

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY ED IN OFFICE
STATE OF GEORGIA

2015 OCT 20 AM 9:53

H. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

LINDA PIERCE, Clerk of Superior,)
State, and Juvenile Courts of)
Muscogee County, and the)
Columbus Board of Equalization,)

Plaintiff,)

v.)

Civil Action Number:
SU14CV3472

COLUMBUS, GEORGIA, TERESA P.)
TOMLINSON, Individually and as Mayor,)
JERRY "POPS" BARNES, Individually)
and as District 1 Councilor,)
GLENN DAVIS, Individually and as)
District 2 Councilor, BRUCE HUFF,)
Individually and as District 3 Councilor,)
EVELYN TURNER PUGH, Individually)
and as District 4 Councilor, MIKE BAKER,)
Individually and as District 5 Councilor,)
GARY ALLEN, Individually and as)
District 6 Councilor, EVELYN "MIMI")
WOODSON, Individually and as District 7)
Councilor, JUDY THOMAS, Individually)
and as District 9 Councilor, BERRY "SKIP")
HENDERSON, Individually and as)
District 10 Councilor, ISAIAH HUGLEY,)
Individually and as City Manager,)
PAMELA HODGE, Individually and as)
Director, REATHER HOLLOWELL, as)
Human Resource Director, CLIFTON C.)
FAY, Individually and as City Attorney,)

Defendants.)

MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

COME NOW all Defendants in this matter, and pursuant to O.C.G.A. § 9-11-12(c) hereby move the Court for partial judgment on the pleadings, respectfully showing the Court the following:

1.

Plaintiff Linda Pierce, Clerk of the Superior Court of Muscogee County, filed her original complaint in this case on November 13, 2014. In Count 3 of the Clerk's original complaint, she asserted a claim for breach of contract related to the Columbus Consolidated Government's ("the CCG") alleged breach of a contract with Tyler Technologies.

2.

On July 1, 2015, the Clerk moved to amend her Complaint a second time. In Count 3 of her proposed amended complaint, the Clerk again asserted a claim for breach of contract against the CCG. (Plaintiff's Second Amended Complaint, ¶¶ 196-198).

3.

In Defendants' original motions to dismiss, Defendants moved to dismiss Plaintiff's breach of contract claim based on Plaintiff's failure to provide timely *ante litem* notice to the CCG as required by law. The Clerk could not produce any such timely notice at that time.

4.

The Court denied Defendants' Motions to Dismiss, in part, but failed to address the breach of contract claim. The failure of the Clerk to provide the CCG with the required *ante litem* notice is a non-curable, jurisdictional defect in the Clerk's case.

5.

Defendants submit that because this case is about to move into active discovery, partial judgment on the pleadings should be granted as to Count 3 of the Clerk's Complaint so that the parties do not engage in unnecessary, time consuming, and expensive discovery on a claim that is so clearly barred as a matter of law.

WHEREFORE, Defendants submit that pursuant to O.C.G.A. § 9-11-12(c), the Court should grant judgment on the pleadings to Defendants for the Breach of Contract claim asserted by the Clerk in Count 3 of her Complaint.

Respectfully submitted, this 20th day of October, 2015.

PAGE, SCRANTOM, SPROUSE,
TUCKER & FORD, P.C.

By: 

Alan G. Snipes

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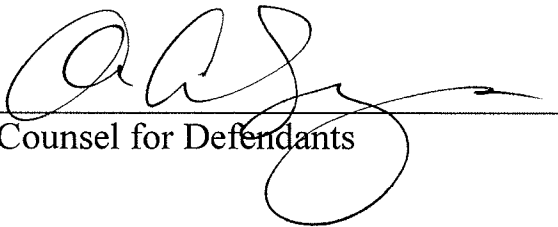
CERTIFICATE OF SERVICE

I do hereby certify that I am counsel for Defendants and that a true and exact copy of the foregoing document has been served upon counsel of record in the within matter by email, as follows:

William S. Stone
Boone & Stone
P.O. Drawer 70
Blakely, Georgia 39823

David Wm. Boone
Simone R. Siex
Ryals D. Stone
James W. Stone
3050 Peachtree Road, NW
Two Buckhead Plaza, Suite 360
Atlanta, Georgia 30305

This ^h20th day of October, 2015.


Counsel for Defendants

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M. LINDA PIERCE
MUSCOGEE COUNTY
SUPERIOR COURT

Plaintiff,)

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Human Resource Director, CLIFTON C.)
FAY, Individually and as City Attorney,)

Defendants.)

**DEFENDANTS' BRIEF IN SUPPORT OF THEIR
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Defendants submit this Brief in Support of their Motion for Partial Judgment on the Pleadings, respectfully showing the Court the following:

STATEMENT OF FACTS

Plaintiff Linda Pierce, Clerk of the Superior Court of Muscogee County, filed her original complaint in this case on November 13, 2014. In Count 3 of the Clerk's original complaint, she asserted a claim for breach of contract related to the Columbus Consolidated Government's ("the CCG") alleged breach of a contract with Tyler Technologies.

On July 1, 2015, the Clerk moved to amend her Complaint a second time. In Count 3 of her proposed amended complaint, the Clerk again asserted a claim for breach of contract against the CCG. (Plaintiff's Second Amended Complaint, ¶¶ 196-198). Specifically, the Clerk alleges in paragraphs 197 and 198 of her Complaint:

197. By reason of the foregoing, the city has breached the Tyler Systems Agreement, and is subject to liability to the clerk for breach of contract.

198. As a proximate result of the breach of that contract, the City has damaged the Clerk in an amount not less than \$750,000 as the necessary expenses required to restore the loss of the Clerk's official digital records caused by the city's failure to perform its obligations to maintain daily backups of the Clerk's official digital records, to implement a Disaster Recovery Plan to enable recovery of these

official digital records in the event of a computer server crash, and to provide adequate permanent store of the official records.

The Clerk separately alleges that the computer crash that caused her alleged loss of digital records occurred in March, 2013. (Plaintiff's Second Amended Complaint, ¶ 93). Pursuant to the Clerk's own allegations, construed as true for purposes of this motion, the Clerk's alleged claim for breach of contract accrued in March, 2013. The Clerk did not plead that she provided *ante litem* notice to the CCG as required by law prior to the filing of her Complaint.¹

ARGUMENT AND CITATION OF AUTHORITY

“When deciding a motion for judgment on the pleadings, the issue is whether the undisputed facts appearing from the pleadings entitle the movant to judgment as a matter of law. All well-pleaded material allegations by the nonmovant are taken as true, and all denials by the movant are taken as false. But the trial court need not adopt a party's legal conclusions based on these facts.” *Sw. Health & Wellness, L.L.C. v. Work*, 282 Ga. App. 619, 623, 639 S.E.2d 570, 575 (2006). In this case, the Clerk has neither pled nor presented any evidence that she provided timely *ante litem* notice of her alleged breach of contract claim prior to

¹Defendants raised this issue in their Motion to Dismiss, which the Court granted in part and denied in part. The Court did not address the *ante litem* notice issue at that time. Since this case is about to move into active discovery, Defendants submit that the Court should rule on this purely legal issue so that the parties do not waste time and money in discovery on a claim that is barred as a matter of law.

filing her lawsuit. Her failure to provide timely *ante litem* notice to the CCG is fatal to her claim.²

O.C.G.A. § 36-11-1 requires that “[a]ll claims against counties must be presented within 12 months after they accrue or become payable or the same are barred....” “[A] cause of action against a county does not exist unless the claim has been presented within 12 months of its accrual.” *Warnell v. Unified Govt. of Athens-Clarke County*, 328 Ga. App. 903, 905, 763 S.E.2d 284, 286 (2014). As noted by the Court in *Coweta Cnty. v. Cooper*, 318 Ga. App. 41, 41-42, 733 S.E.2d 348, 349 (2012):

Failure to present the County with formal written notice of the claim within the 12-month statutory period, or to present the claim to the County by suing and serving the County on the claim within that period, acts as a bar to the claim. OCGA § 36-11-1; *Burton v. DeKalb County*, 202 Ga.App. 676, 677-678, 415 S.E.2d 647 (1992); *Pearson v. Newton County*, 119 Ga. 863, 47 S.E. 180 (1904); *Cobb v. Board of Commrs. of Roads & Revenue of Tift County*, 151 Ga.App. 472, 473, 260 S.E.2d 496 (1979). The plaintiff has the burden of proving substantial compliance with the statute. *Burton*, 202 Ga.App. at 678, 415 S.E.2d 647. The basis for the County’s motion for summary judgment was that the OCGA § 36-11-1 notice was sent to a private law firm used by the County as outside legal counsel, and that this was not sufficient to comply with the statutory requirement that the claims be presented to the County.

²In considering a Motion for Judgment on the Pleadings, the Court can properly consider matters referred to in the pleadings, including the Tyler contract referred to by the Clerk. *Bakhtiarnejad v. Cox Enterprises, Inc.*, 247 Ga. App. 205, 208, 541 S.E.2d 33, 35-36 (2000).

The issue here is quite simple. The Clerk has not alleged that she provided statutory notice of her claim within twelve months after the claim accrued which, according to the Clerk's own allegations, could be no later than March, 2013. (Pl's. Compl., ¶ 93). The City has no record of any *ante litem* notice from the Clerk. If the Clerk contends she provided the required notice, then she should put it before the Court. If not, the Clerk's claim for breach of contract is time barred as a matter of law, and the Court should enter judgment in favor of the Defendants on the Clerk's claim as set forth in Count 3 of her Complaint. *Warnell*, 328 Ga. App. at 905, 763 S.E.2d at 286.

Respectfully submitted, this 20th day of October, 2015.

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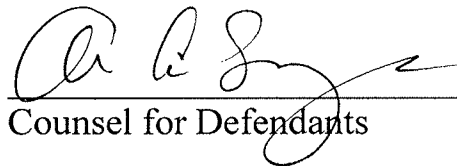
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I do hereby certify that I am counsel for Defendants and that a true and exact copy of the foregoing document has been served upon counsel of record in the within matter by email, as follows:

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This 20th day of October, 2015.



Counsel for Defendants