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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
JUL 02 2013
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

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LARRY MILLER and
STANLEY HAMBRICK,
Plaintiffs,

v.

CITY OF ATLANTA,
Defendant.

CIVIL ACTION FILE NO:

2011CV203707

CLARIFICATION OF DECEMBER 21, 2012 ORDER

This matter came before the Court for oral argument on Plaintiffs' EMERGENCY MOTION FOR CLAIRIFICATION and Defendant's MOTION TO DISMISS PLAINTIFFS' EMERGENCY MOTION FOR CLARIFICATION. Having considered the record, the briefs and arguments of the parties, and the applicable law, the Court hereby DENIES Defendant's motion and issues the following CLARIFICATION.

A trial court has the inherent power "[t]o amend and control its processes and orders, so as to make them comformable to law and justice." O.C.G.A. § 15-1-3(6); see Barlow v. State, 279 Ga. 870, 872, 621 S.E.2d 438, 440 (2005) ("[I]t is certain that the superior court has the power to interpret and clarify its own orders."). This power to clarify prior orders includes "shedding light on the scope of an earlier ruling." Id. (citing King v. Bishop, 198 Ga. App. 622, 402 S.E.2d 307 (1991)). On the other hand, a trial court only has the power to revise, correct, revoke, modify, or vacate a prior judgment if a motion for such revision, correction, revocation, modification, or vacation is filed during the term of the court in which the original judgment was issued. Id. (citing Tanaka v. Pecquer, 268 Ga. App. 380, 601 S.E.2d 830 (2004)). The Supreme Court of Georgia has stated that in deciding whether an order is a clarification or a modification, it is necessary to determine "whether the clarification is reasonable or whether it is so contrary to the apparent intention of the original order as to amount to a modification." Kaufmann v. Kaufmann, 246 Ga. 266, 268, 271 S.E.2d 175, 178 (1980).

This Court's original order was issued on December 21, 2012. Because Plaintiffs' motion was filed on June 10, 2013—outside the term of the Court during which the original order was issued—the Court has no jurisdiction to modify or revise the original order. Further, it is the opinion of this Court that the original order is clear and subject to only one reasonable interpretation. However, in the interest of law and justice, and due to the frequent mischaracterizations of the original order, the Court is exercising its inherent power to shed light on the scope of its earlier ruling. No portion of this clarification is to be read or construed as an attempt to modify, revise, correct, revoke, or vacate the original order.

In the second paragraph of the original order, the court identified several short form abbreviations for various documents that were referenced throughout the remainder of the order. (Order 1, Dec. 21, 2012). Atlanta City Ordinance No. 08-0-1220 was abbreviated as “the ‘Ordinance,’” Atlanta City Resolution 08-R-1209 was abbreviated as “the ‘Resolution,’” and the contract entitled FC-600700095, Public Vending Management Program was abbreviated as “the ‘Contract.’” (Order 1). Together, all three documents were abbreviated as “the ‘Vending Documents.’” (Order 1).

After discussing why the Vending Documents are unconstitutional, the Court declared in the original order that the “Vending Documents are void and without effect.” (Order 3). Therefore, in light of the short form abbreviations announced in the original order (and discussed *supra*), Atlanta City Ordinance No. 08-0-1220, Atlanta City Resolution 08-R-1209, and the contract entitled FC-600700095, Public Vending Management Program were all declared void and without effect.¹

No further clarifications of the Court's original order will be issued.

¹ The Supreme Court of Georgia has held that an unconstitutional statute or ordinance is “wholly void” and is to be viewed “as if it had never been passed.” 105 Floyd Rd., Inc. v. Crisp Cnty., 279 Ga. 825, 620 S.E.2d 826 (2005) (finding that because a local ordinance was unconstitutional, it was void at the time of enactment, and therefore, appellants could not be held in contempt for failing to abide by an injunction during the pendency of the appeal); Comm'rs of Rds. & Revenues v. Davis, 213 Ga. 792, 102 S.E.2d 180 (1958) (finding that amendments to a workers compensation statute that was previously found unconstitutional could not reinstate the unconstitutional portions of the statute because the unconstitutional portions were void from enactment); Grayson-Robinson Stores, Inc. v. Oneida, Ltd., 209 Ga. 613, 75 S.E.2d 161 (1953) (finding that the removal of the unconstitutional portions of Georgia's Fair Trade Act of 1937 did not validate the act because it was void from enactment).

SO ORDERED this the 2nd day of July, 2013.



SHAWN ELLEN LaGRUA, JUDGE

Fulton County Superior Court
Atlanta Judicial District

Distributed via electronic mail only to:

Yasha Heidari, Esq. yasha@heidariplank.com

Robert Frommer, Esq. rfrommer@ij.org

Robert Gall, Esq. bgall@ij.org

William G. Mellor, Esq. wmellor@ij.org

Amber Robinson, Esq. arobinson@atlantaga.gov

Peter Andrews, Esq. pjandrews@atlantaga.gov