

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LISA KRAGNES, et al.</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CITY OF DES MOINES, IOWA,</p> <p>Defendant.</p>	<p>Case No. CE 49273</p> <p>RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</p>
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CLERK DISTRICT COURT

The Court heard the motion for summary judgment filed on behalf of Defendant on June 30, 2008. Plaintiffs were represented by attorneys Bruce Stoltze and Brad Schroeder. Defendant was represented by attorney Mark Godwin. Having considered the motion, the resistance, the supporting documents on both sides and the written and oral arguments of counsel, the court makes the following ruling:

Background

This case involves a class action brought on behalf of residents of the City of Des Moines who allege that a franchise fee Defendant has assessed in its franchise agreements for gas and electrical power services is an illegal tax. The facts and procedural background of this case have been set forth in the Iowa Supreme Court's previous decision remanding this case to the district court. *See Kragnes v. City of Des Moines*, 714 N.W.2d 632 (Iowa 2006). Plaintiffs seek reimbursement for taxes they claim were illegally assessed in this matter upon the theory of unjust enrichment. Defendant asserts that such a claim must proceed as a tort action, and that such an action is barred by Iowa's Municipal Torts Claims Act.

Standard

Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Robinson v. Poured Walls of Iowa, Inc.*

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553 N.W.2d 873, 875 (Iowa 1996); Iowa R. Civ. P. 1.981(3). A fact issue is material only when its resolution might affect the outcome of the case. *Junkins v. Branstad*, 421 N.W.2d 130, 132 (Iowa 1988). A fact issue is genuine if reasonable minds can disagree on how it should be resolved. *Schlueter v. Grinnell Mutual Reinsurance Co.*, 553 N.W.2d 614, 616 (Iowa App. 1996). “The requirement of a ‘genuine’ issue of fact means that the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

The burden to show the nonexistence of a material fact rests on the moving party and the record must be viewed in the light most favorable to the nonmoving party. *Id.* at 615; *see also Thorp Credit, Inc., v. Gott*, 387 N.W.2d 342, 343 (Iowa 1986). However, the resisting party cannot merely rely on the allegations or denials in the pleadings but must come forth with specific facts supporting the claim that a fact issue exists. Iowa R. Civ. P. 1.981(5), *Hoefler v. Wisconsin Education Association Insurance Trust*, 470 N.W.2d 336, 339 (Iowa 1991).

The court must determine whether a genuine material fact issue exists by examining “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits [submitted by the parties], if any” Iowa R. Civ. P. 1.981(3); *see also Wilson v. Darr*, 553 N.W.2d 579, 582 (Iowa 1996). When there is no genuine dispute concerning the material facts and the only remaining issue is what legal consequences flow from the facts, summary judgment is appropriate. *Emmet County State Bank v. Reutter*, 439 N.W.2d 651, 653 (Iowa 1989).

Analysis

Defendant asserts that it is afforded statutory immunity from the claims asserted in this matter by virtue of Iowa Code sections 670.4(2) and 670.4(3). Defendant acknowledges that a claim for unjust enrichment is a claim in equity that falls outside of the scope of the Municipal

Tort Claims Act. See *Dolezal v. City of Cedar Rapids*, 326 N.W.2d 355, 358-59 (Iowa 1982). However, Defendant takes issue with the form in which Plaintiffs have pled their cause of action. Defendant asserts that Plaintiffs have alleged a statutory violation, and that such a claim sounds in tort and not as a claim for unjust enrichment. The Court must therefore first determine whether Plaintiffs' have truly stated a claim for unjust enrichment.

Under our liberal notice pleading rule, the form of or label attached to a given pleading is not conclusive as to its legal significance. See *Schmidt v. Wilkinson*, 340 N.W.2d 282, 283-84 (Iowa 1983); *Iowa Elec. Light and Power Co. v. Lagle*, 430 N.W.2d 393, 396 (Iowa 1988). Iowa Rule of Civil Procedure 1.402 only requires a short and concise statement of the nature of the claim that is sufficient to put a defendant on notice so that the defendant may make an adequate response. *Schmidt*, 340 N.W.2d at 283. The ultimate inquiry should be whether the Petition "apprises a defendant of the incident giving rise to the claim, states the prima facie elements of the claim and sets forth the general nature of the action." *Id.* at 284 (citing *Soike v. Evan Matthews & Co.*, 302 N.W.2d 841, 842 (Iowa 1981)). The Petition is not required to identify a specific legal theory. *Soike*, 302 N.W.2d at 842.

As previously indicated, "a claim for unjust enrichment is rooted solely in equitable principles. . . ." *Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 30 (Iowa App. 2000). It is premised on the theory that "one shall not be permitted to unjustly enrich oneself at the expense of another or to receive property or benefits without making compensation for them." *West Branch State Bank v. Gates*, 477 N.W.2d 848, 852 (Iowa 1991). The necessary elements of such a claim are: (1) the conferment of a benefit by a plaintiff to its detriment, (2) that the defendant had an appreciation of receiving the benefit, (3) that the defendant accepted and retained the benefit under circumstances making it inequitable for there to be no

compensation for its value, and (4) that no remedy exists at law that can appropriately address the claim. *Id.*

In the present case, Plaintiffs' Petition is labeled as an action in equity. It alleges that Defendant has "illegally exacted from the Plaintiff, and those similarly situated, illegal taxes as a revenue generating measure under the guise of the franchise fees," that such taxes are "illegal and void," and that they should consequently "be refunded." (Petition in Equity, p. 2 ¶ 8). This Petition further alleges that Plaintiffs have "no other plain, speedy, or adequate remedy in the ordinary course of the law." (*Id.* at p. 4 ¶ 19). The Court finds that such allegations were sufficient to place Defendant on notice as to the nature of Plaintiffs' claim and the incidents giving rise to such claim. This Petition adequately captures the prima facie elements of Plaintiffs' cause of action. It alleges in essence that Plaintiffs have conferred a benefit upon Defendant in the form of purported franchise fee payments that were in reality an illegal tax, that Defendant has accepted and retained such payments with appreciation of this fact, and that it would be inequitable for Defendant to retain such payments given their illegality. The Petition further alleges that Plaintiffs have no other adequate remedy at law, a position which Defendant apparently accepts given its assertion that Plaintiffs' cause of action, if brought upon tort principles, would fail as a matter of law. Consequently, the court rejects Defendant's argument that Plaintiffs' cause of action cannot be construed as one for unjust enrichment.

Notwithstanding the foregoing, Defendant asserts that Plaintiffs' claim falls squarely within the definition of a "tort" as provided in the Iowa Municipal Tort Claims Act because it is based upon the breach of a statutory duty.¹ Defendant alleges that this duty emanates from Iowa

¹ Iowa Code section 670.2 provides that "[e]xcept as otherwise provided in this chapter, every municipality is subject to liability for its torts and those of its officers and employees, acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function." IOWA CODE § 670.2 (2007). A tort is defined by Iowa Code section 670.1(4) as

Code section 364.3(4), which, as Plaintiffs have properly identified in their Petition, provides that “a City may not levy a tax unless specifically authorized by a state law.” (Petition in Equity, p. 2 ¶ 7). While the Court acknowledges that Plaintiffs’ Petition does in fact allege that the “taxes” imposed are an illegal tax precluded by one of the limitations on city powers enumerated in section 364.3 of the Iowa Code, the Court is not convinced that this precludes Plaintiffs from pursuing their cause of action in this case. The cases cited by Defendant stand for the proposition that a claim based upon the failure to exercise due care in the discharge of a statutory duty, generally imposed to protect a given segment of the population from an identifiable harm, falls within the definition of “tort” as provided in the Municipal Tort Claims Act. *See, e.g., Adam v. State*, 380 N.W.2d 716, 722-23 (Iowa 1986); *Hildebrand v. Cox*, 369 N.W.2d 411, 416-17 (Iowa 1985); *Wilson v. Nepstad*, 282 N.W.2d 664, 669 (Iowa 1979). Plaintiffs do not allege that Defendant breached any standard of care in the discharge of a statutory duty in this case. Plaintiffs simply seek reimbursement for funds they claim were illegally taken from them when Defendant required their payment as a purported franchise fee. Plaintiffs should not be precluded from claiming that Defendant was unjustly enriched in this matter at their expense simply because the enrichment was obtained through the exaction of a tax the legislature has precluded by statute. To hold otherwise would deprive Plaintiffs of a remedy altogether and render the legislature’s express prohibition meaningless.

In addition to the foregoing, Defendant argues that Plaintiffs’ claim for unjust enrichment

every civil wrong which results in wrongful death or injury to person or injury to property or injury to personal or property rights and includes but is not restricted to actions based upon negligence; error or omission; nuisance; *breach of duty, whether statutory or other duty* or denial or impairment of any right under any constitutional provision, statute or rule of law.

IOWA CODE § 670.1(4) (emphasis added).

focuses on the city's exercise of its police power (i.e. the power to tax) and consequently sounds in tort. See *Kelley v. Story County Sheriff*, 611 N.W.2d 475, 481 (Iowa 2000). A proper reading of the *Kragnes* decision, however, renders Defendant's argument in this regard without merit. In *Kragnes*, the Supreme Court determined that a franchise fee that is not related to a city's administrative expenses in exercising its police power is an illegal tax. 714 N.W.2d at 642-43. The court further recognized that "fees exacted in excess of the expenses incurred for the inspection, regulation, and supervision of the utility's use of public grounds are revenue-raising measures arising from a taxing power *and not from a police power.*" *Id.* at 640 (citing *City of Hawarden v. US West Commc'n, Inc.*, 590 N.W.2d 504, 506 (Iowa 1999)) (emphasis added). In the present case, Plaintiffs are alleging that the fees exacted in this matter were in excess of the administrative expenses incurred in inspecting, regulating, and supervising the franchise at issue. The allegations of their Petition therefore do not focus upon the exercise of Defendant's police power. Defendants attempt to characterize Plaintiffs' claim as one in tort based upon the foregoing must fail.

As a final matter, Defendant argues that even if Plaintiffs are permitted to proceed against it upon the theory of unjust enrichment, they cannot satisfy a necessary element of their cause of action, as they cannot demonstrate that they conferred a benefit *to their detriment*. Defendant asserts that Plaintiffs received multiple benefits from the fees paid in this case, and that they cannot therefore claim to have suffered a detriment as a matter of law. The Court finds the record before it insufficient to make such a determination at this time. Moreover, the Iowa Supreme Court has expressly directed this Court to determine at trial whether "any, part of the franchise fees are related to the City's administrative expenses in exercising its police power, including the costs associated with any incidental consequences of the franchised services."

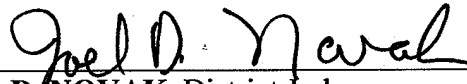
Kragnes, 714 N.W.2d at 643. Whether Plaintiffs have received a benefit in return for the benefit conferred upon Defendant in this matter is an issue properly preserved for trial.

Based upon the foregoing, the Court enters the following order:

ORDER

IT IS THE ORDER OF THE COURT that Defendants' Motion for Summary Judgment is hereby **DENIED**.

SO ORDERED this 6 day of August, 2008.



JOEL D. NOVAK, District Judge
Fifth Judicial District of Iowa

Original Filed

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