

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

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. Harveson; James Stephen Green, Jr.; Homer P. Gonazales; Gerald E. Ziegler; David Messinger; and South Carolina Public Interest Foundation;

Plaintiff(s)

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 Sheriff; 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; Dorchester County Career and Technology Center; and Dorchester County Career and Technology Center Board of Trustees,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C.A. No.: 2016-CP-18-838

**ORDER ON MOTION TO DISMISS
FILED BY DEFENDANTS DORCHESTER
COUNTY SCHOOL DISTRICT FOUR
AND DORCHESTER COUNTY SCHOOL
DISTRICT FOUR BOARD**

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SC Court of Appeals

INTRODUCTION

Defendants Dorchester County School District Four and Dorchester County School District Four Board (hereinafter "District 4 Defendants") move to dismiss under Rule 12(b)(1)

and Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.¹ Upon review of the arguments of counsel and the memoranda submitted in support thereof, this Court grants the District 4 Defendants' motion, dismissing the relevant claims against the District 4 Defendants with prejudice.

FACTUAL BACKGROUND

In their Second Amended Complaint, Plaintiffs allege that the District 4 Defendants (1) violated Act No. 388 and (2) took action constituting unconstitutional double taxation by entering into an agreement with Dorchester County for the assignment of school resource officers to the District 4 Defendants' schools.

According to Plaintiffs, this agreement authorizes and requires Dorchester County to appropriate, requires Dorchester County to bill the District 4 Defendants, and requires the District 4 Defendants to reimburse Dorchester County \$120,000.00 for School Resource Officers ("SROs") serving at District 4 Defendants' schools during FY 2015-17. Further, Plaintiffs' Second Amended Complaint contends that the funds to be reimbursed by the District 4 Defendants are not designated as capital expenses and are for the purpose of paying SRO salaries. Plaintiffs have asserted that under this agreement, the District 4 Defendants are "required to tax 6% properties, including businesses, to subsidize the salaries and other expenses of SROs employed and supervised by the Dorchester County Sheriff."

Plaintiffs claim that by entering into this agreement, the District 4 Defendants have violated Act 388, which exempts owner-occupied residential property from taxation for school operating purposes. Moreover, Plaintiffs contend that Dorchester County and the District 4

¹ This motion was argued on December 12, 2017, in conjunction with three (3) related motions filed by the other defendants in this matter. Present on behalf of Plaintiffs were W. Andrew Gowder, Jr., Esq. and Michael T. Rose, Esq. Adam J. Mandell, Esq., and Christopher S. Elliott, Esq., of Boykin & Davis appeared on behalf of the District 4 Defendants.

Defendants have taxed their exempt property twice, alleging that “Dorchester County taxes all properties within the County, including 6% properties and 4% owner-occupied residential properties, to fund the SROs, and School Districts tax the identical 6% properties to generate revenue to repay Dorchester County.”

Pursuant to Page 50 of the Dorchester County Budget Ordinance for Fiscal Year 2015-16, referenced in Paragraph 68 of the Second Amended Complaint as Ordinance 15-14, this payment from the District 4 Defendants to Dorchester County is listed as a line item under the category “Charges for Services.” On Page 49 of the Budget Ordinance, a separate category called “Taxes” is listed and includes a separate line item for “Current – Real Estate Taxes.” The amendment to the Budget Ordinance included as Exhibit 7 to the Second Amended Complaint does nothing to alter the revenue source for the payment from the District 4 Defendants.

On June 19, 2017, the District 4 Defendants filed this motion to dismiss Plaintiffs’ claims against them, asserting that (1) this Court lacks subject matter jurisdiction over Plaintiffs’ claims under Rule 12(b)(1), SCRPC, and (2) Plaintiffs have failed to state facts sufficient to constitute causes of action under Rule 12(b)(6), SCRPC.

STANDARD OF REVIEW

Whether this Court has subject matter jurisdiction over a matter is a question of law. See, e.g., Berry v. S.C. Dep’t of Health & Envtl. Control, 402 S.C. 358, 363, 742 S.E.2d 2, 4 (2013).

In deciding a motion to dismiss pursuant to 12(b)(6), SCRPC, this Court considers “only the allegations set forth on the face of the plaintiff’s complaint.” Plyler v. Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). Under Rule 12(b)(6), this Court shall dismiss the complaint “if the facts alleged and inferences reasonably deducible therefrom, when viewed in the light most favorable to the

plaintiff,” would not entitle the plaintiff to relief on any theory. McNeil v. S.C. Dep’t of Corr., 404 S.C. 186, 190-91, 743 S.E.2d 843, 846 (Ct. App. 2013).

DISCUSSION

MOTION TO DISMISS PLAINTIFFS’ CLAIMS AGAINST THE DISTRICT 4 DEFENDANTS PURSUANT TO RULE 12(b)(6), SCRPC.

1. The District 4 Defendants do not have taxing authority.

The District 4 Defendants assert that Plaintiffs’ claims with regard to Act 388 and double taxation must be dismissed because Plaintiffs’ have failed to state facts sufficient to constitute causes of action against the District 4 Defendants. The basis for their argument is that the District 4 Defendants lack the authority to impose a tax and, therefore, cannot be held liable for Plaintiff’s tax-based causes of action.

Pursuant to S.C. Const. Ann. Art. X, § 6, “the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State, including . . . school districts.” However, the grant of taxing authority is permissive, and the South Carolina Constitution does not require the General Assembly to vest taxing authority in each school district.

Pursuant to S.C. Code Ann. § 59-73-20, some school districts have the authority to impose a tax for school purposes. This section was last amended in 1962. However, the District 4 Defendants were created by legislation consolidating Dorchester County School Districts One and Three in 1986. That legislation, Act 536 of 1986, Part I, Section 4, states in relevant part that the "Executive Committee of Dorchester County School District No. 4 shall promptly prepare and submit to the appropriate taxing authority a budget for the ensuing year." A plain reading of this language establishes that the legislation creating the District 4 Defendants

explicitly withholds the taxing authority granted to other school districts under S.C. Code Ann. § 59-73-20.

Plaintiffs allege that the District 4 Defendants have violated Act 388, which exempts certain property from the collection of an ad valorem tax, including:

[O]ne hundred percent of the fair market value of owner-occupied residential property eligible for and receiving the special assessment ratio allowed owner-occupied residential property pursuant to Section 12-43-220(c) is exempt from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.

S.C. Code Ann. § 12-37-220(B)(47)(a). Thus, Act 388 imposes limitations on the authority to tax specific types of property for specific purposes. However, the District 4 Defendants lack that authority to tax as a matter of law. Additionally, the District 4 Defendants have adopted a policy reflecting that the District 4 Defendants do not have taxing authority. Specifically, District Policy DC provides “[e]ach school district’s taxing authority is established by state law. In Dorchester County, that authority is vested in Dorchester County Council within statutory limitations.” Thus, because the District 4 Defendants cannot impose a tax as a matter of law, they cannot be held liable for violating Act 388.

As an additional cause of action against the District 4 Defendants, Plaintiffs allege that the District 4 Defendants have engaged in the unconstitutional double taxation of their property. However, double taxation does not occur unless there is “an identity of taxing authority, taxing period, taxing purpose, and person and property taxed.” Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 369, 223 S.E.2d 592, 596 (1976). Similarly as to Plaintiffs’ cause of action under Act 388, the District 4 Defendants cannot violate any prohibition against double taxation because they are not a taxing authority as a matter of law. Therefore, viewing Plaintiffs’ allegations in the

light most favorable to Plaintiffs, the District 4 Defendants do not have taxing authority and, therefore, cannot be held liable for Plaintiffs' allegations of unlawful taxation.²

2. The District 4 Defendants do not use revenue taxed to property exempt under Act 388 to fund the school resource officer program.

While Act 388 does not apply to the District 4 Defendants because of their lack of taxing authority, Act 388 also does not prohibit the District 4 Defendants from funding the school resource officer program from sources other than exempt owner-occupied residential property.

To account for the amounts exempt under Act 388, the State of South Carolina collects an additional one-percent (1%) sales tax which it credits to the Homestead Exemption Fund. S.C. Code Ann. §§ 12-36-1110 to -1130. From the tax revenue deposited into the Homestead Exemption Fund, the State reimburses school districts for the tax revenue lost as a result of the owner-occupied residential property exemption set forth in Act 388. S.C. Code Ann. § 11-11-156(A)(1).

Here, Ordinance 15-14 reflects that the payments to Dorchester County from the District 4 Defendants to fund the school resource officer program are identified as "Charges for Services" rather than "Current – Real Estate Taxes." Thus, based on Dorchester County's budget, the District 4 Defendants have not funded the school resource officer program with exempt property tax revenue but rather from reimbursements from the State. Therefore, because the alleged expenditures by the District 4 Defendants do not violate Act 388 as a matter of law, Plaintiffs have failed to state facts sufficient to constitute their causes of action against the District 4 Defendants.

² Additionally, even if the District 4 Defendants were able to impose the tax alleged by Plaintiffs, Plaintiffs have failed to assert any facts showing that the District 4 Defendants exercised such authority in accordance with the necessary public referendum process set forth in S.C. Code Ann. § 59-73-10, *et seq.*

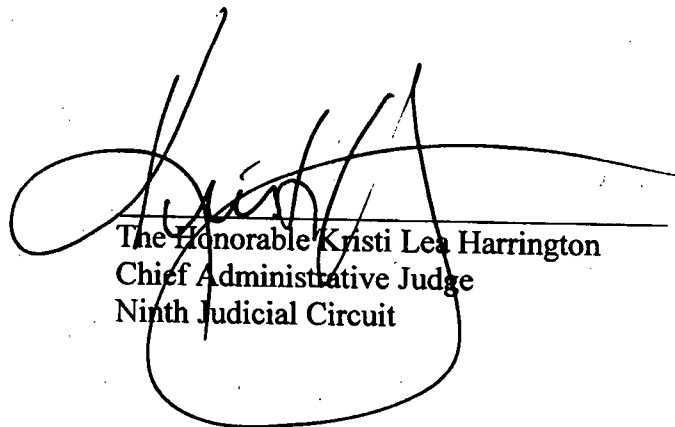
Accordingly, the Second Amended Complaint, on its face, fails to assert facts sufficient to constitute these tax-based causes of action against the District 4 Defendants, and Plaintiffs claims against the District 4 Defendants are hereby dismissed with prejudice.

CONCLUSION

For the aforementioned reasons, this Court GRANTS this motion and dismisses all claims against the District 4 Defendants with prejudice.

AND IT SO ORDERED.

This 9 day of March, 2018



The Honorable Kristi Lea Harrington
Chief Administrative Judge
Ninth Judicial Circuit