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SC Court of Appeals

ELECTRONICALLY FILED - 2023 Feb 23 12:23 PM - AIKEN - COMMON PLEAS - CASE#2021CP0202323

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)
Case Number: 2021CP0202323

MARK GREGORY THOMPSON, ET AL.,
Plaintiffs,
vs.
CLAY KILLIAN, ET AL.,
Defendants.

ORDER ON PLAINTIFFS' MOTION TO ALTER OR AMEND AS TO CITY OF AIKEN DEFENDANTS

The plaintiffs filed a motion to alter or amend an order issued on August 8, 2022, which dismissed the case against the remaining City of Aiken defendants, without prejudice, on the sole remaining cause of action against them for unjust enrichment. The basis of the prior ruling was that a class action is not permitted. Rulings were not made on other issues because of the dismissal. Having reconsidered the matter, the court finds that the plaintiffs who are suing in their individual capacity would not be barred from seeking relief, but that their claim is predicated on their assertion that they are entitled to an assertion that the road maintenance fee is a tax. The exclusive means for securing the relief they seek as individuals would be through administrative procedures. The claims of all plaintiffs are dismissed, without prejudice. The plaintiffs have failed to exhaust their administrative remedies. In addition, the prior order did not decide whether the cause of action for unjust enrichment is barred by sovereign immunity. Having reconsidered the matter, the court finds that the plaintiffs are barred from seeking this claim of unjust enrichment.

The motion asserts that the prior order contains a two-fold error. First, that the court erred in finding that S.C. Code Ann. § 12-60-80(C) applied to this case. It is argued that the clear

legislative intent of the Revenue Procedures Act ("RPA"), specifically § 12-60-20, dictates the RPA's non-application in this matter. Second, the holding that a citizen may not bring a class action against a political subdivision would only prevent class certification, and the plaintiffs' individual claims are not barred by § 12-60-80(C). The court has previously stated in a Form 4 order that it affirms the prior order in finding that the determination that this class action cannot proceed. However, upon reconsideration, the court agrees with the second argument. While the language in the Complaint repeatedly states that this is a class action lawsuit, the standards applicable to summary dismissal would require the court to allow the plaintiffs to pursue individual claims, if they were not otherwise barred from maintaining this action in common pleas court.

An interesting and well-stated argument has been made by the plaintiffs concerning the RPA. There are problems with accepting their position. The only way they can recover for unjust enrichment based on the *Burns* case which they cite is if the City of Aiken's road maintenance fee is declared to be a tax. The definition of tax in the RPA uses the word "fee," as stated in the prior order. It is undisputed that the road maintenance fee was assessed based on the ownership of an item of personal property – a vehicle.

The plaintiffs argue that the court has misapplied or ignored legislative intent in enacting the RPA. S.C. Code Section 12-60-20 states:

> It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine ***a dispute with the Department of Revenue and a dispute concerning property taxes.*** The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent. (emphasis supplied).

The plaintiffs rely upon *Aiken v. South Carolina Department of Revenue,* 429 S.C. 414, 839 S.E.2d 96 (2020), claiming that the dispute with the Department of Revenue makes *Aiken*

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distinguishable. The prior order discussed *Aiken* in the context of prohibiting class action lawsuits. The Supreme Court in *Aiken* interpreted the language of statutory intent cited above to mean that a dispute concerning property taxes is covered, whether or not the Department of Revenue is a party.

The court did not address the other grounds related to subject matter jurisdiction. The prior order stated, “The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.” The parties now seek rulings.

The plaintiffs abandoned their declaratory judgment action against the City of Aiken defendants. That cause of action is moot because the City repealed its ordinance after *Burns*. In a footnote, the prior order states:

> Plaintiffs' counsel stated on page 62 of the transcript: “And, lastly, I will accept the stipulation that money damages aren't being claimed under the due process claim. I would ask, then, that that cause of action be dismissed. And I, certainly, am in agreement with the argument that the — or the concession that the declaratory judgment against the City of Aiken defendants is moot.” The abandonment of the declaratory judgment cause of action creates a confusing posture. The Plaintiffs’ lawsuit is based on the assertion that the Aiken City road maintenance fee is a tax. So, it seems that the only way that relief could be granted is if the court were to decide that *Burns v. Greenville County Council,* 433 S.C. 583, 861 S.E.2d 31 (2021) established that the Aiken City ordinance is a tax. If so, there would be issues as to whether the fee falls within the definition of "tax" under the Revenue Procedures Act (RPA), which arguably requires all disputes concerning taxes to be handled through administrative channels. The court is not permitted to decide a case or controversy that is moot. The court is unclear how it would be possible to decide the foundational issue in the Plaintiffs' favor without a declaratory judgment to that effect. *Burns* acknowledges that road maintenance fees may be properly levied, if the legislative history and reasoning stated by the local government for a particular ordinance is in compliance with the law. That appears to be a case-by-case analysis.

The administrative procedure includes the ability to appeal issues raised before the Administrative Law Court. The plaintiffs' claims seeking a refund or recovery of any illegal or wrongfully collected taxes as claimed by the plaintiffs may be pursued through administrative

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channels. *See*, *B & A Development, Inc. v. Georgetown County*, 372 S.C. 261, 641 S.E.2d 888 (2007). The plaintiffs are not challenging the constitutionality of any statute. Based upon S.C. Code Ann. § 12-60-80(A), the South Carolina Revenue Procedures Act provides for the exclusive remedy "in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-3390 provides: "If a taxpayer brings an action covered by this chapter in circuit court, the circuit court shall dismiss the case without prejudice." The prior order dismissed the claims without prejudice, leaving the plaintiffs the ability to assert their claims. The plaintiffs have administrative remedies that they have not exhausted under the RPA.

Another issue related to subject matter jurisdiction is the contention of the City of Aiken defendants that the unjust enrichment claim is barred by sovereign immunity. The City defendants contend that the plaintiffs' Second Cause of Action for unjust enrichment is barred by sovereign immunity because the South Carolina General Assembly has not explicitly waived sovereign immunity to allow a claim for unjust enrichment or to be prosecuted against a governmental entity.

Sovereign immunity as a common law doctrine was not abrogated until 1986, when the South Carolina Supreme Court decided *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). In response to the Supreme Court's abrogation of sovereign immunity in *McCall*, the General Assembly enacted the Tort Claims Act in 1986. With the Act, the legislature first <u>reinstated sovereign immunity in full</u>. This historical background has been summarized by the South Carolina Supreme Court in its 1995 decision in *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995). The Court wrote:

> Historically, all persons were barred from bringing tort claims against governmental entities. The doctrine of sovereign immunity began to come under fire as being "archaic and outmoded." The legislature subsequently passed various exceptions to the doctrine. We noted, however, the exceptions reflected "a scattered patchwork of sovereign liability that lack[ed] continuity, logic or fairness." Thus, in *McCall* we abolished the doctrine of sovereign immunity. ***In response to our decision in McCall, the legislature implemented a***

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> ***comprehensive act providing for the logical disposition of governmental liability. The Act first completely restores sovereign immunity.*** The Act then provides specific waivers and limitations on actions against governmental entities. Thus, the Tort Claims Act is a limited waiver of governmental immunity. 455 S.E.2d at 690. (Emphasis added)(Citations omitted).
> In the Tort Claims Act, the General Assembly affirmatively states that it "intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, *only to the extent provided herein*." S.C. Code Ann. § 15-78-20(b). (Emphasis added). "All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved." *Id.*

The reinstatement of sovereign immunity is subject only to the limited waiver specifically provided in the Tort Claims Act. The Act does not include a waiver of sovereign immunity for the non-tort/equitable cause of action for unjust enrichment. Moreover, the General Assembly has not enacted any other legislation that explicitly waives sovereign immunity for an unjust enrichment or any other equitable cause of action against the State or its political subdivisions. It is well settled that "[w]aivers of the Government's sovereign immunity, to be effective, must be 'unequivocally expressed'" in legislation. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33 (1992). *See also*, *United States v. Bormes*, 133 S.Ct. 12, 16 (2012).

The plaintiffs' cause of action for unjust enrichment is a non-tort/equitable claim, barred by sovereign immunity. It is dismissed because the General Assembly has never explicitly waived sovereign immunity for such an equitable claim, like it has for tort claims.[1]

THEREFORE, IT IS ORDERED that this case is dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature appears on separate page]

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[1] Two earlier Circuit Court decisions were called to the attention of the court, not as precedent, but argued as being persuasive. This reasoning was applied by then Circuit Court Judge John Few in the case of *Shirley Iron Works v. City of Union*, Civil Action Number 2003-CP-44-171, and more recently by Circuit Court Judge Jocelyn Newman in *Fields v. Richland County*, Civil Action Number 2020-CP-40-2621.

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Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant, et al

Case Number: 2021CP0202323

Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

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