

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

T. ROBERT BENNETT, et. al.	:	CASE NO. 11-CV-00689
Plaintiffs,	:	JONATHAN P. HEIN, Judge
vs.	:	
ROBERT E. PETERS, et. al.	:	
Defendants.	:	<u>JUDGMENT ENTRY</u> – Defendant’s Motion for Judgment on Pleadings

This matter came before the Court on the motion of Defendant American Premier Underwriters to dismiss the complaint. The Plaintiffs have filed a Memorandum in Opposition.

Civil Rule 12(C) provides as follows: "**Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as to not delay the trial, any party may move for judgment on the pleadings."

Upon a review of case interpretations of Civil Rule 12(C), the Court notes that the non-moving party is entitled to have all material allegations and the pleadings along with all reasonable inferences drawn therefrom to be construed in the non-moving party’s favor. See *Peterson v. Teodosio*, 34 Ohio St. 2d 161 (1973). Relief should only be granted where the moving party is entitled to judgment as a matter of law. *Brown v. Wood County Board of Elections*, 79 Ohio App. 3d 474 (1992). In essence, the trial court must decide from the

pleadings if there is any cause of action which could be construed as a valid claim by Plaintiffs against Defendant.

In this matter, American Premier Underwriters asserts that jurisdiction of the claims involved herein are already pending in the Trumbull County Court of Common Pleas [See Case No. 99-CV-732.] and that Plaintiffs are members of the class of individuals certified as Plaintiffs in such case.

However, upon a review of the most recent amended complaint in Trumbull County – still pending from March, 2003 – it is apparent that the claims asserted and the relief requested in the Trumbull County case differs from the claim asserted and the relief requested herein. Briefly stated, the Trumbull County claims request monetary damages from Penn Central Corporation, et. al., and determinations that Penn Central does not possess any interest in various [abandoned] railroad rights of way. However, the claims herein go further by (1) seeking to determine whether Plaintiffs are entitled to ownership of the right of way due to adverse possession (2) over the interests of any other stakeholder, not merely Penn Central Corporation. As such, the jurisdictional priority rule [see *State ex. rel. Shimko v. McMonagle*, 92 Ohio St.3d 426 (2001)] does not divest this Court over the claims raised in the complaint. The Plaintiff's claims herein will still exist when – or if – the issues in Trumbull County are adjudicated, settled or dismissed. As such, the claims herein are not a part of the “whole issue” pending in Trumbull County. *State ex re. Sellers v. Gerken*, 72 Ohio St.3d 115 (1995). Indeed, the rules of evidence regarding relevancy may preclude Plaintiffs from introducing evidence in Trumbull County on claims raised herein.

When construing the pleadings and all inferences in favor of the Plaintiffs, the Court finds that the motion of American Premier Underwriters for judgment on the pleadings should not prevail. As such, the Defendant's motion to dismiss based on the pleadings must fail. **IT IS, THEREFORE, ORDERED AND DECREED** that the motion for judgment on the pleadings is overruled.

IT IS FURTHER ORDERED AND DECREED this matter shall be set for in chambers pre-trial conference for scheduling purposes on **February 23, 2012 at 11:00 a.m.**

Jonathan P. Hein, Judge

cc: John F. Marchal, Attorney for Plaintiffs (via fax)
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