

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2014-CP-07-0723
)	
BRAD LIGHTNER, INDIVIDUALLY)	
AND ON BEHALF OF ALL OTHERS)	
SIMILARLY SITUATED,)	
)	
Plaintiffs,)	ORDER DENYING PLAINTIFFS'
)	MOTION TO RECONSIDER
v.)	
)	
HAMPTON HALL CLUB, INC., STATE)	
OF SOUTH CAROLINA, SOUTH)	
CAROLINA DEPARTMENT OF)	
REVENUE, BEAUFORT COUNTY, AND)	
JOHN DOE)	
)	
Defendants.)	
)	

This matter came before the Court on Plaintiffs', Brad Lightner, individually and on behalf of all others similarly situated ("Plaintiffs"), Motion to Reconsider, Alter, or Amend the Court's July 9, 2015, Order denying in part and granting in part Defendant South Carolina Department of Revenue's ("SCDOR") Amended Motion to Dismiss.

Plaintiffs move the Court to reconsider the holding that they may not proceed against the SCDOR as a class action. Plaintiffs argue (1) applying the class action prohibition within the RPA is inconsistent with the Court's holding that the South Carolina Revenue Procedures Act, S.C. Code Ann. §§ 12-60-10, et seq., ("RPA") does not apply, and (2) the opinion Drummond v. State, 378 S.C. 392, 662 S.E.2d 587 (2008), is inapplicable to the facts of this case. The Court will address the applicability of Drummond first, which will also address the Plaintiffs' argument that the class action prohibition does not apply when the RPA does not apply.

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The Plaintiffs further argue that Drummond does not mandate the applicability of § 12-60-80(c) even when the RPA does not apply. First, the Plaintiffs note that Drummond was filed



in 2002, before the General Assembly last amended the legislative intent of § 12-60-20 in 2007.¹ Therefore, the Drummond opinion does not apply to the 2007 version of the intent of the Act. See Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 397, 596 S.E.2d 42, 46-47 (2004) (“In South Carolina, the law in effect at the time the cause of action accrued controls the parties’ legal relationships and rights.”).

However, other than stating that Drummond was decided under a previous version of the RPA, the Plaintiffs do not show how the amendment would dictate a different result for this case. In both situations, the RPA does not apply but the clear limitations on class actions for tax cases and against the Department contained in § 12-60-80(c) do apply.

Second, the Plaintiffs argue Drummond does not stand for the proposition that, even when the RPA does not apply, § 12-60-80(c) still prohibits a class action. The Plaintiffs argue the reason the RPA could not apply in Drummond is that the administrative law court, which would hear the issue under the Act, does not have the authority to rule on the validity of a regulation, which was the subject of the dispute. Id. at 370, 662 S.E.2d at 591. Therefore, Drummond could “pursue this issue . . . in circuit court” because no administrative remedy existed.

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The Plaintiffs argue that because the case proceeded in circuit court due only to the absence of a remedy in administrative court, the Supreme Court still applied the remaining provisions of the RPA based on the legislative intent set forth in § 12-60-20 in 2002. This, according to the Plaintiffs, is different from finding the RPA does not apply.

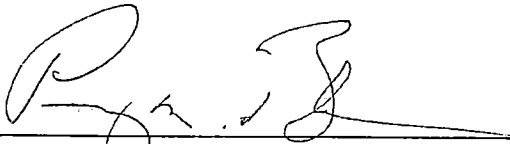
¹ The 1995 version of § 12-60-20 provided “It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine *any disputed revenue liability*.” (1995 Act No. A60, § 4A) (emphasis added). The 2003 version narrowed the application of the RPA from “any disputed revenue liability” to “a straightforward procedure to determine *any dispute with the Department of Revenue*.” (2003 Act No. 69, § 3.CC) (emphasis added).

However, there is no language in Drummond which supports this interpretation. Footnote 5 of Drummond only cites § 12-60-80(c) and states that the declaratory judgment action may not be certified as a class action. There is no discussion of applying the remaining provisions of the RPA because there is no remedy in administrative court for the declaratory judgment action. Rather, the Supreme Court found only that the RPA did not apply and that the action for a declaratory judgment may not be certified as a class action.

Finally, to clear up any confusion from the July 9 Order, the Court finds that the Plaintiffs may proceed as an individual against all Defendants, including the SCDOR and the State of South Carolina, without the necessity of exhausting administrative remedies. The class action allegations against the SCDOR and the State of South Carolina are ordered dismissed.

AND IT IS SO ORDERED.

Dated: August 12, 2015
Walterboro, South Carolina


Perry M. Buckner
Circuit Court Judge

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