Clerk of the Superior Court
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THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN THE ARIZONA TAX COURT

TX 2017-000663 04/02/2024

HONORABLE SARA J. AGNE

CLERK OF THE COURT
J. Holguin
Deputy

HAROLD VANGILDER

TIMOTHY SANDEFUR

v.

ARIZONA DEPARTMENT OF REVENUE

SCOT G TEASDALE

PATRICK IRVINE
JUDGE AGNE

MINUTE ENTRY

The Court held oral argument on February 2, 2024, on Plaintiffs' Motion for Permanent Injunction or Constructive Trust, filed September 11, 2023 ("Motion"), as well as subsequent filings related thereto.

The Court has also received and reviewed the Notices filed by Plaintiffs on February 16, 2024, and March 4, 2024, and the Department's Status Update, filed March 8, 2024. The Court has considered the filings and arguments of the Parties, the relevant authorities and applicable law, as well as the entire record of the case. The Court hereby finds as follows regarding the Motion.

In 2017, the Pinal Regional Transportation Authority ("PRTA") proposed a transportation excise tax that was approved in the November 2017 election. (Mot., at 1–2.) Shortly thereafter Plaintiffs filed this action against PRTA, Pinal County, and the Arizona Department of Revenue ("ADOR") for declaratory and injunctive relief to bar enforcement of the tax. (*See* Compl., filed December 20, 2017.)

The Court denied the preliminary injunction, and PRTA and ADOR began collecting the tax. (Mot., at 2; *see also* Minute Entry, filed March 26, 2018.) The Court eventually found that

the tax was unlawful and entered judgment on November 15, 2018. (*See* Minute Entry, filed August 2, 2018; *see also* Judgment, filed November 15, 2018.)

The Court stayed its judgment and allowed PRTA and ADOR to continue collecting the tax while the appeal was pending. (Mot., at 3–4; *see also* Minute Entry, filed February 7, 2019.) The monies collected from April 2018 to March 2022 were deposited into an escrow account with the Pinal County Treasurer's Office. (Pinal Resp., filed October 16, 2023, at 4.)

The Court of Appeals reversed the judgment in *Vangilder v. Ariz. Dep't of Revenue*, 248 Ariz. 254 (App. 2020); the Arizona Supreme Court ultimately vacated part of that decision and found the tax unlawful and invalid. *Vangilder v. Ariz. Dep't of Revenue*, 252 Ariz. 481, 493 ¶¶48–49 (2022). On April 4, 2022, the Arizona Supreme Court issued its mandate to this Court to hold "such proceedings . . . as shall be required to comply with this Court's opinion." (Mandate, filed April 4, 2022.) Neither the Mandate nor the Arizona Supreme Court's opinion mentioned any refund of the taxes collected.

Plaintiffs now seek an injunction to compel the refund of the monies being unlawfully withheld. (Mot., at 1, 6.) Alternatively, Plaintiffs ask the Court to impose a constructive trust. (Mot., at 12–13.) Plaintiffs contend that action is "necessary to ensure compliance with the judgments of this Court and of the Supreme Court." (Mot., at 5.)

Plaintiffs contend that the Court has the authority to enforce its judgment. (Mot., at 6.) The Court agrees with Plaintiffs to the limited extent that it has the "inherent authority to take actions necessary to effectuate the administration of justice in cases pending before it." *Arpaio v. Baca*, 217 Ariz. 570, 572 n.3 (App. 2008) (citations omitted). However, the relief requested in the Motion regarding the refunds was not sought in the original Complaint nor included in the judgment the Court entered. *See id.* at 577-78 (discussing limits on inherent powers, particularly when other branches of government are involved); *Wineglass Ranches, Inc. v. Campbell*, 12 Ariz. App. 571, 575–76 (1970) ("[P]arties may limit the scope of litigation if they choose, and if an issue is clearly withheld, the court cannot nevertheless adjudicate it and grant corresponding relief."). Neither of Plaintiffs' proposed forms of judgment, lodged with the Court on August 9, 2018, and as amended on August 13, 2018, addressed the issue of refunds.

In their Complaint filed prior to the effective date of the tax, Plaintiffs did not request any tax refund but sought (1) a declaration that the tax was *ultra vires*, void, and of no effect, (2) a preliminary and permanent injunction forbidding enforcement or collection of the tax, (3) a writ of prohibition forbidding enforcement or collection of the tax, (4) an award of costs and attorney's fees, and (5) any other relief the Court deems fair and just. (Compl., at 10–11.) The Court's 2018 judgment entered after the effective date of the tax found that:

(1) Proposition 417 as approved by the Pinal County voters on November 7, 2017, violates A.R.S. § 42-6106 and is void and unenforceable;
(2) No lawful transportation excise tax related to Pinal Regional Transportation Authority Resolutions 2017-01 is now in existence; and
(3) Pinal County Board Resolution 2018-1 dated 2/22/18, which relates to the transportation excise tax approved by the Pinal County Voters on November 7, 2017, as Proposition 417, is void *ab initio* and of no force and effect.

(Judgment, at 1.) Pinal County and the PRTA (the "Pinal Defendants") assert that Plaintiffs obtained all the relief sought in the Complaint. (Pinal Resp., at 6–7.) The Court agrees.

In addition, Plaintiffs never sought to amend their Complaint to seek relief regarding any refund after the tax began to be collected. Plaintiffs filed their Complaint on December 20, 2017, and a Motion for Preliminary Injunction on February 26, 2018. The tax was collected starting on April 1, 2018. (Pinal Resp., at 3.)

The Court denied Plaintiffs' Motion for Preliminary Injunction and found, "[U]nder the principle that tax statutes are not to be enjoined, the remedy is to pay the tax and sue for refund, or alternatively not pay it and see if the county files suit." (Minute Entry, filed March 26, 2018.) In 2018, Plaintiffs previously stated:

> Plaintiffs never sought any sort of monetary relief for themselves or others. On the contrary, they sought declaratory and injunctive relief only. . . . Plaintiffs did not [seek refunds] precisely because their motivation was *not* private or monetary, but public, and aimed at vindicating a policy concern of importance to all Arizonans.

(Plaintiffs' Reply in Support of Motion for Attorney's Fees and Costs, filed September 4, 2018, at 3.)

In their Motion, Plaintiffs now seek an injunction to compel the refund of the monies being unlawfully withheld. (Mot., at 6.) However, such relief is outside the scope of what was sought in Plaintiffs' Complaint and what was awarded in the judgment that was affirmed by the Arizona Supreme Court. (*See* Compl. and Judgment.)

The Pinal Defendants also contend that the superior court does not have jurisdiction because the taxpayers have not exhausted their administrative remedies. (Pinal Resp., at 7.) Pinal

cites to *Hamilton v. State*, 186 Ariz. 590, 593 (App. 1996) and *Estate of Bohn v. Waddell*, 174 Ariz. 239, 245–46 (App. 1992). (Pinal Resp., at 7.) Both cases are instructive. Notably, Plaintiffs do not attempt to distinguish either case in their Reply.

In *Estate of Bohn*, the Court of Appeals held, "[T]he tax court lacks jurisdiction over any claim for refund of taxes that has not been first properly presented to the Department of Revenue and the Board of Tax Appeals." 174 Ariz. at 245. The *Hamilton* Court also found, "A party's failure to exhaust administrative remedies deprives the superior court of authority to hear the party's claim." 186 Ariz. at 593.

Plaintiffs contend that exhausting the refund process would be futile. (Reply, filed October 30, 2023, at 5–6.) In *Hamilton*, the taxpayers also argued that administrative remedies would be futile because the Department of Revenue's policy as to calculating adjusted gross income was established. 186 Ariz. at 594. The Court of Appeals found that the taxpayers did not establish that the administrative remedies would be futile because the Department's position had not been tested before the Board of Tax Appeals and could be reversed by the Board. *Id*.

Here, the Pinal Defendants contend that no one has been denied a refund nor has anyone exhausted the administrative remedies. (Pinal Resp., at 8–9.) According to ADOR, ten refund claims are pending—none of which have been made by Plaintiffs. (Declaration of Hsin Pai, filed January 26, 2024, at ¶6.) Plaintiffs cite to statements on ADOR's website that "until the PRTA makes a decision regarding the final disposition of these funds, the Department cannot process any refund claims for the invalidated Pinal County transportation tax." (Mot., at 5; *see also* Mot., at Exh. 1.) However, Plaintiffs do not argue that anyone has sought and been denied a refund related to the taxes paid.

THE COURT FINDS that (1) the relief Plaintiffs seek is outside the scope of what was sought in Plaintiffs' Complaint and what was awarded in the Judgment and (2) Plaintiffs are required to exhaust their administrative remedies and have not done so here. As a result, the Court does not have jurisdiction to order refunds of the monies held related to the tax. If the Parties were to agree to an orderly process for distributing refunds and determining any remainder, the Court could approve that stipulated agreement. But they have not yet reached such an agreement.

Plaintiffs seek a constructive trust in the alternative. (Mot., at 12–13.) "A constructive trust is a remedial device created by courts of equity to compel one who unfairly holds a property interest to convey that interest to another to whom it justly belongs." *Harmon v. Harmon*, 126 Ariz. 242, 244 (App. 1980). A constructive trust is "used whenever title to property has been obtained through actual fraud, misrepresentation, concealment, undue influence, duress or through any other means which render it unconscionable for the holder of legal title to continue

to retain and enjoy its beneficial interest." *Id*. (citations omitted); *see also Tucson Title Ins. Co. v. State Tax Comm'n of Ariz.*, 59 Ariz. 334, 338 (1942) (constructive fraud not found when there was no evidence that the state committed any fraud).

THE COURT FINDS that Plaintiffs have not come forward with sufficient evidence to establish a constructive trust. *See Harmon*, 126 Ariz at 244 ("In Arizona the proof necessary to establish a constructive trust is clear and convincing evidence.") (citations omitted).

As to the Parties' argument regarding disposition of the remaining funds after appropriate refunds are issued, that issue is not ripe. Therefore, the Court declines to issue any ruling at this point as to any potential funds remaining after refunds are issued. *See City of Surprise v. Ariz. Corp. Comm'n*, 246 Ariz. 206, 209 ¶8 (2019) ("Our courts exercise restraint to ensure they refrain from issuing advisory opinions, that cases be ripe for decision and not moot, and that issues be fully developed between true adversaries.") (quotations omitted).

IT IS ORDERED denying Plaintiffs' Motion for Permanent Injunction or Constructive Trust, filed September 11, 2023, without prejudice. Though the Court will take ADOR's suggestion in its filing of March 8, 2024 (at 2), therefore,

IT IS FURTHER ORDERED that counsel for the Parties meet and confer and submit a Joint Status Update to the Court **no later than June 3, 2024**, that details any progress made on the issues raised in the Motion and any other updates the Parties would like the Court to have regarding the processing of refund requests or in general. Should joint content not be agreed to, each Party may submit a 1.5-page portion of the Joint Status Update that states its position. This means, in the event of disagreements as to content, the total length of the filing is limited to 4.5 pages. There is no length limit for a truly joint filing. The Parties must also include a Rule 7.1(h) certificate with any Joint Status Update filing.