State of Missouri
2lst Judicial Circuit

State of Mo
ext rel Bennett et al
v) 14 sl cc 2207
Lewis and Clark 195 LLC
et al
Defendants

Plaintiffs' (updated) Opposition and Motion to strike Missouri American Water (MAWC) and LaClede Gas Motions to Dismiss as not meeting the rules

Comes now Plaintiffs[1] and move to strike the LG and MAWC Motions to Dismiss for the following reasons

1. The Motions to dismiss are based on matter outside the pleadings and must be submitted as summary judgment

The Motions include contentions outside the record . As such per Rule 55, would need to comply with Rule 74 and offer same with evidence, a list of fact and allow the time in said rule.

2. The Motions are based on known uncorrected false claims of what is in the PSC complaint and even that it is private.[2]

This is even more so where try to oddly contend the complaint is confidential where the public Efis PSC docket system shows the claims made are false, There is no Response. there was a dispute on if PSC could have a rule unit owners could not make a complaint, and an amendment.

o. Date Filed Title of Filing Filed on Behalf Of

Item No.

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[1] This replaces those filed or attempted to be e filed .

[2] This is especially so where for more than 10 days MAWC/LG counsel had the prior Motion that recited same and was personally advised on 10/27 in court on the record he had made false statements in need of correction on what was in the amended complaint and yet made no correction as in the code.

14 10/8/2014 Memo Janice Shands -(All)

13 10/8/2014 Memo on Jurisdiction Janice Shands -(All)

12 10/1/2014 Supplemental Memo on PSC Jurisdiction Janice Shands -(All)

11 9/30/2014 Complainant's Amendment of the Complaint and Opposition to MAWC Motion and Confirming Clarification and do the Extent there can be a Stay Requests Same Janice Shands -(All)

10 9/25/2014 Complainant's Objection to Staff Recommendation Janice Shands -(All)

9 9/24/2014 Motion to Set Aside or Amend Order Questioning Joinder/Entry of Appearance for LCTCA; Motion to Intervene for Good Cause Janice Shands -(All)

8 9/24/2014 Staff's Recommendation to Dismiss Complaint or in the Alternative Motion for More Definite Statement (HC & NP) MO PSC Staff-(All)

7 9/24/2014 Notice Regarding Entry of Appearance Commission-(All)

6 9/19/2014 Entry Joinder and Amendment/Response Janice Shands -(All)

Lewis and Clark Tower Condominium Association-(All)

5 9/15/2014 Entry of Appearance and Answer to Complaint (HC) Laclede Gas CompanyInvestor(Gas)

Date Filed Title of Filing Filed on Behalf Of In Response to Item No.

4 8/22/2014 Entry of Appearance Janice Shands -(All)

3 8/22/2014 Certified Mail Receipt Laclede Gas Company-Investor(Gas)

2 8/14/2014 Notice of Complaint, Order Directing Filing and Order Directing Staff Investigation and Filing of Recommendation Commission-(All)

1 8/14/2014 Formal Complaint (Proprietary) Janice Shands

Even more so, LG/MAWC counsel sought to mislead the court on the nature of the

complaint. As confirmed in the amendment, to the extent same is before the court, what it

stated was :

I am a resident condo unit owner at the Lewis and Clark Tower, 9953 Lewis and Clark Blvd., Moline Acres, MO. The building was originally an apartment and combined strip mall type shopping center with joint utility meters that were billed to the complex developer. In 1980, when the Tower was renovated and designated a separate condominium building, it was essentially subdivided with a Declaration recording the condo .The utllity knew of same where the account was changed to the name of a condo assn.
Under the declaration , the assn and unit owners can be charged only for common expenses for the actual Tower building... ' The next door shopping center that is not a part of the condo, yet It continued to get its utility service from the condo building 's access line and meter. The utilities did not disclose and seem to have concealed that fact from the unit owners.
. I am unaware of, have not seen nor been advised of any contracts or other documentation regarding such arrangement between condo owners and the shopping center owners. I have checked with long time owners and they were not advised of such things and did not consent to it. . There was no authority to legally use the credit or account of the assn without the permission of the unit owners,At this time, the strip mall consists of ten (10) businesses: a tax office/party & entertainment provider, a grocery store, a cell phone/jewelry store, a clothing boutique, 2 barber shops, 2 fast food restaurants, a dog groomer and optometrist's office. The Lewis and Clark Tower Condominiums are listed at 9953 Lewis and Clark while the shopping center is located at 9955 Lewis and Clark.
Currently there is no viable Board or condo Association and no legal custodian of records. The previous condo Board is effectively defunct. Under current conditions, our Declaration allows unit owners to have standing and enforce the rights of all unit owners as outlined in our Declaration and Bylaws which were recorded. limits the expenses that can be incurred to expenses for the property at 9953 .. LCTCA does not have any authority to have had an account for LCTCA for any product for outside the premises.
It was only recently, in June 2014 when the strip mall started to dig up the line to install its own meter and access was it confirmed thecondo account was used for others .
My attorney wrote on July 21 and again on July 29, 2014, even sending letters or faxes disputing the bills but did not receive acknowledgement nor response to the request.
It should now be easy enough to determine actual usage and provide at least an estimated bill. It would seem they would have data on the approximate use of each of the types of businesses
While there are likely violations of allowing accounts to cross property lines where service charges should be exclusive to the premises reflected on the billing, and not having a complaint procedure**, the reason I am filing is not to have those investigated. It is instead to meet any claimed prefiling condition where in the filed court case the utilities have contended have to file with PSC. We are asking the PSC find that it is proper the court hear the case, since no admin expertise is needed, and no record needed , and as such the basis for primary jurisdiction does not exist**

3. **The Motion falsely seeks to apply some kind of precedential value or law of the case**

principles to a denial of a TRO.[3]

As in the Motion to set aside (and on whicn renews Motion in limine)

as in CAPTIVA LAKE INVESTMENTS, LLC, et al v

AMERISTRUCTURE,__ SW3d__ (Mo App ED April 22, 2014)

there is no precedental or law of the case effect of same, especially on a denial of a TRO ,

which is interlocutory in name. As noted there:

... the order and judgment to which Appellants refer is an interlocutory order and therefore does not invoke the doctrine of law of the case. Macke Laundry Serv. Ltd. P'ship v. Jetz Serv. Co., Inc., 931 S.W.2d 166, 176 (Mo.App. W.D. 1996). The order and judgment denied Mr. Fott'smotion to dismiss

As in Macke, supra:
.. "law of the case" doctrine provides that a decision of an appellate court is binding on both the trial and appellate courts in subsequent proceedings, so long as the facts in the subsequent proceeding are substantially similar. State ex rel. Mercantile Nat. Bank at Dallas v. Rooney, 402 S.W.2d 354, 361 (Mo. banc 1966). See also Student Loan Marketing Ass'n v. Raja, 914 S.W.2d 825, 829 (Mo.App.1996). An interlocutory order may be reconsidered, amended, reversed or vacated by the trial court at any time prior to final judgment being entered. Blake v. Irwin, 913 S.W.2d 923, 934 (Mo.App.1996). A trial court is in no way bound by a prior ruling in an ongoing proceeding as the "law of the case."

4 The Motions are contrary to the principle on Motion to dismiss need to take allegations as true

The Motions ignore on a motion to dismiss the dismiss factual llegations must be taken as

true, and under the pleading rules if there is some condition precondition would have the

burden,needs to alleged and prove same.

As set out below this includes facts on PSC jurisdiction.

5. **The law is clear PSC as a creature of statute is legislative body with limited**

administrative adjudicatory powers with same limited only to its rate making with no

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[3] The undersigned submits that same is further questionable where on 10/27 without notice despite same MAWC/LG counsel again knowing same sought to make claims contrary to the above law.

no PSC jurisdiction for common law or equitable claims.

A There is no PSC jurisdictions over complaints on common law, equity or real estate matters.

Its complaint procedure is only for when the complaint is based on a rule , provision or order of PSC.

PSC is not to be a mini Adminstrative Hearing Commission. The reason the statute is written the way it is, is because it is

intended to be a legislative body, where its powers to review complaints is only ancillary to its rate making legislative powers. It is not intended to review issues of common law or equity . It is not just that no PSC expertise and record is not needed, it is that its statute limits its complaints to to complaints based on its rates and orders.

This is long standing and confirmed in May v Union Electric, 107 SW2d __ (Mo App194__), Board of Public Works of Rolla v Sho-Me Power , 244 SW2d 65 (Mo en banc1951), Katz Drug v Kansas City Power, 303 SW2d 672 (Mo App WD 1967) , WilshireConstruction v Union Electric, 463 SW 2d 903 (Mo 1971), State ex rel Fee Fee Trunk Sewer v Litz et al 596 SW2d 466 (No WD 1980), and Gaines v Gibbs, 709 SW 541 (Mo App 1986), the pages actually copied at law library and provided to LG/MAWC counsel. This was also confirmed in STATE EX REL. UTIL. CONSUMERS

COUNCIL, ETC. v. P.S.C. No. 60848. 85

S.W.2d 41 (1979)

where even on what was essentially a rate case in allowing a fuel adjustment

clause where the court found PSC exceeded its jurisdiction, it was confirmed

.. we need not defer to the commission, which has no authority to declare or enforce principles of law or equity, Bd. of Public Works of Rolla v. Sho-Me Power Corp., 362 Mo. 730, 244 S.W.2d 55 (banc 1952).

..

..."neither convenience, expediency or necessity are proper matters for consideration in the determination of" whether or not an act of the commission is authorized by the statute, State ex rel. Kansas City v. Public Service Comm'n, 301 Mo. 179, 257 S.W. 462 (banc 1923). ...

It is for the legislature, not the PSC, to set the extent of the latter's jurisdiction. The mere fact that the commission has approved similar clauses in the past, or that other states permit them, is irrelevant if they are not permitted under our statute, State ex rel. Philipp Transit Lines, Inc. v. Public Service Comm'n, 552 S.W.2d 696, 702 (Mo. banc 1977); State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Comm'n, 240 Mo.App. 1147, 225 S.W.2d 792, 794 (1949)...

.... While this statute gives the PSC general supervisory power over electric utilities, as discussed supra, it gives the PSC broad discretion only within the circumference of the powers conferred on it by the legislature; the provision cannot in itself give the PSC authority to change the ..scheme set up by the legislature..... We have an inherent power to afford redress for an erroneous judgment which results in the paying over of monies from one to another without support of law and to direct that restitution be made. Arkadelphia Milling Co. v. St. Louis S. W. Ry. Co., 249 U.S. 134, 143-46, 39 S.Ct. 237, 63 L.Ed. 517 (1919); State ex rel. Kansas City v. Public Service Comm'n, 362 Mo. 786, 244 S.W.2d 110, 116 (1951); State ex rel. Abeille Fire Ins. Co. v. Sevier, 33 Mo. 269, 73 S.W.2d 361, 366-67, 371-73 (banc 1934), cert. denied, 293 U.S. 585, 55 S.Ct 99, 79 L.Ed. 680 (1934); Aetna Ins. Co. v. Hyde, 327 Mo. 115, 34 S.W.2d 85, 88 (banc 1930). ...

B This is confirmed in the regulation and statute

The CSR regulation expressly limits complaints to when aggrieved by a

violation of a tariff,order or decision of the commission:

Here there is no rule, or decision or order of PSC that is the source of the

complaint or any apparent procedure for the individual unit owners whereby the individual plaintiffs who have suffered the damage having no right to a complaint would not be subject to any primary jurisdiction which is premised on there being adequate remedy at commission level.

The CSR states:

4 CSR 240-2.070 Complaints
PURPOSE: This rule establishes the procedures for filing formal and informal complaints with the commission.
(1) Any person or public utility **who feels aggrieved by an alleged violation of any tariff, statute, rule, order, or decision within the commission's jurisdiction** may file a complaint.
.. end of quote

. This is especially so on a formal complaint :

This is in 4 CSR 240-2.070(4)

(4) Formal Complaints. A formal complaint may be made by petition or complaint in writ-ing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, **in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission.**
emphasis added

This is especially so where an agency is a creature

of statute, its authority is limited to what is in its enabling statute.

For the PSC , its complaint jurisdiction instead is set out in RS

386.390,which states:
Complaint, who may make--procedure to hear--service of process, how had--time and place of hearing, how fixed:
386.390. 1. Complaint may be made by the commission of its own motion, or

by the publiccounsel or any corporation or person, chamber of commerce, board of trade, or any civic,commercial, mercantile, traffic, agricultural or manufacturing association or organization, or anybody politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation,person or public utility, **in violation, or claimed to be in violation, of any provision of law,or of any rule or order or decision of the commission;** provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.
...(emphasis added)

As in the highlighted section : the complaint is limited to only those that are based in violation, of any provision of law, or of any rule or order or decision of the commission.

The key term is “of the commission”.

C. This statute (unlike with Ch 213) does not create a claim, does not require or mandate any filing,(as with other agencies such as the MHRC which requires a discrimination charge and right to sue letter before filing in court)

The statute does not use any mandatory claims such as must or shall file with the commission.

It uses the term “may” which is permissive

It expressly does not extend to all complaints of any kind; only those where the grievance is based on a violation of rule,regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision

of law, or of any rule or order or decision of the commission".. It does not include common law

or torts, just "provision of law " of the commission .

DAs in Turner v Clayton, _318_ SW3d_600_, (Mo 2010), on statutory construction must follow statute as written and terms and language used .

As in Turner, supra:
...The seminal rule of statutory construction is to ascertain the intent of the legislature from the language used and to consider the words used in their plain and ordinary meaning. State ex rel. Unnerstall v. Berkemeyer, 298 S.W.3d 513, 519 (Mo. banc 2009)..This Court enforces statutes as they are written, not as they might have been written. City of Wellston v. SBC Commc'ns, Inc. , 203 S.W.3d 189, 192 (Mo. banc 2006).
...It is presumed that the General Assembly legislates with knowledge of existing laws.State ex rel. Broadway-Washington Assocs., Ltd. v. Manners , 186 S.W.3d 272, 275 (Mo.banc 2006).

Here the key terms are "may", "of commission" and even the fact the term "provision of law" is used whcih has its own definition is for parts of a written statute or contract, not for common law or equity or tort. If it was intended to cover all instances, it would have said , all instances , arising out of common law, tort or statute; it would not have used the phrase "provision of law".

E. The claims in the LG/MAWC[4] Motion are contrary to current caselaw .

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[4]Even more so, LG/MAWC counsel seeks to persist in ignoring the current cases even while reminded more than once these recent cases from ED Court of Appeals effectively overruled those from WD Court of Appeals, and does so despite the code mandate not to ignore precedent on point. He does not seek to distinguish, argue you against them or suggest they were wrongly decided, just seeks to act as if they did not exist .

This was confirmed in RASTER v AMERISTAR CASINOS, INC. 280 SW 3d 487 (Mo App 2010) where the Eastern District Court of Appeals reversed a finding of primary jurisdiction on a contract claims against a regulated casino subject to general supervision and correctly found that if common law remedies are to be supplanted, cannot do so by implication it has to be expressly set out in the statute holding :

. **The defendants effectively argue that the plaintiffs' statutory and common-law remedies are repealed by implication. Repeals of statutory provisions by implication, however, are disfavored. See StopAquila.org v. City of Peculiar, 208 S.W.3d 895, 905 n.14 (Mo. banc 2006)**. Furthermore, "where the legislature intends to preempt a common law claim, it must do so clearly." Overcast v. Billings Mutual Insurance Company, 11 S.W.3d 62, 69 (Mo. banc 2000). "[U]nless a statute clearly abrogates the common law either expressly or by necessary implication, the common law rule remains valid." In re Estate of Parker, 25 S.W.3d 611, 614 (Mo.App. W.D. 2000). Nothing in the statute creating the Gaming Commission expressly or implicitly abrogates the plaintiffs' common-law and statutory remedies.

The entire portion of the holding being:

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The plaintiffs appeal the judgment of the trial court dismissing their two claims brought under the Missouri Merchandising Practices Act (MMPA) and their two breach-of-contract claims against the defendants Ameristar Casinos, Inc. and Ameristar Casino St. Charles Inc. ..

. plaintiffs brought suit, contending that the defendants' actions violated the MMPA and constituted a breach of contract. For their MMPA claim, the plaintiffs alleged that the defendants' representation regarding the changes in the point-award formulas, and the defendants' failure to timely and adequately disclose its falsity, was an "unlawful practice" within the meaning and scope of the MMPA. .., the defendants also contended that plaintiffs' petition should be dismissed because the Missouri Gaming Commission had primary jurisdiction over the matter.:

Before addressing the plaintiffs' final point on appeal, we pause to address a challenge to the trial court's jurisdiction. The defendants contend that, in the event we conclude the petition states a claim, the court should nevertheless dismiss the petition and defer the issues raised by the plaintiffs' petition to the Missouri Gaming Commission under the doctrine of primary jurisdiction. The defendants argue that the plaintiffs' cause of action falls

under the Commission's jurisdiction because the Commission has promulgated specific regulations controlling the advertisement and promotional activities of casinos. We are not persuaded. The plaintiffs should not be deprived of their statutory and common-law remedies merely because the defendants' activities are regulated. There are many regulatory bodies in this state.

The establishment of the Board of Healing Arts does not deprive an injured patient of his medical-malpractice claim. Likewise, the establishment of the Gaming Commission does not deprive a casino customer of statutory and common-law remedies. We conclude that strict regulation exists due to the checkered history of legalized gambling, not to deprive casino customers of their legal remedies. **The defendants effectively argue that the plaintiffs' statutory and common-law remedies are repealed by implication. Repeals of statutory provisions by implication, however, are disfavored. See StopAquila.org v. City of Peculiar, 208 S.W.3d 895, 905 n.14 (Mo. banc 2006)**. Furthermore, "where the legislature intends to preempt a common law claim, it must do so clearly." Overcast v. Billings Mutual Insurance Company, 11 S.W.3d 62, 69 (Mo. banc 2000). "[U]nless a statute clearly abrogates the common law either expressly or by necessary implication, the common law rule remains valid." In re Estate of Parker, 25 S.W.3d 611, 614 (Mo.App. W.D. 2000). Nothing in the statute creating the Gaming Commission expressly or implicitly abrogates the plaintiffs' common-law and statutory remedies.

Moreover, we fail to perceive how the doctrine of primary jurisdiction applies. Under the doctrine of primary jurisdiction, courts generally will not decide a controversy involving a question within the jurisdiction of an administrative tribunal until after the tribunal has rendered its decision. Killian v. J & J Installers, Inc., 802 S.W.2d 158, 160 (Mo. banc 1991). This policy of restraint applies (a) where administrative knowledge and expertise are demanded to determine technical,intricate fact questions, and (b) where uniformity is important to the regulatory scheme. Id.; MCI Metro Access Transmission Services, Inc. v. City of St. Louis, 941 S.W.2d 634, 644 (Mo.App. E.D. 1997). The instant case does not fall within these circumstances.

end of quote emphasis added.

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F.Even more so, their claims are contrary to the holdings on primary jursidiction.

Their claims are contrary to the holding above from Raster, supra.

Their claims are contrary to Cooper v Chrysler 361 S.W.3d 60 (MO App

ED 2011) where

the court described primary jurisdictionas

The primary jurisdiction doctrine provides that "courts will not decide a controversy involving a question within the jurisdiction of an administrative tribunal until after that tribunal has rendered its decision." Killian v. J & J Installers, Inc., 802 S.W.2d 158, 160 (Mo. banc 1991). Pursuant to this doctrine, the Commission has original jurisdiction to determine the fact issues that establish whether or not a claim is subject to the jurisdiction of the Commission. Hannah v. Mallinckrodt, Inc., 633 S.W.2d 723, 726 (Mo. banc 1982) (citing Sheen v. DiBella, 395 S.W.2d 296, 303 (Mo.App.1965)); see also State ex rel. Ford Motor Co. v. Nixon, 219 S.W.3d 846, 849 (Mo.App.2007); Deckard v. O'Reilly Automotive, Inc., 31 S.W.3d 6, 14 (Mo.App. 2000), overruled on other grounds by Hampton v. Big Boy Steel Erection, 121 S.W.3d 220, 223 (Mo. banc 2003); State ex rel. FAG Bearings Corp. v. Perigo, 8 S.W.3d 118, 121 (Mo.App.1999). These questions arise "(1) where administrative knowledge and expertise are demanded; (2) to determine technical, intricate fact questions; (3) where uniformity is important to the regulatory scheme." Killian, 802 S.W.2d at 160. See Deckard, 31 S.W.3d at 14. In other words, the primary jurisdiction doctrine applies to questions involving "administrative expertise, technical factual situations and regulatory systems in which uniformity of administration is essential." Jones v. Jay Truck Driver Training Center, 709 S.W.2d 114, 115 (Mo. 64*64 banc 1986), overruled on other grounds by McCracken v. Wal-Mart Stores East, LP, 298 S.W.3d 473, 479, 479 n. 3 (Mo. banc 2009)...

Their claims are contrary to the holding , in Mainline Hauling v PSC , 577 SW2d 50 (MOApp WD 1978) how primary jurisdiction is the exception and not available where there are no issues requiring adminstrative expertise :

...This doctrine is based on a judicial policy of self-restraint and calls upon a court to defer to and give an administrative agency the first right to consider and act upon a matter which calls for factual analysis or the employment of special expertise within the scope of the agency's responsibility entrusted to it by the legislature. 2 Am.Jur.2d, Administrative Law, Sec. 788, p. 688 et seq.; 73 C.J.S. Public Administrative Bodies and Procedure § 40, p. 347; State ex rel.Cirese v. Ridge, 345 Mo. 1096, 138 S.W.2d 1012 (banc 1940). However, where there are nofactual questions or issues **requiring administrative expertise**, but instead only questions of law which fall within the conventional competency of the courts, there is no reason for judicial deference to the administrative agency and the doctrine of primary jurisdiction has no application. 2 Am.Jur.2d, Administrative Law, Sec. 793, p. 696; 73 C.J.S. Public Administrative Bodies and Procedure, § 41, p. 351;

Smith v. Thompson, 234 Mo.App. 1151, 137 S.W.2d 981 (1940). See also Klicker v. Northwest Airlines, Inc., 563 F.2d 1310 (9th Cir. 1977).

In the instant case, the substantive issue presently for consideration can be resolved as a pure question of law,... Therefore, the doctrine of primary jurisdiction did not preclude exercise of jurisdiction by the Circuit Court.

Their claims are contrary to their own cited case, Premium Standard Farms v Lincoln Township 946 S.W.2d 234 (1997) where the actual holding there was :

Exhaustion of administrative remedies is generally required before a court may assume jurisdiction of a matter where a remedy is available through administrative procedures. Council House Redevelopment Corp. v. Hill, 920 S.W.2d 890, 892 (Mo. banc 1996) ("As a general rule,courts will refrain from acting until the litigants have exhausted all available administrative remedies provided by statute."). This principle is founded upon the theory that agencies have special expertise and a factual record can be developed more fully by pursuing the designated channels for relief within the agency. The issue also may be resolved through the procedures set forth by the agency for resolution of complaints, thereby rendering unnecessary review by the courts.

Nevertheless, several exceptions to the general requirement of exhaustion have been recognized by the courts of this state. Where no adequate remedy lies through the administrative process, the court will not require exhaustion. Glencoe Lime & Cement Co. v. City of St. Louis, 341 Mo 689, 108 S.W.2d 143, 144 (1937); City of St. Ann v. Elam, 661 S.W.2d 632 (Mo.Ct.App.1983).

Where the authority of the political subdivision to impose particular regulations is challenged, the courts may review the issue, although the parties have not pursued their complaint through the administrative process set forth in the zoning regulations. Missouri Rock, Inc. v. Winholtz,614 S.W.2d 734, 738 (Mo.Ct.App.1981). And where the validity of agency rules or the threatened application thereof is at issue, an action for a declaratory judgment may be maintained against agencies "whether or not the plaintiff has first requested the agency to pass upon the question presented." Rule 87.02©). This Court has held that exhaustion of administrative remedies is unnecessary when the authority of a municipal corporation to enact certain regulations under the statutory enabling acts granting it the power to zone is challenged. State ex rel. Kramer v. Schwartz, 336 Mo. 932, 82 S.W.2d 63, 69 (Mo.1935).

Township argues that Westside Enterprises, Inc. v. City of Dexter, 559 S.W.2d 638 (Mo.Ct.App.1977), and similar cases stand for the proposition

that attacks on the application or validity of zoning regulations must be pursued in the first instance through the administrative procedures set forth by the zoning authority. The preliminary issue in Westside Enterprises, however, was whether the land at issue was actually zoned residential as opposed to commercial.

The court observed that if the issue had been appealed through the administrative procedures set forth by statute, determination of the classification could have been made and might have resolved the entire controversy without resort to the courts. The factual issue of whether the zoning authority had placed the tract in a residential or commercial zone was a key question presented. The precise purpose underlying the requirement of exhaustion of administrative remedies would have been served by pursuing an appeal through the administrative channels set forth by statute.

Unlike that case, however, the issue presented in this case is not at all dependent upon further development of the record through administrative procedures. The facts have been admitted as to the nature of the hog confinement facilities and sewage lagoons. Moreover, Township has made clear in Count I of its counterclaim that feedlots and lagoons like those of Premium fall within the purview of its zoning regulations. Premium challenges the authority of 238*238 Township to impose such regulations. The only issue to be determined is whether regulation of such structures is regulation of farm structures or farm buildings, an action township's are specifically not authorized to take under section 65.677, RSMo.

This is a legal issue. "Because the question... poses no factual questions or issues requiring the special expertise within the scope of the [administrative agency's] responsibility, but instead proffers only questions of law clearly within the realm of the courts, the doctrine of exhaustion does not apply in the present case. See 73 C.J.S. Public Administrative Law and Procedure Section 40 (`A failure to exhaust administrative remedies may be justified when the only or controlling question is one of law, at least where there is no issue essentially administrative, involving agency expertise and discretion, which is in its nature peculiarly administrative....')."

Council House Redevelopment Corporation v. Hill, 920 S.W.2d 890, 895 (Mo. banc 1996). This issue requires no exhaustion of administrative remedies. Cf. Cervantes v. Bloom, 485 S.W.2d 446, 448 (Mo.Ct.App.1972); N.G. Heimos Greenhouse, Inc. v. City Of Sunset Hills, 597 S.W.2d 261, 263, n. 4 (Mo.Ct.App.1980) End of quote .

Their claims are contrary to other cases such as Pretsky v. Southwestern Bell Tel. Co.396 S.W.2d 566 (Mo.1965), - for collection of amounts that are not due and unfair means of collection against telephone regulated company the

tort of outrageous conduct was adopted in MO..

This is especially so where the counts are not based et al on

any PSC tariff or rule or anything adopted by the Commission.

There is no mention of same in Count 1, 10 or 11. They no where mention

any tariff , rule, regulation or decision of the PSC.

Instead as in Count 10, the allegations are based in common law and

includes (after realleging allegations of count 1)
on ...par 4
4. Plaintiffs are informed and believes that since it was built in the 1960s LaClede Gas provided natural gas services for heating and hot water to the condo units at 9953 Lewis and Clark and the shopping center premises at 9955 Lewis and Clark through one meter and line for what was then an apartment building and shopping center
5. Plaintiffs are further informed and believe that while LaClede Gas it has been on notice since 1980 when the premises at 9953 Lewis and Clark came under different ownership,were subdivided with the apartment building turned into a condominium , LaClede Gas still sent a combined bill for the shopping center and the condo in the name of the condominium association for the unit owners in turn to pay the bills.
6 At all times pertinent, LaClede Gas knew or should have known such an arrangement was not reasonable was and in violation of the basic duties to see gas services are properly bill only tothose who owe for same
7 At all times pertinent La Clede Gas further knew or should have known that as in the recorded Declaration and Ch 448 there was no legal authority for the association to incur debts for the unit owners for services beyond the property lines of 9953 Lewis and Clark, and no authority to sell, convey or otherwise transfer property rights of the condominium unit owners or otherwise use their credit for others.
8. Despite the duties owed Plaintiffs are informed and believe LaClede Gas nevertheless proceeded to bill the condominium association and the unit owners for the natural gas services for the shopping center .
9 Plaintiffs are informed and believes La Clede Gas continued to bill the condominium association for the natural gas services to the shopping center , at least as to 9955 to 9964 Lewis and Clark and at least for some time from 1980 for shopping center even where it knew or should have known that there was no independent property manager, , when knew or should have known the unit owners did not know they were being billed for the shopping center and concealed and failed to disclose that the association was being billed for the natural gas to the shopping center.

10. La Clede Gas further continued to bill the Lewis and Clark Tower Condominium Association for the natural gas and even shut off the hot water to the residential units in April 2014, and the gas for heat based on the bill which included the shopping center and continued after April 20145 to add usage costs to the bill sent the assn even where it knew or should have known the gas use being billed after April 2014 came from the shopping center and not the condo units.
11. The actions of LaClede Gas in so cutting off the hot water and other gas usage at the Tower and billing the unit owners for the gas for the shopping center was especially outrageous where it was of record as of 2011 Collier, Leigh , Foster and Lewis and Clark 195 LLC had divested themselves of all but one unit ownership of units at the condominium at 9953 Lewis and Clark. This is even more so where laClede gas claimed there has been no payments after February 2013 and failed to make corrections even when proof of payments.
12 There is a ripe controversy on the extent to which LaClede Gas could ever have lawfully have set up such an account in 1980 wherein the assn was billed for the shopping center's gas service and use , on the extent to the it exceeded the limits of lawful authority in the Declaration which limits the debts and expenses to those for 9953 Lewis and Clark and where the actions of LaClede Gas show bad faith and a reflect a reckless.and/or negligence breach of the duties owed to the unit owners at 9953 Lewis and Clark..
13 Defendant LaClede Gas should be further found and declared to be reckless, negligent and outrageous where it engaged in a form of fraudulent concealment and wrongly obtain funds under false pretenses by forcing the unit owners into paying on a bill La Clede Gas knew was not owed from the unit owners with false demands to shut off and actually , shut off the hot water and threatened to completely shut off all services due to the condominium association not paying the bill it did not owe, where it was known it was likelysome of the shopping center that caused much if not most of the use going back to 1980 and where LaClede Gas claimed it has received no payments on the heat and hot water accounts since February 2013 when instead as the CPM and City and Village records show in 2014 there were payments of $3300 on hot water since Feb 2013 and $6000 on hot water plus $76Xin December 2013. As if not applied to the account ..
14 At all times pertinent since 1980 the natural gas line access, rights to natural gas line service, credit standing and right to set up an account and meter access was an asset of the Lewis and Clark Tower owned by all unit owners to which only the unit owners had a lawful right of possession and to use of same which was to be used only for unit owners on the premises..
15. Since 1992 the actions of LaClede Gas in effect further and created the means for defendant Lewis and Clark 195 LLC , and its personnel , to wrongfully convert and wrongfully take property including natural gas for 9953 Lewis and Clark without proper consent or payment to the unit owners and fraudulently conceal same from the unit owners, with LaClede a

participant who took steps to furthers the goal of the civil conspiracy directed to the unit owners to defraud and conceal from them the fact they were being billed for the utilities for the shopping center.
16 Even in or about June 2014 Collier. A.M.C.I, Leigh, Lewis and Clark 195 LLC sought to obtain a permit and beginning construction on their own water line access and meter even then LaClede despite sent notice and demand, failed and refused to voluntarily make a correction to the bills.
17. It is proper and necessary that this court enter declaratory and other orders relating to the rights of the parties where there is a ripe disputed controversy concerninga the extent to which under the Declaration there ever was any authority for the condo assn to have been billed for natural gas services for other than the premises at 9953 Lewis and Clark;
b the extent to which the bills were reasonable and thus would be lawfully owed by the unit owners where under the Declaration their duty is only to pay for expenses for 9953 Lewis and Clark;
c the extent to which LaClede Gas acted lawfully and validly in allowing the condo assn account to be used for gas for 9955 Lewis and Clark shopping center;
d. the extent to which LaClede Gas were placed on record notice by the Declaration and the fact they knew from the words "condo assn" being in the name of the account that the property had been subdivided and the limits of authority were as in the Declaration'
e The extent to which LaClede Gas had a duty to have advised the unit owners that there was no meter for 9955 shopping center and the assn was being billed for the shopping center's natural gas;
f. The extent to which LaClede Gas 's were not reasonable and continue a form of wrongfully obtaining funds under false pretenses under Mo common law especially where it ignored the dispute and continued with the shut off and threatened shut off when it knew of should have known payment was not due from the condo unit owners,'
G The extent to which LaClede Gas gave any proper notice to disconnect where there were no officers on the LCTCA to receive notice .
18. This action is ripe for resolution where with the new utilities being installed, the parties can be put in the position they should have been in where the data and information (specially where since April 2014 with the hot water shut off data) can be obtained on the gas
use for the shopping center to go back and adjust or rebill the association and unit owners only for the gas they used and separately bill the shopping center for its own gas use.
19. Plaintiffs have been and are being damaged as a direct and foreseeable results of the foregoing, including the individual plaintiffs have had their investment and quiet enjoyment of their residence, threatened, have suffered garden variety distress being without hot water since April 2014 and have been should be put in the position of a threat of disconnection and condemnation .The infrastructure of the condo assn of which they

own an undivided interest has also been impacted and its useful life likely shortened by the increased volume and use for the shopping center., and by not having funds for other repairs in having to make payment of the shipping center caused utility bills a priority

20. All conditions precedent have been met,with no primary jurisdiction in PSC in that

A It is properly heard with the other counts on which MSD has taken the position it is not subject to PSC jurisdiction and under judicial estoppel principles would be bound by same;

B There is no need to exhaust administrative remedies where there is no need for agency

expertise or an administrative record, where this is especially so on the claim here which is based not on tariffs but on a legal interpretation for which a court has expertise on such issues as the limits of authority in the Declaration for the assn to have incurred any debt for 9955 utilities , the extent to which by the recording of the Declaration was on notice of the limits of authority , the extent to which the unit owners can be liable for utility expenses to serve premises outside the property lines of 9953 Lewis and Clark, the common law duties under which LaClede Gas had to duty to disclose the true facts and the extent to which LaClede Gas by its concealment set into motion and participated with the owners and operators of 9955 Lewis and Clark in a civil conspiracy for which it would be liable with them ;

C. Same would be futile where an agency cannot provide complete or adequate relief it cannot

address the above legal issues, it cannot construe interpret or declare the duties under the

Declaration and cannot go back to 1980 for relief;

D Plaintiffs substantially complied by submitting an internal complaint land placed the utility and

PSC on notice of the need to take action, and where the procedures do not meet Art 1 section 10 ,and Ch 506.

E Defendants should be judicially estopped from asserting same where they were first to violate

and breach the rules of the same agency.

21.It is proper and necessary that there be declaratory and equitable relief declaring the above and finding unit owners are not liable, that there as not proper authority for the assn to have incurred a debt for natural gas service r for 9955 Lewis and Clark that it cannot be lien on the property and that the unit owners have a right to continued gas utility service ; equitable relief in the form of requiring LaClede Gas to turn the hot water back on , and to cease and desist from

demands unit owners and/or assn as pass through pay MSD for gas services for 9955 Lewis and Clark ; that LaClede Gas return the payments to the condo assn that they paid for the shopping center's gas services; LaClede Gas make unit owners whole; that Lewis and Clark 195 LLC and its operators

(Collier, Leigh, Foster and AMCI) be found and declared to be liable for the sewer service for 9955 shopping center and a complete accounting from same be ordered with them jointly liable for the damages to Plaintiffs to put them and the other unit owners in the position they should be in but for their actions in seeking to use or take the sewer service rights of the condo assn and the fraud in having the association and in turn the unit owners made liable for utility services for the shopping center. through same cause money and property of the unit owners to be wrongfully obtained by :LaClede Gas and the shopping center.

22. It is also proper and necessary that a person equivalent of a receiver be appointed to oversee same for the Plaintiffs, and otherwise see the roles that would be otherwise filled by aBoard or property manager are filled.

23. There is no adequate remedy at law and Plaintiffs and the other unit owners and theassociation will suffer immediate and irreparable harm if an injunction and restraining order is not entered ordering the gas for hot water be turned back on, staying or prohibiting any shut off,
ordering the appointment of the equivalent of receiver and requiring a complete accounting,adjustments, and such orders as above are not provided where any claimed prejudice or harm or prejudice to LaClede Gas is outweighed by the harm to the residents of the Tower that include families, elderly and disabled .

24. It is proper and necessary under equity and otherwise that Plaintiffs who have had to incur expenses including for costs , expenses and legal fees under equity should also be reimbursed for their reasonable fees and expenses, where the efforts to dispute same were ignored and where same has been required to enforce the rights in the Declaration which limits what expenses can be incurred to those for the Tower's own common elements and all enforcement actions as directed to conduct such as here by , Leigh and A.M.C.I. Inc constitute willful misfeasance, fraud, and were intentional, outrageous and willful, knowingly done with the intention to use positions as Board member and property manager for self interest cause harm and reflect a willful, wanton and malicious failure to comply with the Condominium Acts as applicable to them herein.

This is even more so where LG MAWC sought to mislead on Ahalabli v DOR, 300 SW2d 508 (Mo 2009) . It is a Ch 213 MCHR case where the claims there are statutory claims that do not exist in common law or tort, not seek to repeal common law claims by implication. The statute is mandatory. Even more so, the actual holding was do not have to file a charge on each event in issue and prefiling requirement it is met by notice and then can go to

court on matters beyond what is in the charge:

> The Missouri Supreme Court has indicated that it takes a liberal approach to the fulfillment of procedural requirements under the MHRA. See Hill v. Ford Motor Co., 277 S.W.3d 659, 670 (Mo. banc 2009) (where the Court noted the importance of "the availability of complete redress of legitimate grievances without undue encumbrance by procedural requirements especially [in cases where] demanding full and technical compliance would have no relation to the purposes for requiring those procedures in the first instance."). In other words, exhaustion requires a claimant to give notice of all claims of discrimination in the administrative complaint, but administrative complaints are interpreted liberally in an effort to further the remedial purposes of legislation that prohibits unlawful employment practices. Tart, 31 F.3d at 671. As a result, administrative remedies are deemed exhausted as to all incidents of discrimination that are like or reasonably related to the allegations of the administrative charge. Id. Further, the scope of the civil suit may be as broad as the scope of the administrative investigation which could reasonably be expected to grow out of the charge of discrimination.

6. Instead the claims of LG/MAWC should be seen for what they are bad faith smoke and mirrors , that do not even meet Rule 4-3.3, where seek to cite cases such as WD Evans it know it was effectively overruled by Raster, left out the major cases of May, and other easily found in Mo Law Digest under jurisdiction, refused to look at the statute or regulation and seek to create confusion with a series of string cites where there was no issue on whether had jurisdiction[5].

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[5]. Then even more incredibly following the old tactic if do not have the law, cite the fact and if do not have either bang your shoe on the table and seek to create a diversion, as seen on October 27 in a new definition of chutzaph MAWC/LG counsel sought to while and complain calling it harassment when it was pointed pout had miscited cases and cited cases that over overruled. That in itself should have viewed as its own kind of admission. Anyone with actual genuine support the law should be able to withstand scrutiny and should not to be afraid of what the actual cases hold or the current state of the law but should be able as here to address the issues of law.

Wherefore for these reasons Plaintiffs oppose and move same be stricken as

not proper and not meeting the rules and for such other relief as proper

.Respectfully submitted
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Certificate of service
The undersigned has requested e service on those who have filed an entry of appearance on this 28day of October 2014
/s/ Susan H Mello