



BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

FEB - 5 2024

MALLIE J. & SALLY A.
SECKINGER,

Petitioner,

v.

FRANK M. O'CONNELL, in his
Official Capacity as Commissioner of
the GEORGIA DEPARTMENT OF
REVENUE,

Respondent.

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Clara Davis, Tax Tribunal Administrator

DOCKET No.: 2419690

DECISION - 2024-1 Ga. Tax Tribunal, February 5, 2024

I. INTRODUCTION

This action is an appeal brought by *pro se* Petitioners, Mallie J. and Sally A. Seckinger., challenging Statement of Taxpayer's Account(s), Letter No. L0525159024, issued by Respondent, Frank M. O'Connell, in his official capacity as commissioner of the Georgia Department of Revenue, on November 16, 2023. Petitioners filed a motion titled "Petitioner's Motion for Declaratory Summary Judgment" on December 11, 2023. In this motion, Petitioners contend that the Statement of Taxpayer's Account(s) is incorrect and request that an accurate Account Statement be mailed to Petitioners. On December 19, 2023, Respondent filed a response to Petitioners' Motion and included within that response a Cross Motion to Dismiss. Respondent argues that Petitioners' Motion fails for at least four reasons and moves to dismiss this action pursuant to *res judicata*. On January 9, 2024, Petitioners filed a response to Respondent's December 19th response. For the reasons stated herein, Petitioners' Motion is **DENIED** and Respondent's Cross Motion to Dismiss is **GRANTED**.

II. CONCLUSIONS OF LAW

a) Res Judicata Bars Petitioners' Petition

Petitioners previously filed a Petition with the Georgia Tax Tribunal on February 8, 2023. See Petition to Docket No. 2319576. Docket No. 2319576 was dismissed on October 17, 2023 following a Hearing that occurred on October 3, 2023 on the issue of Respondent's Motion to Dismiss for lack of subject matter jurisdiction. Similar to the case at hand, Petitioners filed a Motion for Declaratory Summary Judgment in Docket No. 2319576 as well. The merits of Petitioner's Motion in Docket No. 2319576 were not heard because the Motion was deemed **MOOT** after it was determined that the Tribunal lacked subject matter jurisdiction over the matter.

In the present case, Respondent argues that Petitioners' case should be dismissed because Petitioners' Petition is barred by *res judicata*. O.C.G.A. § 9-12-40 provides that “[a] judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.” O.C.G.A. § 9-12-40 is a codification of Georgia's basic common law rule of *res judicata*. See Lawson v. Watkins, 261 Ga. 147, 148 (1991). In order for one action to act as a bar to a subsequent action, the two actions must share certain characteristics. Id. “First, the parties to the two actions must be identical and, second, the subject matter of the actions must also be identical.” Id.

The Tribunal finds that the parties to the two actions are identical. In Docket No. 2319576, a Petition was filed by Petitioner, Mallie J. Seckinger Sr. In the present case, a Petition was filed by Petitioners, Mallie J. and Sallie A. Seckinger. The Respondent in both cases is the Commissioner of the Georgia Department of Revenue. Thus, the parties in the two actions are identical and the first condition of *res judicata* is met.

The Tribunal finds that the subject matter of the two actions is also identical. The Petition in

Docket No. 2319576 challenged a Statement of Taxpayer's Account(s) citing an inaccurate balance as the basis for the dispute. In the present case, Petitioners' Petition again challenges a Statement of Taxpayer's Account(s) and also cites an inaccurate balance as the basis for the dispute. Thus, the subject matter of the actions is also identical and the second condition of *res judicata* is met.

Finally, the judgment issued in Docket No. 2319576 has not been reversed or set aside. A Hearing in Docket No. 2319576 occurred on October 3, 2023. At issue during the Hearing was Respondent's Motion to Dismiss for lack of subject matter jurisdiction. Respondent's Motion to Dismiss was granted and on October 17, 2023, an Order of Dismissal was issued by the Tribunal. See Mallie J. Seckinger Sr. v. Comm'r, TAX-IIT-2319576 (Ga. Tax Tribunal 2023). Pursuant to O.C.G.A. § 9-12-40, the Tribunal finds that the judgment issued in Docket No. 2319576 shall be conclusive in the present case. Thus, *res judicata* applies to the present case and Respondent's Cross Motion to Dismiss is **GRANTED**. Because the Tribunal lacks subject matter jurisdiction over this matter, Petitioners' Motion for Declaratory Summary Judgment is deemed **MOOT** and is therefore **DENIED**.

b) Frivolous Actions


O.C.G.A. § 9-15-14 states:

The court may assess reasonable and necessary attorney's fees and expenses of litigation in any civil action in any court of record if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action, or any part thereof, that lacked substantial justification or that the action, or any part thereof, was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceeding by other improper conduct, including, but not limited to, abuses of discovery procedures available under Chapter 11 of this title, the "Georgia Civil Practice Act." As used in this Code section, "lacked substantial justification" means substantially **frivolous**, substantially groundless, or substantially vexatious.

With this dismissal, Petitioners have been put on notice that a Petition challenging a Statement of Taxpayer(s) Account is barred by *res judicata*. This Court will consider future petitions or other filings challenging the same to be considered substantially frivolous and thus, lacking substantial justification consistent with O.C.G.A. § 9-15-14. Petitioners could be subject to sanctions in the form of reasonable and necessary attorney's fees and expenses of litigation as warranted under O.C.G.A. § 9-15-14 if such petitions or filings are made in the future.

For the foregoing reasons, this action is hereby **DISMISSED**.

SO ORDERED, this 5th day of Feb, 2024.


LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL