IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
2nd DIVISION

J.B. ROBINSON and K.S. ROBINSON, et al. PLAINTIFFS

VS. NO. CV-2008-5203

FLOYD G. "BUDDY" VILLINES, et al. DEFENDANTS

SEPARATE DEFENDANTS ROBERTS AND CALS' RESPONSE TO MOTION TO ENJOIN 2009 TAXES

Although Plaintiffs claim to be in a hurry to effect a refund, Plaintiffs have done nothing to move the refund process forward. Instead, Plaintiffs file a frivolous motion asking the Court to enjoin taxes Plaintiffs stipulated are legal and not even before this Court. Before there can be any refund, Plaintiffs must comply the Arkansas Supreme Court's directive in Carwell Elevator Co. v. Leathers, 352 Ark. 381, 390 (2003) that requires providing taxpayers an opportunity to opt-out of the refund. CALS has requested Plaintiffs' plans in this regard on several occasions without response from Plaintiffs. Moreover, Plaintiffs have yet to present the details of their "credit" refund. They simply talk about it to the newspaper.

If Plaintiffs really wanted to effect a refund, they would present the specifics of their credit refund to the Court for decision and the method by which they intend

to comply with the requirements of Carwell Elevator v. Leathers instead of filing a frivolous motion in order to generate a story for the Arkansas Democrat-Gazette.[1]

DISCUSSION

Plaintiffs stipulated early in this lawsuit that they are only challenging the millage increase for the 2007 tax year and that the ad valorem tax and millage increase in all subsequent years, including 2009, are legal. In spite of this stipulation and admission, Plaintiffs now ask this Court to enjoin the levy and collection of a legal tax affecting numerous entities that are not parties, including public schools, so that the Court "can consider requiring a credit." The Court is without jurisdiction over the stipulated legal 2009 taxes because Plaintiffs have repeatedly admitted they are not an issue before this Court. Moreover, Plaintiffs have failed to prove the elements required for this Court to grant an injunction: (1) Plaintiffs will likely be successful on the merits on their proposed "credit refund" in the remedy phase of this litigation; (2) that Plaintiffs will suffer irreparable harm should this Court not enjoin the 2009 taxes; and (3) that it is in the public's interest to enjoin the legal 2009 tax collections.

Setting aside the fact that Plaintiffs have set forth no proof or evidence that would show that its "credit" proposal is even legal or feasible, Plaintiffs cannot

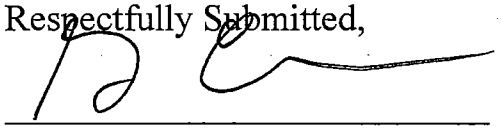
[1] Plaintiffs filed their Motion at 16:25:58 (4:25) p.m. on February 23, 2010, and e-mailed it to counsel at 5:11 p.m. that day. Apparently, the newspaper knew of the filing long beforehand, as an article appeared the next morning in the Arkansas Democrat Gazette, complete with quotes from Plaintiffs' counsel.

suffer any irreparable harm if the 2009 taxes are not enjoined. By definition, there can be no irreparable harm if the remedy is money. There is no evidence that irreparable harm will befall the Plaintiffs if the "money" used to effect the refund does not come from the 2009 tax collections. However, irreparable harm will result if Plaintiffs cut-off legal funds to the public schools.

Additionally, public interest mandates the injunction be denied. The 2009 ad valorem taxes are legal, and preventing the levy and collection of these legal taxes to fund schools and many other entities that rely heavily or solely on these revenues cannot be justified or serve the public interest. The damage that would result to schools and other entities would be devastating and would also require Plaintiffs to post bond to cover potential losses to these entities in the event an injunction is improperly entered. Such a bond would conceivably be in the tens of millions of dollars and it is doubtful that Plaintiffs are in a position to post a bond of this magnitude to cover the injury they would cause to the public schools and other entities should the Court enjoin collection of the 2009 taxes.

Plaintiffs' Motion must be denied.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I, H. Gregory Campbell, certify that the above and foregoing pleading has been served upon the following parties by depositing the same in the United States First Class Mail with sufficient postage affixed thereto to ensure delivery this 2nd day of March, 2010:

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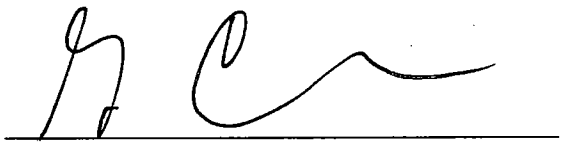

H. Gregory Campbell