STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

UNITED HOUSE OF PRAYER, a District of Columbia non-profit corporation, individually and as representative of a class of similarly-situated persons and entities,

Plaintiff,

-v-

CITY OF DETROIT, a municipal corporation,

Defendant.

Case No. 15-009083-CZ

Hon. Annette J. Berry

OPINION

Defendant City of Detroit brings this motion for summary disposition pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction). For the reasons stated in this opinion, defendant's motion will be denied.

I. STATEMENT OF FACTS

Plaintiff United House of Prayer owns and/or occupies property on Joy Road in the City of Detroit. Defendant City of Detroit provides water and sewerage services to its customers, including plaintiff, through the Detroit Water and Sewerage Department (DWSD). The DWSD

is a branch of the City's government and is governed by a seven member Board of Water Commissioners. [Exhibit A to defendant's brief].

Plaintiff was billed by defendant for water services, including fire protection water service. Fire protection water service differs from ordinary day to day water service because it is designed as a standby service to deliver large quantities of water for short periods of time. [Complaint ¶ 8]. Defendant furnishes fire protection water service to its customers through public fire lines that lead to fire hydrants on public property and through private fire lines that lead to stand-by water pipes and sprinkler connections located on private property. [Complaint, ¶ 9, 12]. It is alleged that the costs of the public fire protection service are incorporated into the water rates charged to all users of the public water supply system and that the costs for private fire protections services are incorporated into private fire line charges to customers who have private fire suppression systems such as sprinklers. [Complaint ¶¶ 11, 12].

Plaintiff, a private fire line customer of the City of Detroit, asserts that the City imposes private fire line charges that are far in excess of its actual cost of providing private fire suppression services.[1] [Complaint ¶ 27]. According to plaintiff, the private fire line charges are made up of two components, the "demand charge" and the "service charge." [Complaint ¶ 17]. Plaintiff contends that the "service charge" component "grossly inflates the overall Private Fire Line Charges, is not based upon any proper or established methodology for establishing Private Fire Line Charges and has no relationship to the City's actual costs of providing private fire line standby service." [Complaint ¶ 21]. It is further alleged that the excess revenue generated by the

[1] Plaintiff also asserts that Detroit private fire line charges "far exceed the same charges imposed by virtually every other major municipality in the United States." [Complaint ¶ 26]. For example, plaintiff alleges that the annual rate charged for a 6" private fire line in Detroit is 19 times higher than that charged in Grand Rapids and almost 16 times higher than that charged in New York City. *Id.*

private fire line overcharges is used to finance governmental functions unrelated to providing fire suppression services. [Complaint ¶ 27].

Plaintiff has filed a class action complaint with this Court asserting, in Count I, that the private fire line overcharges are a "disguised tax" in violation of Article 9, Section 31 of the Michigan Constitution of 1963, commonly known as the Headlee Amendment. [Complaint ¶¶ 45-47]. Count II of plaintiff alleges unjust enrichment from the overcharges. [Complaint ¶¶ 51-55]. Plaintiff requests that this Court order defendant to refund all private fire line overcharges collected and to enjoin defendant from collecting any past overcharges and "from imposing or collecting private Fire Line Charges in the future which exceed the City's actual costs of providing private fire line service." Defendant brings this motion for summary disposition pursuant to MCR 2.116(C)(4) (lack of subject matter jurisdiction) alleging that this Court does not have jurisdiction in this matter because plaintiff was required to and did not exhaust administrative remedies available under DWSD's Interim Collection Rules and Procedures.

II. STANDARD OF REVIEW

Summary disposition is appropriate under MCR 2.116(C)(4) when the trial court "lacks jurisdiction of the subject matter." MCR 2.116(C)(4); *Summer v Southfield Bd of Ed*, 310 Mich App 660; __ NW2d __ (2015). When deciding a motion filed pursuant to MCL 2.116(C)(4), the court examines the pleadings together with affidavits, depositions, admissions and documentary evidence to determine whether subject matter jurisdiction exists. *L & L Wine and Liquor Corp v Liquor Control Com'n*, 274 Mich App 354, 356; 733 NW2d 107 (2007).

III. ANALYSIS

"The term jurisdiction refers to the power of a court to act and the authority a court has to hear and determine a case." *Wayne Cnty Executive v Governor*, 230 Mich App 258, 269; 583

NW2d 512 (1998). Circuit courts, as courts of general jurisdiction, have "original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605; *Farmers Ins Exchange v South Lyon Community Schools*, 237 Mich App 235, 241; 602 NW2d 588 (1999). Additionally, MCL 600.308a grants jurisdiction to circuit courts to hear actions filed under the Headlee Amendment. MCL 600.308a (1); *City of Riverview v State of Michigan*, 292 Mich App 516, 535; 808 NW2d 532 (2011). Jurisdiction is assumed unless the matter in question is specifically excluded by law. *Ingham County Prosecutor v American Amusement Co,* Inc, 71 Mich App 130, 135; 246 NW2d 684 (1976). "The divesture of jurisdiction from the circuit court is an extreme undertaking. Statutes so doing are to be strictly construed. Divesture of jurisdiction cannot be accomplished except under clear mandate of the law." *Wikman v City of Novi*, 413 Mich 617, 645; 322 NW2d 103 (1982).

An exception to the general jurisdiction of the circuit court occurs where a statute provides for exclusive administrative remedies. *Papas v Michigan Gaming Control Board,* 257 Mich App 647, 657; 669 NW2d 326 (2003). In such a circumstance, the circuit court does not have jurisdiction until those remedies have been exhausted. *Id.*; *W A Foote Memorial Hosp v Dept of Public Health*, 210 Mich App 516, 522-523; 534 NW2d 206 (1995). However, a plaintiff is not required to first pursue administrative remedies where doing so would be futile. *Universal Am-Can Ltd v Attorney General*, 197 Mich App 34, 38; 494 NW2d 787 (1992). Additionally, the exhaustion doctrine does not apply when the controlling issue in a case involves a constitutional right. *Id.*

Defendant asserts that summary disposition is proper in this case under MCR 2.116(C)(4) because plaintiff has failed to exhaust administrative remedies. According to defendant, the shut-off notice sent to plaintiff informed plaintiff "of its right to formally dispute the charges pursuant to the Interim Rules, and to then participate in a formal hearing process."[2] Defendant's brief, p 6. The Interim Collection Rules and Procedures of the Detroit Water and Sewerage Department (Interim Rules) set forth "Complaint Procedures" and "Administrative Hearing Procedures." [Exhibit E attached to defendant's brief, p 4-5]. The "Complaint Procedures" provide the time limit for disputing a bill, allows for the testing of meters for accuracy and allows for a customer to request a hearing if it disputes the results of the examination. [Exhibit E, pp 4-5]. The "Administrative Hearing Procedures" section of the Interim Rules states, in part, that "if billing complaints are not resolved to the customer's satisfaction by staff investigation, the customer will be afforded the opportunity for a Hearing before an impartial Hearing Officer." [Interim Rule 8]. The hearing officers are approved by the Board of Water Commissioners and are required to be "qualified arbitrators or attorneys who may be contractually hired by DWSD." [Interim Rule 14]. The hearing officer determines whether or not the customer is liable for the disputed bill and the officer's decision is to be "based upon evidence presented at the Hearing, and applicable Legislative, Judicial and Administrative Law." [Interim Rule 15]. The Interim

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[2] The back of the shut-off notice, attached to defendant's brief as Exhibit C provides, in pertinent part:

> 1. YOU HAVE THE RIGHT TO FILE A COMPLAINT. THIS MUST BE DONE WITHIN 10 CALENDAR DAYS.
> 2. YOU HAVE THE RIGHT TO REQUEST A HEARING BEFORE AN IMPARTIAL HEARING OFFICER.
> 3. YOU HAVE THE RIGHT TO REPRESENT YOURSELF OR BE REPRESENTED BY AN ATTORNEY OR OTHER PERSON AT THE HEARING.
>
> SERVICE WILL NOT BE SHUT OFF PENDING RESOLUTION OF A COMPLAINT OR HEARING IF ALL BILLS OTHER THAN THE DISPUTED BILL ARE PAID WHEN DUE. [Exhibit C].

Rules further state that "the Hearing Officer's decision is binding upon both parties." [Interim Rule 17].

Plaintiff argues that exhaustion of the Interim Rules was not required because there is no statutory authority granting exclusive jurisdiction to DWSD and, in any event, pursuing the administrative process would have been futile. This Court agrees with plaintiff.

As is noted above, this Court has original jurisdiction over all civil claims and remedies "except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. It is undisputed by the parties that, where a statute confers exclusive jurisdiction on a state agency, courts must decline to exercise jurisdiction until all administrative proceedings are complete. See *Papas, supra* at 657 (Legislature conferred exclusive jurisdiction with Michigan Gaming Control Board over all matters relating to licensing and regulation of certain casinos and therefore, plaintiff was required to exhaust administrative remedies); *L & L Wine and Liquor Corp v Liquor Control Com'n,* 274 Mich App 354, 356-357; 733 NW2d 107 (2007) (Statute expressly vested Liquor Control Commission with exclusive jurisdiction over transfer of liquor license and therefore, plaintiff was required to exhaust administrative remedies); *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 51; 620 NW2d 546 (2000) (The Michigan Campaign Finance Act provides exclusive administrative remedies that must be exhausted before a circuit court action can be brought.); *Foote, supra* (The statutory provisions of the Public Health Code specified that court challenges to the issuance or denial of licensing requests could only be made after exhausting administrative remedies.).

Defendant does not dispute that there is no statute that confers exclusive jurisdiction over water rate disputes with any administrative agency, including the Detroit Water Board. Rather,

defendant claims that the City's Interim Collection Rules and Procedures are authorized by City Ordinance and therefore, must be exhausted before this Court has jurisdiction.[3] Plaintiff asserts that administrative exhaustion of remedies is not required in this case because the Interim Rules are not authorized by statute, but are created solely by ordinance.

Neither defendant nor plaintiff cite any published authority addressing the issue of whether a circuit court is divested of jurisdiction where an ordinance sets forth an administrative remedy and the administrative remedy has not been exhausted. Plaintiff references language in *Green v City of Detroit*, 87 Mich App 313; 274 NW2d 51 (1978), where the Court stated that a Detroit City ordinance prescribed an internal procedure for handling claims against the city and that "we do not interpret the cited ordinance as requiring resort to and compliance with it by a claimant as a condition precedent to bringing suit in the circuit court." *Id.* at 316. However, the Court in *Green* was addressing the issue of whether, by following the City ordinance, the plaintiff was relieved of the statutory notice provisions for claims against a governmental agency. *Id* at 317. It was not addressing the issue presented in this case regarding the exhaustion of administrative remedies.

Defendant relies on *Grand Blanc Community Schools v Wright*, unpublished decision of Michigan Court of Appeals (2013 WL 1137120), in support of its argument that exhaustion of administrative remedies established by an ordinance is required before a circuit court action can be brought. In addressing defendant's argument, this Court first notes that an unpublished case is not binding authority. MCR 7.215(C)(1). Moreover, a reading of *Grand Blanc* reveals that it is distinguishable from the instant case. The court in *Grand Blanc* was not addressing the question of whether the circuit court in that case had properly assumed jurisdiction. Rather, the

[3] Detroit City Ordinance Section 2-4-21 states that "[t]he board of water commissioners is hereby authorized to establish appropriate procedures within the water and sewerage department for the disposition of all claims against the water and sewerage department."

issue presented on appeal was whether the trial court improperly delegated its duty to an administrative tribunal when it ordered the parties to appear before a board of review for a final determination water and sewerage fees. *Grand Blanc, supra* slip op at 8. Thus, the Court of Appeals did not address the question of whether the circuit court had jurisdiction in the first instance. Additionally, the decision in *Grand Blanc* does not support defendant's position that administrative remedies established under an ordinance, as opposed to statute, may deprive a circuit of jurisdiction. In fact, the court in *Grand Blanc* specifically found that the trial court in that case correctly referred the parties to the board of review pursuant to a statute, MCL 46.176. *Id.* at 9. It further noted that, contrary to the plaintiff's argument in that case, "the parties were ordered to appear before the Board of Review, not because of the ordinance, but because of MCL 46.176." *Id* at 10. Thus, a careful reading of *Grand Blanc* demonstrates that the opinion does not support defendant's argument, and in fact, offers support against it.

The clear language of MCL 600.605 provides that this Court is vested with "original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state." MCL 600.605. Additionally, this Court has jurisdiction over Headlee Amendment cases pursuant to MCL 600.308a(1). The Court cannot be divested of its jurisdiction except under clear a mandate of law. *Wikman, supra* at 645. Defendant has not cited and this Court has not found any statutory provision that provides such a mandate applicable to the case at bar. Plaintiff's alleged failure to

pursue the remedies under the City's Interim Rules does not divest this Court of subject matter jurisdiction to hear the claims presented in plaintiff's complaint.[4]

Additionally, aside from the lack of statutory authority divesting this Court of subject matter jurisdiction, the exhaustion of administrative remedies rule would not apply in this case because plaintiff could not have obtained the relief it sought through the procedure set forth in the Interim Rules. *Universal Am-Can, supra* at 38. Although plaintiff is disputing its water bill, it does not assert incorrect meter readings or faulty equipment, which are the types of issues the procedures in the Interim Rules are designed to address. See Exhibit E, pp 4-5. Rather, plaintiff challenges the rate set for private fire line services and alleges that overcharges for the services are used to finance unrelated governmental functions in violation of the Michigan Constitution.

The Interim Rules relied on by defendant provide only for a hearing before a hearing officer, whose decision is deemed to binding upon the parties. [Exhibit E, p 8]. There are no provisions for an appeal of the Hearing Officer's decision. However, it is not disputed that the water rates are set by the Board of Water Commissioners and approved by City Counsel.[5] [Plaintiff's Exhibit C - DWSD Information Sheet, p 12]. The hearing officer has no authority over the rates for private fire line services and, therefore, it would have been futile for plaintiff to

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[4] The Court notes that plaintiff did make several efforts through communication with representatives of DWSD to have its concerns about its bill and a threatened shut-off addressed before filing the complaint in the instant case.

[5] Pursuant to Sections 7-1201 and 7-1202 of the City Charter, the Board of Water Commissioners establishes rates to be paid for water, drainage or sewerage services. According to Detroit City Ordinance 18-15-29(b): "The rates for water service and the regulations shall be the rates and regulations required to be established by Act 94." The Revenue Bond Act (Act 94) requires that rates shall be fixed and revised by the governing body of the borrower. MCL 141.121(2)

proceed under the Interim Rules because the relief sought by plaintiff is outside the authority of the Hearing Officer.[6]

IV. CONCLUSION

For the reasons stated above, defendant's motion for summary disposition pursuant to MCR 2.116(C) (4) will be denied.

DATED: 1/27/2016

/s/ Annette J. Berry

Circuit Judge

[6] Moreover, Count I of plaintiff's complaint alleges a violation of the Michigan Constitution and, therefore, the exhaustion of administrative remedies doctrine does not apply to that claim. *Universal Am-Can, supra.*

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