

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 Mark Gregory Thompson and Jane Page)
 Thompson, individually and on behalf)
 of all those similarly situated,)
)
 Plaintiffs,)
)
 vs.)
)
 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.)
)
 _____)

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT

Civil Action Number: 2021CP0202323

RECEIVED

Mar 14 2023

SC Court of Appeals

**ORDER GRANTING
 DEFENDANTS’ MOTION TO DISMISS
 WITHOUT PREJUDICE JASON GOINGS,
 IN HIS OFFICIAL CAPACITY AS
 TREASURER OF AIKEN COUNTY,
 and AIKEN COUNTY, and DISMISSING
 BY CONSENT CLAY KILLIAN, IN
 HIS OFFICIAL CAPACITY AS AIKEN
 COUNTY ADMINISTRATOR, and
 AIKEN COUNTY COUNCIL**

Heard: April 20, 2022 via Webex Virtual Courtroom by consent

Attorney for Plaintiffs: William C. Lewis

Attorney for Aiken Co. Defendants (Killian, Goings, County Council, & Aiken County): Bradley T. Farrar

Attorney for City of Aiken Defendants (City Council, Bedenbaugh, & the City): Andrew Lindeman

Court Reporter: None – Webex recording procedure, by consent

A Rule 12(b)(6) motion to dismiss the Complaint, with prejudice, or, in the alternative, to dismiss the case without prejudice for lack of subject matter jurisdiction has been brought by the Defendants Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, and Aiken County.¹ Because the decision in *Aiken v. South Carolina Dept. of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020) is binding upon this court, the class action lawsuit against

¹ Two Defendants were dismissed by agreement. The motion was originally brought by Defendants Clay Killian, in his official capacity as Aiken County Administrator, Jason Goings, in his official capacity as Treasurer of Aiken County, Aiken County Council, and Aiken County. Plaintiffs agreed to dismiss, without prejudice, Aiken County Council and Clay Killian, as Aiken County Administrator.

the parties designated above is dismissed, without prejudice. Because of the dismissal on this ground, this order does not address the other issues raised.

BACKGROUND

The Plaintiffs challenge the alleged wrongful collection of the Aiken County Road Maintenance Fee beginning in 1992 and continuing each year since. The Plaintiffs rely on *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021), in which the South Carolina Supreme Court ruled that a Greenville County road maintenance fee is invalid because it is actually a tax that violates S.C. Code Ann. § 6-1-310. Properly enacted service or user fees are permitted under § 6-1-330.

The First Cause of Action seeks a judgment declaring the current and former Aiken County's fees are taxes disguised as fees. In the other causes of action, the Plaintiffs seek for themselves and as a class to recover monetary relief for refunds of fees previously paid. The Plaintiffs assert three causes of action for monetary relief: (1) an equitable claim for quantum meruit/unjust enrichment against all Defendants; (2) a claim for violation of S.C. Code § 8-21-30 for illegally collected fees and for a penalty of ten times the fees against the Treasurer only; and (3) a claim for violation of Article I, § 3 of the South Carolina constitution against all Defendants.

The Plaintiffs' memo in support of the motion begins, as follows:

On June 30, 2021, the South Carolina Supreme Court announced to all counties in this state that fees, like the Road Maintenance Fees at issue, are illegal and not authorized under South Carolina law. See *Burns v. Greenville County Council*, 433 S.C. 583, 590 (2021) (“Going forward, courts will carefully scrutinize so-called ‘service or user fees.’”) (J. Kittredge, concurring). The Defendants in this action (both Aiken County and the City of Aiken) had all but identical Road Maintenance Fees to the one invalidated in *Burns*. Given this, post the *Burns* decision, Aiken City Defendants have repealed their illegal Road Maintenance Fee, but have failed to refund any of the illegal fees collected. Compl. ¶ 37. Interestingly, despite having an identical ordinance, Aiken County continues to collect monies pursuant to this illegal fee. *Id.* ¶ 26. As a result, Defendants are

hoarding millions in illegally collected Road Maintenance Fees that they refuse to return to their citizenry. Id. ¶¶ 10, 42.

Contrary to this argument, *Burns* does not appear to declare all such fees invalid, and it leaves open the ability to collect maintenance fees, if the proper procedures are followed. A main question concerning this motion is the appropriate forum for determining whether Aiken County's fees are permissible or are taxes disguised as fees. The court does not reach that issue because the Plaintiffs cannot proceed in a class action under the statute.

STANDARD

At the Rule 12(b)(6) stage, the court is required to take all averments in the Complaint and all reasonable inferences therefrom in the light most favorable to the Plaintiffs. Dismissal is a drastic remedy that is to be invoked cautiously, and the inquiry is generally limited to reviewing the four corners of the Complaint.

GROUNDSS ASSERTED FOR DISMISSAL

The Defendants raise several grounds for dismissal of the Complaint. They maintain that the Plaintiffs' claims are premised on their assertion that the fee is actually a tax and that challenges of taxes fall within the Revenue Procedures Act ("RPA"). The RPA establishes that claims for refunds of money paid for taxes are made through an administrative process, that declaratory judgment actions are barred in circuit court (except where there is a constitutional challenge to the tax), and that class actions are prohibited. Defense counsel has also raised the issue that the claims are barred by sovereign immunity, but that relates only to the unjust enrichment claim.

Subject Matter Jurisdiction

The Defendants argue that the RPA vests exclusive jurisdiction over tax disputes to an administrative process, with review by the Administrative Law Court and the South Carolina Court of Appeals. Subsections (A) and (B) of § 12-60-80 read:

§ 12-60-80. Wrongful collection of taxes; declaratory judgment; class action prohibited.

(A) Except as provided in subsection (B), *there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes.*

(B) Notwithstanding subsection (A), an action for a declaratory judgment where the sole issue is whether a statute is constitutional may be brought in circuit court. This exception does not include a claim that the statute is unconstitutional as applied to a person or a limited class or classes of persons.

The undersigned judge has wrestled extensively with the issues related to this motion and has asked for additional input of counsel following the hearing. Both sides have responded, and both have submitted orders from learned circuit judges who reached different conclusions.² The court is particularly concerned about whether the Plaintiffs can seek relief in the circuit court to answer the fundamental question of whether Aiken County's fees are unlawful, perhaps through a bifurcated procedure. The court is also concerned about the impact of the definitions section of the RPA, such as the definition of the words "tax" and "Department."³ Definitions may impact the analysis by limiting the ordinary and customary scope and meaning of words. Ultimately, this court cannot get around the holding in *Aiken*.

Aiken was decided based on a catchall phrase that is unique to the 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-

² Motions to alter or amend have been filed with some or all of those circuit judges who have ruled.

³ The definitions section of the Revenue Procedures Act, §12-60-30(27) defines the term "tax," as follows: "'Tax' or 'taxes' means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment or collection by the department." "Department" is defined as the South Carolina Department of Revenue.

4-580. An issue was raised as to whether these debts fell within the definition of taxes in the RPA, but the Supreme Court did not deem it necessary to decide that issue.⁴

Our Supreme Court in *Aiken* focused on the so-called "catchall" provision of §12-60-80(C) of the RPA. The key words related to evaluating the present motion are "**any other action.**" *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 Defendants in this motion would be considered as falling under the term "political subdivisions, or their instrumentalities." As interpreted by the Supreme Court in *Aiken*, a class action may not be brought against them in any court of law in this State.

⁴ In this court's view, there was a much more solid position in *Aiken* that the collection of debts fell within the definition of "tax" because they were subject to "collection by the department."

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.

THEREFORE, IT IS ORDERED that this case is dismissed, without prejudice, as to the Defendants named as bringing this motion or being dismissed by consent. Since the case is being dismissed as to these Defendants, the other issues raised by the parties are not addressed in this order.

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