

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

BRAD M. PATRICK, individually, and as a
representative of a class of similarly-situated
persons and entities,

Plaintiff,

vs.

Case No. 2017-003018-CZ

CITY OF ST. CLAIR SHORES,

Defendant.

OPINION AND ORDER

Defendant City of St. Clair Shores (the “City”) has filed a motion for clarification of the Court’s March 13, 2019 Opinion and Order. Plaintiff Brad M. Patrick, individually and as a representative of a class of similarly-situated persons and entities (“Plaintiff”) has filed a response to the motion. Plaintiff has also filed an omnibus motion for entry of an order compelling a refund of stormwater charges wrongfully imposed, enjoining the City from imposing the stormwater charges in the future, dismissing his remaining claims subject to his right to appeal, awarding prejudgment interest, and for entry of a final judgment. In the interests of judicial economy the factual and procedural history set forth in the Court’s March 13, 2019 Opinion and Order are herein incorporated.

The City’s Motion for Clarification

On November 2, 2018, the City filed a motion for reconsideration of the Court’s October 18, 2018 Opinion and Order, which granted Plaintiff summary disposition as Plaintiff’s equitable claims set forth in counts II and III of the amended complaint. The City then filed a supplement requesting the Court also reconsider the decision to grant Plaintiff summary disposition as to count

I of Plaintiff's amended complaint based on the unpublished case of *Binns v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued November 6, 2018 (Docket Nos. 337609 and 339176). The City's supplement to its motion also requested summary disposition as to the equitable claims set forth in counts IV and V of Plaintiff's amended complaint.

However, on March 13, 2019, the Court entered an Opinion and Order on Plaintiff's renewed summary disposition motion granting the City's counter-motion for summary disposition as to counts II and III. Thus, in the instant motion, the City requests clarification of the Court's findings on its motion for reconsideration only as to count I based on *Binns* and counts IV and V. Yet, in Plaintiff's omnibus motion, filed on April 8, 2019, Plaintiff concedes to the dismissal of counts IV and V of its amended complaint based on the Court's prior orders. Therefore, the remaining issue before the Court is the City's motion for reconsideration on count I based on *Binns*.

In *Binns*, the Court of Appeals held, upon examining the criteria set forth in *Bolt*¹, that the city of Detroit's drainage charge was a user fee rather than a tax and that the charge is therefore not subject to the Headlee Amendment. *Binns*, unpub op at 11. In regard to the first *Bolt* criteria, *Binns* reasoned that the drainage charge served a regulatory purpose rather than a revenue-raising purpose. *Id.* *Binns* differentiated its facts from *Bolt* and *Jackson*² "in that, unlike the separated storm water and sewer system being created and maintained respectively in *Bolt* and *Jackson*, the city of Detroit has a combined sewer system..." which needs treatment "as required by federal regulations and orders." *Id.*

Binns also distinguished its case from *Bolt* and *Jackson* by finding an "absence of any evidence of a revenue-generating purpose that outweighs the regulatory purpose of the drainage charge." *Id.* at 12. In *Jackson*, the city of Jackson shifted the funding of preexisting governmental

¹ *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998).

² *Jackson Co v City of Jackson*, 302 Mich App 90; 836 NW2d 903 (2013).

activities from its declining general and street fund revenues to a storm water charge. *Id.* However, in *Binns*, the Court found that there was no indication that the city of Detroit had adopted that drainage charge to fund activities previously funded by general fund revenues. *Id.* Further, unlike *Bolt* and *Jackson*, *Binns* also found that the city of Detroit's drainage charge was not used to fund future expenses for large-scale capital improvements but was instead used to amortize present debt costs incurred to pay for capital improvements. *Id.* at 13.

As to the second *Bolt* criteria, the *Binns* Court held that the drainage charge was reasonably proportionate to the necessary costs of service. *Id.* at 14. The charge in *Binns* was calculated on the basis of aerial photography as well as city assessor data to determine the amount of impervious area on each parcel. *Id.* Further, in *Binns*, no drainage charge was imposed for parcels containing fewer than .02 impervious acres. *Id.* The property owners in *Binns* were also able to avoid the charge if they verified that storm water runoffs flowed directly in the Detroit River or Rouge River. *Id.* The property owners in *Binns* were also able to dispute the measurement of impervious area and were allowed drainage credits of up to 80% for using green infrastructure or practices. *Id.* In *Bolt* and *Jackson*, flat rates were used for residential parcels of two acres or less. *Id.* Further, in *Binns*, the cash on hand was 5.4% of the total receipts. *Id.* at 14. As to the third *Bolt* criteria, the *Binns* Court found that the drainage charge was compulsory rather than voluntary. *Id.* at 15.

Here, upon review of the unpublished base of *Binns* and the arguments presented by the City, the Court finds that the City has failed to present evidence that summary disposition should have been granted in its favor as to count I of Plaintiff's amended complaint. Based on the above, the Court is convinced that the City has failed to differentiate this case from *Jackson*. Here, like in *Bolt* and *Jackson*, the City has a separated system that benefits not only the property owners but also everyone in the city, as well as everyone who operated a motor vehicle in the City. See

Jackson, 302 Mich App at 108-109; *Bolt*, 459 Mich at 166. Further, unlike *Binns*, the City imposed the Stormwater Charge to relieve tax-support funds of the obligation to finance stormwater management. Also, unlike *Binns*, all residential parcels are assigned one equivalent hydraulic acre and a large percentage of property owners are charged a flat rate. Lastly, unlike *Binns*, the City maintains a working capital reserve to finance future capital improvements. Therefore, the Court must deny the City's motion for reconsideration of the Court's October 18, 2018 Opinion and Order granting Plaintiff summary disposition as to count I, violation of the Headlee Amendment.

Plaintiff's Omnibus Motion

Plaintiff is requesting: (a) an order compelling a refund of the Stormwater Charges since August 15, 2016 in the amount of \$3,100,331; (b) an order enjoining the City from imposing the Stormwater Charges in the future; (c) an order dismissing counts IV and V, subject to appeal rights; (d) an award of prejudgment interest in the amount of \$169,463.48; and (e) entry of a final judgment which preserves the rights to seek attorney fees.

First, the Court finds that Plaintiff is entitled to a refund of the Stormwater Charges since August 15, 2016 and interest. As previously held by this Court on October 18, 2018, Plaintiff properly seeks a refund one year back from the filing of this case on the Headlee Amendment claim. Further, the Court finds that Plaintiff was granted class certification on May 14, 2018 and has complied with statutory and court rule procedures for obtaining such refund. However, based on the evidence provided, the Court is unable to determine the amount to be refunded or the amount of interest to be paid. Therefore, the Court orders that the parties schedule a hearing to determine the amount of the refund and interest owed.

Second, Plaintiff requests that the Court enter an order enjoining the City from imposing the Stormwater Charge in the future. MCR 2.614(A)(1) provides that the enforcement of a

judgment is stayed for 21 days after it is entered. If a timely motion for rehearing is filed, execution of the judgment, and proceedings for the enforcement of the judgment, are stayed until 21 days after the motion for rehearing is decided, unless the trial court orders otherwise on motion for good cause. *Id.* Here, the Court decided the City's motion for reconsideration as to violation of the Headlee Amendment in this Opinion and Order. Thus, the Court finds that the City must enjoin from imposing the Stormwater Charge within 21 days from the date of this Opinion and Order.

Third, Plaintiff requests that the Court dismiss counts IV and V of the amended complaint. For the reasons set forth in the Court's March 13, 2019 Opinion and Order, the Court dismisses counts IV and V of Plaintiff's amended complaint. Lastly, Plaintiff requests that the Court preserve counsel's right to seek attorney fees pursuant to MCL 600.308a and the percentage of the common fund theory. The Court finds that Plaintiff's right to seek attorney fees is preserved until the completion of any appeals from the final judgment of this case.

Conclusion

For the reasons stated above, the City's motion for reconsideration is DENIED; the City is ordered to refund Stormwater Charges imposed since August 15, 2016, with the amount to be determined at a separate hearing; the City is enjoined from imposing the Stormwater Charges within 21 days from entry of this Opinion and Order; Counts IV and V of Plaintiff's amended complaint are hereby dismissed; the City is ordered to pay interest, with the amount to be determined at a separate hearing; and the issue of attorney fees is preserved. Until all matters are resolved, this case remains OPEN. MCR. 2.602(A)(3). IT IS SO ORDERED.

DATED: June 18, 2019

JENNIFER M. FAUNCE

Hon. Jennifer M. Faunce

Gregory D. Hanley, Attorney for Plaintiff
Randal S. Toma, Attorney for Plaintiff
Robert Ihrle, Attorney for Defendant
Ronald A. King, Attorney for Defendant

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