

**IN THE SUPERIOR COURT OF CHATHAM COUNTY  
STATE OF GEORGIA**

**CITY OF POOLER, GEORGIA,**

**Plaintiff,**

**v.**

**ROBERT H. BYRD, JR.,**

**Defendant.**

**CIVIL ACTION NO.  
SPCV24-00274-ST**

**ORDER ON PLAINTIFF'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

Plaintiff's Motion for Judgment on the Pleadings (hereinafter "Motion") and response thereto came before the Court for hearing on April 23, 2024. Both parties were represented by counsel. After consideration of the Motion, Defendant's response, the entire record, arguments of counsel, and applicable law, the Court orders as follows.

Defendant entered into a City Manager Employment Contract with the City of Pooler on or about January 1, 2014. The employment contract was amended twice. The second amendment provided for a severance package upon termination of employment under certain circumstances. Rather than simply implementing the terms of the amended employment contract upon his separation from employment, the parties instead entered into a Mutual Separation Agreement ("MSA") on or about December 4, 2023.

The MSA addressed the mutually agreeable separation of Defendant from employment with the City, provided for severance payments for 24 months (as opposed to the lump sum payment term in the second amendment to the 2014 employment contract), provided for certain medical, dental and vision insurance and other benefits for Defendant and his dependents for a period of two years, provided for the purchase and sale of a city-owned 2023 Ford 150 truck to Defendant for a purchase price of \$10,000.00, contained a release of claims by both the City and

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Defendant, and contained a merger clause. Plaintiff has not repudiated the MSA and has been performing its obligations thereunder, but filed the instant action for declaratory judgment.

In its Motion for Judgment on the Pleadings, Plaintiff asserts that the Court is being asked to decide, as a matter of law, whether the MSA violates Georgia law. Specifically, whether the MSA was an ultra vires act, whether the sale of the city-owned F150 truck to Defendant violated Georgia law, whether the MSA unlawfully binds a successor council, and whether the MSA violates the gratuities clause of the Constitution of the State of Georgia.

The purpose of a declaratory judgment is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations. O.C.G.A. § 9-4-1. A declaratory judgment is one which simply declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done. *Burgess v. Burgess*, 210 Ga. 380, 382 (1954).

The Civil Practice Act provides:

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment...

O.C.G.A. § 9-11-12(c).<sup>1</sup> "On a motion for judgment on the pleadings under OCGA § 9-11-12(c), all well-pleaded material allegations by the nonmovant are taken as true, and all denials by the movant are taken as false. Granting the motion is proper only where there is a complete failure to state a cause of action or defense and the movant is thus entitled to judgment as a matter of law." *South v. Bank of America*, 250 Ga.

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<sup>1</sup> To its second amended complaint, Defendant attached the affidavit of Rebecca Benton, Esq., former mayor of the City of Pooler. The Court did not consider that affidavit in ruling on the Motion.

App. 747, 749 (2001). A trial court is not a trier of fact on a motion for judgment on the pleadings. *Caldwell v. Church*, 341 Ga. App. 852, 859 (2017)(disapproved on other grounds by *General Motors, LLC v. Buchanan*, 313 Ga. 811 (2022))

**A. Whether Motion is Premature**

Defendant raised a threshold issue contending that Plaintiff's Motion for Judgment on the Pleadings is premature and should be denied. "As a practical matter, a motion for judgment on the pleadings has been allowed to be filed at any time after the filing of the responsive pleadings when issue has been joined by the parties." RICHARD C. RUSKELL, GA. PRACTICE & PROCEDURE § 9:7 (2023-2024 ed.)(citing *Orkin Exterminating Co. v. Harris*, 224 Ga. 759, 761 (1968); *Smith v. Wheeler*, 233 Ga. 166 (1974); *Friedman v. Friedman*, 233 Ga. 254 (1974); *Browning v. F. E. Fortenberry & Sons, Inc.*, 131 Ga. App. 498 (1974); *Phillips v. Marcin*, 162 Ga. App. 202 (1982)).

Here, the verified complaint was filed on February 23, 2024. The verified answer was filed on March 5, 2024, thereby joining the issues. An amended answer was filed on April 22, 2024. A second amended answer was filed on April 26, 2024. No response is required to an answer or amended answer. Given the procedural posture of this case, the Court does not find the motion premature.

**B. Sale of F150 Truck**

Plaintiff argues that the sale of a city-owned 2023 Ford F150 truck to Defendant violates O.C.G.A. § 36-37-6. Defendant contends that it does not violate that provision of law because it was not a sale; rather, it was merely consideration for Defendant to enter into the MSA. This argument is belied by the plain language of the MSA which refers to the transfer of the truck as "purchase of city vehicle" and uses the terms "sell," "purchase price," "transfer ownership" and "effectuate the sale."

Defendant also cites O.C.G.A. § 36-30-2 in support of its argument; however, O.C.G.A. § 36-30-2 is a general statute addressing a municipality's discretion in the management and disposition of its property. In contrast, O.C.G.A. § 36-37-6 is found

in Chapter 37 of Title 36 entitled "Acquisition and Disposition of Real and Personal Property Generally" and addresses with specificity the manner in which municipalities must dispose of property. O.C.G.A. § 36-37-6(a)(1) provides that except as otherwise provided in that statute, the governing authority of a municipal corporation disposing of any real or personal property of such municipal corporation shall make all such sales to the highest responsible bidder, either by sealed bids or auction after notice has been given. For purposes of statutory interpretation, a specific statute like O.C.G.A. § 36-37-6 will prevail over a general statute like O.C.G.A. § 36-30-2 in the absence of any indication of contrary legislative intent. *Southstar Energy Service, LLC v. Ellison*, 286 Ga. 709, 712 (2010). Moreover, Defendant's O.C.G.A. § 36-30-2 argument, taken to its logical conclusion, would render O.C.G.A. § 36-37-6 meaningless.

There being no applicable statutory exception to the requirements of O.C.G.A. § 36-37-6 for the sale of the F150 truck to Defendant, the Court and declares that the provision of the MSA selling the Ford F150 truck to Defendant violates O.C.G.A. § 36-37-6.

### C. Binding Successor Council

Plaintiff argues that the MSA unlawfully binds a successor council. O.C.G.A. § 36-30-3(a) provides that one city council may not, by ordinance, bind itself or its successors so as to prevent free legislation in matters of municipal government. This prohibition applies not only to ordinances but also to contracts, including municipal contracts. *City of Powder Springs v. WMM Properties, Inc.*, 253 Ga. 753, 756 (1985); *Unified Government of Athens-Clarke Co. v. Stiles Apartments, Inc.*, 295 Ga. 829 (2014). "To the extent that a governmental contract impinges on a municipality's ability to legislate freely, the contract is ultra vires and void." *City of McDonough v. Campbell*, 289 Ga. 216, 217 (2011).

The Court finds the *City of McDonough* case applicable here. In that case, the Supreme Court of Georgia found that an employment contract between a city building inspector and the City of McDonough, which contained an automatic

renewal provision and provided for twelve months' severance plus insurance and retirement benefits, violated O.C.G.A. § 36-30-3. The Supreme Court reasoned that the employment contract restricted the ability of a successor council to terminate the building inspector's contract and to enter agreements with others because the severance provision rendered the cost of terminating the contract exorbitant. The opinion further stated that because the contract is renewed automatically and the severance package requires the city to pay the building inspector his salary and benefits for an entire year after the year in which the contract is terminated, the contract is ultra vires and void.

In this case, the MSA, while not an employment contract, is a separation agreement arising out of the employment of the former city manager. Such an agreement is similar in nature to the agreement in the *City of McDonough* as it is an agreement arising out of the employment relationship which requires, not 12 months like *McDonough*, but 24 months of severance and insurance and benefits for Defendant and his dependents. Plaintiff's verified complaint avers that the total value of the MSA is \$608,605.26, a considerable sum.

The Supreme Court in the *City of McDonough* case observed that "strictest scrutiny" must be given to governmental actions that require increased appropriations or taxes by future governing authorities. *City of McDonough*, 216 Ga. at 217 (citing *Brown v. City of East Point*, 246 Ga. 144 (1980)). As far as restricting a future council, the MSA requires the Plaintiff to budget for 24 months of payments and benefits. In so doing, Plaintiff may be unable to appropriate for some other municipal expense because it must meet the obligations of the MSA for 24 months. It also stands to reason that if 12 months of salary and benefit payments was found to violate the law in the *City of McDonough* case, surely 24 months of payments and benefits also violates the law.

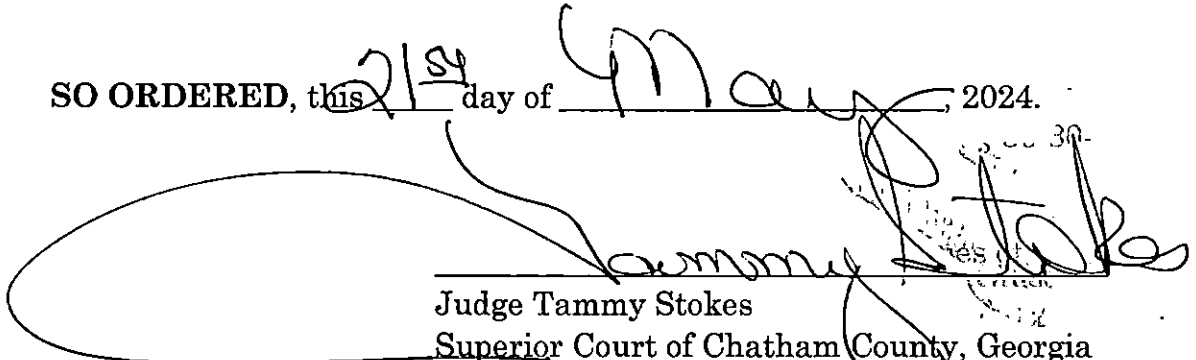
Defendant argues that there is an exception to O.C.G.A. § 36-30-3 because the city council is expressly authorized by the city charter to enter into contracts

with individuals, but giving such effect to a general right to contract would render O.C.G.A. § 36-30-3 essentially meaningless.

Applying strict scrutiny and the rationale of the *City of McDonough* case to this case, the Court concludes that the MSA unlawfully binds the hands of successor councils. The Court concludes and declares that the MSA violates O.C.G.A. § 36-30-3(a) and is thus ultra vires and void.

Having ruled on the issues above, the Court need not reach the issues of whether the contract is ultra vires for failing to comply with Section 6-30 of Plaintiff's Charter or whether the MSA constitutes an unconstitutional gratuity.

SO ORDERED, this 21<sup>st</sup> day of May, 2024.

  
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Judge Tammy Stokes  
Superior Court of Chatham County, Georgia  
Eastern Judicial Circuit

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