IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

J. MATTHEW COLEMAN, IV and ELIZABETH BLAIR COLEMAN	)	
Plaintiffs,	)	
v.	)	Civil Action Number: CE13-01480-063
GLYNN COUNTY, GEORGIA	)	
Defendant.	)	

CLASS CERTIFICATION ORDER

This is a companion action to the action styled J. Matthew Coleman, IV and Elizabeth Blair Coleman v. Glynn County, Civil Action No. CE12-01785-063, in which a hearing on Plaintiffs' Motion for Class Certification was held on August 19, 2013. In light of that hearing and the same underlying legal, factual issues and evidence in this action, the parties have agreed to waive an additional hearing on class certification and have requested that the Court make its ruling based on the stipulated facts including records from Glynn County, testimony of Named Plaintiffs, and deposition testimony of Florence Dees, the Tax Commissioner of Glynn County, testifying individually and as the 30(b)(6) deponent for Glynn County submitted at the August 19, 2013 hearing.

Defendant does not dispute and the Court finds for the reasons set forth in Named Plaintiffs' Brief in Support of Motion for Class Certification and in its Class Certification Order in CE12-01785-063 and based on the documents, evidence and testimony submitted in support Plaintiff's Motion for Class Certification that Plaintiffs have carried their burden of proof in establishing the propriety of certification of the class sought in the instant action. The sole issue on which class certification is opposed by Defendant is that class certification cannot be granted

generally for actions seeking property tax refunds from counties or the other relief sought by Named Plaintiffs. The Court rejects Defendant's position.

Based on the entire record and the evidence presented by Plaintiff, the Court finds each element required for class certification under O.C.G.A. § 9-11-23(a), (b)(1) and (b)(2) satisfied.[1]

In City of Atlanta v. Barnes, the Supreme Court unquestionably held class treatment was appropriate for tax refund actions generally and refund actions under O.C.G.A. § 48-5-380 specifically 276 Ga. 449,451-452, 5748 S.E.2d 110 (2003) ("Barnes I"). Defendant's primary argument against certification is that the Georgia legislature's amendment to O.C.G.A. § 48-2-35 after Barnes I precludes class actions for tax refunds against the State under that code section precludes class certification in the instant action. Defendant's primary argument in support of this position is a footnote in Sawnee Electrical Membership Corp. v. Georgia Dept. of Revenue, 279 Ga. 22, 25 fn 1, 608 S.E.2d 611 (2005) stating that "OCGA § 48-2-35(b)(5) was passed during the 2003 legislative session and constitutes a legislative overruling of this Court's holding in City of Atlanta v. Barnes, supra, 276 Ga. 449(3), 578 S.E.2d 110 ["Barnes I"], that a class action was a permissible means for a taxpayer to pursue a tax refund action."

Sawnee, however, has been distinguished by Barnes v. City of Atlanta, 281 Ga. 256, 257, 637 S.E.2d 4 (2006) (Barnes II). The Sawnee decision did nothing more than recognize the legislative overruling of Barnes I as it applies to tax refunds from *the State* under O.C.G.A. § 48-2-35. The Barnes II Court writes:

> [i]n our prior opinion, however, we held that OCGA § 48-5-380 does not 'provide for the form of action to be utilized. By participating as a plaintiff in a class action that includes a claim for a tax refund, a taxpayer is unquestionably bringing an

[1] The Court also finds that class certification would be appropriate under O.C.G.A. § 9-11-26(b)(3) for the reasons set forth in Plaintiff's briefs in support of class certification. However, given the certification of these classes under (b)(1) and (b)(2), certification under (b)(3) is unnecessary.

> action for a refund, which is what the statute permits.' Barnes I, supra at 452(3), 578 S.E.2d 110. Compare Sawnee Elec. Membership Corp. v. Ga. Dept. of Revenue, 279 Ga. 22, 25(3) fn. 1, 608 S.E.2d 611 (2005) (former OCGA § 48-2-35(b)(5), now designated subsection (c)(5), **superseded Barnes I only as to refund claims against the State**).

Id. at 257 (emphasis added). Accordingly, it is clear to this Court that the Supreme Court of Georgia acknowledges that class actions are appropriate when tax refund litigation is brought against any entity other than the State. This is precisely the case when suit is brought pursuant to O.C.G.A. § 48-5-380 or any other claim where tax refunds are sought from a county.

This conclusion is further supplemented by legislatures opportunity and failure to specifically abrogate class action refund actions against Counties under O.C.G.A. § 48-5-380. The Georgia legislature was no doubt aware of the Supreme Court's ruling in Barnes I at the time of the change to 48-2-35. Had the legislature wished to abrogate the specific holding of Barnes I that class treatment is appropriate for tax refund claims against counties generally and under O.C.G.A. § 48-5-380 specifically it could have done so. It did not. The failure of the legislature to amend O.C.G.A. § 48-5-380 indicates that class treatment remains appropriate for the claims at issue. "[I]t is well settled in this jurisdiction that all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it." Copher v. Mackey, 220 Ga. App. 43, 45, 467 S.E.2d 362 (1996).

Finally, The Georgia Court of Appeals has confirmed the availability of class treatment for the non-monetary relief sought in the instant action. In Fulton County v. Marani, 299 Ga. App. 580, 683 S.E.2d 136 (2009), the Court of Appeals addressed the propriety of class treatment of a group of property owners seeking the right to challenge the application of a local homestead exemption under (b)(1) and (b)(2). 299 Ga. App. at 580-583. There, the County discovered in 2008 that it improperly applied the local homestead exemption resulting in the

undervaluation of the exemption for some property owners resulting in overpayment of taxes and the overvaluation of the exemption for another group of property owners resulting in the underpayment of taxes. Id. Unlike in the instant action, for those whom the error resulted in the overpayment of taxes, Fulton County voluntarily issued a refund of taxes owed for 2005, 2006 and 2007. Id. For those whom the error resulted in the underpayment of taxes, the County issued additional tax bills for 2005, 2006 and 2007. Id. The Court of Appeals upheld certification of a class consisting of property owners who had received additional tax bills under (b)(1) and (b)(2) seeking to compel Fulton County to afford class members the required notice and opportunity for appeal of the recalculation of exemption resulting in the additional tax bills. Id. Accordingly, the Court holds that class treatment is appropriate for the claims asserted in the instant action. The Court incorporates by reference the facts and reasoning in support of Class Certification set forth in its Order on Class Certification in the companion action Civil Action No.: CE12-01785-063.

IT IS HEREBY ORDERED:

Named Plaintiffs' request for class certification is GRANTED under O.C.G.A. § 9-11-33(b)(1) and (b)(2). The Class shall be defined as:

> Glynn County property owners receiving the Scarlett Williams Exemption in the calculation of their tax bills in 2011 or 2012 for whom Glynn County used the year in which the Scarlett Williams Exemption was first granted as the Base Year rather than the immediately preceding year in calculating the exemption amount under the Scarlett Williams Act for property tax bills in 2011 or 2012 and for whom the value frozen in the year in which the Scarlett Williams Exemption was first granted is greater than the value in the immediately preceding year.

Certification of the proposed class is appropriate because:

1) The potential class members are so numerous that joinder of all members is impractical, satisfying the requirements of O.C.G.A. § 9-11-23(a)(1);
2) There are questions of law or fact common to each class member, satisfying the requirements of O.C.G.A. § 9-11-23(a)(2);
3) The claims of the representative parties are typical of the claims of class members, satisfying the requirements of O.C.G.A. § 9-11-23(a)(3);
4) Named Plaintiffs will fairly and adequately protect the interests of the class members; satisfying the requirements of O.C.G.A. § 9-11-23(a)(4);
5) Certification of the class is appropriate under O.C.G.A. § 9-11-23(b)(1) as the prosecution of separate actions by or against 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 the party opposing the class or adjudications with respect to individual class members which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.
6) Certification of the class is appropriate under O.C.G.A. § 9-11-23(b)(2) as Defendant opposing class members has acted or refused to act on grounds generally applicable to each class member, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to members of the class.[2]

[2] The Court also finds that certification under O.C.G.A. § 9-11-23(b)(3) would be appropriate but is unnecessary given the certification under (b)(1) and (b)(2).

7) The law firm of Roberts Tate, LLC will fairly and adequately represent the interests of the class as Class Counsel; and

8) The action is manageable as a class action.

IT IS FURTHER ORDERED THAT Named Plaintiffs J. Matthew Coleman, IV and Elizabeth Blair Coleman shall serve as class representatives for the classes as defined herein.

IT IS FURTHER ORDERED THAT the law firm of Roberts Tate, LLC is appointed as Class Counsel for the class certified herein.

SO ORDERED this 6th day of January, 2014.

Judge, G. Grant Brantley

Respectfully submitted by:

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