

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

VIRGIN ISLANDS UNITY DAY GROUP, INC.)	
)	
Plaintiff,)	CIVIL NO. 08-047
)	
v.)	ACTION FOR VIOLATION OF
)	42 U.S.C. § 1983; VIOLATION
GOVERNMENT OF THE VIRGIN ISLANDS,)	OF REVISED ORGANIC ACT;
ROY MARTIN, in his official capacity as,)	SPECIFIC PERFORMANCE;
Tax Assessor,)	TEMPORARY AND
)	PERMANENT INJUNCTIVE
Defendants.)	RELIEF
)	

DEFENDANTS’ OPPOSITION TO
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Defendants, by and through their undersigned counsel, hereby respond to Plaintiff’s Motion for Preliminary Injunction and states as follows:

1. **Background**

Plaintiff claims that the reassessment was not conducted in accordance with International Association of Assessing Officers (IAAO) standards as required by Section 7 (d) of Act No. 6991. Plaintiff’s allegation is belied by Special Master Joseph Hunt’s Report dated March 31, 2008. In his report, Special Master Joseph Hunt specifically stated that the “assessment system now in place meets or exceeds industry standards recommended by the International Association of Assessing Officers.”¹ The Special Master’s decision is not based on a superficial or limited review; he monitored the reassessment project for a number of years and conducted several site visits before he arrived at his conclusion that the assessment system met IAAO standards. Plaintiff or its counsel in this case is attempting to use the same allegations in this case that were made in the Berne case when the facts of this

¹ A copy of the Special Master’s Report is attached hereto.

case and the Berne are clearly different and the conditions at the Tax Assessors Office have vastly improved as indicated by the Special Master who was appointed in Berne to review the reassessment project. The system was recently certified by the Special Master as capable of producing “credible and reliable assessments as required by law.” Plaintiff’s challenge to the system clearly lacks merit.

2. **District Court lacks Jurisdiction**

Plaintiff next contends that the District Court has jurisdiction over this matter. Rather and repeat the arguments set forth in Defendants’ Motion to Dismiss, Defendants incorporate by reference the arguments set forth in Defendants Motion to Dismiss and Memorandum in Support of Motion to Dismiss that were filed on August 13, 2008 (Docket # 16).

Additionally, Defendants state that this is not a class action suit, the interest of Plaintiff and non-party taxpayers conflicts, and Plaintiff has not followed the procedures set forth in Rule 23 of the Federal Rules of Civil Procedure that is required in order to file a class action suit. To maintain a class action suit, a plaintiff must meet the mandatory requirements (numerosity, commonality, typicality, and adequacy of representation) set forth in Rule 23(a) of the Federal Rules of Civil Procedure and Rule 23 (b) (1), (2) or (3). Bogus v. Am. Speech & Hearing Ass’n, 582 F. 2d 277, 289 (3d Cir. 1974); In re Warfarin Sodium Antitrust Litigation, 391 F.3d 516, 527 (3d Cir. 2004). There has not even been any attempt by Plaintiff to certify a class. Moreover, this case would be inappropriate as a class action suit as many of the taxpayers that Plaintiff purports to sue on behalf of are completely satisfied with their assessments and their interest are adverse to that of Plaintiff. Finally, Title 3 V.I.C. § 80 does not trump Rule 23 and the Third Circuit and this Court has consistently held that standing issues in federal cases must be decided by federal law, not

local law. Rocks v. City of Philadelpis, 868 F.2d 644, 747 3d. Cir. 1989); Bryan v. Turnbull, 291 F.Supp. 2d 386, 389 (D.V.I. 2003); Russell v. de Jongh, 2007 WL 45836 (D.V.I. 2007).

3. **Injunctive Relief is Unwarranted**

Assuming, *aguardo*, that this Court possesses subject matter jurisdiction, this Court should deny Plaintiff's motion for preliminary injunctive relief as Plaintiff has failed to meet the legal requirements for granting injunctive relief.

In deciding whether to grant injunctive relief, the court must determine whether (1) there is a likelihood that the moving party will succeed on the merits; (2) the moving party will suffer irreparable harm if injunctive relief is withheld; (3) the grant of relief will not cause greater harm to non-moving parties; and (4) the public interest is furthered by the Court granting the request for injunctive relief. Rivera v. United States, 910 F.Supp. 239, 241 (D.V.I 1996); Olmeda v. Schneider, 889 F.Supp. 228 (D.V.I. 1995).

a) Plaintiff is unlikely to succeed on the merits

As stated above, Special Master Joseph Hunt in his March 31, 2008 Report specifically stated that the "assessment system now in place meets or exceeds industry standards recommended by the International Association of Assessing Officers." The Special Master, who was appointed by the District Court, monitored the progress of the reassessment for several years and periodically reported the progress of the reassessment. His decision is not based on a superficial, limited, biased, or narrow review. It took over five years of monitoring by the Special Master and millions of taxpayers dollars upgrading

the system, before the Special Master arrived at his conclusion that the real property tax assessment system in the Virgin Islands meets IAAO standards.

b) Plaintiff will not suffer irreparable harm.

Generally, in order to obtain a preliminary injunction, a plaintiff must prove that it suffered or will suffer irreparable harm. The Third Circuit has repeatedly held that a district court may issue a permanent injunction *only* after a showing of irreparable harm. Plaintiff cannot prove irreparable harm as they cannot prove that the Government has violated Act No. 6991. In Berne v. Government of the Virgin Islands, 262 F. Supp. 2d 540 (D.V.I. 2003) the court indicated that a party need not show irreparable harm where the harm is violation of a statute. Nonetheless the Court found that the plaintiffs had proved that they would suffer irreparable injury. The relaxed burden in a statutory violation case has been called into question by two Third Circuit cases – Natural Res. Def. Council v. Texaco Ref. Mktg., Inc., 906 F.2d 934, 941 (3d Cir. 1990) and Rosa v. Resolution Trust Corp., 938 F. 2d 383, 400 (3d Cir. 1990). In Temple University v. White, 941 F.2d 201 (3d Cir. 1999) the Third Circuit Court recognized that there is a conflict within the Circuit as to whether a permanent injunction requires the showing of irreparable injury.

Nevertheless, Supreme Court precedent has held that the basis for injunctive relief in the federal courts is irreparable harm and inadequacy of legal remedies. See also, Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982). The Supreme Court case of Weinberger v. Romero-Barcelo stands for the proposition that, absent a clear Congressional statement, courts should not infer that Congress intended to alter equity practices. In fact, the Supreme Court has rejected the notion that an injunction follows as a matter of course upon a finding of a statutory violation. It has stated that a federal judge should not mechanically

grant an injunction for every violation of law. *Id.* at. Additionally, in Flynn v. United States By and Through Eggers, 786 F.2d 586, 591 (3d Cir. 1986) the Third Circuit in construing § 6213(a) of the Internal Revenue Code which states that a court "may" grant injunctive relief under specified conditions explained that injunctive relief was not mandatory simply because the statutory conditions were met. The Court held that the taxpayer was required to make the kind of showing traditionally required as a prerequisite to equitable relief. The Third Circuit specifically stated that "Congress, in enacting Section 6213(a), did not repudiate the principle that injunctive relief is an extraordinary remedy which is unavailable absent a showing of irreparable injury and no adequate remedy at law." *Id.* at 592. Therefore, "unless a statute in so many words, or by a necessary and inescapable inference, restricts the Court's jurisdiction in equity the full scope of that jurisdiction is to be recognized and applied." Weinberger v. Romero-Barcelo, 456 U.S. 305, 313 (1982).

Therefore, in order to obtain a permanent injunction, Plaintiff must prove that the irreparable injury it suffered is of such a peculiar nature that "money cannot atone for it." Rivera v. United States, 910 F. Supp. 239, 241 (D.V.I. 1999). Plaintiff will not suffer any irreparable harm as it is not a property owner and it lacks associational standing. See Def's Mem in Support of Mot. to Dismiss (Docket #16). If the Court finds that Plaintiff has standing, which Defendants contends it lacks, any harm that the Plaintiff may suffer can be fully alleviated by money damages by a refund action. Courts have repeatedly held that the opportunity to sue for a refund is an adequate remedy at law, which bars the granting of an injunction through a refund action. See e.g., Church of Scientology of California v. U.S., 920 F.2d 1481, 1489 (1990). In other words, the mere entitlement to a refund does not amount to irreparable harm. It is also well established that mere allegations of financial

hardship or loss is insufficient to support a finding of irreparable harm. *See, JAZ Limited Partnership v. Government*, 25 V.I. 364, 369 (D.V.I. 1990); *Gladfelter v. Fairleigh Dickinson Univ.*, 25 V.I. 91, 98 (D.V.I. 1990). *See also, Church of Scientology of California v. U.S.*, 920 F.2d 1481 (1990) (church's claim that assessment for deficiencies in employee withholding taxes exceeded \$9 million was insufficient to show irreparable harm). Plaintiff's purported claims can be resolved through monetary remedies. In fact, the dollar amount of any refund Plaintiff or its members may be entitled to can be precisely determined. Since Plaintiff cannot prove that it will suffer any irreparable harm, the essential elements for a permanent injunction do not exist and Plaintiff is not entitled to injunctive relief.

c) Balance of harm and the public interest factors favor Plaintiff

Granting a preliminary injunction enjoining the Government from collecting property taxes will cause harm to the Government and the public. There is no basis for enjoining the collection of taxes as the Special Master has found the real property tax system to be credible and reliable and meets or exceeds IAAO standards. The harm to the public and the Government outweighs the harm to Plaintiff. Enjoining the Government from collecting the 2006 property tax bills will only delay payment of property taxes, but property taxpayers may find themselves being burdened with having to pay several years property taxes over a short period of time. An injunction will cause harm to many Virgin Islands taxpayers who have seen their property taxes fall as a result of the lower millage rate and other exemptions for residential property owners under Act No. 6991. Granting a preliminary injunction would adversely affect the Government's ability to collect property taxes. Without the ability to collect taxes the Government could find itself in dire financial circumstances. Without revenues the Government cannot pay needed salaries to teachers, government

employees, nurses, police officers, balance its budget, pay for services, and provide essential services to residents who need them. It is the public that will suffer the greatest if the Government is not allowed to collect property taxes. The public interest is best served by denying Plaintiff's motion for injunctive relief injunction.²

Plaintiff has failed to show that it is entitled to a preliminary injunction. The equities weigh in favor of denying the injunctive relief.

WHEREFORE, for the foregoing reasons, Defendants prays that this Honorable Court deny Plaintiff's Motion for Preliminary Injunctive Relief and Request for Expedited Evidentiary Hearing.

RESPECTFULLY SUBMITTED,

VINCENT F. FRAZER, ESQ.
ATTORNEY GENERAL

Dated: October 6, 2008

BY: /s/ Carol Thomas-Jacobs
CAROL THOMAS-JACOBS, ESQ.
ASSISTANT ATTORNEY GENERAL
Department of Justice
34-38 Kronprindsens Gade
GERS Building, 2nd Floor
St. Thomas, VI 00802
cjacobs@doj.vi.gov

² In a September 11, 2008, Memorandum Opinion and Order the District Court in Berne v. Government of the Virgin Islands, Civil No. 200-141, ordered the Government to rescind all 2006 tax bills issued at a rate other than prescribed in the May 12, 2003 Decree. The Government has appealed the order to the Third Circuit Court of Appeals. Since the Government is prohibited by the Court's recent order from issuing the 2006 property tax bills to all taxpayers, Plaintiff's motion is not ripe and should be further denied.

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

James M. Derr
Law Offices of James M. Derr
P.O. Box 664
St. Thomas, VI 00804

/s/ Carol Thomas-Jacobs