

IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO

JOHN DOE 1, et al.,)	CASE NO: 23-cv-H-02-0089
)	
Plaintiffs,)	
)	
vs.)	
)	JUDGE: DAVID M. GORMLEY
CITY OF COLUMBUS, et al.,)	
)	
Defendants.)	
)	

PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' THIRD-PARTY COMPLAINT

Pursuant to Civ.R. 14, Plaintiffs move to strike Defendants' Third-Party Complaint. As explained in the attached Memorandum in Support, Defendants' Third-Party Complaint is not proper under Civ.R. 14. Accordingly, the Court should strike Defendants' Third-Party Complaint.

Respectfully submitted,

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**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION TO STRIKE
DEFENDANTS’ THIRD-PARTY COMPLAINT**

I. Introduction

On May 26, 2023, Defendants filed their Answer to Plaintiffs’ Amended Complaint and a Third-Party Complaint Against the State of Ohio. Defendants’ state that their Third-Party Complaint “is identical to *City of Columbus v. State of Ohio*, Case No. 19 cv 2281, pending in the Franklin County Court of Common Pleas”—a case brought prior to the passage of the ordinances challenged in this action and not involving Plaintiffs. Defs.’ Third-Party Complaint at ¶ 9.

Defendants’ Third-Party Complaint asserts nine causes of action against the State of Ohio: (1) Am. Sub. H.B. 228 and R.C. 9.68 violate the Separation of Powers doctrine; (2) Am. Sub. H.B. 228 and R.C. 9.68 violate Article II, Section 32 of the Ohio Constitution; (3) Am. Sub. H.B. 228 and R.C. 9.68 unconstitutionally interfere with the constitutionally guaranteed Home Rule Authority of the City of Columbus; (4) R.C. 9.68 unconstitutionally interferes with the constitutionally guaranteed Home Rule Authority of the City of Columbus; (5) Am. Sub. H.B. 228 and R.C. 9.68 violate the Home Rule Authority of the City of Columbus by prohibiting zoning ordinances; (6) Am. Sub. H.B. 228 and R.C. 9.68 violate the constitutionally protected Home Rule Authority of the City of Columbus; (7) Am. Sub. H.B. 228 and Amended R.C. 9.68

unconstitutionally interfere with the City of Columbus’ right to exercise its Home Rule Authority regulating the discharge of firearms inside its municipal boundaries; (8) The state’s purported preemption of the City’s ordinance to regulate and prohibit hunting inside its municipal boundaries is a violation of the City’s constitutionally protected right to Home Rule; and (9) By attempting to prohibit the City of Columbus from enacting Ordinances 3176-2022 and 0680-2023, R.C. 9.68 unconstitutionally interferes with the City’s constitutionally protected Home Rule Authority.

Defendants’ Third-Party Complaint asks the Court to rule on the constitutionality of R.C. 9.68. It does not ask the Court to find the State of Ohio liable to Defendants if Plaintiffs prevail in their case.

II. Law and Argument

A. The plain language of Civ.R. 14(a) does not authorize Defendants to file the Third-Party Complaint.

Defendants’ Third-Party Complaint is impermissible. Under Civ.R. 14(a), “a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action *who is or may be liable to him* for all or part of the plaintiff’s claim against him.” (Emphasis added.). “Any party may move to strike the third-party claim, or for its severance or separate trial.” Civ.R. 14(a).

The plain language of Civ.R. 14(a) is clear; a defendant may only bring a third-party complaint if the person to be added is or may be liable to the defendant for monetary damages that the defendant may have to pay to the plaintiff in the existing case. “The third-party defendant must be ‘secondarily liable’ or ‘liable over’” the defendant. *Cambridge Appliance & Serv., Inc. v. German*, 5th Dist. Guernsey No. 95-CA-24, 1996 WL 363924, *1 (June 20, 1996), quoting *Renacci v. Martell*, 91 Ohio App. 3d 217, 220, 632 N.E.2d 536 (9th Dist.1993). “[T]he rule cannot be used to combine all claims tangentially related to one another. Impleader cannot be used as a way of combining all controversies having a common relationship.” *Id.* at *1, citing *Renacci* at 220. “[I]n

order to be the proper subject of a third-party action, the alleged right of the defendant to recover, or the duty allegedly breached by the third-party defendant, must arise from the *plaintiff's successful prosecution* of the main action against defendant.” (Emphasis added.) *Renacci* at 221. In other words, it is a rule that facilitates indemnification from third parties in the same action.

Defendants’ Third-Party Complaint does not seek to “recover” from the State of Ohio any potential monetary damages which Plaintiffs seek from Defendants. That is because Plaintiffs are not seeking any monetary damages.¹

Plaintiffs’ Amended Complaint asks the Court for:

- A. A Declaration that Columbus City Codes 2323.32, 2323.11(N) and (O), 2323.321, and 2323.191 as enacted by the Ordinance and the New Ordinance violate Article I, Section 4 of the Ohio Constitution and thus are null and void;
- B. A Declaration that Columbus City Codes 2323.32, 2323.11(N) and (O), 2323.321, and 2323.191 as enacted by the Ordinance and the New Ordinance violate R.C. 9.68 and are thus null and void;
- C. A Declaration that Columbus City Codes 2323.32, 2323.11(N), and 2323.321 as enacted by the Ordinance are void for vagueness and violate Ohio’s Due Process Clause, Article I, Section I of the Ohio Constitution and thus are null and void;
- D. The issuance of a temporary restraining order, preliminary injunction, and permanent injunction barring Defendants’ from enforcing the challenged code

¹ Plaintiffs are requesting attorney’s fees, but for reasons which should be apparent to Defendants, they would not have an indemnity claim against the State of Ohio for such fees. And they certainly do not assert such an indemnity claim in their Third-Party Complaint.

provisions;

E. An award of any damages suffered by the Plaintiffs;

F. An award of reasonable costs, including but not limited to, attorneys' fees as provided for in R.C. 9.68 and as otherwise provided by law; and

G. Any further relief the Court deems just and equitable.

Pls.' Am. Compl. at 21–22.

Defendants' Third-Party Complaint asks the Court for:

a. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68, both in its original and amended forms, violate Article XVIII, Sections 3 and 7 of the Ohio Constitution;

b. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68 are unconstitutional because they violate the Separation of Powers doctrine;

c. A declaration under R.C. Chapter 2721 that Am. Sub. H.B. 228 and R.C. 9.68 violate Article II, Section 32 of the Ohio Constitution;

d. A preliminary and permanent injunction against Am. Sub. H.B. 228 and R.C. 9.68 enjoining them and any predecessor version of R.C. 9.68;

e. A declaration that R.C. 9.68 does not bar enforcement of Ordinances 3176-2022 and 0680-2023;

f. An order granting the Plaintiff their costs and attorneys fees;

g. Any other relief that this Court deems just and appropriate.

Defs.' Third-Party Complaint at ¶ 133. It says nothing about indemnification, recovery of damages it may have to pay out, or anything else that fits within Rule 14.

Indeed, success on Plaintiffs' Amended Complaint would moot the claims in Defendants'

Third-Party Complaint. Very simply, Defendants' Third-Party Complaint is improper.

III. Conclusion

Based on the foregoing, Plaintiffs move that the Court strike Defendants' Third-Party Complaint.

Respectfully submitted,

/s/ David C. Tryon

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the foregoing Motion to Strike Defendants' Third-Party Complaint has been served by operation of this Court's electronic filing system this 21st day of June, 2023.

/s/ David C. Tryon

David C. Tryon (0028954)