STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

BRAD M. PATRICK, individually, 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

Plaintiff Brad M. Patrick, individually and as a representative of a class of similarly-situated persons and entities ("Plaintiffs") have filed a renewed motion for partial summary disposition. Defendant City of St. Clair Shores (the "City") has filed a response in opposition to the renewed motion and a counter-motion for summary disposition.

Factual and Procedural History

This action arises out of Plaintiffs' claim challenging a mandatory stormwater service charge ("Stormwater Charge") imposed on property owners in the City. The City has a sewer system which includes a separated system, in which one set of pipes collects and conveys sanitary sewage for treatment and another set of pipes collects stormwater that either flows into the pipes for treatment or into Lake St. Clair without treatment.

Prior to 1993, the City was utilizing gas and weight tax fund revenues and general funds, which were also used to repair the roads, and to repair, maintain and replace storm drains. In 1992, the City considered establishing the Stormwater Charge to fund stormwater management. A Stormwater Utility Implementation Report (the "Report") was prepared to study the need of the

Stormwater Charge and to provide recommendations if the City elected to implement the Stormwater Charge. Following the outcome of the Report, the City adopted its stormwater utility ordinance, effective July 27 1993, which was not approved by the City's voters prior to its implementation and requires all owners of real property in the City to pay the Stormwater Charge on a quarterly basis.

On November 3, 2017, Plaintiff filed his first amended complaint in this action alleging count I – violation of Headlee Amendment, count II – assumpsit for money had and received ("assumpsit"), violation of MCL 141.19, count III – unjust enrichment, violation of MCL 141.19, count IV – assumpsit for money had and received, unreasonable water and sewer rates, and count V – unjust enrichment, unreasonable water and sewer rates. On January 29, 2018, Plaintiffs filed a motion for partial summary disposition as to counts I, II and III. On March 26, 2018, the City filed a response in opposition to Plaintiffs' motion and a counter-motion for summary disposition. On October 18, 2018, the Court entered an Opinion and Order granting Plaintiffs summary disposition as to count I for violation of Article 9 Section 31 of the Michigan Constitution – the Headlee Amendment, denying Plaintiffs summary disposition as to counts II and III, and denying the City's counter-motion.

On November 2, 2018, the City filed a motion for reconsideration requesting the Court to grant summary disposition as to counts II and III. On November 16, 2018, the City filed a supplement to its motion claiming that it is also entitled to summary disposition on counts I, IV and V and alleging laches. On December 10, 2018, the Court entered an Opinion and Order allowing Plaintiffs twenty-one days to respond to the City's motion for reconsideration. On December 21, 2018, Plaintiffs filed their response to the City's motion for reconsideration.

On December 5, 2018, Plaintiffs filed the instant renewed motion for summary disposition as to counts II and III. On December 21, 2018, the City filed a response to Plaintiffs' renewed motion and a counter-motion for summary disposition. On January 25, 2019, Plaintiffs filed a reply brief in support of their renewed motion. The Court held a hearing in connection with the motion on February 4, 2019 and took the matter under advisement.

Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds could differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

If the trial court is satisfied that "the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2). In other words, the trial court may grant summary disposition to the nonmoving party if it is entitled to judgment as a matter of law. *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

Arguments

Plaintiffs contend that they are entitled to summary disposition on counts II and III. Specifically, Plaintiffs aver that they are entitled to a remedy of a refund of all Stormwater Charges collected by the City since August 15, 2011 pursuant to MCL 141.91 because the government

unlawfully collected the Stormwater Charge, the Stormwater Charge is not an ad valorem property tax and was not imposed after January 1, 1964.

In response, the City avers that Plaintiffs are unable to obtain equitable relief on counts II and III because a legal remedy is available. The City also argues that the doctrine of laches precludes Plaintiffs from recovering a refund of the Stormwater Charge from August 15, 2011.

Law and Analysis

The Michigan Supreme Court has explained that a court:

> may grant equitable relief "[w]here a legal remedy is not available." "A remedy at law, in order to preclude a suit in equity, must be complete and ample, and not doubtful and uncertain..." Furthermore, to preclude a suit in equity, a remedy at law "both in respect to its final relief and its modes of obtaining the relief, must be effectual as the remedy which equity would confer under the circumstances..." While legislative action that provides an adequate remedy by statute precludes equitable relief, the absence of such action does not. This is so because "[e]very equitable right or interest derives not from a declaration of substantive law, but from the broad and flexible jurisdiction of courts of equity to afford remedial relief, where justice and good conscience so dictate. *Tkachik v Mandeville*, 487 Mich 38, 45; 790 NW2d 260 (2010)(citations omitted).

Further, equity does not apply when a statute controls. *Gleason v Kincaid*, 323 Mich App 308, 318; 917 NW2d 685 (2018). "Although courts undoubtedly possess equitable power, such power has traditionally been reserved for 'unusual circumstances' such as fraud or mutual mistake." *Id.*; quoting *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 590; 702 NW2d 539 (2005). "A court's equitable power is not an unrestricted license for the court to engage in wholesale policy making..." *Id.* Thus, when a statute "is applicable to the circumstances and dictates the requirements for relief by one party, equity will not interfere." *Gleason*, 323 Mich App at 318; *Senters v Ottawa Savings Bank, FSB*, 433 Mich 45, 55-56; 503 NW2d 639 (1993).

Plaintiffs base their equitable claims for assumpsit and unjust enrichment on MCL 141.91, which states:

> Except as otherwise provided by law and notwithstanding any provision of its charter, a city or village shall not impose, levy or collect a tax, other than an ad valorem property tax, on any subject taxation, unless the tax was being imposed by the city or village on January 1, 1964.

It is well settled "that the action of assumpsit for money had and received is essentially an equitable action, founded upon all the equitable circumstances of the case between the parties, and if it appears, from the whole case, that the defendant has in his hands money which, according to the rules of equity and good conscience, belongs, or ought to be paid, to the plaintiff, he is entitled to recover." *Moore v Mandlebaum*, 8 Mich 433, 448 (1860). Further, "as a general rule, where money has been received by a defendant under any state of facts which would in a court of equity entitle the plaintiff to a decree for the money, when that is the specific relief sought, the same state of facts will entitle him to recover the money in this action." *Id.*

Unjust enrichment is defined as the unjust retention of "'money or benefits which in justice and equity belong to another.'" *McCreary v Shields*, 333 Mich 290, 294; 52 NW2d 853 (1952). In order to sustain a claim of unjust enrichment, a plaintiff must establish (1) the receipt of a benefit by the defendant from the plaintiff and (2) and inequity resulting to the plaintiff because of the retention of the benefit by the defendant. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006).

First, Plaintiffs argue that they are entitled to a refund of the Stormwater Charges because the government collected the funds in violation of MCL 141.91, which does not provide for a remedy at law. Plaintiffs argue that Michigan case law has distinguished between actions at law for money damages and an equitable action to obtain a refund of money that a municipality has obtained unlawfully. In *Hyde Park Coop v City of Detroit*, 493 Mich 966; 829 NW2d 195 (2013), the plaintiff challenged a building inspection fee imposed by the City of Detroit for conflicting with the Housing Law of Michigan because the fee exceeded the "actual, reasonable cost of

providing the inspection." *Hyde Park Coop v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued July 24, 2012 (Docket No. 303143), p 1. The plaintiff sought monetary damages equal to the inspection fees charged in excess of the actual, reasonable cost of the inspection and injunctive relief to enjoin defendant from charging the alleged excess fees. *Id.* The Court of Appeals held that "a claim for 'money damages'...is not identical to an action for a refund of an allegedly unlawful exaction." *Hyde Park*, 493 Mich at 966.

Plaintiffs also rely on the unpublished case of *Logan v Township of West Bloomfield*, unpublished per curiam opinion of the Court of appeals, issued January 11, 2018 (Docket No. 333452). In *Logan*, the plaintiff brought a class action suit against West Bloomfield Charter Township challenging fees levied by the townships building division. *Id.* at 1. The plaintiffs raised four counts in their complaint (1) statutory violation of the construction code act ("CCA"), MCL 125.1501, eq seq, (2) violation of the Headlee Amendment, (3) unjust enrichment premised on the townships violation of the CCA, and (4) a request for permanent injunctive relief against imposition of the challenged fees. *Id.* The circuit court held that plaintiff could not seek equitable damages when they had an adequate remedy at law. *Id.* However, the *Logan* Court held that "it [was] entirely possible that plaintiffs' Headlee Amendment claim might fail, leaving them without an adequate legal remedy absent their unjust enrichment claim." *Id.* at 3. "Therefore, it was appropriate for plaintiffs to raise both claims in their complaint." *Id.*

Next, Plaintiffs assert that their claim for assumpsit is proper because they are able to recover fees paid in excess of the amount allowed under the applicable law. See *Serv Coal Co v Mich Unemployment Compensation Comm*, 333 Mich 526, 531; 53 NW2d 362 (1952). Lastly, Plaintiffs aver that their claim for unjust enrichment is proper per *Mercy Serv(s) for Aging v City of Rochester Hills*, unpublished per curiam opinion of the Court of Appeals, issued October 21,

2010 (Docket No. 292569). The *Mercy* Court held that plaintiff was entitled to the equitable remedy of a refund of the annual service charges because the funds were unlawfully collected by a governmental entity. *Id.* at 5; quoting *Romulus City Treasurer v Wayne County Drain Com'r*, 413 Mich 728, 746-747; 322 NW2d 152 (1982).

In response, the City contends that Plaintiffs' equitable claims for assumpsit and unjust enrichment are duplicative of their claim for violation of the Headlee Amendment. The City argues that there is legal remedy available to a violation of the Headlee Amendment under Const 1963, art 9, §32, which states:

> Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Section 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit. Const 1963, art 9, §32.

Further, MCL 600.308a states that: "An action under section 32 of article 9 of the state constitution of 1963 may be commenced in the court of appeals, or in the circuit court in the county in which venue is proper, at the option of the party commencing the action."

The City also states that *Logan* merely held that a plaintiff could plead, as alternative claims for relief, both a legal cause of action and an equitable claim. See *Logan*, unpub at 2. However, the City states that *Logan* did not find that the plaintiff could recover on both claims. *Id.* at 3. The City also contends that none of the case law cited by Plaintiffs stand for the proposition that the court may award equitable relief for a statutory violation where there is a legal remedy for the same alleged misconduct. Lastly, the City avers that Plaintiffs have failed to provide evidence in support of the elements of assumpsit of money had and received or unjust enrichment.

First, the Court finds that Plaintiffs' argument that the Court previously held that it was entitled to recovery under counts II and III per the language of the October 18, 2018 Opinion and Order is without merit. The October 18, 2018 Opinion and Order found that Plaintiffs are entitled

to plead separate and alternative claims with separate and alternative statutes of limitations. The October 18, 2018 Opinion and Order also held that it could not make a determination on counts II and III based on the briefing provided. Therefore, the October 18, 2018 Opinion and Order did not hold that Plaintiffs were entitled to recovery under count II or count III.

Next, the Court finds that the case law relied upon by Plaintiffs is not dispositive of this case. In *Hyde Park*, the Court merely held that a claim for money damages is not identical to an action for a refund of an allegedly unlawful exaction. *Hyde Park*, unpub at 966. In *Mercy*, the Court only addressed a claim for declaratory relief under a theory of unjust enrichment. *Mercy*, unpub at 1.

Further, the *Logan* Court addressed whether a plaintiff could plead, as alternative claims for relief, both a legal cause of action for violation of the Headlee Amendment and an equitable claim for unjust enrichment. See *Logan*, unpub at 3. The Logan Court held that MCR 2.1111(A)(2)(b), for the purpose of avoiding a motion to dismiss pursuant to MCR 2.116(C)(8), "does not preclude plaintiffs from investigating the factual support for alternative claims in discovery." *Id.* The *Logan* Court also stated that plaintiffs could plead both violation of the Headlee Amendment and an equitable claim of unjust enrichment because "it is entirely possible that plaintiffs' Headlee Amendment claim might fail, leaving them without an adequate legal remedy absent their unjust enrichment claim." Id. "Therefore, it was appropriate for plaintiffs to raise both claims in their complaint." *Id.* However, here it is undisputed that Plaintiffs may raise both its claim for violation of the Headlee Amendment and its claims for assumpsit of money had and received and unjust enrichment.

Lastly, the Court is convinced that an adequate remedy at law exists pursuant to Const 1963, art 9, §32, for which Plaintiffs to recover. See *Tkachik*, 487 Mich at 45; *Gleason*, 323 Mich

App at 318. The Court finds that the remedy contained in Const 1963, art 9, §32 is applicable to the circumstances and dictates the requirements for relief by Plaintiffs. See *Gleason*, 323 Mich App at 318. Thus, a complete and ample legal remedy is available pursuant to Plaintiffs' claim for violation of the Headlee Amendment, which has previously been granted by the Court. Therefore, the Court must deny Plaintiffs' motion for partial summary disposition, grant the City's counter-motion for partial summary disposition as to counts II and III of Plaintiffs' complaint, and need not address the City's argument under the doctrine of laches.

Conclusion

For the reasons stated above, Plaintiffs' motion for partial summary disposition is DENIED and the City's cross-motion for summary disposition on counts II and III is GRANTED. Until all matters are resolved, this case remains OPEN. MCR. 2.602(A)(3). IT IS SO ORDERED.

DATED: March 13, 2019

JENNIFER M. FAUNCE

Hon. Jennifer M. Faunce

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