

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS)
FIRST JUDICIAL CIRCUIT)

Dorchester County Taxpayers Association,)
individually, and on behalf of all others)
similarly situated; Weatherstone Property)
Owners Association, individually and on)
behalf of all others similarly situated, George)
Resnick; William A. Harbeson; James)
Stephen Greene, Jr.; Homer P. Gonzalez;)
Gerald E. Ziegler; David Messinger; and)
South Carolina Public Interest Foundation,)

Civil Action No.: 2016-CP-18-838

FILED - RECORDED)
2018 MAR 15 AM 10:14)
CHERYL GRANHAM)
CLERK OF COURT)
DORCHESTER COUNTY)

Plaintiffs,)

**ORDER GRANTING DEFENDANTS')
MOTIONS TO DISMISS PLAINTIFFS')
SECOND AMENDED COMPLAINT)**

v.)

Dorchester County; Dorchester County)
Council; David Chinnis, George Bailey, Jay)
Byars, Willie Davis, Carroll S. Duncan, Larry)
Hargett and William R. Hearn, Jr., in their)
official capacities as members of Dorchester)
County Council; Town of Summerville;)
Summerville Town Council; William E.)
McIntosh, III, in his official capacity;)
Dorchester County Sherriff; Luther C.)
Knight, in his official capacity; Dorchester)
School District Two; Dorchester School)
District Two Board of Trustees; Joseph R.)
Pye, Justin Farnsworth, Gail Hughes, Brian)
Mitchum, Tanya Robinson, Sam Clark,)
Barbara Crosby and Lisa Tupper, in their)
official capacities, Dorchester County School)
District Four, Dorchester County School)
District Four Board of Trustees; Dorchester)
County Career and Technology Center; and)
Dorchester County Career and Technology)
Center Board of Trustees,)

Defendants.)

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SC Court of Appeals

This matter comes before the Court upon the Motion of Defendants Dorchester County (the "County"); Dorchester County Council ("County Council"); David Chinnis, George Bailey, Jay Byars, Willie Davis, Carroll S. Duncan, Larry Hargett, and William R. Hearn, Jr., in their official

capacities as members of the County Council; Dorchester County Sheriff, Luther C. Knight (the “Sheriff”), in his official capacity; and Captain Tony Phinney, individually and in his official capacity for an Order dismissing Plaintiffs’ Second Amended Complaint; and the Motion of Defendants Town of Summerville (the “Town”); Summerville Town Council (“Town Council”); and William E. McIntosh, individually and in his official capacity as a member of Town Council (with the Town, Town Council and William E. McIntosh, individually and in his official capacity as a member of Town Council together as the “Town Defendants”) for an Order dismissing Plaintiffs’ Second Amended Complaint.¹

A hearing on this matter was held on December 12, 2017. Appearing on behalf of Plaintiffs were W. Andrew Gowder, Jr., and Michael T. Rose. Appearing on behalf of the County Defendants were Drew Hamilton Butler and Anthony E. Rebollo. Appearing on behalf of the Town Defendants were Erik P. Doerring and William H. Davidson, II. After considering the arguments of counsel, the applicable law, and legal memoranda submitted by the parties, the Court hereby GRANTS the Motions to Dismiss filed by the County Defendants and the Town Defendants.

The Claims

¹ Hereinafter, the movants are referred to collectively as the “County Defendants.” Defendants Dorchester County School District Four and Dorchester County School District Four Board of Trustees have filed a separate Motion to Dismiss Plaintiffs’ Second Amended Complaint, which is addressed by the Court through separate order. Defendants Dorchester School District Two; Dorchester School District Two Board of Trustees; Joseph R. Pye, Justin Farnsworth, Gail Hughes, Brian Mitchum, Tanya Robinson, Sam Clark, Barbara Crosby and Lisa Tupper, in their official capacities; and Dorchester County Career and Technology Center Board of Trustees have filed Answers to the Plaintiffs’ Second Amended Complaint, and have not filed motions to dismiss Plaintiffs’ Second Amended Complaint.

Plaintiffs' Second Amended Complaint, which is now the live pleading, was filed on December 12, 2016. In their Second Amended Complaint, Plaintiffs assert five (5) causes of action:

First Cause of Action: "Violations of Act 388," alleging (among other things) that Plaintiffs "have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses...." Second Amended Complaint at ¶ 101 (the "First Cause of Action").

Second Cause of Action: "Illegal Double Expenditures," alleging (among other things) that Plaintiffs "have been damaged and will continue to be damaged by public tax monies being spent unlawfully and by the Plaintiffs and other tax payers having to compensate the County treasury for those losses...." *Id.* at ¶ 104 (the "Second Cause of Action").

Third Cause of Action: This cause of action, which is not directed against the County Defendants or the Town Defendants, alleges "[t]he failure and refusal of [Dorchester School District Two ("DD2")] to comply with Act No. 98 of 2009 is unlawful." *Id.* at ¶ 106 (the "Third Cause of Action").

Fourth Cause of Action: "Violations of Freedom of Expression, Association and Petition to Redress Grievances Rights Under Article I, Section 2 of the South Carolina Constitution," alleging that Plaintiff David Messinger's constitutional rights were deprived by Town Defendants William E. McIntosh and the Town of Summerville, and the following County Defendants: Chinnis, Phinney, the County and the Sheriff. *Id.* at ¶ 109 (the "Fourth Cause of Action").

Fifth Cause of Action: "Violations of First and Fourteenth Amendment Rights Under the United States Constitution and 42 U.S.C. § 1983," alleging that Plaintiff David Messinger's constitutional rights were deprived by Town Defendants William E. McIntosh and the Town of Summerville, and the following County Defendants: Chinnis, Phinney, the County and the Sheriff. *Id.* at ¶ 112 (the "Fifth Cause of Action").

The Third Cause of Action is not directed at the County Defendants or the Town Defendants and is therefore unaffected by the County Defendants' Motion and this Order. The remaining claims, directed at one or more of the County Defendants and Town Defendants, fall into two groups. The First Cause of Action and Second Cause of Action, which involve S.C. Code Ann. § 12-37-220(B)(47)(referred to herein as "Act 388"), are claims by all of the Plaintiffs

concerning that property tax statute (“Property-Tax Based Claims”). The Fourth Cause of Action and Fifth Cause of Action are claims by Plaintiff David Messinger only, alleging that he is entitled to money damages due to violations of the state and/or federal constitution and 42 U.S.C § 1983 (“Constitutional Claims”).

Findings

A. Property-Tax based Claims

1. This Court Lacks Jurisdiction. As to the Property-Tax Based Claims, the Court finds Plaintiffs’ Property-Tax Based Claims must be dismissed due to lack of subject-matter jurisdiction. The South Carolina Revenue Procedures Act (“RPA”) provides the exclusive remedies for the Plaintiffs’ Property-Tax Based Claims. The South Carolina Constitution specifies that “[t]he General Assembly may direct, by law, in what manner claims against the State may be established and adjusted.” S.C. Const. Articles X, at § 10, and XVII, at §2. For tax matters, the General Assembly exercised that constitutional power when it enacted the RPA: “It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine . . . a dispute concerning property taxes.” S.C. Code Ann. § 12-60-20 (emphasis added). Moreover, the General Assembly made it clear that “[t]he South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent.” *Id.*

To that end, the RPA provides specific remedies for disputing a real property tax assessed by a county. The taxpayer may file a written protest with the County Assessor, or pay the property taxes and file a claim for refund with the County Assessor. S.C. Code Ann. § 12-60-2520, et seq; S.C. Code Ann. § 12-60-2560. After the County Assessor issues his response to a taxpayer’s protest, or the County Assessor, County Treasurer and the County Auditor render a decision on the taxpayer’s refund claim, the taxpayer may then appeal the decision to the County Board of Assessment Appeals within thirty days. S.C. Code Ann. § 12-60-2530; S.C. Code Ann. § 12-60-

2560(B). After a decision by the County Board of Assessment Appeals, the taxpayer may then seek judicial review through the Administrative Law Court. S.C. Code Ann. § 12-60-2540; S.C. Code Ann. § 12-60-2560(C). Thus, under the RPA, a taxpayer may contest a proposed property tax assessment without first paying the tax through the protest procedures, or the taxpayer may pay the tax and then file a refund claim. Under both procedures, the taxpayer has further review through the County Board of Assessment Appeals and then the Administrative Law Court.

The remedies under the RPA are exclusive. Section 12-60-80(A) of the RPA specifically states “[e]xcept as provided in subsection (B), there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.” The exception set forth in subsection (B), referred to herein as “the RPA Exception,” is for “an action for a declaratory judgment where the sole issue is whether a statute is constitutional.”

The Plaintiffs have not made any claim coming within the RPA Exception. To the contrary, the Plaintiffs contend that Act 388 and other statutes cited in their Second Amended Complaint are valid and constitutionally permissible. In addition, the RPA Exception is inapplicable in any event because, by its express terms, it “does not include a claim that [a] statute is unconstitutional as applied to a person or a limited class or classes of persons.” S.C. Code Ann. § 12-60-80(B). (Emphasis added.) Here, the Plaintiffs describe themselves in the Second Amended Complaint as a limited class. See Second Amended Complaint at ¶ 15.

In this case, the Second Amended Complaint confirms that the Plaintiffs’ claims involve a dispute concerning property taxes in that Act 388 is the focus of their Second Amended Complaint. The case law also supports this conclusion and confirms that the RPA applies to the Property-Tax Based Claims at issue here. See Brackenbrook North Charleston LP v. County of Charleston, 602 S.E.2d 39 (S.C. 2004) and B&A Development, Inc. v. Georgetown County, 641 S.E.2d 888 (S.C. 2007), aff’g as modified 605 S.E.2d 551 (S.C. Ct. App. 2004).

Plaintiffs argue that the RPA's provisions only apply to tax disputes involving the "illegal and wrongful collection of taxes," and that Plaintiffs do not challenge the "collection" of property taxes herein but only how the Defendants apparently use or spend the property tax revenues that have been collected. Plaintiffs cite Section 12-60-80(A) in support, which provides that "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes."

Plaintiffs reliance on the language of Section 12-60-80(A) does not support their position. This language emphasizes that there is no other remedy other than the RPA where it is alleged that taxes have been illegally or wrongfully collected; however, the RPA applies to tax disputes regardless of whether the tax has been collected (see state-based tax dispute procedures under S.C. Code Ann. § 12-60-410 et seq.), and specifically to County property tax disputes such as those herein where the taxpayer is free to protest a proposed property tax assessment without first having to pay the taxes or before the taxes are otherwise collected.

Consequently, this Court lacks subject matter jurisdiction as the First and Second Causes of Action.²

B. Constitutional Claims

As to Plaintiff David Messinger's Constitutional Claims, the Court finds they must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for the reasons set forth below.

2. Grounds for Dismissal of the Fourth and Fifth Causes of Action.

²To the extent that the Plaintiffs' Property-Tax Based Claims include requests for equitable relief, those requests are insupportable because the Plaintiffs have an adequate remedy at law under the RPA.

The Fourth and Fifth Causes of Action, asserted by Plaintiff David Messinger only, allege that the County, Chinnis, the Sheriff, Phinney, the Town and McIntosh violated his state and federal constitutional rights and that, as a result, he should be awarded monetary damages. Chinnis and the Sheriff are sued only in their official capacity. Complaint at ¶¶ 30 and 37. Phinney and McIntosh, however, are sued in both their individual and official capacities. Complaint at ¶ 38.

Messinger's Fourth Cause of Action must be dismissed because (a) it alleges only a claim for money damages based on violations of his rights under the South Carolina State Constitution and (b) state law claims are not cognizable under 42 U.S.C. § 1983. Quillan v. Evatt, 445 S.E.2d 639, 640 (S.C. Ct. App. 1994) (holding that Section 1983 claims, which are limited to violations of rights protected by the United States Constitution and federal law, were not available for injuries allegedly suffered at the hands of state officials).

Furthermore, Chinnis is a member of County Council and McIntosh is a member of the Town Council. Therefore, they are immune from Plaintiff's Messinger's state-based Constitutional Claims under the South Carolina Tort Claims Act, S.C. Code Ann § 15-78-10, et. seq. (the "TCA"). The TCA defines a "[g]overnmental entity" as "the State and its political subdivisions." S.C. Code Ann. § 15-78-30(d). The County is a political subdivision of the State and the Town is a body corporate and a municipal corporation of the State of South Carolina located in the County. The TCA's definition of an "employee" refers to "any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty." S.C. Code Ann. § 15-78-30(c). Under the TCA, "Scope of official duty" or "scope of state employment" mean (1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. § 15-78-30(i).

In addition, Plaintiff Messinger's Constitutional Claims in the Fourth Cause of Action are barred due to legislative immunity. The common law legislative immunity has been retained by several sections of the TCA. See S.C. Code Ann. §§ 15-78-20(b) ("All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved"); 15-78-60(1) (preserving sovereign immunity for "legislative, judicial, or quasi-judicial action or inaction"); 15-78-60(2) (preserving sovereign immunity for "administrative action or inaction of a legislative, judicial, or quasi-judicial nature"); and 15-78-60(4) (preserving sovereign immunity for "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").

Accordingly, Plaintiff Messinger's Fourth Cause of Action is deficient as a matter of law and is hereby dismissed.

Messinger's Fifth Cause of Action is deficient because it is based on claimed injuries to reputation arising out of allegedly "false and defamatory statements," which is not cognizable in an action under 42 U.S.C. § 1983. See Paul v. Davis, 424 U.S. 693, 712 (1976) (holding that defamation did not constitute a violation of constitutional rights and, therefore, did not state a claim under § 1983, further noting that harm or injury to reputation, even where inflicted by an officer of the state, "does not result in a deprivation of any 'liberty' or 'property' recognized by state or federal law").

In addition, the Eleventh Amendment bars Plaintiff Messinger's Fifth Cause of Action against Defendant Sheriff and Defendant Phinney. The plain text of 42 U.S.C. § 1983 provides that, for a claim to be viable, the defendant must be a "person" as that term is used in the statute. Under the Eleventh Amendment to the United States Constitution, however, neither the state, nor

a state official acting in an official capacity, comes within the meaning of “person” as that term is used in 42 U.S.C. § 1983. Will v. Mich. Dep’t. of State Police, 491 U.S. 58 (1989).

Sheriffs and their deputies are state officials and, as such, they are not amenable to a suit under 42 USC § 1983. See Cone v. Nettles, 417 S.E.2d 523, 524 (S.C. 1992) (holding that sheriffs and deputy sheriffs are state officials and that “a cause of action against a sheriff or sheriff’s deputies cannot be maintained under 42 U.S.C. §1983). Accordingly, it is clear that a South Carolina sheriff, and those working under him in the Sheriff’s Department, may not be sued in their official capacity under § 1983. Therefore, the § 1983 claims asserted against Defendant Sheriff and Defendant Phinney, sued in his official capacity “as an employee of the Dorchester County Sheriff,” must be dismissed.

CONCLUSION

For the reasons stated herein, Plaintiffs’ First and Second Causes of Action are dismissed because this Court lacks subject-matter jurisdiction over this matter. Pursuant to the RPA, the Administrative Law Court has exclusive jurisdiction to hear and rule on the matters raised in Plaintiffs’ First and Second Causes of Action

Plaintiff Messinger’s Fourth Cause of Action is dismissed on the grounds that it alleges only a money damages claims based on violations of his rights under the South Carolina State Constitution and state law claims are not cognizable under 42 U.S.C. § 1983. Further, Plaintiff Messinger’s Fourth Cause of Action are dismissed on the ground that the individual Defendants are immune from liability for the alleged state-based Constitutional Claims under the Tort Claims Act, or, in the alternative, are immune due to legislative immunity.

Plaintiff Messinger’s Fifth Cause of Action is dismissed on the ground that claimed injuries to reputation arising out of allegedly “false and defamatory statements” are not cognizable in an action under 42 U.S.C. § 1983. In addition, the Eleventh Amendment bars Plaintiff Messinger’s

claims against Defendant Sheriff and Defendant Phinney and those claims are, therefore, dismissed for that alternative reason as well.

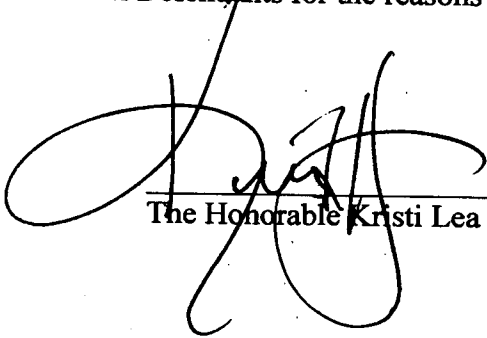
IT IS THEREFORE ORDERED that the Motions to Dismiss filed by the County Defendants and the Town Defendants are GRANTED as to Plaintiffs' First and Second Causes of Action, which are now dismissed without prejudice and may be refiled in the Administrative Law Court, provided the Plaintiffs have met the requirements under the RPA to do so.

IT IS FURTHER ORDERED that the Motions to Dismiss filed by the County Defendants and the Town Defendants are GRANTED as to Plaintiffs' Fourth and Fifth Causes, which are dismissed with prejudice pursuant to Rule 12(b)(6), SCRPC.

IT IS FURTHER ORDERED that, since the Plaintiffs' Third Cause of Action was not directed against the County Defendants or the Town Defendants, this case is dismissed in its entirety as to the County Defendants and the Town Defendants for the reasons stated above.

AND IT IS SO ORDERED.

March 9, 2018
Charleston, South Carolina.



The Honorable Kristi Lea Harrington