

[Cite as *Borchers v. Grand Lake St. Mary's State Park*, 2005-Ohio-6115.]

IN THE COURT OF CLAIMS OF OHIO

DANIEL J. BORCHERS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-05485-AD
GRAND LAKE ST. MARYS	:	<u>MEMORANDUM DECISION</u>
STATE PARK	:	
Defendant	:	

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{¶ 1} From 1996 through 2004, plaintiff, Daniel J. Borchers, purchased annual season dock licenses to dock his boat at defendant, Grand Lake St. Marys State Park ("Grand Lake"). On March 16, 2005, before plaintiff purchased a dock license for the 2005 season, he received a post card from defendant stating Grand Lake would no longer accept a dock license renewal from him. This post card notice from Assistant Park Manager, Brian Miller (dated March 11, 2005) noted:

{¶ 2} "Grand Lake St. Marys State Park will no longer be exercising administrative authority upstream from the State Park's boundary. Therefore, we will not be collecting dock fees from you effective immediately. If you feel that your dock or seawall is inside the park's boundaries . . ."

{¶ 3} Apparently, all past license fees plaintiff had paid to defendant, represented license purchases for a private dock outside the boundary and jurisdiction of Grand Lake. Therefore, plaintiff maintained defendant wrongfully collected dock license fees from him during the period 1996 through 2004. On April 14, 2005, plaintiff filed this complaint seeking to recover \$275.00, the

total amount he paid Grand Lake for dock license fees covering the nine-year period of 1996-2004. The filing fee was paid.

{¶ 4} Defendant contended plaintiff is not entitled to a refund of any past fees collected for the purchase of annual boat dock licenses. Defendant explained license fees were previously collected for docks outside Grand Lake boundaries, because defendant exercised administrative authority over areas upstream from Grand Lake and collected dock license fees as a partial offset for expenses incurred on projects to enhance or maintain navigation on the waterway. Due to the fact defendant had insufficient funding to continue projects on waterways upstream from Grand Lake, the dock license collection program was discontinued. The decision to discontinue the dock license program was a discretionary choice of defendant's personnel. Defendant did not offer any explanation regarding what mechanism was invoked granting authority to collect license fees for docking outside the Grand Lake boundary.

{¶ 5} Initially, it would appear that plaintiff's claim for the refund of fees collected from 1996 through 2003 is barred by the two-year statute of limitations for filings actions in this court. R.C. 2743.16(A), the statute of limitations for commencing actions in this court states:

{¶ 6} "Subject to division (B) of this section, civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties."

{¶ 7} In the instant claim, defendant collected fees from 1996 to 2004. Plaintiff filed his complaint on April 15, 2005. Based on the time frames involved much of the wrongful collections claimed involved license purchases made outside the two-year period for commencing actions.

{¶ 8} However, defendant failed to raise the defense of statute of limitations at any time after the commencement of this action. Where the bar of statute of limitations is not raised as an affirmative defense then the defense is waived. *Mills v. Whitehouse Trucking Co.* (1974), 40 Ohio St. 2d 22. Consequently, defendant in the present claim is estopped from asserting a statute of limitations defense and this action will proceed on plaintiff's entire monetary claim.

{¶ 9} The facts of the present action show plaintiff's claim is based on the wrongful collection of fees for licenses issued by defendant. Since this particular action is for the recovery of an alleged wrongful collection, the claim is grounded solely in equity. *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.* (1991), 62 Ohio St. 3d 97. "[T]he reimbursement of monies withheld pursuant to an invalid administrative rule is equitable relief, not money damages" *id.* at 105. "Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession." *Great West Life & Annuity Ins. Co. v. Knudson* (2002), U.S. 204, at 214, 122 S. Ct. 708, 151 L. Ed 2d 635.

{¶ 10} "A suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity." *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St. 3d 74, 2004-Ohio-28 at paragraph one of the syllabus. R.C. 2743.03(A)(1) and (2) states:

{¶ 11} "(A)(1) There is hereby created a court of claims. The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code, exclusive jurisdiction of the causes of action of all parties

in civil actions that are removed to the court of claims, and jurisdiction to hear appeals from the decisions of the court of claims commissioners. The court shall have full equity powers in all actions within its jurisdiction and may entertain and determine all counterclaims, cross-claims, and third party claims."

{¶ 12} "(2) If the claimant in a civil action as described in division (A)(1) of this section also files a claim for a declaratory judgment, injunctive relief, or other equitable relief against the state that arises out of the same circumstances that gave rise to the civil action described in division (A)(1) of this section, the court of claims has exclusive, original jurisdiction to hear and determine that claim in that civil action. This division does not affect, and shall not be construed as affecting, the original jurisdiction of another court of this state to hear and determine a civil action in which the sole relief that the claimant seeks against the state is a declaratory judgment, injunctive relief, or other equitable relief."

{¶ 13} Additionally, R.C. 2743.10(A) states in pertinent part: "Civil actions against the state for two thousand five hundred dollars or less shall be determined administratively by the clerk of the court of claim . . ." R.C. 2743.10 does not confer equity jurisdiction at the Administrative Determination level of this court. Administrative Determination actions are solely for money damages. Equity jurisdiction in matter involving the state are reserved for judicial review. Although plaintiff, in the instant claim, is seeking to recover funds he asserted were wrongfully withheld, the funds sought for recovery represent a claim for equitable relief and not money damages. Consequently, this court at the Administrative Determination level has no jurisdiction over claims grounded in equity based on the alleged wrongful collection of license fees.

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STATE PARK : DETERMINATION
Defendant :
: :

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Filed 10/27/05

Sent to S.C. reporter 11/17/05