

FILED
GLYNN COUNTY CLERK'S OFFICE

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

FEB -5 PM 2:38

[Handwritten signature]

MARITIME HOMES, LLC,)
MARITIME INVESTMENTS, LLC,)
PALMETTO BUILDING GROUP, LLC,)
AND)
VILLAGE HOLDINGS ASSOCIATES,)
LLC,)

Plaintiffs,)

v.)

BRUNSWICK-GLYNN COUNTY)
JOINT WATER AND)
SEWER COMMISSION)

Defendant.)

CIVIL ACTION NO. CE25-00136

JUDGE SCARLETT

NAMED PLAINTIFFS VERIFIED CLASS ACTION COMPLAINT

COME NOW Plaintiffs Maritime Homes, LLC (“Maritime Homes”), Maritime Investments, LLC (“Maritime Investments”), Palmetto Building Group, LLC (“Palmetto”) and Village Holdings Associates, LLC (“Village Holdings”) (Maritime Homes, Maritime Investments, Palmetto and Village Holdings are collectively referred to as “Named Plaintiffs”) and make and file this Verified Complaint on behalf of themselves and prospective class members for refund and prejudgment interest pursuant to O.C.G.A. § 48-5-380 (the “Refund Statute”) to recover illegal taxes levied and collected and for attorney’s fees and costs under O.C.G.A. § 13-6-11, and other relief and representing to the Court as follows:

INTRODUCTION

1.

This is a class action for refund under the Refund Statute for illegal taxes levied and collected in the form of water and sewer base charges and administrative fees (the “Base Fee”).

The Base Fees are an illegal tax levied and collected from Named Plaintiffs and the prospective class members in violation of Georgia law.

IDENTIFICATION OF THE PARTIES, JURISDICTION and VENUE

2.

Maritime Homes was the owner of the one hundred seventy-five properties in Glynn County, Georgia identified on Exhibit A attached hereto. (the “Maritime Homes Properties”)

3.

Maritime Investments was the owner of the ten properties in Glynn County, Georgia identified on Exhibit B attached hereto. (the “Maritime Investments Properties”).

4.

Palmetto Building Group was the owner of the one hundred twenty-six properties in Glynn County, Georgia. identified on Exhibit C attached hereto. (the “Palmetto Properties”)

5.

Village Holdings Associates was the owner of the two properties located in Glynn County, Georgia identified on Exhibit D attached hereto. (the “Village Holdings Properties”).

6.

Defendant Brunswick-Glynn County Joint Water and Sewer Commission (“JWSC” or “Defendant”) is a political subdivision of the State of Georgia that may sue and be sued and the entity to which Named Plaintiffs and all others similarly situated paid Base Fees and from whom refunds of such taxes are sought. Defendant may be served by delivering a copy of the Summons and Complaint to the majority of its Commissioners.

7.

Jurisdiction and venue are proper in this Court.

FACTUAL BACKGROUND

The JWSC

8.

On April 19, 2006, the Governor of Georgia signed into law House Bill 1585 (Ga. L. 2006, p. 3661) (hereinafter referred to as “Act 485”) approved by referendum on July 18, 2006, creating the JWSC as a separate legal entity from Glynn County (the “County”) and the City of Brunswick (the “City”) and amended by House Bill 1114 (Ga. L. 2012, p. 5287) (the “JWSC Act”), a copy of which is attached hereto as *Exhibit E*.

9.

In accordance with Section 7 of Act 485, the County and City entered into an Operational Agreement, effective June 5, 2007, as amended by an Addendum thereto, effective July 6, 2007, with the JWSC detailing the power of the JWSC to operate a unified system of County and City water and wastewater systems and which sets forth the rights of the City and County governing bodies for the duration of the Agreement (the “Operational Agreement”), a copy of which is attached hereto as *Exhibit F*.

10.

In accordance with Section 9 of Act 485, the County adopted on June 3, 2010 the Glynn County Water and Sewer Ordinance which standardizes the County and City Water and Sewer Ordinances and which the County Commissioners adopted on June 3, 2010 codified in Chapter 2-16 of the Glynn County Code of Ordinances (the “Glynn County Ordinance”).

11.

The Glynn County Ordinance regulates maintenance, uses and operation of water and wastewater systems in the unincorporated areas of Glynn County, Georgia with the exception of Jekyll Island, Georgia.

12.

In accordance with Section 9 of Act 485, the City adopted on May 4, 2010 the City of Brunswick Water and Sewer Ordinance (the "City Ordinance").

13.

The City Ordinance regulates maintenance, uses and operation of water and wastewater systems within the City of Brunswick, Georgia.

14.

The County Ordinance and City Ordinance standardize the city and county ordinances related to the operation of the unified sewer and water system. Pursuant to Act 485 and the Operational Agreement, as amended, the service areas of the city are combined with the service areas of the unincorporated areas of the county to create a unified system of water and sewer systems under the authority of the JWSC.

15.

Under the Operational Agreement, JWSC is required to comply with all applicable laws regarding the operation and maintenance of the unified system. *See* Exhibit F at 3.

16.

The JWSC Act, Operational Agreement, Glynn County Ordinance and City Ordinance set forth the powers and duties of JWSC. The JWSC Act, Operational Agreement, Glynn County Ordinance and City Ordinance are collectively referred to herein as the “JWSC Governing Documents.”

17.

Under the JWSC Governing Documents, JWSC is authorized to establish a user charge system for the purpose of providing amounts sufficient to fund its operations, reserves, capital improvements, and other expenses.

18.

Under the JWSC Governing Documents, JWSC is solely responsible for all claims related to the operation of the unified water and sewer system after the start date of the Operational Agreement and agreed to hold the City and County harmless for all claims related to the operation of the unified water and sewer system after the start date.

19.

Under the JWSC Governing Documents, JWSC is responsible for customer billing, collection and deposit of revenues

20.

Under the JWSC Governing Documents, JWSC is responsible annually for establishing rates for services under an annual rate resolution (the “Rate Resolution”). The Rate Resolution for each year provides the components to be utilized by the JWSC in composing its base rates and consumption rates, if applicable, and may provide for tiered, flat-fee rates for water and/or sewer service. *See* Exhibit F at § 11(c).

21.

The Operating Agreement provides that “[e]very customer shall pay the base rate each month regardless of usage or connection to the system.” *See id.*

22.

According to JWSC:

Base Charge and Administration Fee – This is the fee assessed to each customer on each monthly statement for the cost to provide for the fixed expenses of the agency, known in the business world as overhead costs, and encompasses any day-to-day expenses that we face regardless of the amount billed for water and/or sewer operational expenses. The administration fee is broken down into both a water and sewer component as the rates are calculated based on a total number of customers that have water but not sewer service, sewer but not water service, or both water and sewer service. Effective 7/1/18, each customer now pays a base charge that includes the cost of the first 1,000 gallons of service provided in an effort to stabilize revenue.

See Exhibit G attached hereto.

23.

The Rate Resolution for Fiscal Year 2019 (July 1, 2019 to June 30, 2020) established a Base Fee of \$7.60 per month for water and \$13.06 for Sewer. *See Exhibit H* attached hereto.

24.

The Rate Resolution for Fiscal Year 2020 (July 1, 2020 to June 30, 2021) established a Base Fee of \$7.60 per month for water and \$13.06 for Sewer. *See Exhibit I* attached hereto.

25.

The Rate Resolution for Fiscal Year 2021 (July 1, 2021 to June 30, 2022) established a Base Fee of \$7.60 per month for water and \$13.06 for Sewer. *See Exhibit J* attached hereto.

26.

The Rate Resolution for Fiscal Year 2022 (July 1, 2022 to June 30, 2023) established a Base Fee of \$7.60 per month for water and \$13.06 for Sewer. *See Exhibit K* attached hereto.

27.

The Rate Resolution for Fiscal Year 2023 (July 1, 2023 to June 30, 2024) established a Base Fee of \$7.60 per month for water and \$13.06 for Sewer. *See Exhibit L* attached hereto.

28.

The Rate Resolution for Fiscal Year 2024 (July 1, 2024 to June 30, 2025) established a Base Fee of \$8.10 per month for water and \$13.56 for Sewer. *See Exhibit M* attached hereto.

29.

From February 5, 2020 through January 15, 2025, Maritime Holdings was billed and paid \$12,287.56 in Base Fees.

30.

From February 5, 2020 through May 20, 2022, Palmetto was billed and paid \$20,854.17 in Base Fees.

31.

From February 5, 2020 through January 6, 2025, Village Holdings was billed and paid \$1,244.69 in Base Fees.

32.

Upon information and belief, Water and Sewer Base Charges were assessed against over thirty thousand similarly situated property owners in Glynn County from February 5, 2020 to the current date resulting in the collection of over \$32,000,000.00 in illegal Water and Sewer Base Fee Charges.

The Base Fee is a Tax

33.

It is the substance of the Base Fee that is controlling, not the nomenclature selected by the County for the charge that determines when the charge is a fee or a tax. *See McLeod, et al. v. Columbia County*, 278 Ga. 242, 244, 599 S.E.2d 152, 154 (2004).

34.

The Base Fees are based on the payer's ability to pay, that is it is payment of Base Fees is required for all properties for which a water and sewer tap exists and for which an account is established.

35.

The Base Fee is mandatory for all property owners once a tap fee has been paid regardless of whether water or sewer service is actually provided or utilized.

36.

The Base Fee is mandatory as failure to pay Base Fee results in fines, interest accrual and a lien against the user's real property for such unpaid charges. *See County Ordinance Section 2-16-47 and City Ordinance Section 22-47.*

37.

The Base Fee is based on ability to pay, including property ownership as unpaid charges are subject to placement of a lien against the real property of the user.

38.

Use of the unified water and sewer system is mandatory under the City Ordinance Section 22-7 and County Ordinance Section 2-16-7 which provide:

(a) Water.

(1) No person shall install or operate a private well within an established Service Area for the purpose of obtaining potable water when Utility water service is available.

(2) All new developments and other new construction shall be required to connect to public water lines within sixty (60) days after service becomes available within five hundred (500) feet of the corner of the property nearest to the water main.

(b) Sewer.

(1) No person shall install or operate a private facility for sewage treatment and disposal within an established Service Area when Utility sewer service is available.

(2) All new developments and other new construction shall be required to connect to public sewer within sixty (60) days after it becomes available within five hundred (500) feet of the corner of the property nearest to the sewer main.

39.

Base Fees are imposed even if no water or sewer usage actually occurs.

40.

The Base Fee is a means for JWSC to raise general revenue for the unified water and sewer system. *See Gunby v. Yates*, 214 Ga. 17, 19, 102 S.E.2d 548, 550 (1958) (“A tax is an enforced contribution exacted pursuant to legislative authority for the purpose of raising revenue to be used for public or governmental purposes, and not as payment for a special privilege or a service rendered.”).

41.

The Base Fee is not related to the payor’s contribution to any burden on the unified water and sewer system.

42.

The payer receives no special benefit different from those to whom the charge does not

apply as it is paid by those actually receiving monthly water and sewer service and those who are not receiving monthly water and sewer service.

43.

The Base Fee is assessed without regard to direct benefits that may inure to the Named Plaintiffs or to the prospective class members.

44.

The payer of the Base Fee receives no particularized or enhanced service different from the nonpayer despite having paid the Base Fee.

45.

The Base Fee is not calculated in a manner whereby Named Plaintiffs or the prospective class members are reasonably paying for services rendered or to be rendered.

46.

The Base Fees levied by the JWSC and regulatory framework is virtually identical to the sewer availability charges levied by Lincoln County held to be an unconstitutional tax in *Lincoln County v. Serenity Builders and Development, LLC*, 2024 WL 4614554 (Ga. Ct. App. October 30, 2024).

Refunds For Illegally Assessed and Collected Taxes

47.

All taxes shall be levied and collected under general laws and for public purposes only...[A]ll taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” Ga. Const. Art. 7, § 1, ¶ III.

48.

The inherent power to tax belongs to the General Assembly – not to JWSC. In fact, JWSC

lacks any authority whatsoever to impose a tax.

49.

Instrumentalities of the State “can only exercise the power of taxation as conferred upon it either directly by the Constitution or by the General Assembly when authorized by the Constitution...If there is any doubt as to the power of the [C]ounty to tax in a particular instance, it must be resolved in the negative.” *DeKalb Co. v. Brown Builders*, 227 Ga. 777, 778, 183 S.E.2d 367, 369 (1971) (internal citations omitted).

50.

The Base Fee is based on a flat fee and is not ad valorem. The Base Fee is imposed for real property.

51.

Under the Georgia Constitution and Georgia law, taxation of real property is required to be ad valorem. That is, property must be assessed based upon the value of the property not based upon a rate for the square footage of all Structures with a minimum and maximum amount charged based on the type of Structure. *See Hutchins, et la. v. Howard, et al.*, 211 Ga. 830, 89 S.E. 2d 183, 186 (1955) (“Taxation on all real and tangible personal property subject to be taxed is required to be ad valorem – that is, according to value, and the requirement in the Constitution that the rule of taxation shall be uniform, means that all kinds of property of the same class not absolutely exempt must be taxed alike, by the same standard of valuation, equally with other taxable property of the same class, and coextensively with the territory to which it applies; meaning the territory from which the given tax, as a whole, is to be drawn.”).

52.

Therefore, the Base Fee is an illegal tax not authorized by the Georgia Constitution or by

Georgia law and Named Plaintiffs and the prospective class members are entitled to refunds for the illegally assessed and collected taxes under the Refund Statute plus interest.

COUNT I- CLASS ACTION ALLEGATIONS

53.

Named Plaintiffs reallege and incorporate all allegations set forth previously as if set forth herein verbatim.

54.

This action is brought by Named Plaintiffs as a class action, on its own behalf and on behalf of all prospective class members, under the provisions of O.C.G.A. § 9-11-23 for damages, and relief incident and subordinate thereto, including attorney's fees and costs.

55.

Named Plaintiffs seek certification of one class comprised of individuals and entities that paid a Base Fee from February 5, 2020 through the date of class certification (the "Refund Class").

56.

The Refund Class so described is comprised of thousands members seeking the following relief for each year at issue: (a) refunds of all Base Fees paid to JWSC from February 5, 2020 through the date of class certification ("Class Period") and (b) prejudgment interest.

57.

The members of the Refund Class are so numerous that joinder of individual members herein is impracticable.

58.

There are common questions of law and fact in the action that relate to and affect the rights of members of the Refund Class and the relief sought is common to the members of the Refund Class.

59.

The claims of Named Plaintiffs, as set forth herein, who are representatives of class members, are typical of the claims of the members of the Refund Class, in that the claims of all members of the Refund Class, including Named Plaintiffs, depend on the showing of the acts and/or omissions of JWSC or its agents or instrumentalities giving rise to the right of Named Plaintiffs to the relief sought herein. There is no conflict as between Named Plaintiffs and class members with respect to this action, or with respect to the claims for relief herein set forth.

60.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(A) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for any party opposing the class.

61.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(1)(B) in that prosecution of separate actions by individual class members would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

62.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(2) as Defendant acted or refused to act on grounds applicable to class members making declaratory relief appropriate.

63.

This action is properly maintained as a class action pursuant to O.C.G.A. § 9-11-23(b)(3) inasmuch as the questions of law and fact common to the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

64.

Named Plaintiffs, as the representative party for the Refund Class, are able to, and will, fairly and adequately protect the interests of class members. Roberts Tate, LLC is experienced in class action litigation and have successfully represented claimants in other class litigation. Of the attorneys designated as counsel for Named Plaintiffs, those undersigned attorneys will actively conduct and be responsible for Named Plaintiffs case herein as well as the case of all other class members.

COUNT II- REFUND UNDER O.C.G.A. § 48-5-380

65.

Named Plaintiffs reallege and incorporate all allegations set forth previously as if set forth herein verbatim.

66.

JWSC issued to and collected from bills to Named Plaintiffs and the members of the Refund Class for Base Fees which constituted illegal taxes not authorized by the Georgia Constitution or by Georgia law resulting in the payment of illegally and erroneously assessed taxes and voluntary or involuntary overpayment of taxes.

67.

Under the Refund Statute (O.C.G.A. § 48-5-380), Named Plaintiffs and the members of Refund Classes are entitled to refunds of all Base Fees assessed and collected from February 5, 2020 through the date of class certification. Accordingly, all illegal taxes levied and collected along with prejudgment interest must be refunded to Named Plaintiffs and the members of the Refund Class.

COUNT III- DECLARATORY JUDGMENT

68.

Named Plaintiffs reallege and incorporate all allegations set forth previously as if set forth herein verbatim.

69.

Named Plaintiffs assert this action for declaratory judgment pursuant to O.C.G.A. § 9-4-1 *et seq.*

70.

An actual controversy exists in this matter between Named Plaintiffs and JWSC with respect to the JWSC's assessment and collection of illegal taxes in the form of the Base Fee.

71.

Named Plaintiffs and the members of the Refund Class are entitled to a declaration that the Base Fee is an illegal tax and that all Base Fees paid be refunded to Named Plaintiffs and the Refund Classes.

COUNT IV- INJUNCTION

72.

Named Plaintiffs reallege and incorporate all allegations set forth previously as if set forth herein verbatim.

73.

JWSC has no power to tax authorized by the Georgia Constitution and the legislature.

74.

All taxation carried out must be performed in compliance with the Georgia Constitution and the Georgia state laws.

75.

JWSC through the Base Fee is illegally imposing a tax on property at a flat rate rather than taxing at ad valorem as required by the Georgia Constitution and the Georgia state laws.

76.

Named Plaintiffs and the members of the Refund Classes are entitled to an injunction enjoining the JWSC from the continued assessment and collection of the Base Fee which is an illegal tax.

**COUNT VI- ATTORNEY'S FEES FOR BAD FAITH AND STUBBORN
LITIGIOUSNESS**

77.

Named Plaintiffs reallege and incorporate all allegations set forth previously as if set forth herein verbatim.

78.

JWSC has acted in bad faith, been stubbornly litigious and has caused Named Plaintiffs unnecessary trouble and expense, entitling Named Plaintiffs to recover its costs of this litigation, including reasonable attorney's fees and expenses pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, having filed this Verified Class Action Complaint, Named Plaintiffs pray that:

- a) That process issue and be served on Defendant in accordance with Georgia law;
- b) That Named Plaintiffs and the Refund Classes recover all illegally assessed and collected Base Fees from February 5, 2020 through the date of class certification plus prejudgment interest as set forth above;
- c) That this Court grant Named Plaintiffs prayer for declaratory relief and enter an order declaring that the Base Fee is an illegal tax and that all Base Fees, including any interest and penalties, paid be refunded to Named Plaintiffs and the Refund Classes;
- d) That this Court enter an Order enjoining Defendant from the continued assessment and collection of the Base Fee;

- e) That this Court enter an Order requiring Defendant to pay all of Named Plaintiffs attorney's fees and costs of litigation associated with this action; and
- f) That Named Plaintiffs and prospective class members have all other and further relief deemed just and appropriate by this Court.

RESPECTFULLY SUBMITTED, this 5th day of February, 2025.

ROBERTS TATE, LLC

BY: /s/ James L. Roberts, IV

James L. Roberts IV
Georgia Bar No. 608580
jroberts@robertstate.com

2487 Demere Road, Suite 400
P.O. Box 21828
St. Simons Island, GA 31522

ATTORNEY FOR NAMED
PLAINTIFFS

IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

MARITIME HOMES, LLC,)
MARITIME INVESTMENTS, LLC,)
PALMETTO BUILDING GROUP, LLC,)
AND)
VILLAGE HOLDINGS ASSOCIATES,)
LLC,)

Plaintiffs,)

CIVIL ACTION NO. _____

v.)

BRUNSWICK-GLYNN COUNTY)
JOINT WATER AND)
SEWER COMMISSION)

Defendant.)

VERIFICATION AND CONSENT TO ACT AS CLASS REPRESENTATIVE

Personally appeared before me, an officer duly authorized to administer oaths, Vassa Cate, Manager of Maritime Homes LLC, Maritime Investments, LLC, Palmetto Building Group, LLC and Village Holdings Associates, LLC who states under oath that the foregoing Complaint is true and correct and hereby consents to acting as class representative in this class action.

DocuSigned by:
Vassa Cate
Vassa Cate

Sworn to and subscribed before me
This, 5 day of February 2025:

[Signature]
Notary Public
My Commission Expires 12/14/27
(NOTARIAL SEAL)

