

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

Mark Gregory Thompson and)
Jane Page Thompson, individually and on)
behalf of all those similarly situated,)

Civil Action No. 2021CP0202323

Plaintiffs,)

**ORDER GRANTING
MOTION TO DISMISS BY
DEFENDANTS CITY OF AIKEN
AND AIKEN CITY COUNCIL**

v.)

Clay Killian, in his official capacity as)
Aiken County Administrator, Jason Goings,)
in his official capacity as Treasurer of)
Aiken County, Aiken County Council,)
Aiken County, City of Aiken, Aiken City)
Council, and Stuart Bedenbaugh in his)
official capacity as City Manager of Aiken,)

Defendants.)
_____)

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SC Court of Appeals

Defendants City of Aiken, Aiken City Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken (referred to collectively as "City Defendants" or the "City")¹ move to dismiss and for judgment on the pleadings pursuant to Rule 12(b)(1), Rule 12(b)(6), and Rule 12(c), SCRCF. Present for the hearing were William C. Lewis, counsel for the Plaintiffs, and Andrew F. Lindemann for the City Defendants, and Bradley T. Farrar as counsel for the Aiken County Defendants. The motion seeks dismissal without prejudice for lack of subject matter jurisdiction, or alternatively for dismissal with prejudice as to the merits. If the court understood correctly the concessions stated in oral argument by the Plaintiffs concerning withdrawal of certain claims against the City, the only cause of action remaining against the City Defendants is for unjust

¹ By Partial Stipulation of Dismissal filed April 13, 2022, the Plaintiffs stipulated that "the Third Cause of Action for violation of S.C. Code Ann. § 8-21-30 against the Defendant Stuart Bedenbaugh in his official capacity as City Manager of Aiken is dismissed." Therefore, the Defendant Bedenbaugh has been dismissed from this action.

enrichment.² The court finds that this class action lawsuit is not permitted in circuit court and dismisses this action, without prejudice, based on a lack of subject matter jurisdiction.

BACKGROUND

The Plaintiffs Mark Gregory Thompson and Jane Page Thompson commenced this lawsuit to challenge the alleged wrongful collection of a road maintenance fee that was imposed by Aiken City ordinance in 2016, effective January 1, 2017. The Defendants associated with county government have also filed a similar motion to dismiss concerning the County's ordinances, and that motion is addressed in a separate order.

The Plaintiffs rely on the recent decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court reversed the lower court and ruled that Greenville County's "road maintenance fee" is actually a tax.

Following the *Burns* decision, on August 23, 2021, the Aiken City Council rescinded or repealed the road maintenance fee effective July 1, 2021. As a result, the road maintenance fee is no longer being collected. In addition, the City decided to reimburse all road maintenance fees that have been paid since July 1, 2021.

² Plaintiffs' counsel stated on page 62 of the transcript: "And, lastly, I will accept the stipulation that money damages aren't being claimed under the due process claim. I would ask, then, that that cause of action be dismissed. And I, certainly, am in agreement with the argument that the — or the concession that the declaratory judgment against the City of Aiken defendants is moot." The abandonment of the declaratory judgment cause of action creates a confusing posture. The Plaintiffs lawsuit is based on the assertion that the Aiken City road maintenance fee is a tax. So, it seems that the only way that relief could be granted is if the court were to decide that *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021) established that the Aiken City ordinance is a tax. If so, there would be issues as to whether the fee falls within the definition of "tax" under the Revenue Procedures Act (RPA), which arguably requires all disputes concerning taxes to be handled through administrative channels. The court is not permitted to decide a case or controversy that is moot. The court is unclear how it would be possible to decide the foundational issue in the Plaintiffs' favor without a declaratory judgment to that effect. *Burns* acknowledges that road maintenance fees may be properly levied, if the legislative history and reasoning stated by the local government for a particular ordinance is in compliance with the law. That appears to be a case-by-case analysis.

The Plaintiffs conceded at the hearing that the declaratory judgment cause of action is moot due to the rescission of the City's ordinance. There being no remaining case or controversy as to the declaratory judgment action, it is inappropriate for the court to address it here.

The Plaintiffs also seek monetary relief in the form of a refund of the road maintenance fees previously paid. The Complaint states three causes of action for monetary relief, but only one is currently asserted against the City Defendants, the Second Cause of Action for unjust enrichment.³ Thus, the Plaintiffs' First and Fourth Causes of Action against the City Defendants are dismissed by consent, without prejudice.

I. Lack of Subject Matter Jurisdiction

With the withdrawal of all but the unjust enrichment claims, many of the arguments in support of the City's motion are now immaterial. Issues do remain as to whether the action for unjust enrichment is a claim covered by the RPA, which must be addressed through administrative action, and whether this class action lawsuit against a governmental agency and its officials is barred by the decision in *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). The court determines that *Aiken* prohibits this action, and it does not reach the other subject matter jurisdiction arguments.

Aiken was decided based on a catchall phrase that is unique to class actions. (§12-60-80(C)). The dispute in *Aiken* concerned hospital debts from governmentally owned hospitals, which are permitted to contract with the Department of Revenue to collect those debts under §12-4-580. The term "tax" is a defined term under the RPA, and arguments were raised in the Supreme

³ The Complaint raised monetary damages on the following theories: (1) an equitable claim for unjust enrichment against all Defendants; (2) a claim for violation of S.C. Code § 8-21-30 which is asserted against the County Defendants only; and (3) a claim for violation of Article I, § 3 of the South Carolina Constitution against all Defendants. The Plaintiffs agreed to dismissal of their Fourth Cause of Action because they cannot seek monetary relief pursuant to the South Carolina Constitution. *See, Palmer v. South Carolina*, 427 S.C. 36, 829 S.E.2d 255, 261 (Ct. App. 2019) (certiorari denied on May 28, 2021) ("the South Carolina Constitution does not provide for monetary damages for civil rights violations and the legislature has not enacted an enabling statute").

Court, as they have been here, that the RPA is inapplicable because the contested charges do not fall within the definition of "tax." In *Aiken*, the Supreme Court did not deem it necessary to decide that issue.⁴

The Court in *Aiken* focused on §12-60-80(C) of the RPA. The key words related to evaluating the present motion are "**any other action.**" [the catchall clause] *Aiken* states:

[S]ubsection 12-60-80(C) provides:

Notwithstanding subsections (A) and (B), a claim or action for the refund of taxes may not be brought as a class action in the Administrative Law Court or any court of law in this State, *and the department, political subdivisions, or their instrumentalities may not be named or made a defendant in any other class action brought in this State.* (emphasis added to catchall clause). The answer to the question of whether this action may proceed as a class action is found in our analysis of the catchall clause of subsection (C). Therefore, we need not address the issue of whether the debts purportedly owed by Respondents to the hospitals are "taxes" as that term is defined in subsection 12-60-30(27) of the RPA. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing an appellate court need not address remaining issues when the disposition of a prior issue is dispositive of the appeal).

We reverse the circuit court and hold this case cannot proceed as a class action against the Department.

While *Aiken* involved a lawsuit against the Department of Revenue, clearly bringing the action under this Subsection, all of the City Defendants in this motion would be considered as falling under the term "political subdivisions, or their instrumentalities." As interpreted by the

⁴ In this court's view, there was a stronger argument for dismissal in *Aiken* because the collection of these debts fell within the definition of "tax" because they were subject to "collection by the department."

Supreme Court in *Aiken*, a class action may not be brought against them in any court of law in this State.

Most critically regarding the pending motion, *Aiken* states, "We hold subsection 12-60-80(C) indicates no intent to limit or restrict the general words 'any other class action' in the catchall clause of subsection (C) to the specific subject of taxes." 429 S.C. 414, at 420.

II. Dismissal of Second Cause of Action for Unjust Enrichment

Since the court has decided that it lacks subject matter jurisdiction, this order does not address the argument for dismissal on the merits based on sovereign immunity concerning the unjust enrichment cause of action. (*See McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), the South Carolina Tort Claims Act enacted in 1986, and *Murphy v. Richland Memorial Hospital*, 317 S.C. 560, 455 S.E.2d 688 (1995)).

THEREFORE, IT IS ORDERED that this case against the City Defendants is dismissed, without prejudice.

AND IT IS SO ORDERED.

[Judge's electronic signature follows on separate page]



Aiken Common Pleas

Case Caption: Mark Gregory Thompson , plaintiff, et al VS Clay Killian , defendant,
et al
Case Number: 2021CP0202323
Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley