IN THE SUPERIOR COURT OF GWINNETT COUNTY

STATE OF GEORGIA

Verlin Gilliam and Milagros Gilliam, Plaintiffs, v. Katherine L. Meyer, Gwinnett County Tax Commissioner, CHARLES BANNISTER, Chairman of Gwinnett County Board of Commissioners, GWINNETT COUNTY CLEAN & BEAUTIFUL, INC., BANK OF AMERICA, SANITATION SOLUTIONS, INC., SOUTHERN SANITATION, INC., ADVANCED DISPOSAL SERVICES ATLANTA, LLC, WASTE PRO OF GEORGIA, INC., and REPUBLIC SERVICES OF GEORGIA, LP, Defendants.	)	Civil Action File No. 10-A-08404-4

ORDER DISMISSING THE CLAIMS AGAINST SANITATION SOLUTIONS, INC, SOUTHERN SANITATION, INC, ADVANCED DISPOSAL SERVICES ATLANTA LLC, WASTE PRO OF GEORGIA, INC, AND REPUBLIC SERVICES OF GEORGIA, LP

Defendants Sanitation Solutions, Inc, Southern Sanitation, Inc, Advanced Disposal Services Atlanta LLC, Waste Pro Of Georgia, Inc, and Republic Services Of Georgia (the "Hauler Defendants") each having filed Motions to Dismiss pursuant to OCGA 9-11-12(b)(6), and after reviewing briefs and arguments of counsel at a hearing held before this Court on March 16, 2011, the Court enters the following Findings of Facts, Conclusions of Law, and Order dismissing all claims against each Hauler Defendant.

Findings Of Fact

1.

In April, 2008, Gwinnett County adopted certain amendments to its Solid Waste Management Plan. The County proceeded, thereunder, in conjunction with Gwinnett Clean and

Beautiful ("GCB"), to implement a solid waste management plan for unincorporated Gwinnett County. Gwinnett County contracted with GCB in June, 2008, to initiate this plan, and then expanded their agreement on August 26, 2008 by entering into an Operation and Management Agreement ("O&M Agreement"). In the O&M Agreement Gwinnett County delegated to GCB the right to serve as the "Administrator" of the new solid waste management plan for unincorporated Gwinnett County.

2.

Gwinnett County subsequently implemented the O&M Agreement and GCB's authority in the 2008 Solid Waste Ordinance Amendments ("2008 Ordinance"). Pursuant to the O&M Agreement and prior to adoption of the 2008 Ordinance, GCB conducted a Request for Proposals process ("RFP process") through which it selected Waste Pro of Georgia, Inc. and Advanced Disposal Services of Atlanta, LLC to be the exclusive companies authorized to provide residential solid waste collection in Gwinnett County after December 31, 2008. GCB entered into exclusive contracts with these two companies on November 5, 2008 (the "Initial Hauler Contracts").

3.

On December 5, 2008 Sanitation Solutions, Inc. and Southern Sanitation, Inc. filed suit against Gwinnett County, GCB and others (Case No. 08-A-10716-4) seeking to enjoin any further actions by Gwinnett County and GCB under the O&M Agreement, the 2008 Solid Waste Ordinance Amendments, and the Initial Hauler Contracts. On December 12, 2008 Republic Services of Georgia, L.P. d/b/a United Waste Service/Robertson Sanitation, and BFI Waste Services, LLC d/b/a Allied Waste Services filed suit against the same defendants seeking identical relief (Case No 08-A-11022-4). An evidentiary hearing on the two cases (which were

later consolidated) was held before this Court over a period of two days in December, 2008. This Court entered a comprehensive "Order on Preliminary Injunction" on December 18, 2008 ruling that the O&M Agreement, 2008 Ordinance Amendments, and Initial Hauler Contracts were ultra vires, void, and of no force and effect.

4.

Gwinnett County and GCB subsequently filed appeals of the December 18, 2008 Order, but later dismissed those appeals. Advanced Disposal Services Atlanta, LLC intervened in the consolidated action before this Court and its parent company filed a separate lawsuit against Gwinnett County and GCB several months later in the federal district court. Waste Pro of Georgia, Inc. did not seek to intervene in the consolidated action, but instead filed a separate proceeding in January, 2009 against Gwinnett County and GCB in the Superior Court of Fulton County. The Fulton County Superior Court subsequently transferred the case to this Court, where it was designated as Civil Action File No. 09-A-05328-4.

5.

The parties to all of the aforementioned lawsuits actively engaged in settlement discussions and ultimately reached an agreement for the resolution of all pending actions ("Settlement").

6.

Under the terms of the Settlement, on March 2, 2010, Gwinnett County, through its elected Board of Commissioners, adopted the "Gwinnett County Solid Waste Collection Disposal Services Ordinance of 2010" (the "2010 Solid Waste Ordinance"). The 2010 Solid Waste Ordinance was adopted pursuant to the authority of Gwinnett County and the Board of Commissioners under the provisions of Article IX, Sec. II, Paras. I(a) and III(a)(2) of the

Georgia Constitution, the Georgia Comprehensive Solid Waste Management Act, OCGA § 12-8-20, et. seq., OCGA § 12-8-31.1, and the 2008 Gwinnett County Solid Waste Management Plan.

7.

This Court takes judicial notice of the 2010 Solid Waste Ordinance as contained in the record of a prior suit before this same Court, Red Oak Sanitation, Inc. v. Gwinnett County, et. al. Civil Action File No. 10-A-02632-4. Petkas v. Grizzard, 252 Ga. 104 (1984)). Red Oak Sanitation, Inc. filed suit against the County and Commissioners seeking a ruling that the Settlement was an unlawful restraint on trade and that the process by which the county passed the 2010 Solid Waste Ordinance was in violation of Article IX, Section II, Paragraph I of the Georgia Constitution. Each of the Hauler Defendants intervened seeking a declaration that the Settlement was lawful and the 2010 Solid Waste Ordinance was properly adopted. By order entered May 21, 2010, this Court dismissed the claims of Red Oak and the Hauler Defendants (as Interveners) but did not pass on the constitutionality of the 2010 Solid Waste Ordinance in its entirety, as that issue was not properly before the Court.

8.

The 2010 Solid Waste Ordinance provides for unincorporated Gwinnett County to be divided into five (5) Residential Service Areas ("service zones"). The Ordinance authorizes the Gwinnett County Board of Commissioners to enter into solid waste collection and disposal service agreements, with one residential service provider per service zone, to provide residential waste collection and disposal services and recycling services to County residents ("Residential Service Units") located within each service zone. The 2010 Solid Waste Ordinance requires each Residential Service Unit to receive residential waste collection and disposal services from the residential service provider designated by the County for the applicable service zone. The

2010 Solid Waste Ordinance contains other detailed requirements with respect to residential waste service, uniform service rates and rate adjustments, provides for uniform qualifications and waste collection practices of residential service providers, and provides for Gwinnett County administration of the Ordinance and contracts and enforcement authority.

9.

The 2010 Solid Waste Ordinance is consistent with and implements the Gwinnett County Solid Waste Management Plan. That Solid Waste Management Plan, required by the solid waste planning provisions of the Georgia Solid Waste Management Act in OCGA § 12-8-31.1, was prepared and adopted by the County following a study of the existing residential solid waste collection system commissioned by the County. Through the 2010 Solid Waste Ordinance and the terms of the solid waste collection and disposal service agreements with the five residential service providers, the County provides, administers, regulates, and controls the provision of residential solid waste management services to County residents.

10.

The Residential Service Fee (Ordinance Section V.A.iv. 1-3) consists of two components. The first component, a residential collection and disposal rate to be paid to the service providers for performing the collection and disposal, is set at a uniform rate by the County's contracts with each of those providers and controlled year-to-year through rate adjustment provisions in those contracts. The second component is a fee retained by Gwinnett County to cover the County's costs of administering the residential solid waste program.

11.

In accordance with provisions of the 2010 Solid Waste Ordinance and a duly authorized Resolution of the Gwinnett County Board of Commissioners adopted on April 20, 2010, the

2010 Gwinnett County ad valorem tax billing cycle began to include the residential service fee on the ad valorem tax statement for each owner of a residential unit in unincorporated Gwinnett County (Bovos Aff., ¶ 4-6 and attached Resolution). (Like the 2010 Solid Waste Ordinance, the Bovos Affidavit is a matter of record in the Red Oak Action referenced in paragraph 2 above and this Court takes judicial notice of the contents thereof. Petkas v. Grizzard, supra).

12.

The residential solid waste collection program as set forth in the 2010 Solid Waste Ordinance is administered directly by the County through the Solid Waste and Recovered Materials Division of the Department of Financial Services. (Bovos Aff., ¶ 3). All residential services fees paid by Residential Service Units to the County are segregated in a solid waste enterprise fund set up by the Department of Financial Services and will be used exclusively for services provided under the 2010 Solid Waste Ordinance. None of the fees received by the county will be deposited into the County's general fund. (Bovos Aff., ¶ 10).

13.

The initial bill for residential service fees covered eighteen months of residential waste services – six months from July 1, 2010 through December 31, 2011 and a twelve month period thereafter commencing in the year 2011. (Bovos Aff., ¶ 7). The residential fees were due in two installments, September and November. When the residential unit owners made their November, 2010 payment it effectively covered them through the next thirteen months.

14.

Gwinnett County chose to collect the fees for collection and disposal of residential solid waste and recovered materials through its ad valorem tax process for several reasons, each designed to save the County additional costs. If the County were to bill for services rendered in

arrears, or bill on a monthly basis, the cost to the County and thus to the taxpayers would greatly increase. Instead, billing as provided under the Solid Waste Ordinance of 2010 is sent to the resident one time each year on the ad valorem tax statement for no additional cost to the County without a need for additional manpower to run another County billing and collection department. (Bovos Aff., ¶ 11).

Plaintiffs' Claims and Procedural History

15.

Plaintiffs, who are proceeding *pro se*[1], assert claims in regard to the Residential Service Fee which they are required to pay to Gwinnett County for garbage and solid waste collection and disposal services provided to their residence in Loganville. Specifically, as reflected in their original "Statement of Claim" filed in state court of Gwinnett county on July 16, 2010 against Gwinnett County, the Gwinnett County Tax Commissioner, Gwinnett Clean and Beautiful[2], and Plaintiffs' mortgage lender Bank of America, Plaintiffs complain that the "Residential Service Fee" due to Gwinnett County for solid waste collection and disposal services, and fee assessed by the County for stormwater services, which were being paid by Bank of America out of Plaintiffs' mortgage escrow account (Deed to Secure Debt and related Agreements) was an illegal and unconstitutional interference with Plaintiff's contract (Deed to Secure Debt and related Agreement) with Bank of America. Those service fee assessments are billed to Gwinnett County residents on the annual County ad valorem property tax statement.

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[1] Georgia law is well-settled that (a) *pro se* litigants are held to the same standards for complying with the substantive and procedural requirements of the law as parties represented by legal counsel, and (b) courts "cannot put a pro se litigant on a different standard from one represented by counsel." Jones v. Brown, 299 Ga. App. 418, 420 (2009); Turner v. Mize, 280 Ga. App. 256, 259 (2006); Howell v. Styles, 221 Ga. App. 781, 783 (1996); Campbell v. McLarnon, 265 Ga. App. 87, 90 (2004).

[2] Gwinnett Clean and Beautiful was dismissed as a defendant by Order of this Court entered December 13, 2010.

16.

In filings subsequent to their initial Statement of Claim, Plaintiffs seem to also assert one or more of the following allegations and contentions: that Gwinnett County does not have authority to provide garbage and solid waste collection and disposal to its residents; that the private waste providers instead of Gwinnett County should be billing the Residential Service Fee; that the Residential Service Fee constitutes an unlawful "tax" on citizens of Gwinnett County; Gwinnett County should not collect the Residential Service Fee on the ad valorem property tax statements to residents; and, reading the Plaintiffs' filings liberally, that Gwinnett County's collection of the Residential Service Fee in advance is improper. (See Documents filed by Plaintiff's on July 26, 2101, September 20, 2010 and October 12, 2010).

17.

By order filed September 20, 2010 the case was transferred to the Superior Court and by order entered September 27, 2010 the case was assigned to this court.

18.

The Haulers Defendants were added as parties in November 2010. Each Hauler has filed Answers and Motions to Dismiss the Plaintiffs' claims for failure to state any claim for which relief may be granted against the Hauler Defendants.

By Order filed May 21, 2011, Bank of America's Motion to Dismiss was granted.

19.

Defendant Tax Commissioner, Katherine L. Meyer filed an answer and a motion to dismiss on November 24, 2010. Defendants Gwinnett County, Gwinnett County Board of Commissioners filed an answer on December 22, 2010 and, along with Katherine L. Meyer, Tax Commissioner, filed a Motion for Summary Judgment on January 18, 2011.

Conclusions of Law
Standard for Dismissal Under 12(b)(6)

20.

As stated in the Court's Order granting Bank of America's motion to dismiss entered in this action on April 18, 2011, a motion to dismiss a complaint for failure to state a claim is to be granted if: (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a grant of the relief sought. Mooney v. Mooney, 235 Ga. App. 117, 508 S.E.2d 766 (1998). The defense of 'failure to state a claim upon which relief can be granted' is an enumerated defense pursuant to OCGA § 9-11-12(b)(6), which may be made at the option of the pleading party by motion in writing. Id.

21.

Notwithstanding the liberal pleading requirements set forth in OCGA § 9-11-8(a), the United States Supreme Court's decisions in the cases of Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009) establish a more rigorous standard for the pleading of complaints. "While a complaint attacked by a [Rule] 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the `grounds' of his `entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 55 (citations omitted); see Papasan v. Allain, 478 U.S. 265, 286 (1986) (On a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). Furthermore, "[f]actual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555.

22.

Under this standard, to survive a 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim that is plausible on its face". Iqbal, 129 S. Ct. at 1949; see also Twombly, 550 U.S. at 570 (In order for a complaint to survive a motion to dismiss under [Rule] 12(b)(6), it need not contain detailed factual allegations, but "only enough facts to state a claim that is plausible on its face."). A court need not credit legal conclusions masquerading as facts nor must a court credit a formulaic recitation of elements of a cause of action as sufficient to defeat a motion to dismiss. Iqbal, 129 S. Ct. at 1945-46. Absent independent factual support, the naked conclusions are insufficient to "nudge" the plaintiff s claim "across the line from conceivable to plausible." Id. at 1951.

23.

Finally, a motion to dismiss for a plaintiffs failure to state a claim is proper at any time prior to judgment. OCGA § 9-11-12(h); see also Southern Concrete Co. v. Carter Constr. Co., 121 Ga. App. 573, 174 S.E.2d 447 (1970). Further, it is within the trial court's discretion to dismiss a complaint against a defendant where the plaintiff would not be entitled to relief under any state of provable facts contained within the complaint. Mooney, 235 Ga. App. 117, 508 S.E.2d 766.

24.

Plaintiffs' Complaint Fails To State A Claim Upon Which Relief May Be Granted.

In the case at bar, Plaintiffs' Complaint fails to state a claim upon which relief may be granted against the Hauler Defendants, even under the law's liberal standard: "[F]or the purposes of the motion to dismiss, the complaint must be construed in a light most favorable to the plaintiff, and the factual allegations taken as true." Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997). While this is a liberal standard, there are limits. "[A]

court's duty to liberally construe a plaintiff s complaint in the face of a motion to dismiss is not the equivalent of a duty to re-write it." Peterson v. Atlanta Housing Auth., 998 F.2d 904, 912 (11th Cir. 1993).

Plaintiff's Contentions

25.

Plaintiffs' contend that "trash collection is not a part of the [County's] everyday Function," and that "there is no logical argument that will support the county officials claim that privately owned equipment and manpower is forthwith a function of the county and that the services of these [Haulers] are provided by the county." (See Plaintiffs' "Argument in Support of Above-Referenced Action" dated July 26, 2010, and Plaintiffs' "Supplement in Support" dated September 22, 2010, p. 2). Plaintiffs' Statement of Claim and supplemental pleadings, however, ignore the legal authority of Gwinnett County and the Gwinnett County Board of Commissioners, under both state constitutional and statutory law, to control and regulate the collection and disposal of residential solid waste generated in Gwinnett County for the public benefit. Georgia constitutional, statutory, and decisional law provides that solid waste collection and disposal is not merely a matter of local interest, but a "core function" of local government. The home rule provisions of the Georgia Constitution give counties legislative power to adopt reasonable ordinances relating to their property, affairs, and local government. Georgia Constitution, Art. IX, Sec. II, Para. 1. Among their expressly enumerated home rule powers in the Georgia Constitution, counties may exercise powers and provide services related to "garbage and solid waste collection and disposal." Georgia Constitution, Art. IX, Sec. II, Para. III(a)(2); Strykr v. Long County Board of Commissioners, 277 Ga. 624 (2004); Board of Commissioners v. Guthrie, 273 Ga. 1 (2000). Gwinnett County has exercised these home rule powers and provides these services to County residents through the 2010 Solid Waste Ordinance and the

requirements of the residential waste collection and disposal service agreements through which the County controls the provision of garage and solid waste collection and disposal services to County residents.

26.

Further, the Georgia Comprehensive Solid Waste Management Act, OCGA §12-8-20, et. seq., expressly provides that counties have the legal authority to "adopt and enforce additional regulations, not in conflict with this part, imposing further conditions, restrictions, or limitations with respect to the handling or disposal of solid waste." OCGA §12-8-30.9.

27.

Based on these grants of legal authority to counties for solid waste collection and disposal to their residents, it is clear that as long as the county does not contravene the provisions of the Solid Waste Act or the Constitution, it retains the power, right, and authority to regulate garbage and solid waste collection according to its discretion. As the Georgia Supreme Court held in Lindsey v. Guhl, 237 Ga. 567, 570 (1976), counties have broad discretion when exercising their authority, and their actions will not be set aside unless there has been an abuse of discretion, a failure to comply with the law, or a constitutional violation.

28.

While this Court has authority to review county commissioners' administration of county affairs,[3] the Georgia Supreme Court has specifically held that this authority is to be used cautiously and has instructed that there be no interference by the trial courts unless it is clear

[3] The constitution requires that regulations not be unreasonable, arbitrary or capricious, and that the means adopted must have some real and substantial relation to the object to be attained. Rockdale County v. Mitchell's Used Auto Parts, Inc., 243 Ga. 465, 465 (1979).

and manifest that the commission is abusing its discretion. Lovett v. Bussell, 242 Ga. 405, 405 (1978).

29.

Moreover, all duly adopted ordinances are presumed to be valid, a presumption that remains in effect until the party challenging an ordinance proves it is invalid. See Rockdale County, 243 Ga. at 465 ("Like other legislative action, rezoning legislation, when duly adopted, is presumed to be valid. That presumption continues until the contestant shows otherwise."); Hall Paving Co. v. Hall County, 237 Ga. 14, 15 (1976).

A court can set aside the deference owed to a presumably valid ordinance only where it is "clear and manifest" that the ordinance is arbitrary, capricious, unlawful, or unconstitutional. See, e.g., Lovett, 242 Ga. at 405. In cases such as this, where the commission has not abused that discretion, "superior courts **should not** substitute their judgment" for the judgment of the commission. Smith v. Bd. Of Comm'rs of Rds. & Revenues of Hall County, 244 Ga. 133, 141 (1979) (emphasis added). Even under a liberal construction of Plaintiff's claims, Plaintiff has not alleged any facts to support the claim that the Solid Waste Ordinance of 2010 was not authorized by the Georgia Constitution of 1983, Georgia Comprehensive Solid Waste Management Act or case law, nor has the Plaintiff sufficiently pleaded any facts showing the county abused its discretion or failed to comply with the law or constitution.

30.

Throughout Plaintiffs' "Statement of Claim" and supplemental pleadings, they argue that the Residential Service Fee included on the Plaintiffs' ad valorem tax statement constitutes an unlawful "tax" on the citizens of Gwinnett County. (See Plaintiffs' "Supplement in Support" filed September 22, 2010, pp. 3, 5, and "Additional Argument in Support," p. 2). To the contrary,

Georgia law clearly authorizes and contemplates counties' collection of fees for solid waste collection and disposal services to its residents. In addition to the general Home Rule power to charge fees, Ga. Const. Art. IX, Sect. II, Para. 1(b)(2); Ga. Const. Art. IX, Sect. IV, Para, VI, the Solid Waste Act specifically allows counties to assess fees for solid waste collection, and to collect those fees in the same manner as it collects taxes. OCGA § 12-8-39.3(a), (b).

31.

The Georgia Supreme Court has repeatedly held that solid waste collection assessments are fees for services, not taxes. See e.g., Strykr v. Long County Bd. Of Comm'rs, 277 Ga. 624, 625 (2004); Levetan v. Lanier Worldwide, Inc., 265 Ga. 324 (1995), and other Georgia Court decisions cited at pgs. 324-25; Gunby v. Yates, 214 Ga. 17, 19 (1958) ("A charge is generally not a tax if its object and purpose is to provide compensation for services rendered."). The purpose of the Residential Service Fee in this case is to provide compensation for the collection and disposal services provided by waste service providers pursuant to contract with the County, along with the County's costs of administering the residential waste program. Those fees are fully appropriate and within the County's power to manage solid waste collection. Strykr, 277 Ga. at 625; Levetan, 265 Ga. at 324-25.

32.

As the constitutional provisions, statutory sections, and case law demonstrates, the 2010 Solid Waste Ordinance's plan to impose fees for the collection of solid waste, and to administer the collection of these fees in the same manner it administers the collection of taxes, is constitutional. As such, Plaintiffs' contention that the Residential Service Fee is an unlawful tax is wholly without merit as a matter of law.

33.

Plaintiffs complain that billing and collection of the Residential Service Fees by the County requires utilization of County employees and is not in the best interest of the residents of Gwinnett County, and instead, that the authorized private waste providers should be required to incur the burden and cost of billing and collecting the Residential Service Fees from County residents. (See Plaintiff's "Supplement in Support" filed September 22, 2010.) This contention finds no support in Georgia law.

It is well-settled that the method by which a local government chooses to deliver governmental services to its residents, specifically including residential solid waste collection and disposal services, is left to the determination and discretion of the local governing authority as long as lawful means are chosen. Smith v. Board of Commissioners of Hall County, 244 Ga. 133 (1979); Strykr v. Long County Board of Commissioners, supra.

34.

Based on these applicable legal authorities, no valid legal challenge can be raised to the decision of the Gwinnett County Board of Commissioners to provide solid waste collection and disposal services to County residents through a contract with a private waste provider administered and regulated by the County, nor to the decision of the Gwinnett County Board of Commissioners to create a system of uniform residential collection rates and fees implemented through County billing and collection of the Residential Service Fees from County residents, as authorized by OCGA §12-8-39.3.

35.

Plaintiffs contend that Gwinnett County and the Hauler Defendants have "interfered with" Plaintiffs' contract with their mortgage lender by receiving payments for the Residential

Service Fees from the Plaintiffs' mortgage escrow account. (See Statement of Claim dated July 16, 2010). However, Plaintiffs simply fail to understand that neither Gwinnett County nor the other named Hauler Defendants had any role in deciding whether the Residential Service Fee would be paid out of Plaintiffs' mortgage escrow account. This method of payment of the Residential Service Fee is dictated solely by the terms of Plaintiffs' contract with their mortgage lender who has been dismissed from this action.

36.

With regards to whether Gwinnett County can accept payment for the Residential Service Fees from the Plaintiffs' mortgage escrow account, Georgia law clearly provides that a County can use the same method to collect solid waste fees as it uses to collect taxes. As discussed above, nothing in the Constitution prohibits or restrains a county from using the taxation system it already has in place to collect solid waste fees. In fact, the Solid Waste Act specifically authorizes counties to enforce the collection of those fees "in the same manner as authorized by law for the enforcement of the collection and payment of state taxes, fees, or assessments" and specifically allows the tax commissioner to be the officer charged with this duty. OCGA § 12-8-39.3(a).

Georgia courts have long recognized this authority. As the Georgia Supreme Court explained in Levetan, "a county may choose to provide by statute, as DeKalb County did, that the tax commissioner has exclusive authority to collect the sanitation service charges." 265 Ga. at 325.[4]

[4] The question in Levetan was whether the sanitation charges could be collected by anyone other than the tax commissioner.

For these reasons and the reasons set forth in this courts Order of April 18, 2011 granting Bank of America's motion to dismiss, Plaintiffs have not alleged any facts sufficient to overcome the statutory and case law cited above.

37.

If the various pleadings are liberally construed, Plaintiffs also make an effort to argue that the advance collection of the Residential Service Fee on their ad valorem tax statement is unlawful.

The Supreme Court has explained that any "means" adopted by an ordinance that are "reasonably necessary for the accomplishment" of the ordinance's purpose are constitutional as long as they are not "unduly oppressive upon the persons regulated." Cannon v. Coweta County, 260 Ga. 56, 58, overruled on other grounds, (1990). The court in Cannon makes it clear that the County can collect solid waste fees as far in advance as is reasonably necessary to the goal it seeks to accomplish. Here, both the initial and subsequent collection are reasonably necessary to providing residents of Gwinnett County with solid waste services and Plaintiffs have not alleged any fact that the collection in advance is unduly oppressive to those residents. If the residence is sold, the fees paid in advance would be prorated as of the date of sale and adjustments made on the closing statement as is commonly done for ad valorem taxes.

38.

Not only is advance collection justified by a reasonable need, there is support for its constitutionality in the analogous method through which counties collect ad valorem taxes. As previously mentioned, counties are authorized to enforce collection of fees in the same way they enforce collection of taxes. OCGA § 12-8-39.3.

39.

Therefore, this Court concludes that solid waste fees, like ad valorem taxes, license fees, and other similar governmental fees, can be collected in advance. See, e.g., City of Atlanta v. Henry Grady Hotel Corp., 220 Ga. 249, 252-53 (1964) (holding unconstitutional any method of collecting fees for liquor licenses **other than** the advance payment specified by statute). Gwinnett County's advanced collection of the solid waste fees is constitutional.

ORDER

The Court finds that Plaintiff has failed to state a claim against Sanitation Solutions, Inc, Southern Sanitation, Inc, Advanced Disposal Services Atlanta LLC, Waste Pro Of Georgia, Inc, and Republic Services Of Georgia upon which relief may be granted.

IT IS HEREBY ORDERED that each of Sanitation Solutions, Inc, Southern Sanitation, Inc, Advanced Disposal Services Atlanta LLC, Waste Pro Of Georgia, Inc, and Republic Services Of Georgia motions to dismiss is GRANTED and each Hauler Defendant is dismissed from this action.

SO ORDERED this 9th day of June, 2011.

Michael C. Clark
Judge Superior Court
Gwinnett Judicial Circuit

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