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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF CHARLESTON |) | NINTH JUDICIAL CIRCUIT |
| |) | |
| JAMES N. DEIERLEIN, JR., STEPHEN |) | CASE NO. 2023-CP-10-01688 |
| H. DEIERLEIN, WALTER H. |) | |
| DEIERLEIN, ERIC C. DEIERLEIN, |) | |
| AND ALICE KATHLEEN D. GREEN, |) | |
| |) | |
| PLAINTIFFS, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE COMMISSION OF PUBLIC |) | TOWN OF MOUNT PLEASANT, SOUTH |
| WORKS FOR THE TOWN OF MOUNT |) | CAROLINA’S MOTION TO DISMISS |
| PLEASANT D/B/A MOUNT |) | PLAINTIFFS’ COMPLAINT |
| PLEASANT WATERWORKS, TOWN |) | |
| OF MOUNT PLEASANT, SOUTH |) | |
| CAROLINA, AND COUNTY OF |) | |
| CHARLESTON, SOUTH CAROLINA, |) | |
| |) | |
| DEFENDANTS. |) | |
| |) | |

TO: ROSS A. APPEL, ESQ., ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE THAT, within ten (10) days of the service of this Motion, or as soon thereafter as counsel may be heard, the Defendant Town of Mount Pleasant, South Carolina (hereinafter “Town”), by and through undersigned counsel, will move before the presiding judge of the Court of Common Pleas for Charleston County, pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* for an Order dismissing all claims asserted against the Town in the above-captioned matter with prejudice.

The Town’s Motion is based upon the following grounds:

Plaintiffs allege that they own a 185-acre property (the “Property”) in unincorporated Charleston County, which they inherited from their father, James N. Deierlein. (See Plaintiffs’ Compl. ¶¶ 17, 31). Plaintiffs admit that the Property is outside the Town limits. (See Plaintiffs’

Compl. ¶ 2.) Despite owning property outside the Town, Plaintiffs allege that they are entitled to connect to the Town's water supply – which Mount Pleasant Waterworks (“MPW”) maintains and services. (*See* Plaintiffs' Compl. ¶¶ 12, 18). Plaintiffs further allege that MPW refuses to provide the water service to the Property unless Plaintiffs' annex into the Town. (*See* Plaintiffs' Compl. ¶ 21). Plaintiffs contend that they are not required to annex into the Town to connect to the Town's water supply, and that MPW and the Town are liable to Plaintiffs for imposing this condition. (*See* Plaintiffs' Compl. ¶ 27).

Specifically, Plaintiffs allege that they are third-party beneficiaries of a 1989 Merger Agreement between MPW and the Bulls Bay Rural Community Water District (“Bulls Bay”). (*See* Plaintiffs' Compl. ¶¶ 28, 31). Plaintiffs allege that the Merger Agreement requires MPW to provide water service to any property that was once within Bulls Bay – which allegedly includes their Property. Plaintiffs contend that MPW and the Town cannot make annexation a condition for water service connection because the 1989 Merger Agreement entitles them to water service. Based on these allegations, Plaintiffs assert the following causes of action against the Town: (a) declaratory judgment action declaring that Plaintiffs are entitled to water service from MPW; (b) breach of the MPW-Bulls Bay Merger Agreement (breach of contract); and (c) violation of substantive due process. Plaintiffs' causes of action against the Town should be dismissed for the following reasons:

1) The Town is not a party to the Merger Agreement.

The Town is not a party to the Merger Agreement at issue in the Complaint. The Merger Agreement is between only MPW and Bulls Bay. The Town has no obligations or duties under the Merger Agreement. Because the Town is not a party to the contract, Plaintiffs' claims for breach of contract and declaratory judgment should be dismissed.

2) Plaintiffs are not third-party beneficiaries to the Merger Agreement.

Plaintiffs concede they are not parties to the merger agreement. Moreover, the Agreement shows that Plaintiff are not referenced within the terms of the Agreement. Plaintiffs, however, contend that they are third-party beneficiaries to the Merger Agreement between MPW and Bulls Bay. The Merger Agreement, which is attached to Plaintiffs' Complaint, shows that MPW and Bulls Bay entered into the Agreement for the purposes of merging their two entities, and did not intend to make Plaintiffs a beneficiary of the agreement. *See Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (finding that a third-party beneficiary must be an intended beneficiary of the contracting parties who stands to directly benefit from same). As such, Plaintiffs are not third-party beneficiaries and their claims against the Town for breach of contract and declaratory judgment must fail.

3) Plaintiffs do not have a property interest in connecting to the MPW's water service.

To prove a violation of substantive due process, the Plaintiffs must show that they were arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. *Worsley Companies, Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000). Plaintiffs allege that the Town violated Plaintiffs' substantive due process rights by imposing annexation as a condition for water service. Under South Carolina law, however, property owners do not have a cognizable property interest in water service. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 430, 593 S.E.2d 462, 470 (2004). Plaintiffs further lack a property interest from the Merger Agreement. Accordingly, Plaintiffs' substantive due process claim against the Town fails, and must be dismissed.

Plaintiffs' Complaint, therefore, fails to state a cause of action upon which relief may be granted against the Town. Plaintiffs' Complaint against the Town, therefore, must be dismissed with prejudice.

The Town's Motion may be further supported by a Memorandum of Law, affidavits, and other documents or evidence the Court may receive or require, and such common law, and rules of court as may be applicable here.

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Dated: June 16, 2023