

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

RECEIVED

Ryan Powell,)
)
Plaintiff,)

Case No. 2014-CP-46-1425

DEC 03 2014

SC Court of Appeals

v.)

**ORDER SUBSTITUTING DEFENDANT
AND ORDER OF DISMISSAL**

Amy Boheler d/b/a York County Auditor,)
Beth Latham d/b/a York County Treasurer,)
Robert Kiser d/b/a York County Delinquent)
Tax Collector,)
)
Defendants.)

FILED-RECEIVED
2014 JUN 25 AM 9:31
DAVID HAMILTON
S.C.C.P. @ S.S.
YORK COUNTY, S.C.

This matter came before me on June 19, 2014, upon Defendants’ motion to substitute York County as Party Defendant, and to dismiss Plaintiff’s complaint pursuant to Rules 12(b)(1) and 12(b)(6) S.C.R.P. Plaintiff appeared *pro se*, and Defendants were represented by W. Keith Martens. Based on the record presented, I find and conclude the following.

Summary of Plaintiff’s Claims

Plaintiff brought this action against Amy Boheler “d/b/a York County Auditor,” Beth Latham “d/b/a York County Treasurer” and Robert Kiser “d/b/a York County Delinquent Tax Collector.” Plaintiff’s causes of action include claims for (1) ‘sham legal process,’ (2) fraud, (3) trespass *quare clausum fregit*, (4) money had and received, (5) slander of title, (6) false light invasion of privacy/libel, (7) breach of contract, (8) negligence per se, (9) civil conspiracy, and (10) intentional infliction of emotional distress.

Plaintiff’s complaint and legal memoranda read like a doctrinal manifesto. It is a rambling presentation of twisted, disconnected and inapplicable legal theories that contradicts all statutory and case law governing the issues presented. It challenges the right and authority of the County to assess and collect *ad valorem* property taxes on realty, as well as the owner’s obligation to pay those taxes.

According to Plaintiff, no land owner is required to pay property taxes, unless the owner’s deed has been recorded. Instead, property owners elect to pay property taxes when they choose to record their deeds. Plaintiff asserts that a property owner can avoid any liability for property taxes by simply choosing not to record his deed. Because Plaintiff chose not to record

mk
1

his deed, Plaintiff contends that York County cannot assess taxes against his real property, which is a conclusion unrelated to any personal liability for the taxes. Applying such "logic", Plaintiff asserts that he is not liable for property taxes on a parcel that he owns in York County, and that the County lacks the authority to collect such taxes through the delinquent tax collection process.

The Complaint alleges that Plaintiff is the owner of a parcel of real property that was conveyed to him by deed in December, 2012, by a now-dissolved trust known as San Juan Holdings. Plaintiff alleges that he has intentionally not recorded his deed in the York County property records, because he did not want to become liable for taxes on the property. Plaintiff's transferor did, however, record a document captioned a "Notice of Sale, Transfer or Exchange" on December 20, 2012, which stated that the transferor had conveyed the property to an unidentified "unenfranchised living man" (presumably Plaintiff), and that the transferor trust "no longer owns the property." Nevertheless, the trust remains the record owner of the property.

According to Plaintiff, the York County Tax Assessor generated and sent a tax bill for 2012 taxes to the dissolved trust, which the trust did not pay. The York County Delinquent Tax Collector then came onto Plaintiff's property without Plaintiff's permission, posted a notice of levy on Plaintiff's property, and advertised the property for sale at the York County delinquent tax sale. When plaintiff became convinced that his property was going to be sold for unpaid taxes, he paid the taxes under protest.

Plaintiff contends that he can have no property tax liability to York County because he never recorded his deed. Plaintiff further contends that his property cannot be "seized" or sold by York County to satisfy the tax liability of Plaintiff's transferor.

Substitution of Party Defendant

As an initial matter, I find and conclude that York County, and not the individuals named by Plaintiff as defendants, is the proper defendant. Each of the defendants named in Plaintiff's suit is an employee of York County, and each of the defendants was sued for acts undertaken on behalf of the County. There is no issue of fact presented that any named Defendant was acting outside the scope of his or her official duties as employees of the County.

South Carolina's Tort Claims Act (S.C. Code Ann. § 15-78-10 *et seq.* (1976, as amended).) ("Tort Claims Act") provides "[i]n the event that [an] employee is individually named [as a defendant in a tort action], the agency or political subdivision for which the employee was acting must be substituted as the party defendant." S.C. Code Ann. § 15-78-70 (1976, as amended). Therefore, Defendants' motion to substitute York County as the proper

Handwritten signature and initials, possibly "M" and "Z", with a small mark below.

defendant must be granted, and Amy Boheler, Beth Latham and Robert Kiser shall be dismissed with prejudice as party defendants.

Rule 12(b)(1) S.C.R.P.

As already indicated, Plaintiff's Complaint is a rambling narrative, but to the extent it challenges the authority of York County to tax Plaintiff's real property or to collect those taxes from Plaintiff, this court lacks subject matter jurisdiction to adjudicate Plaintiff's claims. The South Carolina Revenue Procedures Act (S.C. Code Ann. § 12-10-60 *et seq.* (1976, as amended).) (hereinafter "RPA") expressly provides, with one limited exception not applicable here, that ". . . there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes." S.C. Code Ann. § 12-60-80(A)(1976, as amended). The RPA also prescribes a "contested case" procedure whereby a ". . . property taxpayer may object to a property tax assessment made by a county assessor . . .," and vests South Carolina's Administrative Law Court with the exclusive jurisdiction to decide contested cases. *Id.*, §§ 12-60-2520-2540. Therefore, to the extent Plaintiff's complaint challenges the taxing authority of York County as it relates to his property, the complaint must be dismissed pursuant to Rule 12(b)(1) S.C.R.P.

Rule 12(b)(6) S.C.R.P.

Plaintiff also alleges that York County's employees committed various torts in issuing a notice of levy against his real property, and in otherwise attempting to collect delinquent taxes assessed against the property. Accepting the factual allegations of the Complaint as true, Plaintiff fails to allege any facts that would entitle him to relief.

Plaintiff's tort claims are all barred by the doctrine of sovereign immunity, and the provisions of the Tort Claims Act. Section 15-78-20(b) provides: "The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit from any tort except as waived by this chapter." Further, § 15-78-60 provides:

The governmental entity is not liable for a loss resulting from: . . . (3) execution, enforcement, or lawful implementation of any process; (4) adoption, enforcement, or compliance with any law . . . whether valid or invalid . . . ; (9) entry upon any property where the entry is expressly or impliedly authorized by law; . . . (11) assessment or collection of taxes or special assessments or enforcement of tax laws.

"Exceptions to the waiver of sovereign immunity under the Tort Claims Act must be construed liberally in favor of limiting the liability of the state and its political subdivisions."



Arthurs v. Aiken County, 338 S.C. 253, 270, 525 S.E.2d 542, 551 (Ct. App. 1999), *aff'd as modified sub nom. Arthurs ex rel. Estate of Munn v. Aiken County*, 346 S.C. 97, 551 S.E.2d 579 (2001), *citing* § 15-78-20(f); *see, also, Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).

Plaintiff has failed to allege that Defendants took any action not “. . . expressly or impliedly authorized by law . . .” in their efforts to enforce the tax laws of the County and the State. (§ 15-78-60(9).) Further, every act that Plaintiff has alleged to be actionable clearly relates to the “. . . assessment or collection of taxes or special assessments or enforcement of tax laws.” (§ 15-78-60(11).) In summary, I find and conclude that Plaintiff has alleged no facts to support any legitimate claim against York County, or against any of the individuals named, under any theory of liability.¹ I further find and conclude that Plaintiff's claims are entirely frivolous. Thus, all of Plaintiff's claims shall be dismissed with prejudice.

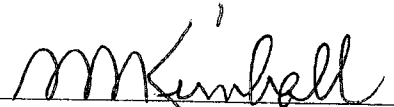
ORDER

For the reasons set forth herein, it is ordered as follows:

1. York County is substituted as the party defendant in this action, and Amy Boheler, Beth Latham and Robert Kiser are all dismissed as parties to this action, with prejudice.
2. Plaintiff's claims for monetary damages are all dismissed with prejudice.
3. To the extent Plaintiff challenges the authority of York County to assess and collect taxes against his real property, this court lacks subject matter jurisdiction to adjudicate such matters, and all such claims are dismissed.

AND IT IS SO ORDERED.

June 24, 2014


S. Jackson Kimball
Special Circuit Court Judge
York County



¹ Plaintiff's breach of contract action appears to be an attempt by Plaintiff to circumvent the Tort Claims Act. However, Plaintiff has failed to allege any facts by which this court could conclude or infer that he entered into an enforceable contract with York County, or with any of the individuals named as defendants in Plaintiff's lawsuit. Thus, the cause of action must fail as a matter of law.

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2014CP4601425

FILED-RECEIVED

2014 OCT 23 PM 3:33

RECEIVED

Ryan Powell

York County

DEC 03 2014

DAVID HAMILTON
 C.C.C.P. & GS
 YORK COUNTY, SC

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: *The Court*

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

This matter came before me on October 16, 2014, upon Plaintiff's motion pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the Court's Order filed June 25, 2014. Representing the parties were: Plaintiff appearing *pro se*; and, W. Keith Martens for Defendant.

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to "... reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. See *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009); and, *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the court's ruling in the prior order. Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRCP, be denied.

AND IT IS SO ORDERED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

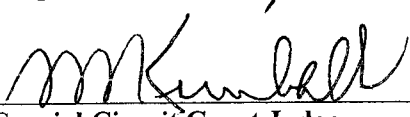
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


 Special Circuit Court Judge

3063

10/17/2014

Judge Code

Date

For Clerk of Court Office Use Only

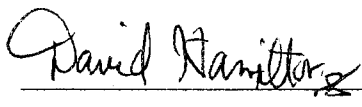
This judgment was entered on ^{10/23/14} and a copy mailed first class or placed in the appropriate attorney's box on ^{10/23/14} to attorneys of record or to parties (when appearing pro se) as follows:

Ryan Powell 25056 Timberlake Drive Fort Mill, SC 29715

Walter Keith Martens 130 E. Main Street Rock Hill, SC 29731

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter: Shirley Broome

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

HZ