

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

South Carolina Public Interest )  
Foundation, Edward D. Sloan, Jr. and )  
William B. DePass, Jr., individually and )  
on behalf of all others similarly situated, )

Civil Action No. 2016-CP-40-2875

Plaintiffs, )

v. )

Richland County, )

Defendant, )

Central Midlands Regional Transit )  
Authority, )

Intervenor-Defendant. )  
\_\_\_\_\_ )

ORDER GRANTING  
MOTION TO DISMISS

2017 NOV 30 AM 8:41  
RICHLAND COUNTY  
FILED  
JEANNETTE W. HCBRIDE  
C.C.P. & G.S.

RECEIVED  
APR 30 2018  
SC Court of Appeals

This matter is before this Court on the Motion to Dismiss and Motion for Summary Judgment filed by the Defendant Richland County. A hearing was held with all counsel of record present on October 26, 2017. After a review of the pleadings, written submissions by the parties, and the oral arguments of counsel, this Court grants the Defendant County's motions as follows:

**BACKGROUND**

In 1995, the South Carolina General Assembly enacted Chapter 37 of Title 4 of the South Carolina Code of Laws which is entitled "Optional Methods for Financing Transportation Facilities" (hereinafter referred to as the "Transportation Act"). See, 1995 Act No. 52. Section 1 of the Transportation Act sets forth a preamble to the Act with legislative findings that state as

follows:

In furtherance of the powers granted to the counties of this State pursuant to the provisions of Section 4-9-30, and Section 6-21-10 *et seq.*, of the 1976 Code, each of the counties of this State is authorized to establish transportation authorities and to finance, following the public hearing and referendum required in this act, the cost of acquiring, designing, constructing, equipping and operating highways, roads, streets, and bridges, and other transportation-related projects, either alone or in partnership with other governmental entities including, but not limited to, the South Carolina Department of Transportation.

See, 1995 Act No. 52, § 1.<sup>1</sup>

On July 18, 2012, the Richland County Council enacted Ordinance Number 039-12HR for the purpose of levying a one percent sales and use tax pursuant to Section 4-37-30 of the Transportation Act (hereinafter referred to as the "Penny Tax").<sup>2</sup> The Penny Tax Ordinance provided for a referendum to be held on November 6, 2012. The Ordinance also provided for the County's implementation of the Penny Tax upon approval by the electorate. On November 6, 2012, the voters of Richland County approved the referendum.<sup>3</sup>

---

<sup>1</sup> The title to 1995 Act No. 52 states that the Transportation Act was intended "to authorize counties to establish optional methods for the financing of transportation facilities including the acquisition, construction, equipment, and operation of highways, roads, streets, bridges, and other transportation-related projects." See, 1995 Act No. 52. The list of transportation-related projects was expanded in 2000. The title to 2000 Act No. 368 states that the amendment was "to provide that the proceeds of the tax may be used for mass transit systems and greenbelt projects." See, 2000 Act No. 368.

<sup>2</sup> Richland County chose not to adopt a transportation authority as permitted by the Transportation Act.

<sup>3</sup> The results of the referendum were challenged to the Richland County Board of Elections and Voter Registration, which denied the protest. An appeal was filed to the State Board of Canvassers, which affirmed the decision of the County Board. Thereafter, in *Letts v. Richland County*, Appellate Case No. 2012-213679, the petitioner sought a writ of certiorari to review the decision of the State Board. On March 21, 2013, the South Carolina Supreme Court unanimously denied the petition for writ of certiorari.



Following approval of the referendum, Richland County began establishing the framework for the implementation of the Transportation Penny Program to be paid for by the sales and use tax collected pursuant to the referendum. The Penny Tax was levied and collected for Richland County effective May 1, 2013.

The Plaintiffs have filed this action challenging the legality of Richland County Ordinance Number 039-12HR including categories of expenditures that have been made in accordance with that Ordinance. The Central Midlands Regional Transit Authority ("CMRTA") has intervened as a Defendant. The Defendant County has moved to dismiss and/or for summary judgment as to each of the Plaintiffs' causes of action.

## LEGAL ANALYSIS

### **I. Motion to Dismiss -- Failure to Prosecute**

Plaintiffs have failed to prosecute this action which thereby warrants dismissal under Rule 41(b), SCRPC. Rule 41(b), SCRPC, authorizes a court to dismiss an action based upon a plaintiff's failure to prosecute. In *Small v. Mungo*, 254 S.C. 438, 442, 175 S.E.2d 802 (1970), the Supreme Court held that "it is within the inherent power of the court to dismiss an action for failure to prosecute." 175 S.E.2d at 803. The Supreme Court has further held that "[t]he plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause. This authority is necessary if the courts are to control and efficiently manage an ever-expanding docket." *Don Shevey & Spires, Inc. v. American Motors Realty Corp.*, 279 S.C. 58, 301 S.E.2d 757, 758 (1983). See also, *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997).



In the case at bar, the record reflects that the Plaintiffs have taken no action to prosecute their claims in the eighteen or so months since the Complaint was filed on May 9, 2016. The Plaintiffs pursued no discovery as part of this lawsuit.<sup>4</sup> No written discovery was timely served by the Plaintiffs, and no depositions have been taken.<sup>5</sup> In the Amended Order Denying Motions to Dismiss and Motion for Judgment on the Pleadings filed March 27, 2017, the Court wrote as follows: "The Court finds that the issue in the First Cause of Action is not one that should be decided on judgment on the pleadings, but rather should be developed factually and legally through the course of the litigation. There has been no discovery in this case." Since that time, the Court is advised that discovery has still not been conducted. In short, this Court finds that no timely discovery has been initiated or completed, and based on the Scheduling Order filed November 18, 2016, the discovery deadline has now expired. Based upon the lack of activity in prosecuting this action by the Plaintiffs, the Court finds that the dismissal of this action under Rule 41(b) and the inherent authority of the Court is warranted.

---

<sup>4</sup> In response, the Plaintiffs only point to a Freedom of Information Act (FOIA) request that was submitted to the County prior to this action being filed. The Plaintiffs concede that that is the only "discovery" that has been undertaken.

<sup>5</sup> The Court is advised that the Plaintiffs served its initial set of interrogatories on the Defendant County on September 22, 2017, which was four days after the County had filed its dispositive motions. In addition, the service of those interrogatories was more than two months after the discovery deadline set by the Court's Scheduling Order.

*Ed*

**CONCLUSION**

IT IS, THEREFORE, ORDERED that the Motion to Dismiss and Motion for Summary Judgment filed by the Defendant Richland County are hereby granted, and the Plaintiffs' Amended Complaint is dismissed with prejudice. The Plaintiffs' claims for declaratory and injunctive relief are denied for the reasons herein stated.

**AND IT IS SO ORDERED.**



---

G. THOMAS COOPER, JR.  
Circuit Court Judge  
Fifth Judicial Circuit

Columbia, South Carolina

November 21, 2017