IN THE CIRCUIT COURT
IN AND FOR
ESCAMBIA COUNTY,
FLORIDA

LETTIE ESTELLA BUCK; et. al.,

Plaintiffs,

v.

EMERALD COAST UTILITIES AUTHORITY, and PALAFOX PARTNERS, LTD.,

Case No.: 16-0419-CA
Division: A

Defendants.

ORDER DENYING EMERGENCY MOTION FOR TEMPORARY INJUNCTION PURSUANT TO COUNT III OF THIRD AMENDED COMPLAINT

THIS MATTER is before this Court on the Plaintiffs' Emergency Motion for Temporary Injunction Pursuant to Third Amended Complaint, filed September 13, 2017. Having considered said Motion, the arguments of counsel, court file and records, and being otherwise fully advised, this Court finds as follows:

A party seeking a temporary injunction must demonstrate: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) that a temporary injunction would serve the public interest. SunTrust Bank, Inc., v. Cauthon & McGuigan, PLC, 78 So. 3d 709, 711 (Fla. 1st DCA 2012). In the instant case, this Court finds that the Plaintiffs have not demonstrated a substantial likelihood of success on the merits.

The parties do not dispute the operative facts. The Plaintiffs object to the Emerald Coast Utilities Authority's (hereinafter "ECUA") decision to develop an emergency wastewater storage tank. Since commencing this action, the Plaintiffs have learned that the ECUA has pursued its development of the storage tank. (Nichols Aff., p. 2). The Plaintiffs moved for an emergency temporary injunction to prohibit the ECUA from proceeding with its development of the storage tank.

The Plaintiffs argue that the ECUA failed to comply with various statutory preconditions prior to its decision to begin development of the wastewater tank. First, the Plaintiffs argue that Section 153.03, Florida Statutes, imposes upon the ECUA a requirement to obtain City Council approval of sewer improvements within city limits. The Plaintiffs argue that the ECUA is a "functional county" and that the ECUA is bound by the statutory

requirements imposed by the Florida Legislature. The Plaintiffs argue that by succeeding the county in its role as a provider of sewer and water services, the ECUA should be bound by the applicable statutory language which previously regulated the county's actions and decision making process. Second, the Plaintiffs similarly argue that the ECUA is bound by the language contained in Sections 180.03 and 180.04, Fla. Stat., which concern certain requirements and formalities when a municipality undertakes public utility projects.

This Court finds that the legal theories upon which the Plaintiffs rely do not demonstrate a substantial success of likelihood on the merits. Specifically, this Court finds that Sections 153.03, 180.03, and 180.04, Fla. Stat., are inapplicable to the ECUA, and that the Plaintiffs have not provided an argument supported by authority which may persuade this Court to find otherwise. To the contrary, this Court finds that the legislative intent and sweeping grant of authority expressed in the ECUA's enabling legislation is clear, and this Court bound by well-established principles not to question the wisdom of the legislature. Stewart v. Green, 300 So. 2d 889, 893 (Fla. 1974).

Section 153.03 is contained in Title XI, "County Organization and Intergovernmental Relations." Section 153.03(1) grants powers to Florida's counties with respect to its management of water and sewer systems. The specific language the Plaintiffs point to concerning approval measures relates to situations where the county decides to engage in water and sewer projects within a municipality, where the county does not own property within city limits, or where the municipality is already providing similar services. The language reads, in pertinent part, "none of the facilities provided by this chapter may be constructed, owned, operated or maintained by the county on property located within the corporate limits of any municipality without the consent of the council, commission or body having general legislative authority in the government of such municipality unless such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality." Section 153.03(1), Fla. Stat. The statute further reads that no "county shall furnish any of the facilities provided by this chapter to any property already being furnished like facilities by any municipality without the express consent of the council, commission or body having general legislative authority in the government of such municipality." Section 153.03(1), Fla. Stat. It appears that these provisions are intended to resolve disputes between a county and a municipality when their functions as providers of utilities overlap.

Sections 180.03 and 180.04 are contained in Title XII, which concerns municipalities. The legislature defines a municipality as "any city, town, or village duly incorporated under the laws of the state." Section 180.01, Fla. Stat. Section 180.03 requires certain resolutions and ordinances to be passed by the city council or the legislative body of the municipality when the municipality proposes to engage in the development, construction, or extension of a utility. Section 180.03(1), Fla. Stat. This section further includes a formal process for filing objections to the municipality's proposals contained within its resolutions and ordinances. Section 180.03(2), Fla. Stat. Section 180.04 requires certain resolutions and ordinances when the

municipality actually undertakes to develop, construct, or extend a utility, acting upon the proposal required by the prior section. Section 180.04, Fla. Stat.

The Plaintiffs argue that these provisions concerning counties and municipalities apply to the ECUA. However, the ECUA clearly is not a county or a municipality, and the legislature granted the ECUA broad authority under its enabling legislation. The ECUA is an "independent special district." 2001 Fla. Laws 324 (the "ECUA Act"). This Court cannot ignore the broad language employed by the legislature in describing the roles and powers of the ECUA. The legislature describes the ECUA as a "consolidation of certain utility systems" and an "independent authority." Id. "The [ECUA] is created for the purpose of acquiring, constructing, financing, owning, managing, providing, promoting, improving, expanding, maintaining, operating, regulating, franchising, and otherwise having plenary authority…" Id. at 2. The legislature reiterates that the ECUA "shall have all powers and authorities necessary, convenient, or desirable to accomplish the purposes of this act." Id. at 3. The ECUA was granted "[a]ll power and authority heretofore possessed pursuant to law, ordinance, franchise, or otherwise by Escambia County, the Board, the City of Pensacola… related to sewage collection and disposal, and water supply… including, but not limited to… part I of chapter 153... [and] chapter 180…" Id. at 4. The Plaintiffs argue that this language grants powers, and not restrictions, and therefore, the remaining provisions relating to counties and municipalities which serve as restrictions rather than powers still apply to limit and check the authority of the ECUA. However, this Court is not persuaded that the legislature's design was to impose any such restrictions upon the ECUA. "No listing of powers included in this act is intended to be exclusive *or restrictive*." Id. at 6 (emphasis added). "On the contrary, it is intended that the authority should have all implied powers necessary or incidental to carrying out the expressed powers and the expressed purposes for which the authority is created." Id. If this language was not already sufficiently broad and clear, the legislature adds that the "provisions of this act shall be liberally construed to effectuate the purposes set forth herein." Id. at 15.

This Court finds that the legislature created the ECUA with broad, sweeping powers. This Court is bound by the principle of judicial deference, and with the instruction from the legislature to construe the ECUA Act liberally in order to give effect to the provisions and legislative purpose, this Court cannot infer, without express terms to the contrary, that the legislature intended for certain restrictions, otherwise specifically imposed upon counties and municipalities, to also restrict the ECUA. The Plaintiffs do not provide, and this Court could not find, any authority to the contrary that would lead this Court to conclude that the ECUA, an independent special district, was intended to be treated as a county or municipality for the specific statutory provisions advanced.

This Court is cognizant of the public policy concerns raised by the Plaintiffs. However, the ECUA is a creation of the state legislature, and this Court, as part of the judicial branch, is constrained by well-settled judicial principles to give deference to the duly elected legislators of the state of Florida.

This Court notes that the legislature included provisions in the ECUA Act to ensure public participation and oversight. The governing body of the ECUA is a five member elected board. 2001 Fla. Laws 324. Members are elected through primary and general elections in Escambia County, and are to serve limited terms. Id. at 2. Members must conduct, at minimum, monthly meetings, and when the ECUA takes action concerning policies, procedures, rules, and regulations, the ECUA "shall provide for notice of all public meetings and shall provide that an agenda will be available at least 3 days before any regular meeting of the authority." Id. "The authority shall be deemed… an 'agency' within the meaning of Chapter 119, Florida Statutes, and all records of the authority shall be open to the public." Id. at 3. Further, the legislature included a mechanism for opposing ECUA actions: "Any person wishing to appeal an action of the authority that directly affects his or her substantial interests may file a petition for review… The authority shall consider such petitions for review and shall take action at a public meeting to grant or deny such petitions…" Id. at 13. "A person aggrieved by a decision of the authority shall have the same rights and remedies that would have been available to him or her under general law if the action complained of had been taken by Escambia County or the City of Pensacola." Id.

Therefore, it is

ORDERED AND ADJUDGED that the Plaintiffs' Emergency Motion for Temporary Injunction Pursuant to Count III of Third Amended Complaint is **DENIED**.

DONE AND ORDERED in chambers, Escambia County, Florida, this 27 day of September, 2017.

James B. Fensom

JAMES B. FENSOM
CIRCUIT JUDGE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been provided by electronic mail to Counsel for the Plaintiffs, George R. Mead, Esq., at emead@mhw-law.com; and Counsel for the Defendants, Bradley S. Odom, Esq., at email@odombarlow.com, this 27th day of September, 2017.

Ann Nelson

Ann Nelson, Judicial Assistant