

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Nathan Bluestein, Ettaleah Bluestein,))
 Théodore Albenesius and Karen)
 Albenesius,)
)
 Plaintiffs,)
)
 Versus)
)
 Town of Sullivan's Island and)
 Sullivan's Island Town Council,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 Case No. 10-CP-10-5449
 Order Granting Summary Judgment to Defendants
 Regarding Plaintiffs Request for an Injunction
 Barring the Collection of Certain Property Tax

FILED
 2014 DEC -4 PM 4:20
 JULIE L. ARMSTRONG
 CLERK OF COURT
 BY _____

This matter comes before the Court pursuant to the Defendants' Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the beach.¹ Plaintiffs contend that, by enacting ordinances in 1995 and 2005, the Town has deprived them of a right to a view by failing to cut (or allow others to cut) trees and shrubbery growing on town-owned land that lies between Plaintiffs' houses and the ocean. The Plaintiffs further contend that the Town's ordinances have effectively made them no longer "beachfront", thus making it inappropriate for them to be taxed as beachfront property. Plaintiffs seek an injunction restraining Town Council from "accepting taxes based upon a so-called 'beach front and ocean view' location so long as

¹ Plaintiffs describe their right with various labels (right to have vegetation pruned, condemnation of their view or beachfront status, etc.), but in essence the dispute in this case revolves around whether the Plaintiffs can force the Town to engage in the vegetation cutting necessary to allow Plaintiffs to see the ocean. For ease of reference in this Order, regardless of Plaintiffs label, this will generally be termed "right to a view".

the Town and Town Council continue to frustrate, block, reduce and / or eliminate 'beach front and ocean view' properties as such." Second Amended Complaint, Para. 81. At least one of the Plaintiffs here has already utilized Charleston County's ad valorem tax appeal procedures to seek adjustment.

Law

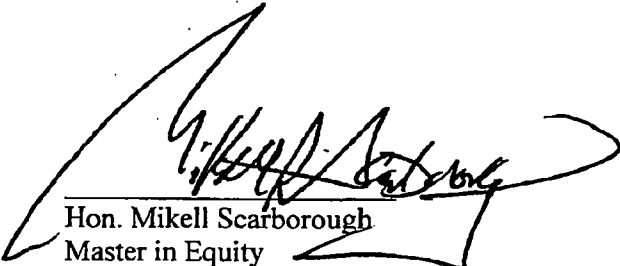
Standards for Decision

Summary judgment is appropriate where no genuine issues of material fact remain for trial when viewed in the light most favorable to the opponent. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (SC 1997); Adamson v. Richland County School District One, 1998 WL 251387 (S.C.App. 1998). Mere denials contained within a party's pleadings are not sufficient under S.C.R.C.P. 56(e). And while the moving party has the initial burden of showing that no genuine issues of fact remain, there is no requirement that the moving party negate every aspect of the opponent's claim. Baughman v. American Telephone and Telegraph, 410 S.E.2d 537, 545 (SC 1991)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Thus, the opponent must "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing there is a *genuine issue for trial*.'" Baughman, 410 S.E.2d at 545, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Notably, while Summary Judgment may be inappropriate when *facts* remain in dispute, the fact that the parties disagree on the legal interpretation of contract is a question of law for which Summary Judgment is particularly appropriate.

Legal Analysis

The Court finds that Summary Judgment is appropriate in favor of the Town. S. C. Code Ann. 12-60-80 (A) specifically provides that “[e]xcept as provided in subsection (B)², there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes.” Our Supreme Court in Riverwoods LLC v County of Charleston, 563 S.E.2d 651 (SC 2002) specifically cited this statute when it upheld the trial court’s denial of an injunction that would have halted collection of (allegedly) improperly calculated property taxes. The Riverwoods court found injunctive relief against property tax levies inappropriate because administrative remedies existed. Later, the Court made this even clearer in Brackenbrook v. County of Charleston, 602 S.E.2d 39 (SC 2004) and specifically noted the existence of S.C. Code Ann. 12-60-80 in regards to this analysis. For the same reasons, the Plaintiffs in this case must utilize their administrative and statutory remedies rather than obtaining an injunction from this Court to interfere with taxation.

This 16 day of Nov, 2014


Hon. Mikell Scarborough
Master in Equity

² Subsection B provides “Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is unconstitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class of persons.” Thus, subsection (B) clearly has no application in the instant injunction request.