



IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

JUDY PRUITT, RUSSELL PRUITT, MARK :
ROUSE, LARAN ROUSE, LEON : Docket Number:
HILLSGROVE, CHRIS DOWDY, LENA : OSAH-BNR-WQC-1027626-154-Gatto
DOWDY, BILL LEONARD, CAROL :
LEONARD, JEFF SATTERFIELD, GARY :
ESLER, VAN STEPHENS, KAREN :
STEPHENS, DIANE WEST, MARY :
NEWMAN, TERRY NALEPA, AND TERRI :
NALEPA, :

Petitioners, :

v. :

F. ALLEN BARNES, Director, :
Environmental Protection Division, Georgia :
Department of Natural Resources, :
Respondent. :

TERESA STANSEL, :
Petitioner, :

Docket Number:
OSAH-BNR-WQC-1027627-154-Gatto

v. :

F. ALLEN BARNES, Director, :
Environmental Protection Division, Georgia :
Department of Natural Resources, :
Respondent. :

MEMORANDUM OPINION AND ORDER

COUNSEL: Judy Pruitt, Pro Se, Russell Pruitt, Pro Se, Mark Rouse, Pro Se, Laran Rouse, Pro Se, Leon Hillsgrove, Pro Se, Chris Dowdy, Pro Se, Lena Dowdy, Pro Se, Bill Leonard, Pro Se, Carol Leonard, Pro Se, Jeff Satterfield, Pro Se, Gary Esler, Pro Se, Van Stephens, Pro Se, Karen Stephens, Pro Se, Diane West, Pro Se, Mary Newman, Pro Se, Teresa Stansel, Pro Se, for Petitioners

THURBERT E. BAKER, Attorney General, ISAAC BYRD, Deputy Attorney General, JOHN E. HENNELLY, Senior Assistant Attorney General, WILLIAM R. PHILLIPS, Senior Assistant Attorney General, for Respondent.
GATTO, Judge.

I. INTRODUCTION

Petitioners challenge Land Application System Permit No. GA01-524 (“Permit”) issued to Chris Mote’s Pumping Services, LLC on March 2, 2010 by Respondent for a land application system on Paradise Valley Road near Cleveland, Georgia.¹ A motion for summary judgment was filed and joined by most of the Petitioners.² Respondent opposed the motion and filed a counter motion for summary judgment. Petitioners filed a Response to Cross Motion for Summary Judgment and Respondent filed a Reply to Petitioners’ Response to Cross Motion for Summary Judgment. For the reasons indicated below, Petitioners’ motion is **GRANTED** and Respondent’s motion is **DENIED**.

II. UNDISPUTED FACTS

The Permit was issued by the Respondent pursuant to the Georgia Water Quality Control Act, O.C.G.A. § 12-5-30, to Chris Mote’s Pumping Services, LLC on March 2, 2010. The original application in this matter was submitted by Chris Mote’s Pumping Service, Inc, even though Chris Mote’s Pumping Service, Inc. did not exist at the time of the application. Chris Mote submitted the application for the Permit using the Business name but with the designation

¹ These cases were consolidated for trial and disposition since they involved common issues of law or fact.

² The Court’s Administrative Rules of Procedure refer to a “summary judgment” motion as a “summary determination” motion. *See* A.R.P. Rule 15.

“Inc.” at the end instead of “LLC”. The applicant corrected the ending designation of that name during the permitting process to EPD’s satisfaction.

III. STANDARD OF LAW

A summary judgment motion before the Court is properly granted where the moving party demonstrates that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. *See* A.R.P. Rule 15. However, when a motion for summary judgment is made and supported, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing. A.R.P. Rule 15(3); *see generally Southeast Reducing Co. v. Wasserman*, 229 Ga. App. 1 (1997) (affidavit that is conclusory and unsupported by substantiating fact or circumstances is insufficient to raise a genuine issue of material fact.) The standards applicable to motions for summary judgment are announced in *Lau's Corp. v. Haskins*, 261 Ga. 491 (1991). When ruling on a motion for summary judgment, the opposing party is given the benefit of all reasonable doubt, and the court should construe the evidence and all inferences and conclusions therefrom most favorably toward the party opposing the motion. *Moore v. Goldome Credit Corp.*, 187 Ga. App. 594, 595-96 (1988). A motion for summary judgment should not be granted unless it affirmatively appears from the pleadings and evidence that the party so moving is entitled to prevail. *Finch v. City of Atlanta*, 232 Ga. 415, 416 (1974). *See generally* O.C.G.A. § 9-11-56 (c); *Sanders v. Colwell*, 248 Ga. 376 (1981).

IV. ANALYSIS

The parties agree that the original application in this matter was submitted by Chris Mote’s Pumping Service, Inc. The parties also agree that Chris Mote’s Pumping Service, Inc. did

not exist at the time of the application. However, as Respondent correctly notes, neither the applicable statute nor the applicable regulations prohibit a permit applicant from correcting or amending a permit application. To the contrary, inasmuch as application materials “submitted shall be complete and accurate,” Ga. Comp. R. & Regs. r. 391-3-6-.11(5)(c), the Court concludes that it is incumbent upon the applicant to correct any clerical errors or misprints in the application in order for the application process to proceed. The applicant did so here to Respondent’s satisfaction and to this Court’s satisfaction. Thus, the Court concludes that the application was corrected to indicate that Chris Mote’s Pumping Services, LLC was the applicant.

Under the Georgia Water Quality Control Act, a "person" is required to apply for a permit. *See* O.C.G.A. § 12-5-30. Under the Act, a “person” means “any individual, *corporation*, partnership, or other unincorporated association. This term may extend and be applied to bodies politic and corporate.” (Emphasis added.) O.C.G.A. § 12-5-22(7). In their Response to Cross Motion for Summary Judgment, Petitioners argue that although a “corporation” is authorized to file an application for a permit, a “limited liability company” is not a “corporation” and is therefore not authorized to file an application. In Respondent’s Reply to Petitioners’ Response to Cross Motion for Summary Judgment, Respondent argues that a limited liability company is one legal form of a corporation.

Under Georgia’s Land Disposal and Permit Requirements, any land disposal system permit application form is required to be signed as follows:

1. *For a corporation, by a responsible corporate officer.* For this subparagraph a responsible corporate officer means:
 - (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$ 25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

3. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

(Emphasis added.) Ga. Comp. R. & Regs. r. 391-3-6-.11(d).³

Thus, the question before the Court is whether a limited liability company is authorized to file a permit application under Ga. Comp. R. & Regs. r. 391-3-6-.11(d)(1). The Georgia Limited Liability Company Act provides that a "corporation" is "a corporation incorporated under [the Georgia Business Corporation Code]." O.C.G.A. § 14-11-101(5). On the other hand, a "limited liability company" is "a limited liability company formed under [the Georgia Limited Liability Company Act] by one or more members." O.C.G.A. § 14-11-101(12).

The Georgia Limited Liability Company Act provides in relevant part that "management of the business and affairs of the limited liability company shall be vested in the *members*, and, subject to any provisions in the articles of organization or a written operating agreement, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto." (Emphasis added.) O.C.G.A. § 14-11-304(a). Therefore, a limited liability company does not have a "responsible corporate officer," but rather, has "members." And "members" are not one of the enumerated individuals authorized to sign an application under Ga. Comp. R. & Regs. r. 391-3-6-.11(d)(1).

Thus, the Court concludes that although the federal and state regulations authorize the filing of an application by a "corporation," they do not authorize the filing of an application by a

³ Ga. Comp. R. & Regs. r. 391-3-6-.11(d) requires applications to be signed in accordance with 40 CFR 122.22, which has identical language.

“limited liability company” since a limited liability company is not a corporation.⁴ Here, the amended application was filed in the name of “Chris Mote’s Pumping Service, LLC”, which is a limited liability company. The Court therefore concludes that the Respondent improperly granted an application to Chris Mote’s Pumping Service, LLC, a limited liability company. Thus, it affirmatively appears from the pleadings and evidence that Petitioners’ are entitled to prevail on their summary judgment motion. Accordingly,

V. ORDER

IT IS HEREBY ORDERED THAT Petitioners’ Motion for Summary Judgment is **GRANTED**, Respondents’ Motion for Summary Judgment is **DENIED**, and the Respondent’s decision to issue Land Application System Permit No. GA01-524 to Chris Mote’s Pumping Services, LLC is **REVERSED**.

IT IS FURTHER ORDERED THAT based upon this ruling, the action is removed from the Court’s trial calendar and all witnesses are released from any pending subpoenas.

SO ORDERED THIS 7th day of June, 2010.


JOHN B. GATTO, Judge

⁴ In *Eckles v. Atlanta Technology Group*, 267 Ga. 801 (1997), the Supreme Court established that only a licensed attorney is authorized to represent a corporation in a proceeding in a court of record. The *Eckles* decision contains language limiting its application to corporations. In *Winzer v. EHCA Dunwoody, LLC*, 277 Ga. App. 710, 713 (2006), the Supreme Court expressly extended *Eckles*' application to limited liability companies. Thus, it is clear that a limited liability company is not a corporation but is a separate and distinct legal entity.