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Order (WILLIAM A. WILLIS)

Alice D. Bonner
Superior Court of Fulton County

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Recommended Citation
Bonner, Alice D., "Order (WILLIAM A. WILLIS)" (2010). *Georgia Business Court Opinions.* Paper 45.
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WILLIAM A. WILLIS, *et al.*,	)	
Plaintiffs,	)	**Civil Action File No. 2007-CV-128923**
v.	)	
EMPLOYEES RETIREMENT SYSTEM OF GEORGIA, *et. al.*,	)	
Defendants,	)	

FILED IN OFFICE
MAY 17 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER

On April 14, 2010, counsel appeared before the Court to present oral argument on the Parties' cross motions for summary judgment regarding the Ninety Percent Rule. The Parties have resolved Plaintiffs' claims in this case through a court-approved class action settlement. However, they continue to disagree as to whether a rule adopted and followed by Defendant Employee Retirement System of Georgia may be applied to payments to class members in this case. The parties agreed to resolve their dispute over the Ninety Percent Rule by filing cross motions for summary judgment. After hearing the arguments made by counsel, and reviewing the briefs submitted on the motions and the record in the case, the Court finds as follows:

The Employee Retirement System of Georgia ("ERS") was established by a 1949 Act of the General Assembly, Ga. L. 1949, p. 138, § 1 et seq., which is currently codified as O.C.G.A. § 47-2-1 ("ERS Act"). The ERS Act vests management of ERS in a Board of Trustees. O.C.G.A. § 47-2-20. The Board of Trustees is charged with the "administration" and "proper operation of the retirement system and for effectuating [the ERS Act]." O.C.G.A. § 47-2-21 (a).

The 1949 Act did not provide a specific method for calculating retirement benefits. In 1954, the Board of Trustees adopted a rule that limited maximum receivable retirement benefits to no more than eighty percent of a retiree's highest monthly salary. In 1955, the Board of Trustees amended that rule to allow up to ninety percent of a retiree's highest monthly salary. Plaintiffs argue that the Ninety Percent Rule should not be applied to payments to class members in this case because it conflicts with the ERS Act. The Court finds that in the absence of a method for calculating retirement benefits in the ERS Act, the Board of Trustees has the authority to adopt rules for such calculation. Alverson v. Employees' Retirement System of Georgia, 272 Ga. App. 389, 393 (2005) (noting that "because neither of these Code sections [in the ERS Act] provides a formula for the calculation of service retirement benefits, the authority to do so rests with the Board under the general grant of authority in O.C.G.A. § 47-2-20 to effectuate the provisions of the ERS Act.").

Plaintiffs further argue that the Board of Trustees repealed the Ninety Percent Rule in 1961. Specifically, Plaintiffs cite to meeting minutes of the Board of Trustees from June 8, 1961 which provide:

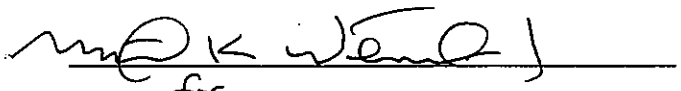
> Following the discussion of the presently effective Board ruling which takes into consideration monthly allowances not to exceed 90% of the members' highest monthly salary; the Board amended the rule by providing that all calculation of benefits shall be made without withholding from the member or the beneficiary any part of the benefits payable. The rule to which this is to be applicable is, that no check shall be issued for payment of benefits which is in excess of 90% of the member's highest monthly salary and said excess shall not be considered as due and payable.

The Court finds that the plain text of these minutes undermines Plaintiffs' argument that the Board of Trustees repealed the Ninety Percent Rule. The Board of Trustees did not use words such as repeal, abolish or the like, but instead, the Board

noted that it "amended" the Ninety Percent Rule. The actions of ERS since the Board of Trustees' meeting in June 1961 also undermine Plaintiffs' argument. ERS has continued to apply the Ninety Percent Rule, since it was established in 1955, until today. Such practice is inconsistent with Plaintiffs' argument that ERS intended to do away with the rule altogether in 1961.

For the foregoing reasons, the Court finds that ERS's Ninety Percent Rule may be applied to payments payable to class members in this case. Accordingly, Plaintiffs' Motion for Partial Summary Judgment Concerning the 90% Benefits Reduction is DENIED and Defendant's Motion for Summary Judgment Concerning the Application of the "Ninety Percent (90%)" Rule in Calculations of Retiree Benefits is GRANTED.

SO ORDERED this 17th day of May, 2010.



for
Alice D. Bonner, Senior Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

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