Williams v. Ormsby*, 131 Ohio St.3d 427, 2012-Ohio-690, 966 N.E.2d 255, ¶ 16. Consideration may either consist of a detriment to the promisee or a benefit to the promisor. *Id.* Such a benefit may be some right, interest, or profit accruing to the promisor, while a detriment may be some forbearance. *Id.*

After reviewing Plaintiffs' complaint, the Court finds that there are no allegations or factual support that pled the element of consideration required for a contract to have been formed between Paduchik and the Plaintiffs. Even if the benefit of each Plaintiff taking their respective position with the ORP might be inferred as a benefit, it is not clear what detriment was taken on by the ORP. Plaintiffs' complaint does not state that they gave up anything as part of their appointment to various committees. It also does not appear that any benefit that received by either Plaintiffs or Defendants was "bargained for." There is no indication from Plaintiffs' complaint that they sought out their respective committee seats by offering something of value to Defendants. Nor is there any averment in Plaintiffs' complaint that Plaintiffs or Defendants gave up anything of value or took on any detriment. Instead, the scenario is more akin to all parties benefitting, *i.e.*, Plaintiffs received the benefit of their committee position and Defendants received the benefit of Plaintiffs' service. The Court does not view an agreement from Plaintiffs to follow the Bylaws upon accepting their committee positions as a bargained for detriment, especially when the Bylaws also

applied to Defendants.

Though their complaint attempts to support the position that a violation of bylaws can create a breach of contract claim, Plaintiffs did not respond in their memorandum contra to Defendants' point that Plaintiffs' relied upon case is distinguishable. *See O'Loughlin v. Ottawa St. Condo. Ass'n*, 6th Dist. Lucas No. L-16-1128, 2018-Ohio-327, ¶ 30 (If a condominium association violates its bylaws, the unit owners can maintain a claim for breach of contract.) *and Wolf v. Southwestern Place Condo. Ass'n*, 7th Dist. Mahoning No. 01 CA 93, 2002 Ohio App. LEXIS 5247, \* 9. Instead, Plaintiffs focus on statutes contained in R.C. Chapter 1745 that are not applicable to the facts of this case.

Additionally, it is not clear between whom Plaintiffs allege the existence of a contract. Their complaint labels Paduchik as the Defendant for both breach of contract claims. However, after reviewing the Bylaws, the Court does not find that any set of facts exist within Plaintiffs' complaint that support the averment that the Bylaws created a contract between Plaintiffs and Paduchik, only that a contract between each Plaintiff and the ORP was allegedly formed.

In any event, the Court finds that no set of facts exists that would entitle Plaintiffs to relief on their breach of contract claims because they failed to allege that any consideration was exchanged or bargained for.

#### **D. INSPECTION OF BOOKS AND RECORDS**

The ORP again argues that R.C. Chapters 1702 and 1745 are not applicable to political parties, whose formation and business are governed by R.C. Chapter 3517.10. The Court agrees.

Since Plaintiffs' complaint is based on R.C. Chapters 1702 and 1745, statutes that are inapplicable to political parties such as the ORP, there exists no set of facts that would entitle Plaintiffs' to relief on their claim for "INSPECTION OF BOOK AND RECORDS UNDER OHIO

REV. CODE ANN. § 1702.15 (Against Defendant ORP).”

### **E. ACCOUNTING AND AUDIT**

Plaintiffs’ verified complaint alleges that they are entitled to an audit and accounting of ORP pursuant to Article IV Section 6 of the Bylaws, which states

The Audit Committee shall consist of three members. The Audit Committee shall examine the accounts of the Treasurer, for which purpose it shall have authority to employ a certified public accountant, and shall make an annual report to the Committee.

Defendants argue that the Bylaws do not provide a member the right to compel a full audit and that the Bylaws also do not specify any remedy for members to examine the Treasurer’s accounts and report to the Committee. Plaintiffs do not cite to any other portion of the Bylaws for support of their contention that, “[t]his language is mandatory and as explained above may be enforced by a member in court when the rules are not followed.” (Memo. Contra, pg. 5-6). Instead, they rely on *Carlson*, which held that a member of an Ohio nonprofit corporation has a statutory right to inspect the books and records of the nonprofit corporation upon written demand stating a reasonable and proper purpose. *Carlson v. Rabkin*, 152 Ohio App. 3d 672, 2003-Ohio-2071, 789 N.E.2d 1122, ¶ 14 (1st Dist.). Having already found that the ORP is a political party defined under R.C. 3517.01(A) and governed by R.C. Title 35, not a nonprofit corporation governed by R.C. Chapter 1702, *Carlson* is distinguishable.

Further, the Bylaws do not set forth any remedy for a violation of Article IV Section 6, let alone a full audit. They do allow for business to be conducted at a meeting or special meeting attended by a quorum of members and supported by a majority vote. (Motion to Dismiss Ex. A, Article V, Section 1-2). Though Plaintiffs’ acknowledge this procedure in their complaint in alleging that it was not used to properly remove Plaintiffs from their committee positions, they do

not allege that any meeting or vote was held, requested, or refused to be held on the issue of requesting a full accounting or audit.

After reviewing Plaintiffs’ verified complaint, the Court finds that because Plaintiffs do not point to any statutory authority or Bylaw that would allow them their requested relief of a full audit or accounting, this claim must be dismissed pursuant to Civ.R. 12(B)(6) for failure to state a claim.

#### **F. INTERLOCUTORY INJUNCTION**

Defendants argue that this claim must be dismissed because an injunction is a remedy, not a separate claim. Plaintiffs do not refute this in their memorandum contra.

“In general, injunctive relief is a remedy, not a cause of action.” *Bresler v. Rock*, 2018-Ohio-5138, 117 N.E.3d 184, ¶ 45 (10th Dist.). Plaintiffs have not provided any argument supporting a departure from this general rule. Therefore, Defendants’ motion to dismiss is **GRANTED** as to this claim.

#### **G. BREACH OF FIDUCIARY DUTY**

Defendants again argue that R.C. Chapter 1702 and 1745 are not applicable to the ORP, and R.C. Title 35 political party. The Court agrees.

“In order to prevail on a claim for breach of fiduciary duty, a plaintiff must demonstrate: (1) the existence of a duty arising from a fiduciary relationship, (2) the defendant’s failure to observe the duty, and (3) an injury proximately resulting from the breach.” *Santagate v. Pa. Higher Educ. Assistance Agency (PHEAA)*, 10th Dist. Franklin No. 19AP-705, 2020-Ohio-3153, ¶ 31.

Here, Plaintiffs claim that R.C. 1745.33(B) provides that Defendants have a statutory fiduciary duty to act in good faith. Since R.C. 1745.33 only applies to unincorporated nonprofit associations, and not political parties, Plaintiffs’ argument is not well-taken. Plaintiffs have not

cited to any other fiduciary duty owed by Defendants either within the Bylaws or in any other applicable statute or legal authority. Therefore, Defendants' motion must be granted as to this claim.

#### **H. ATTORNEY FEES AND EXPENSES**

Defendants argue that this claim must also be dismissed because attorney fees and expenses are a remedy, not a separate cause of action.

"With regard to the recovery of attorney fees, Ohio generally follows the 'American rule' under which each party is responsible for paying for its own attorney fees." *Russell v. Ryan*, 2021-Ohio-2505, 175 N.E.3d 969, ¶ 13 (10th Dist.). Some exceptions to the rule exist, including where attorney fees are specifically authorized by statute. *Id.*

In *Chilli Assocs. Ltd. P'ship v. Denti Rests. Inc.*, 4th Dist. Ross No. 21CA3743, 2022-Ohio-848, ¶ 23-25, the 4<sup>th</sup> District Court of Appeals considered whether a request for attorney fees and costs is a remedy or a separate cause of action. *Chilli Assocs.* recognized two distinct situations: (1) when a statute, *e.g.* Civ.R. 11 or R.C. 2323.1, authorizes the awarding of attorney fees, a motion for fees and costs is factually separate from the primary claims of the litigation, and can thus exist independently thereof; and (2) when the request for attorney fees and costs is made for conduct relevant to the underlying litigation. *Id.* at 23-24. The *Chilli Assocs.* court determined that because the request for attorney fees and costs was made for damages for the breach of contract claim, it could not exist as a separate claim. *Id.* at 25.

Here, Plaintiffs' count eight for attorney fees and expenses claims that they are appropriate because Defendants failed to provide access to books and records and acted in bad faith. This request for attorney fees is related to the conduct comprised within the underlying claims, and not based on a statute designed to deter sanctionable conduct during the litigation. Therefore, the

Court finds that Plaintiffs' claim for attorney fees and costs cannot exist separately and is subsumed into their other claims.

#### **V. CONCLUSION**

After reviewing the motions, pleadings, and arguments of the parties, the Court finds that Defendants' motion to dismiss pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief may be granted is well-taken, and is **GRANTED**.

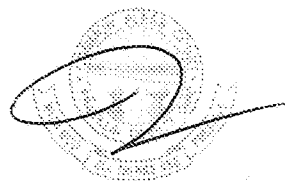
**IT IS SO ORDERED.**

**Copies to all parties.**

Franklin County Court of Common Pleas

**Date:** 05-27-2022  
**Case Title:** LAURA ROSENBERGER ET AL -VS- ROBERT A PADUCHIK ET AL  
**Case Number:** 21CV007443  
**Type:** ORDER

It Is So Ordered.

A handwritten signature in black ink is written over a circular, dotted seal. The signature is a stylized, cursive 'J' followed by a horizontal line. The seal is partially obscured by the signature.

/s/ Judge Jaiza Page



Court Disposition

Case Number: 21CV007443

Case Style: LAURA ROSENBERGER ET AL -VS- ROBERT A  
PADUCHIK ET AL

Case Terminated: 18 - Other Terminations

Motion Tie Off Information:

1. Motion CMS Document Id: 21CV0074432021-12-2999950000  
Document Title: 12-29-2021-MOTION TO DISMISS -  
DEFENDANT: THE OHIO REPUBLICAN PARTY  
Disposition: MOTION GRANTED
2. Motion CMS Document Id: 21CV0074432022-02-0999980000  
Document Title: 02-09-2022-MOTION TO AMEND - PLAINTIFF:  
LAURA ROSENBERGER  
Disposition: MOTION DENIED
3. Motion CMS Document Id: 21CV0074432022-03-1499980000  
Document Title: 03-14-2022-MOTION TO STRIKE - DEFENDANT:  
THE OHIO REPUBLICAN PARTY  
Disposition: MOTION GRANTED