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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-185

Filed 05 September 2023

Forsyth County, No. 21 CVS 5345

TOWN OF RURAL HALL, Plaintiff,

v.

MEGAN M. GARNER, Defendant.

Appeal by Defendant from order entered 12 October 2022 by Judge Richard Doughton in Forsyth County Superior Court. Heard in the Court of Appeals 8 August 2023.

Randolph M. James, P.C., by Randolph M. James and Kyle W. Martin, for Plaintiff-Appellee.

New South Law Firm, by Valerie L. Bateman and June K. Allison, for Defendant-Appellant.

GRIFFIN, Judge.

Defendant appeals from an order granting Plaintiff's motion for judgment on the pleadings. Defendant argues the trial court erred in granting Plaintiff's motion as there existed material issues of fact under the applicable law. We hold the trial court did not commit error in granting Plaintiff's motion for judgment on the pleadings.

I. Factual and Procedural Background

Defendant Megan Garner began serving as the town manager of Rural Hall on 10 July 2017. On 11 January 2021, Defendant made a confidential report of a hostile work environment, which later became public. In August 2021, Defendant employed counsel who reached out to town attorney, B. Burge. Together, Defendant's counsel and Burge began settlement discussions detailing Defendant's potential exit from her position as town manager. By and through these settlement discussions with Burge, Defendant agreed to and signed a settlement agreement on 20 October 2021.

On 21 October 2021, the town council voted for and accepted the settlement agreement by majority vote. Immediately after the vote, the three council members who voted for the settlement agreement resigned. Additionally, Burge resigned from his position as town attorney. The newly elected town council failed to adopt a budget amendment to fund Defendant's settlement agreement.

On 15 November 2021, Plaintiff filed a complaint seeking declaratory relief with respect to the settlement agreement asserting it did not comply with N.C. Gen. Stat. § 159-28. Then, on 8 December 2021, Plaintiff filed an amended complaint seeking a declaratory judgment while also asserting Defendant breached her fiduciary duty. Defendant responded on 7 February 2022 with a motion to dismiss, answer, and counterclaims. On 14 April 2022, Defendant's motion to dismiss as to Plaintiff's breach of fiduciary duty claim came on for hearing and was granted. That same day, Defendant filed a notice of voluntary dismissal without prejudice of certain

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counterclaims, including negligent misrepresentation and/or fraud, intentional infliction of emotional distress, Title VII, defamation, and 42 U.S.C. § 1983. On 2 May 2022, Defendant amended the notice of voluntary dismissal to also include a claim for constructive discharge and filed an amended complaint, answer to amended complaint, and counterclaims.

On 1 June 2022, Plaintiff filed a motion to dismiss, reply to amended counterclaims, and affirmative defenses including sovereign immunity. On 24 August 2022, Plaintiff filed a motion for summary judgment noting it was undisputed the settlement agreement was not in compliance with N.C. Gen. Stat. § 159-28 and therefore the contract was void. Further, Plaintiff alleged that because the contract was void, governmental and sovereign immunity barred any recovery by Defendant.

On 22 September 2022, Plaintiff filed a motion for judgment on the pleadings. On 12 October 2022, the trial court entered an order granting Plaintiff's motion for judgment on the pleadings as the settlement agreement was void as a matter of law for failure to comply with N.C. Gen. Stat. § 159-28; and dismissing Defendant's counterclaims with prejudice.

Defendant filed a notice of appeal on 8 November 2022.

II. Standard of Review

The purpose of a motion for judgment on the pleadings “is to dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit[.]” *Anderson Creek Partners, L.P. v. Cnty. of Harnett*, 382 N.C. 1, 11–12, 876 S.E.2d 476, 485 (2022)

(internal marks and citations omitted). A trial court may grant a motion for judgment on the pleadings where the pleadings lack any material issues of fact while questions of law remain. *Bauman v. Pasquotank Cnty. ABC Bd.*, 270 N.C. App. 640, 642, 842 S.E.2d 166, 168 (2020) (citations omitted). However, “[g]ranted judgment on the pleadings ‘is not favored by law[.]’” *Id.* (quoting *Carpenter v. Carpenter*, 189 N.C. App. 755, 762, 659 S.E.2d 762, 767 (2008)). Thus, in deciding whether to grant such a motion, “the trial court is required to view the facts and permissible inferences in the light most favorable to the nonmoving party, with all well pleaded factual allegations in the nonmoving party’s pleadings being taken as true and all contravening assertions in the movant’s pleadings being taken as false.” *Anderson Creek Partners, L.P.*, 382 N.C. at 12, 876 S.E.2d at 485 (internal marks and citations omitted).

On appeal, we review the trial court’s decision to grant or deny a motion for judgment on the pleadings de novo. *Old Republic Nat’l Title Ins. Co. v. Hartford Fire Ins. Co.*, 369 N.C. 500, 507, 797 S.E.2d 264 (2017). As such, we consider the matter anew, freely substituting our own judgment for that of the trial court. *Reese v. Mecklenburg Cnty.*, 200 N.C. App. 491, 497, 685 S.E.2d 34, 38 (2009) (citations omitted).

III. Analysis

Defendant argues the trial court erred in granting Plaintiff’s motion as (A) there existed material issues of fact under the applicable law—N.C. Gen. Stat. § 159-

28; and (B) Plaintiff waived its sovereign immunity. We disagree.

A. Plaintiff's Motion for Judgment on the Pleadings

Defendant contends the trial court erred in granting Plaintiff's motion for judgment on the pleadings as there existed material issues of fact under N.C. Gen. Stat. § 159-28, and therefore the court should have waited for the parties' cross-motions for summary judgment to resolve the legal issue of whether the lack of preaudit certification rendered the settlement agreement void.

Under North Carolina General Statute, section 159-28(a), "[n]o obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation[.]" N.C. Gen. Stat. § 159-28(a) (2021). Where the obligation is reduced to writing in a contract or agreement requiring the payment of money, the written contract or agreement "shall include on its face a certificate stating that the instrument has been preaudited[.]" *Id.* § 159-28(a1). Where these requirements have not been met, there is no valid contract, and any claim based upon such contract must fail. *Data Gen. Corp. v. Cnty. of Durham*, 143 N.C. App. 97, 103, 545 S.E.2d 243, 247 (2001) (citations omitted).

Here, Defendant concedes, in her brief on appeal, the settlement agreement was not stamped with a preaudit certification as required by statute. Nonetheless, Defendant, relying on this Court's opinion in *Lee v. Wake Cnty.*, 165 N.C. App. 154, 598 S.E.2d 427 (2004), argues "[t]he law is clear that under certain circumstances the

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absence of a preaudit certificate pursuant to N.C. Gen. Stat. § 159-28 does not render a settlement void.” Defendant maintains the same circumstances which existed in *Lee* also exist in the instant case and therefore the trial court should have waited for the parties cross-motions for summary judgment to resolve the legal issue of whether the lack of certification rendered the settlement agreement void.

In *Lee*, the plaintiff was injured in an accident arising out of her employment, while employed by the defendant. *Lee*, 165 N.C. App. at 155, 598 S.E.2d at 429. The parties participated in a workers’ compensation mediation and signed a written memorandum of agreement, in which they agreed to prepare a formalized settlement agreement for consideration by the Industrial Commission. *Id.* at 156, 598 S.E.2d at 429. Thereafter, the defendant refused to prepare a formal agreement, arguing before the Commission and on appeal before this Court, that because the agreement lacked a preaudit certificate pursuant to N.C. Gen. Stat. § 159-28, the Commission was without authority to direct the defendant to prepare a formal agreement. *Id.* at 161, 598 S.E.2d at 432. Our Court held otherwise noting the memorandum of agreement executed by the parties was simply an agreement to prepare a formalized settlement agreement for the Commission’s consideration. *Id.* at 162, 589 S.E.2d at 433. Thus, the action on appeal was for specific performance and not for the payment of money and therefore did not require a preaudit certificate. *Id.*

While Defendant is correct in stating, under some circumstances, that lack of a preaudit certificate will not invalidate a contractual agreement, her argument is

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misplaced. The circumstances which exist in the present case are not analogous to those which existed in *Lee* as the settlement agreement here was for the payment of money while *Lee* involved an action for specific performance. Further, it is undisputed that the settlement agreement here lacked a preaudit certification pursuant to N.C. Gen. Stat. § 159-28.

Because it is undisputed the settlement agreement here lacked a preaudit certification, and because the issue of whether the lack of preaudit certification under N.C. Gen. Stat. § 159-28 is, in itself, a question of law, there existed no material fact which could have affected the trial court's ability to rule on the pleadings. Thus, the trial court did not err in granting Plaintiff's motion for judgment on the pleadings.

B. Sovereign Immunity

Defendant contends Plaintiff waived its sovereign immunity and therefore can be found liable on the terms of the contract itself, as well as for any unjust enrichment based on detrimental reliance by Defendant. Thus, Defendant necessarily argues the trial court erred in dismissing her equitable claims with prejudice.

Under the doctrine of sovereign immunity, the State of North Carolina, including its counties and municipalities therein, is immune from suit absent consent or waiver of immunity. *Meyer v. Walls*, 347 N.C. 97, 104, 489 S.E.2d 880, 884 (1997). Sovereign immunity is more than an affirmative defense—it “shields [the State] entirely from having to answer for its conduct at all in a civil suit[.]” *Craig v. New Hanover Cnty. Bd. of Educ.*, 363 N.C. 334, 337, 678 S.E.2d 351, 354 (2009) (citation

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omitted). The State may, however, waive sovereign immunity in several ways, including: (1) engaging in a proprietary activity; (2) entering into a valid contract; or (3) purchasing liability insurance. *Fuller v. Wake Cnty.*, 254 N.C. App. 32, 42, 802 S.E.2d 106, 113 (2017). Relevant here, the State waives sovereign immunity by entering into a *valid* contract because, in doing so, the State “implicitly consents to be sued for damages on the contract in the event it breaches the contract.” *Smith v. State*, 289 N.C. 303, 320, 222 S.E.2d 412, 424 (1976).

Having held the trial court did not err in granting judgment on the pleadings as the settlement agreement was invalid, we need not reconsider the validity of the contract itself. *See Supra* III.A. Nevertheless, Defendant attempts to challenge Plaintiff’s sovereign immunity despite our Court having repeatedly held a party may not recover under contractual claims nor claims in equity concerning the same matter where the county has not entered a valid contract. *See Data Gen. Corp.*, 143 N.C. App. at 97, 545 S.E.2d at 243; *see also Finger v. Gaston Cnty.*, 178 N.C. App. 367, 631 S.E.2d 171 (2006).

In *Data General*, the plaintiff and the defendant entered into a lease of certain computer equipment. 143 N.C. App. at 99, 545 S.E.2d at 245. The plaintiff failed to show the existence of the required preaudit certification under N.C. Gen. Stat. § 159-28. *Id.* at 102, 545 S.E.2d at 247. The defendant argued no such preaudit certification existed. *Id.* Our Court held that because there was insufficient evidence in the record to show the statutory requirements had been met under N.C. Gen. Stat. § 159-28,

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there was no valid contract between the parties. *Id.* at 103, 545 S.E.2d at 247–48. Further, our Court held that because there was no valid contract, the defendant had not waived its sovereign immunity and therefore the plaintiff could not maintain a suit for contract damages. *Id.* (citations omitted). However, the plaintiff was also seeking claims in equity based on the parties' agreement. *Id.* Nonetheless, our Court held the plaintiff could not recover under equitable theories where it had not entered into a valid contract. *Id.* at 104, 545 S.E.2d at 247–48.

Similarly, in *Finger v. Gaston County*, the plaintiff signed a memorandum of understanding with the defendant concerning a special allowance. 178 N.C. App. 367, 368, 631 S.E.2d 171, 172 (2006). The memorandum, however, did not include a preaudit certification pursuant to N.C. Gen. Stat. § 159-28. *Id.* at 369, 631 S.E.2d at 173. On appeal, our Court cited *Data General* noting a county only waives sovereign immunity where it enters into a valid contract and that a contract such as the one at issue could not be valid where it lacked the requisite preaudit certification. *Id.* at 369–70, 631 S.E.2d at 173. Nevertheless, the plaintiff argued that even where the memorandum was not legally enforceable, the plaintiff was still entitled to recover under equitable theories such as estoppel. *Id.* at 371, 631 S.E.2d at 174. Despite the plaintiff's contentions, our Court held the plaintiff was not entitled to recover under equitable theories as to allow such would effectively negate N.C. Gen. Stat. § 159-28(a). *Id.*

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Here, as in both *Data General* and *Finger*, the parties did not enter into a valid contract as the settlement agreement did not include a preaudit certificate pursuant to N.C. Gen. Stat. § 159-28 and therefore Plaintiff did not waive sovereign immunity. Further, per our Court's precedent, Defendant can neither recover in contracts nor upon any other equitable theory as allowing Defendant to do so would effectively negate N.C. Gen. Stat. § 159-28(a).

As such, the trial court did not err in dismissing Defendant's equitable claims with prejudice.

IV. Conclusion

For the aforementioned reasons, the trial court did not err in granting Plaintiff's motion for judgment on the pleadings.

AFFIRMED.

Chief Judge STROUD and Judge ARROWOOD concur.

Report per Rule 30(e).