COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION NO. ONE
CASE NO. 12-CI-89

Charlie Coleman, *et al.* **Plaintiffs,**

v.

Campbell County Library Board of Trustees **Defendant.**

ORDER

Defendant, Campbell County Library Board of Trustees, filed a Motion for Summary Judgment on February 8, 2016. Plaintiffs, Charlie Coleman, John P. Roth Jr., and Erik Hermes, filed a Combined Response and a Cross-Motion for Summary Judgment on March 21, 2016. On April 20, 2016, Defendant filed a Response to Plaintiffs' Cross-Motion for Summary Judgment. A Reply was filed by Plaintiffs' on May 27, 2016, and Defendant filed its Reply on June 10, 2016.

Plaintiffs filed a Class Action Complaint on January 19, 2012, challenging the ad valorem tax rates imposed by Defendant starting in 1994 and seeking a refund on behalf of all property owners in Campbell County. Specifically, Plaintiffs alleged that Defendant had set its ad valorem tax rate in excess of that allowed by KRS 173.790. Defendant had been utilizing KRS 132.023 to calculate its ad valorem tax rates. On April 1, 2013, this Court granted summary judgment in favor of Plaintiffs on their Declaratory Judgment claim. Defendant appealed. On March 20, 2015, the Court of Appeals reversed, finding that Defendant was able to set its ad valorem tax rates based on KRS 132.023 as long as it did not increase revenue above 4 percent above the compensating tax rate. The Court of Appeals harmonized the statutes by determining that if Defendant wishes to increase the ad valorem tax rate above the 4 percent increase it must utilize the procedure spelled out in KRS 173.790, which only allows an increase by a petition of the voters. The case was

reversed and remanded for proceedings consistent with the Court of Appeals opinion. On April 20, 2015, Plaintiffs sought discretionary review with the Kentucky Supreme Court; however, that review was denied on December 10, 2015.

In its current motion, Defendant asserts that it is entitled to summary judgment on all Plaintiffs' claims in light of the Court of Appeals' decision. In turn, Plaintiffs argue that they are entitled refunds for each of the 2006 through 2015 tax years based on the fact that Defendant calculated the ad valorem tax rate to be above the 4 percent increase without the authorizing petition of the voters as required by the Court of Appeals' decision. This Court requested that each party focus its Responses on the issue of whether the Court of Appeals' opinion applies retroactively or prospectively.

Kentucky courts are permitted to grant summary judgment "if the pleadings . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. The Supreme Court of Kentucky has repeatedly advised that courts should cautiously grant summary judgment. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). As such, this Court will view the record in this case "in a light most favorable to the party opposing the motion for summary judgment and [resolve] all doubts . . . in [its] favor." *Id.* Summary judgment will only be used by this Court "to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Id.* at 483 (*quoting Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (1985)).

In *Chevron Oil Company v. Huson*, the United States Supreme Court laid out a three-pronged test for determining whether a decision is to be applied retroactively. 404 U.S. 97, 106

(1971). The test has been utilized by Kentucky courts in determining whether a decision should be applied retroactively or prospectively.[1] The test is as follows:

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed . . . Second, it has been stressed that 'we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' . . . Finally, we have weighed the inequity imposed by retroactive application, for '[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity.'

Yount v. Calvert, 826 S.W.2d 833, 836 (Ky. Ct. App. 1991) (*quoting Chevron Oil*, 404 U.S. at 106-07). The first prong requires a court to determine whether the decision in issue establishes a new principle of law by either overruling clear, past precedent or by deciding an issue of first impression whose resolution was not foreshadowed. This Court does not believe that there was clear, past precedent regarding the proper statute to use; however, there had been some conflicting guidance give to Defendant by the Executive Branch. For example, the Office of the Attorney General issued three opinions indicating that the appropriate statute to use was KRS 173.790.[2] The Court of Appeals noted that all Kentucky library districts had been using KRS 132.023 to calculate their ad valorem taxes at the direction of the Executive Branch. *Campbell County Library Board of Trustees v. Coleman*, 475 S.W.3d 40, 45 (Ky. Ct. App. 2015). Additionally, it stated that the "Kentucky Department for Library and Archives has been instructing public library districts to set the ad valorem tax rates in accordance with the compensating tax rate and KRS 132.023 for over

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[1] *See Frisby v. Bd. of Educ. of Boyle Cnty*, 707 S.W.2d 359, 362 (Ky. Ct. App. 1986); *Yount v. Calvert*, 826 S.W.2d 833, 836 (Ky. Ct. App. 1991); *Revenue Cabinet, Commonwealth of Kentucky v. CSC Oil Co., Inc.*, 851 S.W.2d 497, 499 (Ky. Ct. App. 1993); *Founder v. Cabinet for Human Resources, Dept. for Employment Services, Div. of Unemployment Ins.*, 23 S.W.3d 221, 224 (Ky. Ct. App. 1999).

[2] *See* OAG 80-570, OAG 81-257, and OAG 84-141.

thirty years . . ." *Id.* Thus, while there may not have been clear, past precedent, the Court of Appeals' decision to harmonize the two statutes overrode the guidance from the Kentucky Department for Library and Archives that Defendant had been relying on in setting its ad valorem tax rates.

The next determination is whether the Court of Appeals' opinion decided an issue of first impression whose resolution was not clearly foreshadowed. Here, the Court of Appeals harmonized the two statutes by making KRS 132.023 applicable to libraries up to a certain point before the procedure in KRS 173.790 is triggered. The Court believes that the resolution of this issue through the harmonization of the statutes was not clearly foreshadowed since there was no previous guidance that it was proper to use the statutes in unison when setting library ad valorem tax rates. As such, the first prong of the *Chevron Oil* analysis is satisfied.

The second prong of *Chevron Oil* requires an examination of "the prior history of the rule in question, its purpose and effect, and whether retrospective application will further or retard its operation." *Yount*, 826 S.W.2d at 836. The General Assembly intended for KRS 173.790 to be utilized for increasing the ad valorem tax rate for library districts formed by petitions. The legislative purpose behind KRS Chapter 132, which capped the ad valorem tax rate that taxing districts could impose at the compensating tax rate, was to counter the dramatic increase in ad valorem taxes expected to occur as a result of *Russman v. Luckett*.[3] In this case, the rule announced by the Court of the Appeals gives effect to both statutes while harmonizing them. This Court believes the harmonization was done in an attempt to not adversely affect the libraries which had utilized KRS 132.023 in setting their ad valorem tax rates. Consequently, this Court does not

[3] *Russman v. Luckett* was issued in 1965 and changed the valuation of property to be 100 percent of its fair cash value, which would have drastically increased the ad valorem tax rate. 391 S.W.2d 694 (Ky. Ct. App. 1965).

believe that retroactive application will further the operation of the new rule. Thus, the second prong of the *Chevron Oil* analysis is satisfied.

Finally, this Court must consider whether the retroactive application of the decision would cause "substantial inequitable results." *Yount*, 826 S.W.2d at 836. In this case, retroactive application of the Court of Appeals' decision would require Defendant to refund Plaintiffs for the excess they paid in ad valorem taxes prior to the rendering of the decision.[4] This would require Defendant to potentially repay millions of dollars collected in ad valorem taxes which have been utilized for library programs and services. The Court of Appeals noted that "eighty library districts across Kentucky, created by petition under KRS Chapter 173, who have followed the tax provisions of KRS 132.023, would be adversely affected . . ." *Coleman*, 475 S.W.3d at 48. This Court believes that this is the kind of substantial inequitable results the *Chevron Oil* analysis is meant to avoid. Accordingly, the third prong of the *Chevron Oil* analysis is satisfied.

In conclusion, this Court believes that the Court of Appeals' decision harmonizing KRS 173.790 and KRS 132.023 was meant to be applied prospectively. Wherefore, Defendant's Motion for Summary Judgment is GRANTED and Plaintiffs' Cross-Motion for Summary Judgment is DENIED.

THIS IS A FINAL AND APPEALABLE ORDER AND THERE IS NO JUST CAUSE FOR DELAY.

DATE: 9-16-16

JULIE REINHARDT WARD, Judge

CC: Counsel of Record

[4] The amount would depend upon the applicability of common law and statutory remedies to the case.