

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

HIGH MILL HOLDINGS, LLC, ET
AL.,

Plaintiffs - Appellants

-vs-

ANGELA KINSEY, STARK
COUNTY AUDITOR,

Defendant - Appellee

Case No. 2026CA00080

Opinion And Judgment Entry

Appeal from the Stark County Court of Common
Pleas, Case No. 2025CV01404

Judgment: Affirmed

Date of Judgment Entry: October 13, 2026

BEFORE: Andrew J. King; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: G. BRENDA COEY, for Plaintiffs-Appellants; KYLE L. STONE,
Stark County Prosecuting Attorney, by DEBORAH A. DAWSON, for Defendant-
Appellee.

Montgomery, J.

{¶1} High Mill Holdings, LLC, and Stone Crossing SNF & ALF Holding, LLC,
appeals from the decision of the Stark County Court of Common Pleas, granting Defendant's
Civ.R. 12(b)(6) motion to dismiss or in the alternative, Civ.R. 56(C) motion for summary
judgment. For the reasons below, we AFFIRM.

PROCEDURAL HISTORY

{¶2} High Mill Holdings, LLC, and Stone Crossing SNF & ALF Holding, LLC (“Appellants”), filed a Complaint on June 25, 2025, and filed their complaint asserting claims for replevin and conversion. The complaint initially named the Stark County Recorder as defendant but Appellants filed an amended complaint on July 10, 2025, naming Appellee, Stark County Auditor, Angela Kinsey (“Kinsey”) as defendant. Appellants amended complaint asserted two claims – conversion and replevin.

{¶3} On October 15, 2025, Kinsey filed a Civ.R. 12(b)(6) motion to dismiss and/or a Civ.R. 56(C) motion for summary judgment. Kinsey maintained that conversion and replevin were inappropriate to recover alleged overpayment of taxes/conveyance fees. Appellants filed a brief in opposition on December 17, 2025, and on March 24, 2026, the Court granted the motion and dismissed the action with prejudice.

BACKGROUND FACTS

{¶4} Appellants’ claims relate to “conveyance fees” they paid after the transfer of certain real estate in Stark County. On or about February 10, 2025, High Mill Holdings, LLC, attempted to file a conveyance of real property to Canal Property, LLC, and also record the deeds of transfer. In connection therewith, High Mill submitted a DTE-100 EX (“DTE-100”) form, stating that the transaction was exempt from conveyance fees.¹ Stark County Auditor, Angela Kinsey, requested documentation that the conveyance was an exempt transaction and verify the assertion that no money or other valuable consideration was paid or to be paid related to the conveyance. High Mill responded with an affidavit from the LLC

¹ The DTE-100 EX form is the Ohio Department of Taxation’s official form for claiming an exemption from the conveyance fees.

member, Eli Gunzburg (“Gunzburg”), stating that the transferor and transferee entities shared the same membership and that no consideration was paid for the transfer.

{¶5} On or about February 10, 2025, Stone Crossing SNF & ALF Holding, LLC, conducted a similar but separate transaction. Stone Crossing attempted to file a conveyance of real property to Edgefield Properties, LLC, and record the deed of transfer. In connection therewith, Stone Crossing submitted a DTE-100 form stating that the transaction was exempt from conveyance fees. Kinsey similarly requested documentation that the conveyance was in fact exempt from conveyance fees. Stone Crossing again provided an affidavit stating that the membership between the transferor and transferee were the same and that no consideration was given for the transfer.²

{¶6} Kinsey refused to endorse or record the deeds and requested more documentation, including membership agreements for each LLC, to accurately determine if the transactions were exempt. Appellants provided organizational and other documents. The parties were ultimately unable to resolve whether the proposed transactions qualified for an exemption. Kinsey requested an opinion from the Stark County prosecutor. On March 6, 2025, Gerard T. Yost (“Yost”), Assistant Prosecuting Attorney, issued a written legal opinion, stating:

I have reviewed the DTE-100-EX forms and accompanying affidavits. * * *

Based upon the affidavit provided I would advise that the necessary attached

² In other words, in February of 2025, High Mill and Stone Crossing executed deeds to convey real property to Canal Property LLC and Edgefield Property LLC respectively. The deeds were sent to the Stark County Recorder's Office through the electronic recording/filing system. The transactions were accompanied by State prescribed DTE-100 EX forms purporting that the transactions were exempt from the 0.4 percent conveyance fee. Auditor Kinsey refused to endorse the deeds as exempt.

proof is sufficient and the transaction should progress as an exempt transaction under section (m) in this particular instance.

{¶7} Notwithstanding the opinion, Kinsey did not endorse the deeds. Finally, after several weeks, on March 26, 2025, Kinsey’s office sent a final email stating “If you wish to contest this while moving the transaction forward, you may note on the DTE-100 that you are paying under protest or attach an addendum.” *See* Amended Complaint, ¶ 15. In their Appellate Brief, Appellants point out that the email did not state anything specific regarding R.C. 2723.01, *et seq.*, or the procedure within the statute, except to make the notation that they were paying under protest.

{¶8} Thereafter, Appellants paid the conveyances fees. High Mill paid \$14,352.00 and Stone Crossing paid \$21,115.36, for a total of \$35,467.36 in fees. Upon payment, High Mill and Stone Crossing (“Appellants”) wrote a notation on the DTE-100 form that the payment was made “under protest.” At some point, the prosecutor later reversed its original opinion regarding the applicability of the exemption to the transactions at issue.

{¶9} Appellants ultimately filed an action against Auditor Kinsey asserting only two claims, conversion of property and replevin. Appellants sought damages to recover the conveyance fees paid. Kinsey filed a motion to dismiss under Civ.R. 12(b)(6) or, in the alternative, a motion for summary judgment. The trial court granted Kinsey’s motion to dismiss under Civ.R. 12(b)(6).

{¶10} In its decision, the trial court found that the special statutory procedure set forth in R.C. 2723.01 *et seq.*, is the exclusive remedy to recover taxes and assessments already paid

to the taxing authority.³ Next, the court determined that the conveyance fees paid are taxes for purposes of Chapter 2723. The court then held that Appellants could not recover the conveyance fees by means of a conversion or a replevin claim, namely because R.C. 2723.01 *et seq.* provides the exclusive means by which a taxpayer may demand that the County auditor refund erroneously collected taxes. The trial court determined: (1) R.C. 2723.01, *et seq.* provides the sole and exclusive procedure to recover unlawfully paid taxes to a taxing authority – meaning conversion and replevin were not available to Appellants; and (2) the statutory procedure requires both a written protest as well as notice of an intent to sue the taxing authority, inclusive at the time the conveyance fees were paid.

{¶11} Because Appellants did not strictly adhere to said exclusive statutory procedure and failed to provide notice of an intent to sue, inclusive at the time the conveyance fees were paid, their action against Kinsey failed. The court stated: “As the Plaintiffs failed to file a notice of intention to sue under sections 2723.01 to 2723.05, inclusive at the time the conveyance fees were paid, the Court finds that Ohio Revised Code Sections 2723.01 *et seq.* bar the Plaintiffs' claims.” Appellants filed the instant appeal.

ASSIGNMENTS OF ERROR

{¶12} “I. THE TRIAL COURT ERRED IN DISMISSING THE AMENDED COMPLAINT ON THE GROUNDS OF ALLEGED NONCOMPLIANCE WITH R.C. 2723.03 WHERE THE PROTEST PROCEDURE PRESCRIBED BY DEFENDANT CONSTITUTED VALID NOTICE AND SUBSTANTIALLY COMPLIED WITH THE STATUTE'S REQUIREMENTS.”

{¶13} “II. THE TRIAL COURT COMMITTED REVERSIBLE PROCEDURAL ERROR BY LOOKING BEYOND THE FOUR CORNERS OF THE AMENDED COMPLAINT TO RESOLVE R.C. 2723.03 COMPLIANCE ON A CIV.R.

³ As discussed *infra*, neither Appellants nor Kinsey initially asserted a cause of action under R.C. 2723.01, *et seq.*, or that the statute was an exclusive remedy. The trial court identified the statute and its accompanying procedure.

12(B)(6) MOTION AND BY APPLYING INCONSISTENT STANDARDS TO DIFFERENT ISSUES.”

{¶14} “III. THE TRIAL COURT ABUSED ITS DISCRETION BY DISMISSING THE AMENDED COMPLAINT WITH PREJUDICE RATHER THAN GRANTING LEAVE TO AMEND UNDER CIV.R. 15(A).”

{¶15} “IV. THE AMENDED COMPLAINT, LIBERALLY CONSTRUED UNDER CIV.R. 8(F), STATES A VIABLE CLAIM UNDER R.C. 2723.01.”

{¶16} “V. THE TRIAL COURT ERRED IN FINDING NO GENUINE ISSUE OF MATERIAL FACT WHERE DEFENDANT'S OWN COUNSEL CONFIRMED THE EXEMPTION IN WRITING AND SUBSEQUENTLY REVERSED WITHOUT EXPLANATION.”

STANDARD OF REVIEW

{¶17} A Civ.R. 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State. ex rel. Hansen v. Guernsey County Board of Commrs.*, 65 Ohio St.3d 545 (1992). The trial court may review only the complaint and may dismiss the case only if it appears beyond a doubt that plaintiff can prove no set of facts entitling the plaintiff to recover. *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242 (1975). The Court must presume that all factual allegations in the complaint are true and draw all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Mille Co.*, 40 Ohio St.3d 190 (1988).

{¶18} Thus, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien*, supra. If there is any set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss. *Cincinnati v. Beretta USA Corp.*, 95 Ohio St.3d 416 (2002); *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143 (1991).

{¶19} Our appellate standard of review on a Civ.R. 12(b)(6) motion is de novo. *Bratton v. Couch*, 2003-Ohio-3743, ¶ 8 (5th Dist.). Under a de novo analysis, we must accept

all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Kuhn v. 21st Century Ins. Co.*, 2012-Ohio-2598, ¶ 21-22 (5th Dist.). In reviewing a Civ.R. 12(b)(6) motion to dismiss for failure to state a claim, a trial court may not consider matters outside the pleadings unless the court converts the motion to dismiss into a motion for summary judgment. *Id.*; *Smith v. Lurie*, 2012-Ohio-499, ¶ 11 (8th Dist.).

{¶20} Similarly, the question of whether a trial court correctly interpreted and applied a statute is a question of statutory interpretation, which appellate courts review de novo. *Columbus Zoological Park Assn. v. Fingerhut*, 2026-Ohio-1436 (5th Dist.), citing *State ex rel. Natl. Lime & Stone Co. v. Marion Cty. Bd. of Commrs.*, 2017-Ohio-8348, ¶ 14, citing *Ceccarelli v. Levin*, 2010-Ohio-5681, ¶ 8.

ANALYSIS

1) R.C. 2723.01, et seq.

{¶21} In the first assignment of error, Appellants argue that this Court should find that the statutorily mandated notice requirements of R.C. 2723.03 were met because (1) Appellants marked the DTE-100 forms with the notation “paying under protest,” (2) Kinsey’s internal email advised Appellants to use such notation but did not identify any additional requirements (i.e. notice of intent to sue) and (3) Appellants substantially complied with the statute. We disagree.

{¶22} R.C. 2723.01 states:

Courts of common pleas may enjoin the illegal levy or collection of taxes and assessments and entertain actions *to recover them when collected*, without regard

to the amount thereof, but no recovery shall be had unless the action is brought within one year after the taxes or assessments are collected. (emphasis added).

In turn, R.C. 2723.03 provides:

Action to enjoin the collection of taxes and assessments must be brought against the officer whose duty it is to collect them. Actions to recover taxes and assessments must be brought against the officer who made the collection, or if he is dead, against his personal representative. When they were not collected on the county duplicate, each corporation or board which is entitled to share in the revenue so collected must be joined in the action.

If a plaintiff in an action to recover taxes or assessments, or both, alleges and proves that he * * *, at the time of paying such taxes or assessments, filed a *written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality thereof, together with notice of his intention to sue* under sections 2723.01 to 2723.05, inclusive, of the Revised Code, such action shall not be dismissed on the ground that the taxes or assessments, sought to be recovered, were voluntarily paid. (emphasis added).⁴

{¶23} The Ohio Supreme Court has held that “R.C. 2723.01 *et seq.* provide[s] the exclusive means by which a taxpayer may . . . demand that the [taxing authority] refund

⁴ Ohio Revised Code Section 2723.05 states:

If, by judgment or final order of any court of competent jurisdiction in this state, in an action not pending on appeal, it is determined that any tax or assessment or part thereof was illegal and such judgment or order is not made in time to prevent the collection or payment of such tax or assessment, then such tax or assessment or such part thereof as is at the time of such judgment or order unexpended and in the possession of the officer collecting the same shall be refunded to the person paying such tax or assessment by the officer having the same in his possession.

erroneously collected taxes.” *Ryan v. Tracy*, 6 Ohio St.3d 363, paragraph one of syllabus; *Boler v. City of Rittman*, 2025-Ohio-5780, ¶ 17 (9th Dist.) (“R.C. 2723.01 *et seq.* provide the exclusive means by which a taxpayer may . . . demand that the county auditor refund erroneously collected taxes.”), citing *Ryan*, 366; *see also Kresevic v. Kimmel*, 2026-Ohio-3095, ¶ 10 (9th Dist.).

{¶24} *Ryan* and its progeny continue to be the law in Ohio as the sole means by which to demand a refund of erroneously collected taxes. *See e.g., Coventry Courts, LLC v. Cuyahoga Cty.*, 2023-Ohio-1037, ¶ 24 (8th Dist.) (unjust enrichment not the proper remedy for recovering overpayment of taxes because R.C. 2723.01 provides adequate remedy); *Hughes v. Bd. of Cty. Commrs. for Portage Cty.*, 2023-Ohio-260, ¶ 21-25 (11th Dist.) (affirming dismissal of unjust enrichment claim because R.C. Chapter 2723 provides an adequate remedy at law); *Musial Offices, Ltd. v. Cty. of Cuyahoga*, 2020-Ohio-5426, ¶ 26-43 (8th Dist.) (taxpayers could not recover overpayment of illegal taxes based on an unjust enrichment claim but could recover under specific cause of action created by R.C. 2723.01).

{¶25} Based on well-established Ohio law, the trial court properly held that Appellants’ claims of conversion and replevin against Kinsey were not proper claims to recover taxes erroneously or unlawfully collected. Ohio law clearly mandates that the R.C. 2723.01 is the sole and exclusive remedy to recover such money from the taxing authority. Thus, Appellants were required to pursue any claims against Kinsey pursuant to the statutory framework set forth in R.C. 2723.01, *et seq.*

{¶26} In addition to being the exclusive remedy, *Ryan* also indisputably held that the specific provisions of R.C. 2723.03, relating to the filing of a (1) written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality thereof;

and (2) the notice of intention to sue inclusive under sections 2723.01 to 2723.05, are “mandatory,” and must be strictly followed. *Ryan*, at 365, citing *Swetland Co. v. Evatt*, 139 Ohio St. 6 (1941); *State, ex rel. Bassichis, v. Zangerle*, 126 Ohio St. 118 (1933); *Cuyahoga Falls v. Beck*, 110 Ohio St. 82 (1924); *Trustees v. Thoman*, 51 Ohio St. 285 (1894).

{¶27} Thus, the *Ryan* decision enforces the statute’s plain and unambiguous text, requiring a clear notice of intent to litigate against the collecting officer – i.e. Kinsey, inclusive under R.C. 2723.01 through R.C. 2723.05. A failure to comply with the statutory requirements bar an action under R.C. 2723.01 *et seq.* to recover previously paid taxes or assessments. *Ryan, supra* (the written protest and notice of intention to sue provisions of R.C. 2723.03 are mandatory and must be strictly adhered to if an action for the recovery of allegedly wrongfully collected taxes is to be maintained); *Johnson v. Clark Cty. Auditor*, 2020-Ohio-3201, ¶ 73 (2d Dist.) (“The provisions regarding written protest and notice of intention to sue are mandatory and must be adhered to strictly * * *. When a plaintiff fails to comply with those requirements, the action is barred.”); *Blisswood Village Homeowners Assn. v. McCormack*, 38 Ohio St.3d 73, 74 (1988) (holding it was undisputed that appellant failed to comply with the protest and notice requirements of R.C. 2723.03 and thus any action predicated upon R.C. 2723.01 was barred); *Dean v. Cuyahoga Cty. Fiscal Office*, 2019-Ohio-5115 (Cuyahoga Cty.) (holding that even if appellant had standing to sue for the alleged overpayment of property taxes, his action would nonetheless fail because he did not assert that he filed a written protest and notice of intention to sue); *Shanahan v. City of Toledo*, 2009-Ohio-5991 (6th Dist.) (Written protest and notice provisions of R.C. 2723.03 are mandatory and failure to comply bars any action brought under R.C. 2723.01 to recover previously paid taxes and assessments).

{¶28} Here, as the trial court determined, although Appellants wrote a notation “under protest,” at the time they paid the conveyance fees, it is clear that Appellants did not provide any notice of their intention to sue nor specify the nature of his claim. As stated, the alleged notice is an “under protest” notation on a DTE-100 form and an email from Kinsey’s office stating to file the form under protest. The DTE-100 does not on its face specify the nature of the claim or communicate a clear intent to sue Kinsey. Ohio case law makes clear that courts must adhere to *Ryan’s* rule of strict adherence.

{¶29} Appellants argue that because they “substantially complied” with the statute’s requirements, dismissal with prejudice was inappropriate. Substantial compliance with a statute’s requirements has been applied mostly to election statutes in Ohio. *See, State ex rel. Painter v. Brunner*, 2011-Ohio-35, ¶ 35 (“[T]he general rule is that unless there is language allowing substantial compliance, election statutes are mandatory and must be strictly complied with.”), quoting *State ex rel. Stewart v. Clinton Cty. Bd. of Elections*, 2010-Ohio-1176. Importantly, a court is not authorized to add an exception that is not contained in the express language of the applicable statutory provisions. *Brunner*, ¶ 35.

{¶30} In the present case, there is no statutory language allowing substantial compliance. To the contrary, R.C. 2723.03 - and case law interpreting same - is clear and unambiguous. Where the language used in a statute is clear and unambiguous, the statute must be applied as written, and no further interpretation is necessary. *Vaughn Indus. v. Dimech Servs.*, 2006-Ohio-3381, ¶ 23 (6th Dist.), citing *Columbus & Franklin Cty. Metro. Park Dist. v. Shank*, 65 Ohio St.3d 86, 103 (1992). Quite simply, *Ryan, supra*, and controlling precedent require strict compliance with the clear and unambiguous notice and intent to sue provision

in R.C. 2723.03. Thus, substantial compliance with the statutory requirements is simply not a defense. Appellants' first assignment of error is overruled.

2) The trial court did not look beyond the four corners of the amended complaint

{¶31} Appellants' second assigned error suggests that the trial court improperly looked beyond the four corners of the complaint and examined "the filings in this case." Appellants state "[t]he amended complaint does not contain any allegation that Plaintiffs failed to file a notice of intention to sue under R.C. 2723.03. The amended complaint alleged that Defendant instructed Plaintiffs to mark 'paying under protest' on the DTE-100, and that Plaintiffs did so." Appellants' Brief, p. 10.

{¶32} Appellants accurately state that consideration of anything outside the four corners of the complaint is improper when considering a Civ.R. 12(b)(6) motion. *Douglass v. Provia Door*, 2013-Ohio-2853 (5th Dist.). Indeed, a Civ.R. 12(b)(6) determination "cannot rely on factual allegations or evidence outside the complaint." *Sweeney v. Pfan*, 2019-Ohio-4605, ¶ 19.

{¶33} Importantly however, the Ohio Supreme Court made it equally clear that courts are free to consider memoranda, briefs, and oral arguments on legal issues in determining whether a complaint should be dismissed for failure to state a claim upon which relief can be granted and this material is not considered matters outside the pleadings. *State ex rel. Scott v. Cleveland*, 2006-Ohio-6573; *Sweeney*, ¶ 19.

{¶34} Here, Appellants amended complaint asserts only two claims against Kinsey – conversion and replevin. Indeed, Appellants failed to plead any action pursuant to R.C. 2723.01, the statute is wholly absent from the amended complaint. Even Kinsey did not argue at the trial court level that R.C. 2723.01 applied and was an exclusive remedy. The trial court

independently found this exclusive statutory procedure. Notwithstanding, the trial court clearly analyzed the amended complaint alone and resolved a purely legal question regarding whether Appellants' payment of the conveyance fees with a notation of "under protest" on a tax exemption form was sufficient to state a cause of action under R.C. 2723.01, the exclusive statutory remedy.

{¶35} The trial court's statement that a "review of the filings" showed "no documentation or allegation" of notice merely recognizes that the amended complaint does not allege compliance with R.C. 2723.03, nor even mention R.C. 2723.01 or *any* of its provisions and fails to plead anything that would constitute proper statutory notice. The amended complaint alleges, at most, the payment was made "under protest." *See* Amended Complaint, ¶ 16 ("Plaintiffs revised their respective DTE-100 form, indicating that the conveyance fee was being paid under protest."). Even a cursory review of the amended complaint makes clear that Appellants reference both the DTE-100 form itself as well as the email from Kinsey. *See* Amended Complaint, ¶¶ 15-16.

{¶36} Where the cause of action is contingent upon the satisfaction of a condition precedent, Civ.R. 9(C) requires the plaintiff to plead that the condition has been satisfied and permits the plaintiff to aver generally that any conditions precedent to recovery have been satisfied. *Secy. of Veterans Affairs v. Anderson*, 2014-Ohio-3493, ¶ 16, citing *Lewis v. Wal-Mart, Inc.*, 1993 Ohio App. LEXIS 3920, *8 (10th Dist.). Appellants did not plead satisfaction with a condition precedent, the notice of intent to use under R.C. 2723.01, *et seq.*, and cannot so plead because the notice of intent to sue simply did not happen and cannot be construed from the notation of "under protest." There is simply nothing to suggest the trial court considered anything beyond what was proper. Appellants' second assignment of error is overruled.

3) Civ.R. 15(A) - Leave to Amend Complaint

{¶37} In the third assignment of error, Appellants claim the trial court abused its discretion by dismissing the amended complaint with prejudice rather than granting leave to amend under Civ.R. 15(A). We disagree.

{¶38} An appellate court reviews a trial court's decision to deny a motion for leave to file an amended pleading for an abuse of discretion. *Franciscan Communities, Inc. v. Rice*, 2021-Ohio-1729, ¶ 32 (8th Dist.). A trial court abuses its discretion where its decision is unreasonable, arbitrary or unconscionable. *Id.* An abuse of discretion involves far more than a difference in opinion. *Id.*

{¶39} Civ.R. 15(A) provides that leave of court shall be freely given when justice so requires; however, there is no unconditional right to amend a complaint. *See Kinchen v. Mays*, 2014-Ohio-3325 (8th Dist.); *Parmertor v. Chardon Local Sch.*, 2016-Ohio-761, ¶ 35 (11th Dist.). “Where a plaintiff fails to make a *prima facie* showing of support for new matters sought to be pleaded, a trial court acts within its discretion to deny a motion to amend the pleading.” *Wilmington Steel Prod., Inc. v. Cleveland Elec. Illuminating Co.*, 60 Ohio St.3d 120 (1991), syllabus; *see also Townsend v. Ohio Dept. of Transp.*, 2012-Ohio-2945 (10th Dist.). Such requirement ensures that a proposed amendment is not a delay tactic or one which would cause prejudice to the opposing party. *Darby v. A-Best Products, Co.*, 2004-Ohio-3720, ¶ 20, citing *Wilmington Steel, supra*, at 122.

{¶40} Here, Appellants’ failure to include the statutorily required notice of their intent to sue Kinsey cannot be cured with a second amended complaint. Appellants did not provide the notice. Even if we accept all facts as true, Appellants cannot meet the mandatory prerequisites of R.C. 2723.03, and no set of facts entitles them to relief. Thus, the trial court

properly dismissed the action with prejudice. Appellant's third assignment of error is overruled.

4) Civ.R. 8(F) - Liberal construction of Amended Complaint

{¶41} Next, Appellants argue that the amended complaint, liberally construed under Civ.R. 8(F), states a viable claim under R.C. 2723.01. It does not. Civ.R. 8(F) provides that “[a]ll pleadings shall be so construed as to do substantial justice.” However, the rule is not intended as a means by which a party may correct a substantive error in a pleading after the time for amendment to the pleading has passed. *Am. Outdoor Advertising Co., L.L.C. v. P&S Hotel Group, Ltd.*, 2009-Ohio-4662, ¶ 26 (10th Dist.). In other words, Civ.R. 8(F) does not permit transformation of deficient pleadings when the complaint lacks the required allegations under R.C. 2723.01 and R.C. 2723.03. No matter how “liberally” one construes the instant amended complaint, Appellants claim under R.C. 2723.01 is barred.

{¶42} As stated above, R.C. 2723.03 unambiguously requires that, at the time of payment, the payer file “a written protest as to the portion sought to be recovered, specifying the nature of his claim as to the illegality thereof, together with notice of his intention to sue under sections 2723.01 to R.C. 2723.05.” Appellants allege a “paying under protest” notation on a DTE-100 form but do not allege the legal basis for the protest, and do not provide the notice of intent to sue at the time of payment as R.C. 2723.03 requires. Generalized knowledge by the taxing authority that a dispute exists (or even prior correspondence) does not satisfy the statutorily required notice of intent to sue.

{¶43} R.C. 2723.03 contemplates payment under protest with a contemporaneous unequivocal notice of intent to sue, so the taxing authority is placed on formal notice at the time it receives the payment. Here, if this court were to liberally construe the amended

complaint as properly stating a claim under R.C. 2723.01, the court would be improperly transforming deficient pleadings. Appellants' fourth assignment of error is overruled.

5) Summary Judgment

{¶44} In its fifth assignment of error, Appellants contend the trial court improperly determined no genuine issue of material fact exists even though Kinsey's own counsel confirmed the exemption in writing and subsequently reversed without explanation. Again, we disagree with Appellants. The trial court dismissed the amended complaint with prejudice under Civ.R. 12(b)(6). The court stated: "For the above-stated reasons, the Court finds the Motion to Dismiss of the Defendant for the failure of the Plaintiffs to state a claim upon relief can be granted, to be well-taken, and is sustained." Although Kinsey filed a motion for summary judgment in the alternative, there is no analysis regarding summary judgment in the least and this court will not unnecessarily engage in same. As stated above, the trial court relied upon the amended complaint and other content that is appropriate to consider when ruling on a Civ.R. 12(b)(6). Appellants' fifth assignment of error is overruled.

CONCLUSION

{¶45} Appellant's first, second, third, fourth, and fifth assignments of error are overruled in their entirety. The judgment of the Stark County Court of Common Pleas is affirmed.

{¶46} Costs to Appellant.

By: Montgomery, J.

King, P.J. and

Popham, J. concur.