

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Bruce A. Vance et al., :  
 :  
 Plaintiffs-Appellants, :  
 :  
 v. : No. 18AP-484  
 : (C.P.C. No. 16CV-3295)  
 State of Ohio, : (REGULAR CALENDAR)  
 :  
 Defendant-Appellee. :

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D E C I S I O N

Rendered on March 12, 2019

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**On brief:** *Cohen Rosenthal & Kramer LLP, and Joshua R. Cohen; The Roberts Law Firm, and Kevin T. Roberts; Murray & Murray Co. L.P.A., Dennis E. Murray, Jr., and William H. Bartle; Mansour Gaven LP, Anthony J. Coyne, and Edward O. Patton, for appellants. Argued: Kevin T. Roberts.*

**On brief:** *Brennan, Manna & Diamond, LLC, Robert A. Hager, Justin M. Alaburda, Daniel J. Rudary; [Dave Yost], Attorney General, Daniel W. Fausey, Christine Mesirov, and Daniel Kim, for appellee. Argued: Daniel J. Rudary.*

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APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Plaintiffs-appellants, Bruce A. Vance, et al., appeal from a judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of defendant-appellee, State of Ohio, and dismissing appellants' class action complaint due to lack of subject-matter jurisdiction. For the reasons that follow, we affirm.

## **I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} On June 26, 2015, appellants, Bruce A. Vance, G. Fredrick Pierce-Ruhland, and the Joseph K. Blystone Trust, filed a class action complaint "on behalf of the more than 100,000 owners of Ohio lands devoted to agricultural production," alleging that the state, by and through Joseph W. Testa, Commissioner of the Ohio Department of Taxation ("tax commissioner"), "illegally collected" more than \$1 billion of property taxes from appellants by "fail[ing] to calculate Current Agricultural Use Valuation ("CAUV") taxes" in accordance with Ohio law. (Class Action Compl. at ¶ 1.) The complaint further alleges that "[c]ommencing in 2005 and increasingly during the Kasich Administration, CAUV taxes have doubled, tripled and quadrupled, threatening the future of agriculture, Ohio['s] largest industry." (Class Action Compl. at ¶ 1.) The complaint alleges a claim for unjust enrichment and seeks injunctive and declaratory relief, as well as the certification of a class action under Civ.R. 23(B)(2) and (3).

{¶ 3} In an amended class action complaint filed in the Ashtabula County Court of Common Pleas on July 27, 2015, appellants identified several other named plaintiffs, added the Honorable John R. Kasich, Governor of the state of Ohio ("governor"), as a defendant and added claims for equitable restitution and for compensatory damages based on certain alleged statutory and constitutional violations.

{¶ 4} In a second amended complaint filed by appellants with leave of court on November 9, 2015, appellants identified the state of Ohio as the defendant, removed the tax commissioner and governor as defendants, and deleted the claims for injunctive relief and for compensatory damages based on alleged statutory and constitutional violations. Thus, the remaining claims for relief alleged in the second amended complaint are equitable restitution and declaratory judgment. Appellants' second amended complaint seeks "an award against the State of Ohio for equitable restitution to the Plaintiffs and members of the proposed class, entitling them to the difference between what they paid in property taxes since 2005 and what they would have paid had the [Ohio Department of Taxation ("ODT")] properly and lawfully calculated CAUV." (Second Am. Compl. at 28-29.)

{¶ 5} On February 24, 2016, the Ashtabula County Court of Common Pleas granted the state's motion to transfer the action to Franklin County. On November 2, 2016, the trial

court denied the state's motion to dismiss the second amended complaint for failure to state a claim on which relief may be granted. The trial court found that because the second amended complaint alleged " '[t]he State of Ohio has unjustly enriched itself by assessing and retaining the illegitimate property taxes paid as a result of ODT's misapplication of CAUV,' " the complaint arguably stated a claim for relief against the state sounding in equitable restitution under *Santos v. Ohio Bur. of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28. (Nov. 2, 2016 Decision at 6, quoting Second Am. Compl. at ¶ 111.)<sup>1</sup> In the November 2, 2016 decision denying the state's motion to dismiss, the trial court stated:

The Court further finds that Defendants' contention that they do not have the funds that were allegedly wrongfully taken from Plaintiffs, is a matter that may be resolved by a motion for summary judgment in the future, but not by the present motion to dismiss.

(Nov. 2, 2016 Decision at 7.)

{¶ 6} On May 12, 2017, the state filed a motion for summary judgment arguing the Court of Claims of Ohio had exclusive jurisdiction of appellants' second amended complaint because any claim for monetary relief against the state asserted therein sounded in legal rather than equitable restitution. In opposing the state's motion, appellants abandoned their allegation that the state assessed and retained the illegitimate property taxes paid as a result of the tax commissioner's misapplication of CAUV. Rather, appellants claimed the respective county auditors and county treasurers acted as agents of the tax commissioner for purposes of assessing and collecting CAUV property taxes. Appellants' further contended the state was unjustly enriched by the retention of overpaid taxes which directly reduce the state's burden of local school funding.

{¶ 7} On May 17, 2018, the trial court granted the state's motion for summary judgment as to appellants' claim for equitable restitution and "dismissed" appellants' class action complaint "without prejudice for lack of subject matter jurisdiction." (Emphasis omitted.) (May 31, 2018 Order & Jgmt. Entry.) Appellants timely appealed to this court from the judgment of the trial court.

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<sup>1</sup> In opposition to the motion to dismiss, appellants also successfully argued that mandamus was not the form of relief sought by the complaint. (Appellants' Sept. 19, 2016 "position statement regarding pending motions" at 16-18.) The November 2, 2016 judgment is not the subject of this appeal.

## II. ASSIGNMENTS OF ERROR

{¶ 8} Appellant assigns the following as trial court error:

1. The trial court erred by granting summary judgment in favor of Appellees.
2. The trial court erred in holding that it lacked subject matter jurisdiction over Appellants' claims.

## III. STANDARD OF REVIEW

{¶ 9} Appellate review of summary judgment is de novo. *Gabriel v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 14AP-870, 2015-Ohio-2661, ¶ 12, citing *Byrd v. Arbors E. Subacute & Rehab. Ctr.*, 10th Dist. No. 14AP-232, 2014-Ohio-3935, ¶ 5. Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Phillips v. Wilkinson*, 10th Dist. No. 17AP-231, 2017-Ohio-8505, ¶ 11, citing *Byrd* at ¶ 6, citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978).

{¶ 10} " '[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.' " *Byrd* at ¶ 7, quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). "Once the moving party meets its initial burden, the nonmovant must set forth specific facts demonstrating a genuine issue for trial." *Phillips* at ¶ 12, citing *Byrd* at ¶ 7, citing *Dresher* at 293.

#### IV. LEGAL ANALYSIS

##### A. APPELLANTS' ASSIGNMENTS OF ERROR

{¶ 11} In appellants' first assignment of error, appellants contend the trial court erred by granting summary judgment in favor of the state as to their claim for equitable restitution. The trial court concluded that because appellants failed to produce evidence that CAUV property taxes were collected or held by the treasurer of state, appellants claim for equitable restitution fails, as a matter of law. In appellants' second assignment of error, appellants argue the trial court erred when it dismissed appellants' second amended complaint on finding appellants' claim for monetary relief against the state was legal in nature and, therefore, within the exclusive, original jurisdiction of the Court of Claims.

{¶ 12} Because our resolution of both appellants' first and second assignments of error depends on whether the common pleas court or the Court of Claims has subject-matter jurisdiction of any claim for monetary relief against the state alleged in the second amended complaint, we will consider them together.

##### 1. Appellants' First and Second Assignments of Error

{¶ 13} "The issue of subject-matter jurisdiction involves ' "a court's power to hear and decide a case on the merits and does not relate to the rights of the parties." ' " *TLC Health Care Servs., LLC v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 17AP-181, 2017-Ohio-9198, ¶ 8, quoting *Columbus Green Bldg. Forum v. State*, 10th Dist. No. 12AP-66, 2012-Ohio-4244, ¶ 14, quoting *Vedder v. Warrensville Hts.*, 8th Dist. No. 81005, 2002-Ohio-5567, ¶ 14. " "When presented with a motion to dismiss for lack of subject matter jurisdiction pursuant to Civ.R. 12(B)(1), a trial court must determine "whether any cause of action cognizable by the forum has been raised in the complaint." ' " *TLC Health Care Servs.* at ¶ 8, quoting *Interim HealthCare of Columbus, Inc. v. State Dept. of Adm. Servs.*, 10th Dist. No. 07AP-747, 2008-Ohio-2286, ¶ 7, quoting *PNP, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 04AP-1294, 2006-Ohio-1159, ¶ 9, citing *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). "Appellate courts review de novo the issue of subject-matter jurisdiction without any deference to the trial court's determination." *TLC Health Care* at ¶ 8, citing *Cheap Escape Co., Inc. v. Tri-State Constr., LLC*, 173 Ohio App.3d 683, 2007-Ohio-6185, ¶ 18 (10th Dist.). A dismissal for lack of subject-matter jurisdiction

is a judgment other than on the merits of the case. *George v. State*, 10th Dist. No. 10AP-4, 2010-Ohio-5262, ¶ 10.

{¶ 14} In appellants' assignments of error, appellants take exception to the trial court's determination that the Court of Claims has exclusive, original jurisdiction of any claim for monetary relief asserted in their second amended complaint. Appellants contend the claims alleged in the second amended complaint are purely equitable in nature and, therefore, within the jurisdiction of the courts of common pleas. We disagree.

{¶ 15} In 1974, the Ohio General Assembly exercised its authority under Article II, Section 36 of the Ohio Constitution and created a system of CAUV for property tax purposes. The ODT subsequently adopted regulations that govern the calculation and application of the CAUV property tax in Ohio. The Ohio CAUV statute, R.C. 5713.30 et seq., permits owners of land that is devoted exclusively to agricultural use to request the auditor to value the property in accordance with its current agricultural use rather than its true market value. *Johnson v. Clark Cty. Bd. of Revision*, \_\_\_ Ohio St.3d \_\_\_, 2018-Ohio-4390, ¶ 11 (slip opinion). CAUV status is a preferred tax status and land must qualify to be valued in this manner. *Id.* at ¶ 32. "[I]n general, a value determined by agricultural use is lower than a property's true market value and therefore, CAUV status typically results in a lower real-property-tax liability." *Id.* at ¶ 12, citing *Renner v. Tuscarawas Cty. Bd. of Revision*, 59 Ohio St.3d 142 (1991).

{¶ 16} Pursuant to R.C. 5713.31, an owner of CAUV land must file an annual application with the local county auditor to be included in the CAUV program. Pursuant to R.C. 5713.31(G), "[i]f the auditor determines \* \* \* that the land is land devoted exclusively to agricultural use, the auditor shall appraise it for real property tax purposes in accordance with section 5715.01 of the Revised Code and the rules adopted by the commissioner for the valuation of land devoted exclusively to agricultural use." The statute further provides "such appraised value shall be the value used by the auditor in determining the taxable value of such land for the current tax year under section 5713.03 of the Revised Code." The relevant rules pertaining to CAUV are located at Ohio Adm.Code 5703-25-06 and 5703-25-30 to 5703-25-36.<sup>2</sup>

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<sup>2</sup> "R.C. 5703.02(A)(5) gives the [Board of Tax Appeals] jurisdiction over appeals from the '[a]doption and promulgation of rules of the tax commissioner.' R.C. 5703.14 plainly provides that '[a]pplications for review of any rule adopted and promulgated by the tax commissioner may be filed with the board of tax appeals by

{¶ 17} There is no dispute in this case that the county auditor in each of the 88 Ohio counties must value CAUV property in accordance with the CAUV Land Tables prepared by the tax commissioner.<sup>3</sup> In her May 12, 2017 affidavit, Shelley Wilson, ODT's Executive Administrator of the Tax Equalization Division, explained the mechanics of the CAUV program, in relevant part, as follows:

2. \* \* \* In my capacity as Executive Administrator of the Tax Equalization Division, I have personal knowledge of and oversee the Department's administration of real property taxation programs, including the Current Agricultural Use Valuation ("CAUV") program.

\* \* \*

5. The Tax Commissioner annually prepares CAUV Land Tables that county auditors use to appraise the taxable value of land devoted exclusively to agricultural use and duly registered for the CAUV program.

6. The CAUV Land Tables are subsequently provided to the auditors of each of Ohio's 88 counties in the years in which those counties undergo sexennial reappraisal or are scheduled for triennial update.

7. Using the CAUV land tables, the county auditors appraise the taxable value of the land for all properties participating in the CAUV program, and assess the property for purposes of taxation.

8. Once appraised and assessed by the county auditors, CAUV property taxes (like all other real estate taxes) are then collected by each of Ohio's 88 county treasurers and disbursed by each of Ohio's 88 county auditors.

(Aff. of Shelley Wilson, attached to May 12, 2017 Mot. For Summ. Jgmt.)

{¶ 18} The crux of appellants' claim in this case is that the state, by and through its tax commissioner, has engaged in the practice of illegally overstating CAUV, resulting in greater property tax liability to appellants. The complaint posits that most land devoted exclusively to agricultural use is situated in the rural and semi-rural areas of Ohio.

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any person who has been or may be injured by the operation of the rule.' Under the statute, the burden was on the landowners to 'show that the rule is unreasonable.' " *Adams v. Testa*, 152 Ohio St.3d 217, 2017-Ohio-8854, ¶ 7.

<sup>3</sup> R.C. 5715.01(B) provides in relevant part: "County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner."

Accordingly, the second amended complaint alleges the more tax dollars county treasurers collect from rural and semi-rural counties due to the unlawfully inflated CAUV property taxes, the less funding the state must provide to those counties for their schools, parks, municipal functions, and the like.

{¶ 19} According to appellants, the tax commissioner's decision to systematically increase CAUV has resulted in a savings to the state of millions in supplemental educational funding. Appellants cite the deposition testimony of Daria Shams, Senior Policy Analyst for the Ohio Department of Education, and Fredrick G. Church, Deputy Budget Director at the Office of Budget Management, as evidence that higher CAUV has "always resulted in the State spending less [on education] and retaining more money." (Appellants' Brief at 35.) Appellants estimate the state has saved "at least hundreds of million[s] of dollars by overcharging farmers." (Appellants' Brief at 35.)

{¶ 20} Appellants acknowledge their second amended complaint seeks to compel the payment of money by the state. Appellants argue, however, that even though their complaints seek monetary relief from the state, their claims are purely equitable in nature, not claims for legal restitution or for money damages at law. Accordingly, appellants maintain the common pleas court has jurisdiction to hear and determine their claim for monetary relief against the state. The state argues that appellants seeks monetary relief from the state in the form of legal restitution or compensatory damages. Accordingly, the state maintains such claims are cognizable only in the Court of Claims.

{¶ 21} R.C. 2743.03 created the Court of Claims and vested the court with jurisdiction of the following:

(A)(1) \* \* \* 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 and exclusive jurisdiction of the causes of action of all parties in civil actions that are removed to the court of claims. 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.

{¶ 22} R.C. 2743.02(A)(1) sets out the state's waiver of sovereign immunity, in relevant part, as follows:



The state hereby waives its immunity from liability \* \* \* and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter \* \* \*. To the extent that the state has previously consented to be sued, this chapter has no applicability.

{¶ 23} "Pursuant to the statutory framework, the Ohio General Assembly vested the Court of Claims with exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in R.C. 2743.02 and full equity powers in all actions within its jurisdiction." *TLC Health Care* at ¶ 12, citing *State ex rel. Moritz v. Troop*, 44 Ohio St.2d 90, 92 (1975). Under R.C. Chapter 2743, "a civil claim against the state that requests only equitable relief may be heard in the courts of common pleas, while other civil claims against the state involving monetary relief generally fall within the exclusive, original jurisdiction of the Court of Claims." *Crable v. Ohio Dept. of Youth Servs.*, 10th Dist. No. 09AP-191, 2010-Ohio-788, ¶ 9, citing *Cristino v. Ohio Bur. of Workers' Comp.*, 118 Ohio St.3d 151, 2008-Ohio-2013; R.C. 2743.03(A)(1) and (2). On numerous occasions, the Supreme Court of Ohio has been called on to determine whether certain claims seeking monetary relief from the state should be treated as claims for equitable relief within the jurisdiction of the common pleas courts or actions at law within the exclusive, original jurisdiction of the Court of Claims.

{¶ 24} In *Cristino*, Pietro Cristino relinquished his statutory rights to periodic payments for permanent total disability ("PTD") compensation in exchange for a lump sum payment of the present value of his PTD claim pursuant to an agreement with the Bureau of Workers' Compensation ("BWC"). Cristino, on behalf of a class of similarly situated plaintiffs, brought a putative class action suit against the BWC in the common pleas court seeking numerous forms of relief, including "full restitution of the difference between the amounts represented by the Administrator to be the 'actual present value' of their PTD claims and the true 'actual present value' \* \* \*." *Id.* at ¶ 3. The common pleas court denied BWC's motion to dismiss the suit for lack of subject-matter jurisdiction and the Eighth District Court of Appeals affirmed.

{¶ 25} In reversing the Eighth District, the Supreme Court set out the prevailing legal rule as follows:

It is well established that restitution can be either a legal or an equitable remedy. *Santos*, 101 Ohio St.3d 74, 2004 Ohio 28, 801 N.E.2d 441, at ¶ 11. In order to determine whether a claim for restitution requests legal or equitable relief, we look to the basis for the plaintiff's claim and the nature of the underlying remedies sought. 2004 Ohio 28, at ¶ 13.

*Id.* at ¶ 7.

{¶ 26} The Supreme Court held the common pleas court did not have jurisdiction of Cristino's claim because "a claim against the state for money due under a contract is not a claim of equitable restitution and must be brought in the Ohio Court of Claims." *Id.* at ¶ 16.

{¶ 27} In *Cristino v. Ohio Bur. of Workers' Comp.*, 10th Dist. No. 13AP-772, 2014-Ohio-1383, *discretionary appeal not allowed*, 140 Ohio St.3d 1416, 2014-Ohio-3785,<sup>4</sup> this court addressed the distinction between equitable claims seeking the payment of money and legal claims seeking monetary relief as follows:

[N]ot every claim seeking monetary relief is a claim for money damages. [*Interim HealthCare*] at ¶ 15. Even where a claimant seeks relief that will ultimately result in the payment of money by the state, "a cause of action will sound in equity if 'money damages' is not the essence of the claim." *Id.*, citing *Ohio Academy of Nursing Homes v. Ohio Dept. of Job & Family Servs.*, 114 Ohio St.3d 14, 2007-Ohio-2620, ¶ 15, 867 N.E.2d 400. For example, an equitable action for specific relief, seeking reimbursement of the compensation allegedly denied or retained, is not transformed into a claim for damages simply because it involves the payment of money. *Zelenak v. Indus. Comm.*, 148 Ohio App.3d 589, 2002-Ohio-3887, ¶ 18, 774 N.E.2d 769 (10th Dist.) (claim for specific temporary total disability compensation, to which plaintiffs were statutorily entitled, sought equitable relief and not monetary damages), citing *Ohio Edison Co. v. Ohio Dept. of Transp.*, 86 Ohio App. 3d 189, 194, 620 N.E.2d 217 (10th Dist.1993). "Unlike a claim for money damages where a plaintiff recovers damages to compensate, or substitute, for a suffered loss, equitable remedies are not substitute remedies, but an attempt to give the plaintiff the very thing to which it was entitled." *Interim HealthCare* at ¶ 15, citing *Santos* at ¶ 14.

*Id.* at ¶ 13.

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<sup>4</sup> Subsequent to the decision of the Supreme Court in *Cristino*, 2008-Ohio-2013, Cristino refiled his class action complaint in the Court of Claims, but the Court of Claims held that his claims were time-barred.

{¶ 28} Appellants rely primarily on *Santos*, 2004-Ohio-28, in support of their contention that they seek equitable restitution from the state. In *Santos*, the plaintiffs, a group of claimants receiving workers' compensation benefits who later settled intentional tort claims against their employers, filed a putative class action suit in the common pleas court seeking the return of specific funds collected by the BWC under a subrogation statute that the Supreme Court had recently held to be unconstitutional. BWC filed a motion seeking dismissal of the case arguing that the Court of Claims had exclusive, original jurisdiction of the claims against the state asserted in the complaint. The trial court denied BWC's motion to dismiss and certified a class action. The Eighth District reversed, finding the common pleas court lacked subject-matter jurisdiction.

{¶ 29} In reversing the Eighth District, the Supreme Court in *Santos* concluded: "A suit that seeks the return of specific funds wrongfully collected or held by the state is brought in equity. Thus, a court of common pleas may properly exercise jurisdiction over the matter as provided in R.C. 2743.03(A)(2)." *Id.* at ¶ 17. The *Santos* court noted that although restitution can be either legal or equitable, whether it is "legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought." *Id.* at ¶ 13, citing *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002). In *Santos*, the court relied on *Great-West* in recognizing the following general distinction between legal and equitable restitution:

Restitution is available as a *legal* remedy when a plaintiff cannot " 'assert title or right to possession of particular property, but in which nevertheless he might be able to show just grounds for recovering money to pay for some benefit the defendant had received from him.' " \* \* \* Restitution is available as an *equitable* remedy "where money or property identified as belonging in good conscience to the plaintiff could clearly be traced to particular funds or property in the defendant's possession."

(Emphasis sic.) *Santos* at ¶ 13, quoting *Great-West* at 213, quoting Dobbs, *Law of Remedies*, Section 4.2(1), 571 (2d Ed.1993).

{¶ 30} The Supreme Court reached a similar result in *Ohio Hosp. Assn. v. Ohio Dept. of Human Servs.*, 62 Ohio St.3d 97 (1991). In that case, certain Medicaid providers sought reimbursement of funds withheld by the Ohio Department of Human Services ("ODHS") pursuant to administrative rules improperly promulgated by ODHS. In that case, ODHS

argued the Court of Claims had no jurisdiction over the matter because the state did not waive its immunity from liability for money damages resulting from an invalidated administrative rule. The Supreme Court held the Court of Claims had exclusive jurisdiction of the complaint because the hospitals alleged their contractual rights under the provider agreements and an earlier settlement agreement had been violated, and they sought monetary relief. *Id.* at 104. In so holding, the Supreme Court noted, however, that "[t]he order to reimburse Medicaid providers for the amounts unlawfully withheld is not an award of money damages, but equitable relief." *Id.* at 104. The court in *Ohio Hosp. Assn.* cited *Bowen v. Massachusetts*, 487 U.S. 879, 895 (1988), for the proposition that "'[d]amages are given to the plaintiff to substitute for a suffered loss, whereas specific remedies are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled.'" (Emphasis sic.) (Internal quotation marks omitted.) *Ohio Hosp. Assn.* at 105, citing *Bowen* at 895, quoting *Maryland Dept. of Human Resources v. Dept. of Health & Human Servs.*, 763 F.2d 1441, 1446 (C.A.D.C.1985).

{¶ 31} The state, on the other hand, relies primarily on *Cirino v. Ohio Bur. of Workers' Comp.*, 153 Ohio St.3d 333, 2018-Ohio-2665, in support of the contention that jurisdiction of appellants' complaint lies in the Court of Claims. In that case, BWC executed a contract with Chase Bank whereby BWC agreed to deposit claimant's workers' compensation benefits into a Chase account, and Chase agreed to provide claimants with access to their workers' compensation benefits via several methods, including debit cards. When Chase began deducting fees from the claimants' accounts for certain debit card transactions, Michael Cirino, as putative class representative, filed a class action suit against BWC seeking to compel BWC to compensate them for the fees charged by Chase. When the court of common pleas denied BWC's motion to dismiss for lack of subject-matter jurisdiction, BWC appealed.

{¶ 32} The Eighth District affirmed and the Supreme Court accepted the discretionary appeal to review of the following proposition of law:

Only a suit to recover specific funds held by a State defendant, or suits over which the State consented to be sued before the effective date of the Court of Claims Act, are proper in the common pleas court. All other suits against the State must be filed in the Court of Claims.

*Id.* at ¶ 16.

{¶ 33} The Supreme Court reversed the Eighth District and held the Court of Claims had exclusive jurisdiction of Cirino's complaint. *Id.* at ¶ 1. In so holding, the court stated: "The crux of the claim is \* \* \* that the bureau has improperly allowed benefit recipients to be harmed by fees charged by Chase and that the proper relief is to have the bureau pay money to compensate for that loss. The claim therefore seeks compensatory relief—a classic form of legal relief." *Id.* at ¶ 27. The Supreme Court agreed with BWC that "the relief Cirino seeks is not restitution at all. It is best described as compensatory damages." *Id.* at ¶ 25. The *Cirino* court also found their prior decision in *Santos* was not controlling:

Our holding in *Santos* does not change our view on this point. In *Santos*, the bureau collected money directly from the plaintiffs and the claim sought the return of those specific funds. The money clearly had unjustly enriched the bureau, and we viewed the suit, which sought a payment by the bureau, as "an action to correct [that] unjust enrichment." *Santos*, 101 Ohio St.3d 74, 2004-Ohio-28, 801 N.E.2d 441, at ¶ 17. That is different from the situation here. The only specific funds identified by Cirino are the fees collected by Chase, not any money withheld by the bureau. A payment by the bureau in an amount equal to those fees is therefore best described as compensation for a loss caused by Chase, not a correction of the bureau's unjust enrichment.

*Cirino* at ¶ 28.

{¶ 34} In our view, none of the above-cited cases dealing with the distinction between legal and equitable claims is precisely on point as this case arises under a distinct and different set of facts. Nevertheless, we agree with the state that any claim for monetary relief against the state set out in appellants' second amended complaint sounds in law rather than equity, and the Court of Claims has original, exclusive jurisdiction of appellants' complaint.

{¶ 35} As previously noted, appellants seek "an award against the State of Ohio for equitable restitution to the Plaintiffs and members of the proposed class, entitling them to the difference between what they paid in property taxes since 2005 and what they would have paid had the ODT properly and lawfully calculated CAUV." (Second Am. Compl. at 28-29.) There is, however, no dispute in this case that CAUV property tax revenue is collected and held by the county treasurer, not the treasurer of state. In other words, even though the tax commissioner fixes the CAUV Land Tables on which the county auditors

assess CAUV, there is no evidence that the CAUV property tax revenue collected and held by the county treasurers is ever paid into the state treasury. Even accepting as true appellants' contention that the state treasurer retained an amount of money roughly corresponding to the amount of money illegally collected from CAUV taxpayers, there is no factual dispute that the property tax revenue in this case was collected and held by the county treasurer and not the state treasurer. Thus, the specific property tax dollars wrongfully paid by appellants are not traceable to funds collected or held by the state.

{¶ 36} Additionally, unlike the plaintiffs in *Santos* and *Ohio Hosp. Assn.*, appellants do not seek reimbursement of funds taken or withheld from them pursuant to an unconstitutional statute or an invalidated administrative rule.<sup>5</sup> Though appellants' second amended complaint alleges that the tax commissioner violated certain provisions of the Ohio Revised Code and the Ohio Administrative Code, there is no allegation that the relevant statutes are unconstitutional or that the relevant administrative rules are invalid. While appellants' second amended complaint alleges a violation by the tax commissioner of certain statutes and rules pertaining to CAUV, appellants cannot claim any entitlement to receive funds directly from the state pursuant to the CAUV program. Rather, appellants' claim that they conferred a benefit on the state by reason of the tax commissioner's faulty application of the relevant statutes and rules. The complaint seeks recovery of the portion of property tax dollars appellants illegally paid to the county treasurer on the grounds that those additional tax dollars relieved the state of its corresponding burden to subsidize local schools, parks, municipal functions, and the like. In our view, this is classic legal restitution. *Santos* at ¶ 13; *Cristino*, 2008-Ohio-2013, at ¶ 8, citing *Great-West*, 534 U.S. 204, at 213.

{¶ 37} Additionally, under the prevailing legal rule as set forth in *Cirino*, a payment by the state in an amount equal to the money retained by the county treasurers due to the alleged overpayment by appellants is best described as compensation for a loss caused by the county auditor and county treasurer, not a correction of the state's unjust enrichment. *Cirino* at ¶ 29. As was the case in *Cirino*, there is no factual dispute that the sums sought by appellants are in the hands of a third party, the county treasurers. This being the case, the reimbursement sought by appellants from the state is merely a substitute remedy for

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<sup>5</sup> We note that subsequent to the commencement of this action, the Supreme Court in *Adams*, 2017-Ohio-8853, rejected a challenge to the validity of Ohio Adm.Code 5703-25-06 and 5703-25-30 to 5703-25-36, the rules pertaining to CAUV.

the property taxes wrongfully collected and held by the county treasurers. *Ohio Hosp. Assn.* at 105. Thus, under *Cirino*, appellants' cause of action for monetary relief against the state seeks compensatory damages at law, rather than equitable restitution. *Id.* at ¶ 25.

{¶ 38} In an effort to show that the funds they seek in this action were collected or held by the state, appellants argue there is an agency relationship between the tax commissioner and each of the 88 county treasurers for purposes of assessment and collection of CAUV property taxes. In support of their agency argument, appellants rely on *Comms. of Hamilton Cty. v. Noyes*, 5 Ohio Dec. Rep. 238 (1874), *aff'd*, 5 Ohio Dec. Rep. 281 (1875), *aff'd*, 35 Ohio St. 201 (1878), and *State ex rel. Guilbert v. Yates*, 66 Ohio St. 546 (1902). We find both *Noyes* and *Guilbert* to be of little precedential value in this case because those cases were decided many decades prior to the Court of Claims Act, which became law in 1975. The Court of Claims Act draws a clear distinction between political subdivisions, such as a county and its elected officials, and the state which includes "the offices of all elected state officers." R.C. 2743.01(A).

{¶ 39} The state cites *Ohio Utilities Co. v. Collins*, 48 Ohio St.2d 169 (1976), for the proposition that no such agency relationship exists. We agree with the state.

{¶ 40} In *Collins*, a utility company alleged that it overestimated its taxable assets for a certain year by nearly \$5 million dollars and sought an abatement from the tax commissioner. The utility company challenged the tax commissioner's determination that he lacked jurisdiction to grant abatement for overpayment of an ad valorem public utilities tax paid to a county treasurer. The Board of Tax Appeals affirmed. The Supreme Court agreed with the board that the tax commissioner had no authority under R.C. 5703.05(B) to grant an abatement for overpaid taxes if the overpayment was made to a county treasurer. *Id.* at 172. The court reasoned that because the "statutory scheme call[ed] for local collection and local disbursement of *ad valorem* public utility tax revenues, the board's determination that the county treasurer [was] not merely an agent for the Department of Taxation [was] reasonable and lawful." (Emphasis sic.) *Id.*

{¶ 41} Pursuant to the CAUV property tax scheme at issue in this case, CAUV property taxes are assessed locally by county auditors, collected locally by the respective county treasurers, and distributed locally. The fact that the CAUV is determined pursuant to the Land Tables drafted by the tax commissioner does not change the local character of

the assessment and collection of the tax. Accordingly, consistent with the reasoning employed by the Supreme Court in *Collins*, we hold that local county treasurers are not agents of the tax commissioner or the state treasurer for purposes of the CAUV property tax.

{¶ 42} In the final analysis, we agree with the trial court that the relief sought by appellants in this case is legal in nature rather than equitable. Unlike the plaintiffs in *Santos*, appellants cannot identify specific funds belonging in good conscience to them that can clearly be traced to specific funds in the possession of the state. The fact that the amount of the alleged overpayment to the county treasurers is calculable does not change the character of the claim. Accordingly, we hold that the trial court did not err when it determined that appellants failed to produce evidence to support a claim for equitable restitution against the state and granted the state's motion for summary judgment as to that claim.

{¶ 43} Furthermore, because appellants' claim for monetary relief against the state sought either legal restitution or compensatory damages at law, the trial court did not err when it determined the Court of Claims had exclusive, original jurisdiction of the second amended complaint. Accordingly, we hold that the trial court did not err when it dismissed appellants' second amended complaint, without prejudice, due to the lack of subject-matter jurisdiction.

{¶ 44} For the foregoing reasons, appellants' two assignments of error are overruled.

## **V. CONCLUSION**

{¶ 45} Having overruled appellants' two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

DORRIAN and LUPER SCHUSTER, JJ., concur.

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