

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Nathan Bluestein, Ettaleah Bluestein,)
 Theodore 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 Unfair Trade Practices Act Claim

FILED
 2014 DEC -4 PM 4:20
 JULIE J. 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 passage of these ordinances manipulated the real estate market and constituted a violation of the South Carolina Unfair Trade Practices Act.

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 relevant facts are not in dispute. There is no question that the Town passed 1995 and 2005 ordinances that limited the cutting of vegetation on the AL that Plaintiffs desire. There is no question that these ordinances are legislative acts of a Governmental entity.

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.

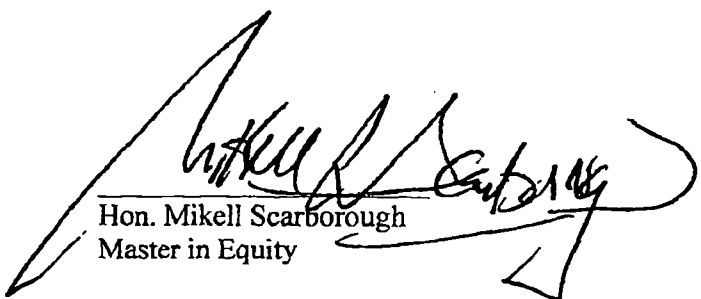
Legal Analysis

The Court finds that Summary Judgment is appropriate because the South Carolina Tort Claims Act bars damages from being awarded for the alleged type of governmental conduct. See

S.C. Code 15-78-60 (1) (“legislative ... action or inaction”); (2) “administrative action or inaction of a legislative ... nature.”); (4) “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.”) The heart of the Plaintiffs’ claim is that the AL ordinances of the Town², enacted by Town Council as a law, are the “unfair trade practice.” This is simply barred.

The Court further finds that the Unfair Trade Practices Act claim would also be barred by the South Carolina Supreme Court’s recent decision in Health Promotion Specialists, LLC v. South Carolina Board of Dentistry, 743 S.E.2d 808 (SC 2013). In Health Promotion Specialists the Court concluded that governmental regulation does not amount to “trade or commerce” as contemplated by the Unfair Trade Practices Act. The ordinances challenged by the Plaintiffs here, zoning ordinances, are even more in the heartland of legislative power than the regulations examined in Health Promotion Specialists. Summary Judgment is appropriate on this rationale as well.

This 26 day of Nov., 2014


Hon. Mikell Scarborough
Master in Equity

²This includes the legislative and administrative activities related to the AL ordinances and contemplated AL ordinances.