IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

FILED IN OFFICE
2015 APR 29 PM 1:53
H. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

JOHN T. DARR, in his official capacity as Sheriff of Muscogee County, Plaintiff, v. COLUMBUS, GEORGIA, a City, a public corporation and body politic and a political subdivision of the State of Georgia; TERESA P. TOMLINSON, in her official capacity as Mayor of Columbus, ISAIAH HUGLEY, in his official capacity as the City Manager of Columbus, PAM HODGE, in her official capacity as Finance Director of Columbus, JERRY "POPS" BARNES, in his official capacity as District 1 Councilor, GLENN DAVIS, in his official capacity as District 2 Councilor, BRUCE HUFF, in his official capacity as District 3 Councilor, EVELYN TURNER PUGH, in her official capacity as District 4 Councilor, MIKE BAKER, in his official capacity as District 5 Councilor, GARY ALLEN, in his official capacity as District 6 Councilor, EVELYN "MIMI" WOODSON, in her official capacity as District 7 Councilor, TOM BUCK, in his official capacity as District 8 Councilor, JUDY THOMAS, in her official capacity as District 9 at Large Councilor, and BERRY "SKIP" HENDERSON, in his official capacity as District 10 at Large Councilor, Defendants.	Civil Action No. SU14CV3437-94

NOTICE OF APPEAL

COME NOW, Defendants, and pursuant to O.C.G.A. §5-6-34, file this Notice of Appeal of two Orders dated April 22, 2015, filed with the clerk on April 29, 2015, from the Superior Court of Muscogee County, the Honorable Senior Judge Hilton Fuller presiding.[1] Defendants appeal the partial denial of their Motion to Dismiss, filed initially on November 24, 2014, and they appeal the grant of the Plaintiff's Petition for the Appointment of Counsel and Payment of Attorneys' Fees, filed on November 10, 2014. Attached hereto as Exhibit "1" and Exhibit "2" are the Court's Orders.

Jurisdiction is proper under Art. VI, §6, ¶ III of the Constitution of the State of Georgia, in that this appeal involves the validity of equitable relief issued by the Superior Court, to include injunctive and/or mandamus relief. Partial denial of a Motion to Dismiss on multiple grounds of immunity is directly appealable to the Supreme Court. In addition, under the collateral order doctrine, jurisdiction of all related matters is proper under § 5-6-34(d).

The Clerk shall delete nothing from the record on appeal. A transcript of the proceeding shall be transmitted as part of the record.

[1] This additional notice is being filed out of an abundance of caution after the attached orders (Exhibit "1" and Exhibit "2") were filed today, April 29, 2015.

Respectfully submitted this 29th day of April, 2015.

HATCHER, STUBBS, LAND, HOLLIS & ROTHSCHILD, L.L.P.

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Attorneys for Defendants

EXHIBIT 1

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

FILED IN OFFICE
2015 APR 29 PM 12:34
M. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

JOHN T. DARR, in his official capacity as Sheriff of Muscogee County, Plaintiff, v. COLUMBUS, GEORGIA, a City, a public corporation and body politic and a political subdivision of the State of Georgia; TERESA P. TOMLINSON, in her official capacity as Mayor of Columbus, ISAIAH HUGLEY, in his official capacity as the City Manager of Columbus, PAM HODGE, in her official capacity as Finance Director of Columbus, *et. al.* Defendants.	Civil Action No. SU-14-CV-3437-94 Order on Defendants' Motion to Dismiss

Order on Defendants' Motion to Dismiss

Plaintiff Sheriff Darr (the "Sheriff"), filed the instant action on November 10, 2014. The Sheriff filed his first amendment to his Petition for Mandamus Absolute on November 24, 2014; this revised the nomenclature of several Defendants. Defendants answered the first Amended Petition on December 10, 2014, and filed a Motion to Dismiss on that same date. In response to the Motion to Dismiss, the Sheriff filed a Second Amended Petition for Mandamus Absolute and Injunction on December 31, 2014. With this filing the plaintiff sought to add all of the named Defendants in their individual capacities and revised both the factual allegations and the prayers for relief. On January 15, 2015, the court heard defendants' motions including extensive argument from the parties. On January 29, 2015, the Sheriff filed his Third Amended Petition for

Order on Defendant's Motion to Dismiss

Linda Pierce, Clerk of the Superior, State, and Juvenile Courts of Muscogee County, Georgia, and the Clerk of the Columbus Board of Equalization (the "Clerk") filed the instant action on November 13, 2014. Defendants have filed motions to dismiss. On December 8, 2014, defendants filed a separate motion to dismiss all claims against them in their individual capacities.

For purposes of the present order, the court considers the allegations as pled in the Clerk's original complaint, as amended and supplanted by the Clerk's first amended complaint, which is the operative complaint at this time.

On January 15, 2015, the court heard defendants' motions including extensive argument from the parties. On January 26, 2015 the Clerk dismissed certain claims asserted in the complaint as amended. After a review of all materials on file and consideration of argument, the court finds and **ORDERS** as follows:

Georgia law provides:

"A motion to dismiss for failure to state a claim upon which relief may be granted should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. In deciding a

In *Sustainable Coast*, Georgia's Supreme Court did not then have before it claims for declaratory relief, alleged constitutional deficiencies, attorney's fees, or mandamus as these claims are presented in this case. But, from the court's opinion on the issues it did have before it, one could infer that without legislative or constitutional waivers, judicial exceptions to other constitutional or statutory immunities might be inappropriate as well.

As to injunctive theories of recovery, sovereign immunity bars claims against CCG and individual defendants in official capacities. Therefore, the defendants' motion to dismiss is sustained and GRANTED insofar as it applies to injunctive claims against CCG and the individual defendants in official capacities.

The motions to dismiss as they apply to declaratory judgments and mandamus claims are DENIED.

Attorney's fees and expense claims are the subjects of a separate order.

SO ORDERED, this 22nd day of April 2015.

Hilton M. Fuller, Jr.
Senior Superior Court Judge,
presiding by designation.

EXHIBIT 2

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

FILED IN OFFICE
2015 APR 29 PM 12:34
M. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

JOHN T. DARR, in his official capacity as Sheriff of Muscogee County,

Plaintiff,

v.

COLUMBUS, GEORGIA, a City, a public corporation and body politic and a political subdivision of the State of Georgia; TERESA P. TOMLINSON, in her official capacity as Mayor of Columbus, ISAIAH HUGLEY, in his official capacity as the City Manager of Columbus, PAM HODGE, in her official capacity as Finance Director of Columbus,

et. al.

Defendants.

Civil Action No. SU-14-CV-3437-94

ORDER ON SHERIFF DARR'S PETITION FOR THE APPOINTMENT OF COUNSEL AND FOR PAYMENT OF ATTORNEYS' FEES AND COSTS

Before the court is the Plaintiff's motion pursuant to O.C.G.A. § 45-9-21(e) for authority to retain the law firms of W. Kerry Howell, LLC and Walker, Hulbert, Gray & Moore, LLP as his independent counsel in this matter, and to require the Defendant CCG to pay all associated attorney's fees and costs.

Upon consideration of the motion, all submissions and arguments of counsel, the pleadings, admissions, and all other materials and evidence on file, it is considered and ordered as follows:

1. Sheriff Darr's Petition for Appointment of Counsel and Payment of Attorney Fees and Costs is before this court as a separate petition and as Count III in the underlying action.

2. This action involved a dispute between Sheriff Darr and Defendants regarding the sufficiency of FY2015 Budget, the legality of the budget process used with respect to his FY 2015 budget, the constitutionality of budget Ordinances, and the appointment of attorneys and payment of fees and costs pursuant to O.C.G.A. § 45-9-21(e).

3. O.C.G.A. § 45-9-21(e) provides:

> (e)(1) As used in this subsection, the term "county officer" means the sheriff, the judge of the probate court, the clerk of the superior court, and the tax commissioner or tax collector and tax receiver of a county.
>
> (2) In any civil case in which the county attorney has a conflict of interest which would ethically prevent the county attorney from representing both the county, the governing authority of the county, or another county officer or employee and the county officer, upon a determination by the chief judge of the superior court of the circuit in which the county is located that an ethical conflict exists, the county officer shall be authorized to employ individual legal counsel to represent such county officer in such matter. The governing authority of the county shall pay the reasonable fees of such individual counsel and all applicable court costs, deposition costs, witness fees and compensation, and all other like reasonable costs, expenses, and fees; provided, however, that such attorneys' fees shall be no more than the rate paid to the county attorney for similar representation or in accordance with a schedule of rates for outside counsel adopted by the governing authority, if any. Such fees and costs shall be authorized by the chief judge of the superior court of the circuit in which the county is located. This subsection shall not apply unless the governing authority of the county has first denied a written request by a county officer for counsel.

4. The Sheriff is a "county officer" as that term is described in O.C.G.A. § 45-9-21(e)(1).

5. Under the City Charter, § 4-312(1) the City Attorney, or his designated and approved outside counsel, normally represents the Sheriff in legal matters, including litigation.

6. The Defendants admit and the court finds that a conflict of interest exists. As such, the Sheriff cannot legally or ethically be represented in this action by the City Attorney, or its retained outside counsel.

7. The Defendants acknowledge further that the Sheriff has a legal right to employ independent counsel to represent him in this case and have his attorney's fees and litigation expenses paid by the City pursuant to O.C.G.A. § 45-9-21(e), at the same rate the Defendants attorneys are being paid.

8. While the Defendants acknowledge that the Sheriff's legal fees and expenses in this action are to be paid by CCG, the parties disagree as to the mechanics of said payment.

9. The Defendants contend the City is entitled to charge the Sheriff's attorney's fees and litigation expenses in this case against his budget. The Sheriff asserts that the City should pay said expenses from other funds. In this instance, the court agrees with the Sheriff.

10. The detailed billings of the Sheriff's independent counsel are subject to attorney-client privilege, and for that reason it would be inappropriate for CCG to review them. O.C.G.A. § 45-9-21(e) provides adequate safeguards to ensure the Sheriff's fees and expenses are reasonable and necessary. First, the rate charged by the Sheriff's attorneys for their attorney's fees must be the same as the rates the City's attorneys charge CCG for their attorney's fees which are approved by the City Counsel. Second, O.C.G.A. § 45-9-21(e) requires the court to approve the attorney's fees and litigation expenses claimed by the Sheriff's attorneys, and order their payment.

11. The Defendants do not assert that the Council has adopted a budget amendment appropriating to the Sheriff's budget any funds for payment of his attorney's fees or litigation expenses, or charging any attorney's fees or litigation expenses to the Sheriff's budget. Rather, the Defendants assert that if the City must pay the Sheriff's attorney's fees and litigation expenses, they are entitled to charge those

payments against the Sheriff's budget, with no need to increase the Sheriff's budget by the amount of such payments.

12. At least in this instance, in this budget year, charging the Sheriff's attorney's fees and litigation expenses to his budget would undermine the intent and purpose of O.C.G.A. § 45-9-21(e).

13. CCG is not authorized to charge the amount of the Sheriff's attorney's fees and litigation expenses for representation in this case against the Sheriff's FY15 budget; instead it shall pay such fees and expenses as approved by the court from CCG's general funds as a cost of government operations.

14. The Sheriff's attorneys are ordered to submit their bills for fees and expenses monthly to the Court for *in camera* review, along with an affidavit establishing that the fees and expenses charged are reasonable and necessary.

15. Within 10 days of entry of this order the Defendants and their counsel shall submit to the Court proof of the rates for attorney's fee charged by the Defendants' attorneys to represent them in this matter, and serve such proof on the Sheriff's counsel. Along with that submission, the Defendants shall submit to the Court for *in camera* inspection all bills previously sent to the City for the Defendants' attorney's services in this case along with evidence of payment of such bills by the City. Also within 10 days of this order, the Sheriff and his counsel shall submit to the court for *in camera* inspection copies of all currently rendered and due bills and expenses (hard copies only).

16. The court will issue appropriate orders approving the amounts CCG is ordered to pay to the Sheriff's counsel, W. Kerry Howell, LLC and Walker, Hulbert, Gray & Moore, LLP.

SO ORDERED, this 22nd day of April 2015.

Hilton M. Fuller, Jr.
Senior Superior Court Judge,
presiding by designation.
And acting Chief Judge for purposes of
O.C.G.A §45-9-21(e)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **NOTICE OF APPEAL** via U.S. first class mail and electronic mail addressed as follows:

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This 29th day of April, 2015.

Attorney for Defendants