

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
CCP STORAGE, LLC,)
)
)
Plaintiff,)
)
v.)
)
DORCHESTER COUNTY,)
DORCHESTER COUNTY)
ASSESSOR'S OFFICE, AND)
WAYNE WELCH, in his capacity)
as chief assessor within said office,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2019-CP-18-00360

ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS

RECEIVED
NOV 15 2019
SC Court of Appeals

This action was commenced by the Plaintiff pursuant to SCRCP 57 and S.C. Code Ann. Sec. 15-53-10, et seq., against the Defendants alleging that the Dorchester County Assessor failed to comply with state law in determining the fair market value of Plaintiff's property.

The Defendants interposed a Motion to Dismiss pursuant to SCRCP 12(b)(1), alleging that the Court lacked subject matter jurisdiction and SCRCP 12(b)(6) alleging that the Plaintiff's Complaint failed to state facts sufficient to constitute a cause of action.

The Defendants SCRCP 12(b) motions were heard on April 12, 2019, and for the below stated reasons the court finds that the motions should be granted and the Plaintiff's action should be dismissed without prejudice pursuant to S.C. Code Ann. Sec. 12-60-3390.

The Defendants' motion pursuant to SCRCP 12(b)(1) alleges that the Court lacks subject matter jurisdiction over this controversy. The South Carolina Revenue Procedures Act (RPA) codified in S.C. Code Ann. Sec. 12-60-10, et seq. provides the exclusive remedy for a dispute concerning real property taxes. Section 12-60-20 sets forth the intent of the General Assembly that the RPA provides a straightforward procedure to determine a dispute concerning property taxes. The Section further states that the RPA must be interpreted and construed in accordance with, and in furtherance, of that intent.

The RPA sets forth a detailed procedure which a taxpayer must follow to contest a property tax assessment and the fair market value of property. See S.C. Code 12-60-2510 through 12-60-2540. That procedure includes an objection by the property taxpayer to the Assessor, a notice of right to protest the decision of the Assessor, an appeal to the Board of Assessment Appeals, and then an appeal to the Administrative Law Court.

A review of the Plaintiff's Complaint clearly indicates that the Plaintiff is contesting the valuation which the Assessor has placed upon its property and the resulting taxes assessed by Dorchester County. The Plaintiff alleges that the tax bill issued does not properly reflect the fair market value of its property and that the Assessor violated state law regarding the valuation of Plaintiff's property. The Complaint alleges improper assessment determinations by the Assessor and further alleges that the actual controversy is the amount of taxes owed to Dorchester County. The Complaint contains no allegation that Dorchester County has enacted neither any unconstitutional ordinance, nor any allegation challenging the constitutionality of any statute.

S.C. Code Ann. Sec. 12- 60- 80(A) specifically provides that there is no other remedy other than the remedies provided for in the RPA in any case involving the illegal or wrongful collection of taxes or attempt to collect taxes unless the action is one for a declaratory judgment where the sole issue is whether a statute is constitutional. In this limited circumstance, a claim may be brought in circuit court. See 12-60- 80(B). As noted above, there is no such allegation in the Plaintiff's Complaint. If the Plaintiff believes that the Assessor has failed of properly follow state law, the procedures to be followed to remedy this situation are found in S.C. Code Ann. Sec. 12- 60- 2510 through 12- 60- 2540.

The claims made by the Plaintiff in this case are clearly covered by the RPA because (a) they involve the alleged improper assessment of the value of the Plaintiff's property and the tax bill which resulted therefrom, and, (b) the RPA Exception is not applicable. Three South Carolina Supreme Court decisions have held that taxpayers may not challenge local property taxes through lawsuits filed in the circuit court, as that would circumvent the requirements and prohibitions of the RPA. In Brackenbrook North Charleston LP v. County of Charleston, 602 S.E.2d. 39 (S.C. 2004), a group of taxpayers filed suit in circuit court, seeking a writ on mandamus, and declaratory and injunctive relief, concerning perceived higher millage rates applicable to non-owner-occupied residences. In B&A Development, Inc. v. Georgetown County, 641 S.E. 2d. 888 (S.C. 2007), aff'd as modified 605 S.E.2d. 551 (S.C. Ct. App. 2004), a group of taxpayers sued the county, county council, school district, and individual county officers in circuit court concerning the assessment of county property taxes and funding of local schools. In both Brackenbrook and B&A Development, the South Carolina Supreme Court held that the RPA refund claim procedure was the taxpayer's exclusive remedy, and the circuit court actions were dismissed. Finally, in the South Carolina Supreme Court's most recent opinion in Lightner v. Hampton Hall Club, Inc., et al., 798 S.E.2d. (S.C. 2017), the State of South Carolina and South Carolina Department of Revenue (SCDOR) challenged a circuit court ruling that the RPA is only applicable to disputes with SCDOR

concerning property taxes and not a challenge to the collection and retention of admission taxes by the Defendants. The circuit court had ruled that the Respondent was therefore not required to exhaust its administrative remedies under the RPA. The Court reversed the Circuit Court and found the RPA applied to disputes concerning property taxes which may involve the SCDOR or a county or municipality. It noted that Article 9 of the RPA provides procedures for resolving state and county property tax disputes and stated that the preamble of the 2007 amendment intended to include disputes concerning property taxes. The Court noted that the RPA was intended to include disputes concerning property taxes. The Court further found that there is no other remedy other than those provided in the RPA in any case involving the illegal or wrongful collection of taxes or attempt to collect taxes. S.C. Code Ann. Sec. 12-60-80(A). The RPA requires if a taxpayer brings an action covered by the RPA in circuit court, the circuit court must dismiss the case without prejudice. See S.C. Code Ann. Sec. 12-60-3390.

Based upon the foregoing, the Defendants' Motion to Dismiss pursuant to SCRCF 12(b)(1) is granted inasmuch as the Court lacks subject matter jurisdiction over the controversy alleged by the Plaintiff in its Complaint.

The Defendants also moved to dismiss pursuant to SCRCF12(b)(6) alleging that the Plaintiff's Complaint failed to allege facts sufficient to constitute a cause of action. A review of the allegations contained in the Plaintiff's Complaint as well as the reasonable inferences to be drawn therefrom fail to allege any exception to the exclusive remedy provided for in the RPA. See 12- 60- 80(B). As noted above the only exception to the exclusive remedy of the RPA is an action for a declaratory judgment where the sole issue is whether a statute is constitutional. In that case, the action may be maintained in circuit court. There is no allegation of such unconstitutionality nor can any inference be drawn alleging such unconstitutionality. On this basis, the Defendants' Motion to Dismiss pursuant to SCRCF 12(b)(6) is also granted.

IT IS THEREFORE ORDERED that the Defendants' Motions to Discuss pursuant to SCRCF 12(b)(1) and SCRCF 12(b)(6) are granted. This dismissal is without prejudice pursuant to S.C. Code Ann. Sec. 12-60-3390.

AND IT IS SO ORDERED.

George M. McFaddin, Jr.,
Circuit Court Judge, At-Large

_____, 2019

Sumter, South Carolina



Dorchester Common Pleas

Case Caption: CCP Storage LLC VS Dorchester County Assessors Office ,
defendant, et al
Case Number: 2019CP1800360
Type: Order/Dismissal

So Ordered

S/George M. McFaddin, Jr., #2759