

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**CHARLES R. OGLE, *et al.***

**Plaintiffs,**

**v.**

**COLUMBIA GAS TRANSMISSION,  
LLC, *et al.***

**Defendants.**

**Case No. 2:10-cv-1059**

**Judge Peter C. Economus**

**MEMORANDUM OPINION AND ORDER**

For the reasons discussed below, the Court **DISMISSES** Plaintiffs' claims for damages incurred after November 5, 2009, **DISMISSES** all claims for equitable relief, and **DENIES** Plaintiffs' Renewed Motion For Injunction Against Defendant Columbia Gas Transmission, LLC For Immediate and Permanent Removal of All Threats Endangering Livestock Owned by Plaintiff Charles R. Ogle. (Dkt. 67.)

**I. Background**

Complaining of damages relating to the expansion of natural gas facilities on their land (the "Property"), Plaintiffs Charles and Melanie Ogle filed this action against Columbia Gas Transmission, LLC ("Columbia"); the following agents of Columbia: Defendants Minear, George, Burnsworth, Hovermale, Martin, Hedges, Riddle, Rowley, Carter, C&L Erectors and Riggers, Inc., Off Duty Services, Inc., and RMR Enterprises ("Columbia Agents"); the Federal Energy Regulatory Commission ("FERC"); and several defendants associated with Hocking County, Ohio (the "County Defendants").

In an Opinion and Order dated August 17, 2011 (the "2011 Order"), this Court dismissed the claims against FERC and the County Defendants on the basis of lack of jurisdiction and failure to state a claim, respectively. The Court also dismissed the federal claims against

Columbia and the Columbia Agents on the basis of *res judicata*, finding that “Plaintiffs [sought] to relitigate a question previously decided by the Hocking County Court of Common Pleas.” (2011 Order (citing Dkt. 10, Ex. V)). Because the Court disposed of Plaintiffs’ federal claims, it declined to exercise supplemental jurisdiction over the remaining state law claims against Columbia and dismissed them without prejudice.

Plaintiffs appealed. Subsequently, the Ohio Court of Appeals reversed the trial court judgment adjudicating Columbia’s rights—the decision upon which this Court relied in its 2011 Order—and remanded the matter to the trial court for further proceedings. *Columbia Gas Transmission, LLC v. Ogle*, No. 10CA11, 2012 WL 1108375 (Ohio Ct. App., Mar. 21, 2012). In the appeal of this case, a panel of the Sixth Circuit upheld dismissal of the claims against FERC and the County Defendants. However, in light of the Ohio Court of Appeals’ decision, the Sixth Circuit remanded the case as to the claims against Columbia and the Columbia Agents.

While awaiting the Sixth Circuit’s mandate to this Court, Plaintiffs filed a Renewed Motion For Injunction Against Defendant Columbia Gas Transmission, LLC For Immediate and Permanent Removal of All Threats Endangering Livestock Owned by Plaintiff Charles R. Ogle. (Dkt. 67.) In the course of briefing this motion, Columbia raised the abstention principles set forth in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). (Dkt. 68.) Because no party, including Columbia, addressed the standard set forth in *Colorado River* and its progeny, the Court ordered the parties to brief whether the case should be stayed or dismissed pursuant to *Colorado River*. (Dkt. 74.) In its response, Columbia proffered newly discovered evidence that, prior to filing this case, Plaintiffs had transferred the Property to Ogleshill Farm, LLC, which is not a party to this case. (Dkt. 75-2 at 3.) In light of this evidence, the Court ordered the parties to show cause why this case should not be dismissed for lack of

standing, or whether Plaintiffs should be allowed, through counsel, to substitute Ogleshill Farm, LLC as the real party in interest. (Dkt. 79 (citing *Zurich Ins. Co. v. Logitrans, Inc.*, 297 F.3d 528, 532 (6th Cir. 2002); *Doherty v. Am. Motors Corp.*, 728 F.2d 334, 340 (6th Cir. 1984)).

The parties' briefing reflects that, on November 5, 2009, Plaintiffs transferred the Property to Ogleshill Farm, LLC, an Ohio limited liability company that Plaintiffs had incorporated on August 20, 2009. (Dkt. 75-2 at 3, 23–26; Dkt. 80; Ohio Secretary of State, Ogleshill Farm, LLC, Articles of Orgnztm/Dom. Profit Lim.Liab. Co., Doc. No. 200923201700 (Aug. 20, 2009), available at <http://www2.sos.state.oh.us/reports/rwservlet?imgc&Din=200923201700>; see *Passa v. City of Columbus*, 123 Fed. Appx. 694, 697 (Feb. 16, 2005) (on judicial notice of public records).)

## **II. Standing**

“In order for a federal court to exercise jurisdiction over a matter, the party seeking relief must have standing to sue.” *Zurich*, 297 F.3d at 531. In their Amended Complaint, Plaintiffs seek compensation for past damage to the Property as well as various forms of equitable relief relating to Defendants' future activity on the Property. (Am. Compl., Dkt. 23, at 33–35.) The Court will address Plaintiffs' claims according to whether they were incurred prior to or after the transfer of the Property.

### **A. Damages Incurred After Transfer; Equitable Claims**

Plaintiffs lack standing to assert claims, either equitable or for damages, relating to Defendants' activity on the Property after November 5, 2009. As of that date, Plaintiffs are no longer owners of the Property. Even assuming they are the sole shareholders of Ogleshill Farm, LLC, they do not have standing to sue on its behalf:

[W]here the business or property allegedly interfered with by [the defendants] is that [of] a corporation, it is that corporation alone, and not its stockholders (few or many) . . . who has a right to

recovery, even though in an economic sense real harm may well be sustained as the impact of such wrongful acts bring[s] about reduced earnings, lower salaries, bonuses, injury to general business reputation, or diminution in the value of ownership.

*Canderm Pharmacal, Ltd. v. Elder Pharmaceuticals, Inc.*, 862 F.2d 597, 603 (6th Cir. 1988) (quoting *Schaffer v. Universal Rundle Corp.*, 397 F.2d 893, 896–97 (5th Cir. 1968)). This general rule applies even “in cases where the individual [would-be plaintiff] is the sole stockholder.” *Id.* (quoting *Schaffer*, 397 F.2d at 896)).

Because Plaintiffs lack standing to assert claims arising from damage to the Property after November 5, 2009, this Court lacks jurisdiction over such claims, and substitution of parties is not permissible. *Zurich*, 297 F.3d at 531 (affirming the denial of a Rule 17(a) motion where the plaintiff had “no standing to make a motion to substitute the real party in interest”). The Court therefore **DISMISSES** Plaintiffs’ claims for damages to the extent they arose after November 5, 2009, **DISMISSES** all of Plaintiffs’ claims for equitable relief relating to the Property, and **DENIES** Plaintiffs’ Renewed Motion For Injunction Against Defendant Columbia Gas Transmission, LLC For Immediate and Permanent Removal of All Threats Endangering Livestock Owned by Plaintiff Charles R. Ogle. (Dkt. 67.)

**B. Remaining Claims: Damages Incurred Prior to Transfer**

Plaintiffs assert that the following damages occurred and payments were due prior to Plaintiffs’ transfer of the Property to Ogleshill Farm, LLC, and are owed to Plaintiffs: “[c]onstruction, crop, and diminution damages”; “[c]riminal trespass and theft damages”; and “well rental payment and pipeline payment required in advance of construction.” (Dkt. 80 at 2–3.) Plaintiffs argue that “Columbia was required pursuant to 15 U.S.C. § 717f(h), to have a compensation agreement for damages with Plaintiffs—the owners of [the Property] on the date Columbia entered the subject property, prior to entering thereon.” (*Id.* at 4.)

To the extent that Plaintiffs seek damages incurred to the Property prior to November 5, 2009, they have standing. See *United States v. Jordan*, 186 F.2d 803, 808 (6th Cir. 1951) *aff'd*, 342 U.S. 911 (1952) (holding that former property owner had assignable claims against the government for damage inflicted by government lease of property); *State ex rel. Ribo v. Uhrichsville*, 2012 AP 02 0010, 2012 WL 3679574 (Ohio Ct. App. Aug. 24, 2012) (under Ohio law, the current owner was not entitled to recover where, prior to acquiring the property, she had notice of an alleged prior taking; her argument “that she should have been given an opportunity to substitute the real party in interest” was moot due to the statute of limitations).

In order to streamline the resolution of this case, the Court hereby **ORDERS** Plaintiffs to file an amended complaint within **30 DAYS** of this Order. Plaintiffs’ amended complaint shall assert only claims for damages incurred prior to November 5, 2009. This is limited to the pre-transfer claims Plaintiffs identified in their brief: “[c]onstruction, crop, and diminution damages”; “[c]riminal trespass and theft damages”; and “well rental payment and pipeline payment required in advance of construction.” (Dkt. 80 at 2–3.) Plaintiffs shall plead specific facts to constitute “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

**IT IS SO ORDERED.**

  
**UNITED STATES DISTRICT JUDGE**