**IN THE COURT OF COMMON PLEAS**
**GENERAL DIVISION**
**BUTLER COUNTY, OHIO**

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| **DOREEN BARROW, et al.** | * | **Case Number: CV2013 07 2047** |
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| **Plaintiffs,** | * | **JUDGE MICHAEL A. OSTER, JR** |
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| **-V-** | * | **DECISION AND ENTRY** |
| | * | **AS TO SUMMARY JUDGMENT** |
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| **VILLAGE OF NEW MIAMI, et al** | * | |
| | * | |
| **Defendants.** | * | |
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"It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood. . ." James Madison, The Federalist No. 62. In the case sub justice, the last issue to be decided by this Court appears to be as simple as: If the government has created an Unconstitutional law/ordinance that has taken people's money without affording them the necessary Due Process protections, should not justice demand and the law require restitution of that money to the people?

But, the guiding law is not simple. Rather, it is complex and mandates a thorough dissection of cases and legal principles to root out the answer.

However, once the complexities of the law are analyzed, the answer is simple: Yes.

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## POSTURE

This matter is before the Court upon Plaintiff's Renewed Motion for Summary Judgment, filed in this case on 8/3/2016, and Defendant's Renewed Cross Motion for Summary Judgment filed in this case on 10/14/2016. The matters having been fully briefed, oral arguments were held on 12/29/2016, at which Counsel for all parties was present. Upon a review of the record and all evidence submitted, this Court hereby **GRANTS** Plaintiff's Renewed Motion for Summary Judgment and **DENIES** Defendant, Village of New Miami's Cross Motion for Summary Judgment, for the reasons more fully set forth below.

## PROCEDURAL BACKGROUND

This case was filed in this Court on 7/19/2013, based upon a challenge by Plaintiff's as to The Village of New Miami's Automated Speed Enforcement Program (ASEP) in the Village of New Miami, Ohio.

This case arises out of the operation of the Automated Speed Enforcement Program in the Village of New Miami. The Village of New Miami is in St. Clair Township located just north of the city of Hamilton. New Miami is less than one square mile in size (.95 square miles) and has a population of 2,249 people based on the 2010 United States Census Bureau. U.S. 127, a major north-south highway, runs through the Village and is the primary location where the speed cameras were located.

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After lengthy Motion practice and multiple appeals, the remaining issue before the Court is Plaintiff's claim in Court IV, for unjust enrichment. The Court also has before it Defendant's Renewed Cross Motion for Summary Judgment as to Plaintiff's Count IV claim.

## LAW AND LEGAL ANALYSIS

### *I. Standard of review for a Motion for Summary Judgment under Ohio law.*

A motion for summary judgment shall only be granted when there are no genuine issues of any material fact, and the moving party is entitled to judgment as a matter of law. Summary judgment shall not be granted unless it appears from the evidence that reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion is made. In reviewing a motion for summary judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. Civ. R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317. The only evidence to be considered when ruling upon a motion for summary judgment are pleadings, depositions, affidavits, written discovery responses filed with the court, transcripts of evidence, and written stipulations of fact. Civ.R. 56(C).

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Summary judgment is a procedural device to terminate litigation and to avoid formal trial when there is nothing to try. It must be awarded with caution,

resolving doubts and construing evidence against the moving party, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion. *Norris v. Ohio STD Oil Co.* (1982), 70 Ohio St.2d 1. Doubts must be resolved in favor of the non-moving party. *Osborne v. Lyles* (1992), 63 Ohio St. 3d 326.

For summary judgment to be granted there can be no genuine issue as to any material fact and the moving party must be entitled to judgment as a matter of law. Material facts are those facts that might affect the outcome of the lawsuit under the law of the case. *Turner v. Turner* (1993), 67 Ohio St.3d 337, 340, 617 N.E.2d 1123, 1126, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202, 212–213. To determine if these facts present a genuine issue, the court must decide whether the evidence presents a sufficient conflict to require submission to a jury, or whether it is so one-sided that one party must prevail as a matter of law. *Id at 1126.*

In the case at bar, the parties rely upon arguments provided in their respective supporting memoranda, oral arguments, pleadings, and affidavits.

### *II. Legal vs. Equitable under Ohio law*

The crux of the arguments between the parties as to Plaintiff's Court IV is truly whether the unjust enrichment claim would represent restitution claims sounding in law or sounding in equity. "At times, creative pleading may obscure the conceptual line between damages for loss sustained and claims for a specific

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form of relief." *Morning View Care Ctr.-Fulton v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 04AP–57, 2004-Ohio-6073, ¶ 24, citing, *Zelenak v. Indus. Comm. of Ohio*, 148 Ohio App.3d 589, 2002-Ohio-3887, 774 N.E.2d 769, at ¶ 15. As such, this Court must first determine whether the relief sought is legal or equitable in nature.

Both the Supreme Court of the United States, and the Supreme Court of Ohio have had an opportunity to address the very issue before this Court. Specifically, in *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441, ¶¶ 11-17, the following guidance was provided:

> Historically, restitution has been available both in equity and in law as the remedy for an unjust enrichment of one party at the expense of another. Restatement of the Law, Restitution (1937) 9. Several remedies are available to a litigant seeking restitution, including a judgment for money. "Although ordinarily such money judgment is obtained by an action at law, a decree for money will sometimes be rendered by a court of equity." *Id.* at 21, Section 4.
>
> The United States Supreme Court recently examined the term "equitable relief" as used in Section 502(a)(3) of the Employee Retirement Income Security Act ("ERISA"), Section 1132(a)(3), Title 29, U.S.Code. *Great–West Life & Annuity Ins. Co. v. Knudson* (2002), 534 U.S. 204, 122 S.Ct. 708, 151 L.Ed.2d 635. The court considered whether "judicially decreed reimbursement for payments made to a beneficiary of an insurance plan by a third party" was "equitable relief" and therefore authorized by ERISA. The petitioners characterized their claim as one of restitution. The court stated, " 'Almost invariably * * * suits seeking (whether by judgment, injunction, or declaration) to compel the defendant to pay a sum of money to the plaintiff are suits for "money damages," as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty.' " *Id.* at 210, 122 S.Ct. 708, 151 L.Ed.2d 635, quoting *Bowen v. Massachusetts* (1988), 487 U.S. 879, 918–919, 108 S.Ct. 2722, 101 L.Ed.2d 749 (Scalia, J., dissenting). The court ultimately found that the relief requested in Great–West was

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indeed at law because the basis for petitioners' claim was that they were contractually entitled to funds for benefits that they had conferred. *Id.* at 214, 122 S.Ct. 708, 151 L.Ed.2d 635.

Justice Scalia, writing for the majority, noted that not all suits seeking restitution can be characterized as seeking equitable relief. Instead, whether restitution is "legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought." (Internal quotations and brackets omitted.) *Great–West* at 213, 122 S.Ct. 708, 151 L.Ed.2d 635. Justice Scalia provided the following guidance: Restitution is available as a legal remedy when a plaintiff cannot " 'assert title or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant had received from him.' " *Id.*, quoting *Dobbs, Law of Remedies* (2d Ed.1993) 571, Section 4.2(1). Restitution is available as an equitable remedy "where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession." Id. "Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession." *Id.* at 214, 122 S.Ct. 708, 151 L.Ed.2d 635.

This court has employed similar reasoning to hold that equitable restitution may include the recovery of funds wrongfully held by another. In *Ohio Hosp. Assn. v. Ohio Dept. of Human Serv.* (1991), 62 Ohio St.3d 97, 579 N.E.2d 695, this court invalidated administrative rules improperly promulgated by the former Ohio Department of Human Services ("ODHS"). In that case, the ODHS argued that the Court of Claims had no jurisdiction over the matter because the state did not waive its immunity from liability for money damages resulting from an invalidated administrative rule. This court disagreed, finding that sovereign immunity was not applicable to the case. This court reasoned, "The order to reimburse Medicaid providers for the amounts unlawfully withheld is not an award of money damages, but equitable relief." *Id.* at 104, 579 N.E.2d 695. This court cited another United States Supreme Court case, *Bowen v. Massachusetts*, 487 U.S. 879, 895, 108 S.Ct. 2722, 101 L.Ed.2d 749, for the proposition that "[d]amages are given to the plaintiff to substitute for a suffered loss, whereas specific remedies are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled. Thus, while in many instances an award of money is an award of damages, occasionally a money award is also a[n] [in] specie remedy."

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(Emphasis sic; internal quotations and citations omitted.) *Ohio Hosp.* at 105–106, 579 N.E.2d 695. The court concluded that "[t]he reimbursement of monies withheld pursuant to an invalid administrative rule is equitable relief, not money damages, and is consequently not barred by sovereign immunity." *Id.* at 105, 579 N.E.2d 695.

Similarly, in *Judy v. Ohio Bur. of Motor Vehicles*, a class of individuals sought injunctive relief and reimbursement from the Ohio Bureau of Motor Vehicles ("BMV") in a court of common pleas. *Judy v. Ohio Bur. of Motor Vehicles* (Dec. 31, 2001), Lucas App. No. L–01–1200, 2001 WL 1664295. The class sought return of driver's license fees that it argued the BMV had unlawfully assessed. The BMV argued that the Court of Claims had exclusive jurisdiction over the matter because the class brought an action for money damages against the state. The appellate court held that the common pleas court had properly exercised its jurisdiction because the class "sought injunctive relief and simple reimbursement of the allegedly improperly assessed fees," rather than money damages. *Id.*

This court recently considered the appeal in *Judy v. Ohio Bur. of Motor Vehicles*, 100 Ohio St.3d 122, 2003-Ohio-5277, 797 N.E.2d 45, although the BMV did not appeal the issue of subject matter jurisdiction to this court. We did not recognize any jurisdictional defect and held that the BMV had improperly interpreted two Revised Code sections and as a result had improperly collected double license reinstatement fees. The return of the improperly collected fees is analogous to the return of moneys here. In both cases, the plaintiffs sought the return of specific funds improperly collected by a state agency.

This court held in *Holeton*, 92 Ohio St.3d 115, 748 N.E.2d 1111, that the workers' compensation subrogation statute was unconstitutional. Accordingly, any collection or retention of moneys collected under the statute by the BWC was wrongful. The action seeking restitution by Santos and his fellow class members is not a civil suit for money damages but rather an action to correct the unjust enrichment of the BWC. A suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity. Thus, a court of common pleas may properly exercise jurisdiction over the matter as provided in R.C. 2743.03(A)(2).
(*Emphasis added*)

In the case at bar, this Court has already found Council Ordinance 1917,

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as adopted the Village of New Miami's council to be Unconstitutional. Accordingly, any collection or retention of the moneys collected under the Ordinance was wrongful. Based upon the aforementioned established Ohio law, this action *sub justice* is therefore not a civil suit for money damages; but rather, an action to correct the unjust enrichment of the Village of New Miami.

A suit that seeks the specific funds wrongfully collected or held by the village, is thus, a suit brought in equity. *See, Santos*, 2004-Ohio-28, ¶¶ 11-17; *Bowen v. Massachusetts*, 487 U.S. 879, 895; *Ohio Hosp. Assn.*, 62 Ohio St.3d 97; Judy, 2003-Ohio-5277; *Cirino v. Ohio Bur. of Worker's Comp.*, 8th Dist. No. 104102, 2016 -Ohio- 8323, ¶54; *LaBorde v. Gahanna*, 10th Dist. Franklin Nos. 14AP–764 and 14AP–806, 2015-Ohio-2047, ¶ 43–44.

This statement of law has long been recognized in the State of Ohio. Where money is collected by a state agency to which it is not entitled (or fails to pay amounts it should have paid), an action that seeks the recovery of those specific and identifiable funds is considered a claim for equitable restitution. These exact sentiments were stated in the case of *Cirino*, 2016-Ohio-8323, ¶54, where the Court went on to list all of the following as examples:

> *Interim HealthCare*, 2008–Ohio–2286, at ¶ 17 ("Cases in which a plaintiff claims a state agency has wrongfully collected certain funds are characterized generally as claims for equitable restitution."), citing *Morning View Care Ctr.-Fulton*, 2004–Ohio–6073, at ¶ 19; *Dunlop v. Ohio Dept. of Job & Family Servs.*, 10th Dist. Franklin No. 11AP–929, 2012–Ohio–1378, ¶ 13–16 (claim for reimbursement of child support payments that child support agency allegedly wrongly collected in excess of child support payments ordered by the common pleas court

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was a claim for equitable restitution even though agency thereafter distributed most of the money collected to the child support obligee, the state and the federal government); *San Allen v. Buehner*, 8th Dist. Cuyahoga No. 99786, 2014–Ohio–2071 (employers' claim against the BWC for the return of portions of workers' compensation premiums that exceeded the premiums employers should have been charged was a claim for equitable restitution); *Keller v. Dailey*, 124 Ohio App.3d 298, 303–304, 706 N.E.2d 28 (10th Dist.1997) (plaintiff's claim for unpaid overtime compensation was an equitable claim because plaintiff sought "the very thing to which she is allegedly entitled" under the Fair Labor Standards Act); *Henley Health Care v. Ohio Bur. of Workers' Comp.*, 10th Dist. Franklin No. 94 APE08–1216, 1995 Ohio App. LEXIS 715 (Feb. 23, 1995) (healthcare company's claims, which sought reimbursement of money withheld pursuant to allegedly invalid rules, were equitable in nature and not a request for money damages). *Compare Measles*, 128 Ohio St.3d 458, 2011–Ohio–1523, 946 N.E.2d 204 (injured workers' restitution claim to recover funds allegedly wrongfully withheld after the workers applied for, and the BWC approved, a lump sum advancement of permanent total disability benefits they had been awarded was a claim for money due under a contract, i.e., an action in law disputing the effect of the lump sum advancement agreement the workers had entered into with the state, that must be pursued in the court of claims); *Zelenak*, 148 Ohio App.3d 589, 2002–Ohio–3887, 774 N.E.2d 769, at ¶ 24–25 (claim for interest on total temporary disability compensation withheld or recovered as overpayments but later reimbursed was a claim for monetary damages over which the common pleas court lacked subject matter jurisdiction).

Accordingly, the motorists in the case *sub justice* are seeking the specific amount of fines that they were made to pay under an Unconstitutional Ordinance. The motorists are not seeking to impose personal liability from the Village, but rather, are seeking the restoration, return, or refund of the particular and specific amount of money that they were made to pay, that was wrongfully collected by the Village, and that is in the Village's possession.

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The action seeking restitution, return, or refund by the Class members is not a civil suit for money damages, but rather an action to correct the unjust enrichment of the Village of New Miami. As such, this Court finds this to be a suit brought in equity.

### *III. Sovereign Immunity*

The Village of New Miami argues that sovereign immunity applies to the present case, and thus any refund or return of the money collected is barred. See, R.C. 2744. This Court disagrees.

As not to recreate the wheel, the First District Court of Appeals has previously stated the law relevant to this court's determination succinctly as follows:

> R.C. Chapter 2744 provides a three-tiered scheme that grants broad immunity to political subdivisions. See *Colbert v. Cleveland*, 99 Ohio St.3d 215, 2003–Ohio–3319, 790 N.E.2d 781, ¶ 7. The first tier of the scheme provides a general grant of immunity: "[A] political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." R.C. 2744.02(A)(1).
>
> Once immunity is established, the next tier of the analysis carves out certain exceptions to immunity listed in R.C. 2744.02(B) which re-establish the liability of a political subdivision where there is negligence with respect to the exercise of proprietary functions.
>
> Finally, if any exception applies to re-impose liability, the third tier of the analysis focuses on whether any of the defenses contained in R.C. 2744.03 apply to reinstate immunity. See *Munday v. Lincoln Hts.*, 1st Dist. Hamilton No. C–120431, 2013–Ohio–3095, ¶ 19; see also *R.K. v. Little Miami Golf Ctr.*, 2013–Ohio–4939, 1 N.E.3d 833, ¶ 8 (1st Dist.).

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Here, Harrison argues that since Cincinnati's claims sound in intentional tort, it was entitled to immunity under R.C. Chapter 2744. Cincinnati claimed that Harrison had tortiously interfered with and impaired its contract with the county to provide water to the disputed areas. Cincinnati did not assert damages arising from Harrison's negligent establishment, expansion, or operation of its water system in the disputed areas. Rather, Cincinnati argued that Harrison had taken actions "both as a governmental entity and through its elected officials, deliberately intended to solicit the County to enter into an agreement with Harrison giving it service rights in the Disputed Areas despite the County Contract, and deliberately intended to impair Cincinnati's rights and duties under the County Contract." Harrison argues that these claims are barred by R.C. Chapter 2744, whether it had been engaged in a governmental function, as it asserts, or in a proprietary function as Cincinnati argues. See R.C. 2744.01(G)(2)(C) (classifying as a proprietary function "[t]he establishment, maintenance, and operation of a utility, including but not limited to * * * a municipal corporation water supply system.").

Harrison is correct that R.C. 2744.02(B) includes no specific exceptions for intentional torts which would re-establish any liability granted under the first tier. "[P]olitical subdivisions are immune under R.C. 2744.02 from intentional tort claims." *Williams v. McFarland Properties, LLC*, 177 Ohio App.3d 490, 2008–Ohio–3594, 895 N.E.2d 208, ¶ 11 (12th Dist.); see *Hubbard v. Canton City School Bd. of Edn.*, 97 Ohio St.3d 451, 780 N.E.2d 543 (2002); R.K. at ¶ 49.

Harrison is not immune to claims for Injunctive and Declaratory relief, but the resolution of Harrison's immunity as to the first, or injunctive, relief ordered by the trial court lies in the General Assembly's intent in enacting R.C. Chapter 2744: "[t]o limit the exposure of political subdivisions to money damages." *Engleman v. Cincinnati Bd. of Edn.*, 1st Dist. Hamilton No. C–000597, 2001 Ohio App. LEXIS 2728, *6, 2001 WL 705575 (June 22, 2001); see *Wilson v. Stark Cty. Dept. of Human Serv.*, 70 Ohio St.3d 450, 453, 639 N.E.2d 105 (1994). **Where a political subdivision is not being subjected to a claim for money damages, the near absolute immunity of R.C. 2744.02(A)—the first tier of the scheme—is not available**.

R.C. 2744.02(A)(1) extends immunity to political subdivisions against claims for "damages in a civil action for * * * loss to person or property" **but not to those claims seeking equitable relief**. "By its very language and title, [R.C. Chapter 2744] applies to tort actions for damages." (Emphasis added.) *Big Springs Golf Club v. Donofrio*, 74 Ohio App.3d 1, 2, 598 N.E.2d 14 (9th Dist.1991).

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Ohio courts have uniformly held that while sovereign immunity bars tort claims for money damages, **it has no application in actions for equitable relief**. See *Portage Cty. Bd. of Commrs. v. Akron*, 156 Ohio App.3d 657, 2004–Ohio–1665, 808 N.E.2d 444, ¶ 186 (11th Dist.); see also *Mega Outdoor, LLC v. Dayton*, 173 Ohio App.3d 359, 2007–Ohio–5666, 878 N.E.2d 683, ¶ 54 (2d Dist.); *State ex rel. Johnny Appleseed Metro. Park Dist. v. Delphos*, 141 Ohio App.3d 255, 258, 750 N.E.2d 1158 (3d Dist.2001); *Rocky River v. Lakewood*, 8th Dist. Cuyahoga No. 90908, 2008–Ohio–6484, ¶ 13; *Parker v. Upper Arlington*, 10th Dist. Franklin No. 05AP–695, 2006–Ohio–1649, ¶ 9 (sovereign immunity is only a defense to tort claims seeking monetary damages, and not to claims seeking declaratory relief); *State ex rel. Fatur v. Eastlake*, 11th Dist. Lake No.2009–L037, 2010–Ohio–1448, ¶ 41.

For example, R.C. Chapter 2744 does not provide immunity to a political subdivision against a claim of unconstitutional taking of property damaged during a drug raid. That claim is "constitutional in nature," and statutory immunity is not a proper defense to claims that "d[o] not sound in tort." See *Brkic v. Cleveland*, 124 Ohio App.3d 271, 282, 706 N.E.2d 10 (8th Dist.1997).

Where a sign company had sued the city of Dayton for a declaration that it was entitled to a sign permit outside the right-of-way, for mandamus requiring the city to prove the sign was installed on property zoned for billboards, for an injunction restraining the enforcement of a stop-work order, and for compensatory damages, the trial court granted the city summary judgment on each count of the complaint because Dayton was "entitled to immunity." *Mega Outdoor, LLC*, 173 Ohio App.3d 359, 2007–Ohio–5666, 878 N.E.2d 683, at ¶ 54.

**Because "[s]overeign immunity applies to money damages, not to claims for equitable relief, such as injunctive relief**," the Second District Court of Appeals held that the trial court had erred in granting summary judgment on the sign company's claims for declaratory judgment, mandamus, and injunctive relief. *Id.* But the trial court had properly granted summary judgment to the city on the company's claim for compensatory damages. See *Id.* at ¶ 53, 878 N.E.2d 683.

The established rule that sovereign immunity is not a bar to claims seeking injunctive relief is not limited to situations where the plaintiff is a private citizen. Where one municipality had filed a nuisance complaint against another municipality, seeking an injunction against the operation of its dog park, the trial court's dismissal of the

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claim on the basis of sovereign immunity was reversed because sovereign immunity under R.C. Chapter 2744 "applies only to an action for damages." *Rocky River*, 8th Dist. Cuyahoga No. 90908, 2008–Ohio–6484, at ¶ 13.

In its July 2012 motion for cross-summary judgment, Cincinnati moved for summary judgment against Harrison on the four remaining counts of its amended complaint: count one (violation of state law), count two (impairment of contract), count five (waiver, laches, and equitable estoppel), and count seven (tortious interference). As to each count, Cincinnati claimed that it was entitled to "injunctive and declaratory relief" to enjoin Harrison from further acts of interference with its contract with the county to provide water to the disputed areas. Cincinnati did not assert any claim in the motion for monetary damages, though it had in its amended complaint.

In its March 2013 judgment granting summary judgment to Cincinnati, the trial court expressly enjoined Harrison from further acts intended to encroach on Cincinnati's water-service rights (count one), to impair or interfere with Cincinnati's contract with the county (count two), to violate its decision that Harrison's actions were barred by the doctrines of waiver, laches, and equitable estoppel (count five), and to interfere with Cincinnati's rights under the contract.

**Sovereign immunity under R.C. Chapter 2744 is not a defense to claims seeking injunctive relief**. See *Portage Cty. Bd. of Commrs.*, 156 Ohio App.3d 657, 2004–Ohio–1665, 808 N.E.2d 808, at ¶ 186. Thus Cincinnati is entitled to judgment as a matter of law, and the trial court did not err in overruling that portion of Harrison's motion for summary judgment asserting that it was entitled to immunity from the injunctions ordered by the trial court. See Civ.R. 56(C). We overrule that portion of Harrison's assignment of error.

*Cincinnati v. Harrison*, 1st Dist. Hamilton No. C–130195, 2014-Ohio-2844, 2014 WL 2957946, ¶¶ 24-36 (*Emphasis added*).

The present case was filed by the Plaintiff, seeking, in part, an injunction. This Court granted the injunction, and subsequently found the Ordinance in question to be Unconstitutional. Based upon that, and as stated in the first part of this decision, the Court has found that the present suit is brought in equity. As such, Ohio law is clear that the reimbursement of monies collected pursuant to an

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Unconstitutional enactment or invalid rule is equitable relief, not money damages, and is consequently not barred by sovereign immunity. See, *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.* (1991), 62 Ohio St.3d 97, 104-105, 579 N.E.2d 695; *See, also LaBorde*, 2015-Ohio-2047, ¶20 (refunds from overpayments were equitable and this City not entitled to immunity under R.C. 2744); *Cirino*, 2016-Ohio-8323, ¶54; *Cincinnati v. Harrison*, 2014-Ohio-2844, ¶¶ 24-36.

Accordingly, for all of the reasons as set for herein, this Court **GRANTS** Plaintiff's Motion for Summary Judgment as to its remaining Count IV claim, and **DENIES** Defendant's Cross Motion for Summary Judgment.

## CONCLUSION

Pursuant to the record, and under Ohio law, this Court **GRANTS** Plaintiff's Motion for Summary Judgment and **DENIES** Defendant's Cross Motion for Summary Judgment. No later than thirty days (30) after the filing of this Order, Plaintiff is to file with the Court, an Affidavit evincing monies paid under the invalidated ordinance, along with an Excel spread sheet, so that the Court can set the proper amount of restitution/refund as determined under the laws of equity.

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion for Summary Judgment is hereby **GRANTED**. Defendant's Cross Motion for Summary Judgment is hereby **DENIED**.

Plaintiff to file its Affidavit no later than thirty days after the filing of this Order.

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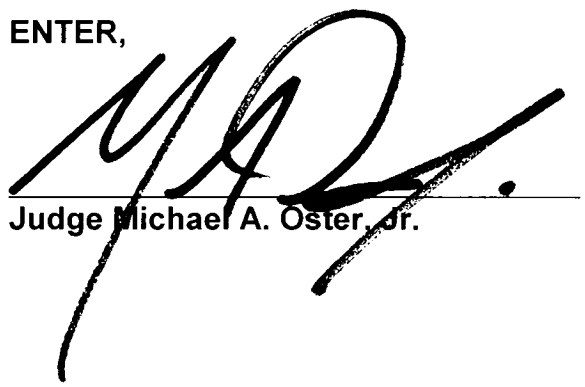
**SO ORDERED.**

**ENTER,**



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