

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
BRAD LIGHTNER, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Plaintiffs,

v.

HAMPTON HALL CLUB, INC., STATE  
OF SOUTH CAROLINA, SOUTH  
CAROLINA DEPARTMENT OF  
REVENUE, BEAUFORT COUNTY, AND  
JOHN DOE

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO. 2014-CP-07-0723

) ORDER ON DEFENDANT SOUTH  
) CAROLINA DEPARTMENT OF  
) REVENUE'S MOTION TO DISMISS, OR  
) IN THE ALTERNATIVE TO STRIKE,  
) TO DISMISS THE STATE OF SOUTH

) CAROLINA  
) RECEIVED

) SEP 28 2015

) SC Court of Appeals

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SOUTH CAROLINA

This matter came before the Court on Defendant South Carolina Department of Revenue's ("SCDOR") Amended Motion to Dismiss Pursuant to Rule 12(b)(6), SCRCPP, or, in the Alternative, Motion to Strike Pursuant to Rule 12(f), SCRCPP, to Dismiss the State of South Carolina as a Party, and to Stay Discovery in Response to the Plaintiffs' Amended Complaint. The Court heard the Motion on June 16, 2015. Present for Plaintiffs Brad Lightner, individually and on behalf of all others similarly situated, ("Plaintiffs") were William F. Barnes, III, and Kathleen C. Barnes. Present for the SCDOR were Milton G. Kimpson and Tasha B. Thompson.

"In considering a Rule 12(b)(6), SCRCPP, motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct. App. 2010). "In evaluating a 12(b)(6) motion, the trial court . . . must presume all well pled facts to be true." HHHunt Corp. v. Town of Lexington, 389 S.C. 623, 633, 699 S.E.2d 699, 704 (Ct. App. 2010).



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Plaintiffs brought this action seeking damages for the allegedly wrongful collection and retention of State and County admissions taxes from 2007 to the present. Plaintiffs allege the State and Beaufort County should not have charged them admissions taxes because Plaintiffs are members of non-profit corporations and, by virtue of their memberships, are entitled to use of and admission to the club facilities.

On August 5, 2014, Plaintiffs filed a Motion for Class Certification under Rule 23, SCRPC. On September 2, 2014, the SCDOR filed an Amended Motion to Dismiss or Strike, to Dismiss the State of South Carolina as a party, and to Stay Discovery. The SCDOR alleges the action against it should be dismissed for failure to exhaust administrative remedies and a prohibition on bringing a class action against it. (SCDOR Mot. to Dismiss p. 2). The SCDOR alternatively argues all class action allegations should be stricken under S.C. Code Ann. § 12-60-80(C) (2014). The SCDOR alleges Plaintiffs are not entitled to injunctive relief and the State should be dismissed as a party defendant.

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The SCDOR's main argument is that Plaintiffs failed to exhaust administrative remedies in the South Carolina Revenue Procedures Act (the "Act"), S.C. Code Ann. §§ 12-60-10, *et seq.* (2014). Four of the SCDOR's arguments for dismissal are based on the applicability of the Act. The SCDOR argues that (1) Plaintiffs' case should be dismissed for not exhausting alleged administrative remedies under the Act, (2) Plaintiffs' class action allegations are barred by § 12-60-80(C) of the Act, (3) Plaintiffs' class action allegations should be stricken under § 12-60-80(C), and (4) Plaintiffs are barred from injunctive relief by § 12-60-60 of the Act.

In its current form, as amended by the General Assembly in 2007, § 12-60-20 provides:

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 dispute concerning property taxes. The South Carolina Revenue Procedures Act

must be interpreted and construed in accordance with, and in furtherance of, that intent.

(2007 Act No. 116, § 32A).

When interpreting a statute, the sole function of the Court is to determine and give effect to the intent of the legislature. Hodges v. Rauinery, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In interpreting text, the plain meaning rule requires "that words be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand that statute's operation." State v. Leopard, 349 S.C. 467, 471, 563 S.E.2d 342, 344 (Ct. App. 2002).

The legislative intent of the Act specifies that it only applies to a dispute with the SCDOR concerning property taxes. The SCDOR argues that the General Assembly intended to create two categories of disputes: one involving the SCDOR and one involving property taxes. However, looking at the plain meaning of the statute, it appears that "with" means that the SCDOR is the appropriate body and that "concerning" provides the subject matter for the dispute. Therefore, for the Act to apply, the dispute must be with the appropriate body, the SCDOR, and must concern the appropriate subject matter, property taxes.

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The State and SCDOR conceded at the hearing that this action does not involve property taxes. Therefore, the Act does not apply to this action. Plaintiffs are not required to exhaust administrative remedies before filing an action in circuit.

The Defendant argues that § 12-60-80(C) bars a class action suit regardless of the Act's application. The language of § 12-60-80(C) states that "...a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State."

This code section was interpreted by the South Carolina Supreme Court in Drummond v. State of South Carolina and SCDOR, 378 S.C. 362, 662 S.E.2d 587 (2008). In Drummond, the lower court dismissed the Plaintiff's declaratory judgment action undertaken pursuant to S.C. Code Ann. § 1-23-150 because of the Plaintiff's failure to comply with the Act. 378 S.C. at 365, 662 S.E.2d at 588. On appeal, the Supreme Court reversed, ruling that the Act did not apply to that cause of action and allowed the declaratory judgment suit to go forward against the SCDOR in circuit court. Id., 378 S.C. at 370, 662 S.E.2d at 591. The Court, however, did not allow the suit to proceed as a class action:

We note that § 12-60-80(C), which prohibits a class action, applies not only to administrative law cases but also to tax cases brought in circuit court. This section provides:

Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Judge Division or any court of law in this State, and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.

Accordingly, this action may not be certified as a class action.

Id., at fn. 5.

That case is similar to this one in that the Supreme Court held that the Act did not apply but the prohibition against class actions within the Act applied to bar a class action suit.

Therefore, the Plaintiff cannot proceed against the Defendant SCDOR as a class action suit.

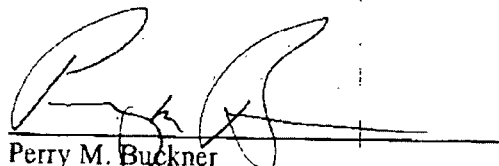
Defendant SCDOR's Motion to Dismiss is granted.

HC  
LAB

**AND IT IS SO ORDERED.**

Dated:

July 9, 2015  
Walterboro, South Carolina



Perry M. Buckner  
Circuit Court Judge  
14th Judicial Circuit