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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442

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

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 Counsel, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken Respondents.

FINAL *AMICUS CURIAE* BRIEF ON BEHALF OF BEAUFORT COUNTY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Court Rules

INTEREST OF AMICUS CURIAE

Beaufort County is a political subdivision of South Carolina empowered under law to assess ad valorem taxes and uniform service charges. Beaufort County has imposed a uniform service charge on county residents' vehicles (referred to herein as a "road fee") since 1993. Beaufort County is presently a named defendant in a putative class action challenging its road fee, styled Civil Action No. 2021-CP-07-01967 ("Beaufort County Case"). The plaintiffs' theories and claims in the Beaufort County Case are essentially identical to the claims and theories at issue in the appeal presently before this Court, as well as the claims in a number of other road fee cases across the State.[1] The road fee cases across the State are in various stages of litigation, but this is the first road fee case to reach our appellate courts. Accordingly, the resolution of this case on appeal could greatly impact the trajectory of the other road fee cases.

More generally, the outcome of these road fee cases is of paramount importance to the entire State and its citizenry. First, the amount of money the plaintiffs are seeking in these numerous road fee cases is staggering. Not only do the plaintiffs universally seek a refund of all road fees collected over a number of years, they also seek a ten-times multiplier on those fees. In Beaufort County alone, the plaintiffs seek an estimated $227 million in damages. Any such recoveries will necessarily come out of the pockets of local governments and their citizens, causing financial instability and hardship. Second, the ability of political subdivisions to provide safe and convenient roadways for their citizens and tourists alike will be extremely hampered if these entities cannot impose road fees. Building and maintaining roads is a core government function. Counties and cities rely on these road fees as a critical source of revenue to support their roadways,

[1] There are presently cases at various stages of circuit court litigation in at least the following counties: Aiken County, Beaufort County, Florence County, Georgetown County, Horry County, Kershaw County, Orangeburg County, Richland County, and Spartanburg County.

as they have very limited means for collecting revenues outside of charging uniform service fees. *See, e.g.*, S.C. Code § 6-1-310 (Except for value-based property taxes, local governing bodies "may not impose a new tax . . . unless specifically authorized by the General Assembly."). Thus, the continued viability of these road fees is critically important for South Carolina.

For these reasons, Beaufort County respectfully submits this brief for the Court's consideration.

STATEMENT OF ISSUES ON APPEAL

1. The circuit court correctly determined that Appellants are not entitled to the declaratory judgment they seek under the Supreme Court's holding in *Burns v. Greenville County Council*, 433 S.C. 583 (2021).

2. The circuit court correctly applied the "catchall clause" in S.C. Code § 12-60-80(C) to dismiss all of Appellants' class claims.

3. Assuming the disputed road fees are impermissible taxes, the circuit court properly determined that Appellants are not entitled to relief on their causes of action, either because Appellants did not exhaust their exclusive remedies under the Revenue Procedures Act (if the road fees are "property taxes") or because the voluntary payment bars recovery (if the road fees are not "property taxes").

4. The circuit court correctly determined that Appellants are not entitled to the statutory penalty in S.C. Code § 8-21-30 for the alleged improperly charged fees.

STATEMENT OF THE CASE

Beaufort County adopts and incorporates by reference the Statement of the Case set forth in the Initial Brief of Respondents dated August 23, 2023.

STANDARD OF REVIEW

In deciding a motion to dismiss, "the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Cases that present legal questions, and do not involve facts, are well suited for dispositive motions. *See Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 434, 622 S.E.2d 564, 568 (Ct. App. 2005) ("When the dispute is not as to the underlying facts but as to the interpretation of the law, and the development

of the record will not aid in the resolution of the issues, it is proper to decide even novel issues on a motion to dismiss."). "Although our Court has held that 'important questions of novel impression should not be decided on a motion to dismiss,' this general rule does not apply when the determinative facts are not in dispute." *Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 168, 785 S.E.2d 595, 598 (2016) (citing *Unisys Corp. v. S.C. Budget & Control Bd. Div. of Gen. Servs. Info. Tech. Mgmt. Off.*, 346 S.C. 158, 164, 551 S.E.2d 263, 267 (2001)). "Where, as here, the question is one of simple statutory construction, a trial court should not deny a meritorious motion merely because the question is one of first impression." *Kubic,* 416 S.C. at 168, 785 S.E.2d at 598.

When reviewing a trial court order granting a motion to dismiss, "the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. at 395, 645 S.E.2d at 247. However, on appeal, "[t]he appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." SCACR, 220(c). Accordingly, a respondent's brief may "contain argument asking the court to affirm for any ground appearing on the record." SCACR. 208(b)(2).

INTRODUCTION

Many of the road fees that are currently under attack, if not most, have been in place for several decades. This recent wave of lawsuits was precipitated by a Supreme Court ruling in 2020 invalidating one county's road fee as an impermissible tax: *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). However, the pending cases have little in common with the *Burns* case and pose an unjustified and reckless threat to the financial stability of impacted counties.

In *Burns*, a few members of the General Assembly challenged Greenville County's road fee and alleged it was an illegal tax. Notably, the plaintiffs in *Burns* did not seek any monetary

damages, nor did they seek class certification. The Supreme Court ultimately ruled in favor of the plaintiffs in *Burns* after determining that the road fee did not satisfy the "in some manner different" analysis under S.C. Code § 6-1-300(6). Importantly, the Supreme Court in *Burns* did not: (i) invalidate all county road fees, (ii) consider the applicability of the Grandfather Clause in S.C. Code § 6-1-330(A) (discussed in Roman Numeral I below) to any road fee, or (iii) consider any of the issues that persuaded the circuit court to grant Respondents' motion to dismiss in the case at hand. For these reasons, *Burns* is of no help to the Appellants in this appeal.

The current road fee cases seek to invalidate numerous counties' road fees that have been used to support South Carolina roads for decades. The plaintiffs in these cases seek class certification in order to seek hundreds of millions of dollars in damages. But the plaintiffs in these cases do not allege that imposing uniform service charges for the purpose of supporting county roads is illegal, improper, or unnecessary, nor do the plaintiffs allege that the counties used the road fees for an unauthorized or undesirable purpose. In fact, the plaintiffs in these cases do not provide any cogent public policy reasons for attacking the county road fees. Rather, the plaintiffs seek to expand *Burns* to not only invalidate longstanding county road fees, but also to do what *Burns* never contemplated: allow the recovery of hundreds of millions of dollars from local governments. Were the plaintiffs in these cases to prevail, the consequences would be catastrophic for local governments and their citizens. As previously stated, counties have limited means to generate revenue. All counties can do is assess ad valorem property taxes and impose uniform service charges. Therefore, how do the plaintiffs envision the counties would pay for such recoveries? Presumably, it would have to be through increased ad valorem property taxes. So, the very plaintiffs intended to benefit from these putative class actions (*i.e.*, county residents) would have to foot the bill for their "victory."

At the end of the day, county road fees are vital to counties' ability to ensure their residents and visitors can safely and enjoyably travel. South Carolina relies heavily on tourism via its roadways. South Carolina residents do not want their roads to fall into disrepair. Respectfully, Beaufort County urges this Court to consider the potential impact of overturning the circuit court's decision to dismiss Appellants' case. The financial risks to our State's political subdivisions and its citizens are too dire to ignore.

ARGUMENT

I. Road fees imposed prior to December 31, 1996 are statutorily grandfathered and are not subject to the Supreme Court's ruling in *Burns*.

Road fees adopted prior to December 31, 1996 are not governed by the "some manner different" analysis of S.C. Code § 6-1-300(6). Therefore, road fees adopted prior to December 31, 1996 are insulated from the Supreme Court's finding in *Burns*. Accordingly, Appellants' causes of action against Aiken County's road fee in reliance on *Burns* cannot lie because Aiken County implemented its road fee prior to December 31, 1996. *See* (**Appellants' Initial Brief, p. 10**) ("Aiken County Respondents enacted an ordinance that imposed the County's Road Maintenance Fee in 1992.").

Pursuant to the Home Rule Act, the General Assembly explicitly set forth the powers counties may exercise, including "to assess . . . uniform service charges . . . and make appropriations for functions and operations of the county, including . . . roads." S.C. Code § 4-9-30(5)(a). In the predecessor case to *Burns* challenging a county road fee in 1992, the South Carolina Supreme Court acknowledged that "[w]ithout ambiguity and by its express terms, [S.C. Code § 4-9-30] provides counties with additional and supplemental methods for funding improvements. This is consistent with the intention of the drafters of the Home Rule Act to provide county government with the option of imposing service charges or user fees upon those who use

county services . . . ." *Brown v. County of Horry*, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992). Accordingly, the Supreme Court in *Brown* upheld Horry County's road fee, finding that county road fees were permissible so long as "(1) the revenue generated is used to the benefit of the payers, ***even if the general public also benefits*** (2) the revenue generated is used only for the specific improvement contemplated (3) the revenue generated by the fee does not exceed the cost of the improvement and (4) the fee is uniformly imposed on all payers." *C.R. Campbell Const. Co., Inc. v. City of Charleston*, 325 S.C. 235, 237, 481 S.E.2d 437, 438 (1997) (summarizing the Court's findings in *Brown*) (emphasis added).

In 1997, five years after *Brown*, the General Assembly enacted S.C. Code § 6-1-300(6), imposing the "some manner different" requirement on uniform service charges implemented ***after*** December 31, 1996. Importantly, the General Assembly recognized that some local governing bodies adopted uniform service charges prior to the enactment of S.C. Code § 6-1-300(6). The counties that did adopted such uniform service charges pursuant to the grant of authority in S.C. Code § 4-9-30(5)(a). At the same time it adopted S.C. Code § 6-1-300(6), the General Assembly explicitly recognized that uniform service charges adopted prior to 1997 were still valid. Specifically, the General Assembly simultaneously adopted S.C. Code § 6-1-330(A), stating "[a] fee adopted or imposed by a local governing body prior to December 31, 1996, ***remains in force and effect until repealed*** by the enacting local governing body, ***notwithstanding the provisions of this article***." (emphasis added) (hereinafter the "Grandfather Clause"). The Grandfather Clause is still in effect today.

Importantly, the Supreme Court in *Burns* did not address the Grandfather Clause. Presumably this is because it was not raised by the parties.[2] *See Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984) ("[A]ppellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked."). Regardless, the Supreme Court did not invalidate (or even consider) the Grandfather Clause in *Burns*, and certainly could not do so impliedly and without justification. Therefore, the Grandfather Clause must be read in harmony with *Burns*, which is easily accomplished. The Supreme Court in *Burns* only analyzed road fees subject to the "in some manner different" standard imposed by the General Assembly on road fees adopted after December 31, 1996. For road fees adopted prior to December 31, 1996, the Supreme Court's holding in *Brown* still applies (*i.e.*, that a road fee benefiting the fee-payers is valid even if the road fee also benefits the general public).

The Appellants in the instant case, as well as the plaintiffs in the Beaufort County Case and the other road fee cases, have not argued that the disputed road fees do not benefit the fee-payers. Instead, they have only argued that the road fees do not benefit fee-payers "in some manner different." Accordingly, for road fees adopted prior to December 31, 1996, such as the Aiken County road fee and the Beaufort County road fee, plaintiffs have not pled an actionable cause of action and their claims were properly dismissed by the circuit court. The "in some manner different" analysis simply does not apply. For both Aiken and Beaufort Counties, their roads fees were adopted prior to December 31, 1996, and they have never been repealed. Thus, according to the plain and unmistakable statutory language in the Grandfather Clause, Aiken and Beaufort

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[2] The Supreme Court in *Burns* appears to have assumed (without finding) that the Greenville County road fee was imposed after December 31, 1996. *Burns*, 433 S.C. at 587, 861 S.E.2d at 33. The Greenville County road fee was actually implemented in 1993, but Greenville County presumably did not argue the applicability of the Grandfather Clause.

Counties' road fees "remain[] in force and effect until repeal[] by the enacting local governing body . . . ." S.C. Code § 6-1-330(A).

II. The "catchall clause" in the Revenue Procedures Act plainly and unambiguously precludes class actions against counties.

The circuit court dismissed Appellants' class action claims in reliance on the "catchall clause" in S.C. Code § 12-60-80(C). There are two parts to S.C. Code § 12-60-80(C). The first part of S.C. Code § 12-60-80(C) states "a claim or action for a ***refund of taxes*** may not be brought as a class action," and the second part (or "catchall clause") states "and the department [of revenue], political subdivisions, or their instrumentalities may not be named or made a defendant in ***any other*** class action brought in this State." (emphasis added). In *Aiken v. S.C. Dep't of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020), the Supreme Court determined that the catchall clause is not limited to cases involving tax refunds, as indicated by the phrase "any other class action." Notably, the Supreme Court in *Burns*, decided the year after *Aiken v. Dep't of Revenue*, did not rule on or even consider whether the catchall clause in S.C. Code § 12-60-80(C) precludes a class action for the purpose of challenging a political subdivision's road fee and seeking monetary damages. Of course, the Supreme Court in *Burns* did not rule on this issue because the plaintiffs in *Burns* did not seek any money and therefore had no reason to proceed as a class action.

In the absence of any support or analysis from the Supreme Court in *Burns* and in direct contradiction to the Supreme Court's holding in *Aiken v. S.C. Dep't of Revenue*, Appellants argue that it was never the intent of the General Assembly to prohibit all class action lawsuits against political subdivisions in the catchall clause of S.C. Code § 12-60-80(C). (**Appellants' Initial Brief, pp. 16-22**) (**Appellant's Reply Brief, pp. 6-7**). Appellants look to other provisions within the Revenue Procedures Act ("RPA") to make their case. But Appellants' effort to identify evidence of the General Assembly's intent outside of S.C. Code § 12-60-80(C) violates the rules

of statutory interpretation. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.") (emphasis added).

South Carolina law is clear:

> **What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will**. Therefore, courts are bound to give effect to the expressed intent of the legislature. Thus, we must follow the plain and unambiguous language in a statute and have no right to impose another meaning. It is only when applying the words literally leads to a result so patently absurd that the General Assembly could not have intended it that we look beyond the statute's plain language.

Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535-36, 725 S.E.2d 693, 695-96 (2012) (internal citations omitted) (emphasis added). Courts do not engage in the rules of statutory construction (including an analysis of legislative intent) when the plain language of the statute is unambiguous. Therefore, unless S.C. Code § 12-60-80(C) is ambiguous, Appellants' argument that the Court can and should look to any other provision of the RPA when interpreting S.C. Code § 12-60-80(C) violates the rules of statutory interpretation.

Despite ***never once*** arguing that S.C. Code § 12-60-80(C) is ambiguous, Appellants nonetheless argue that in interpreting S.C. Code § 12-60-80(C), the Court should look to S.C. Code § 12-60-**20** and the Supreme Court's ruling in *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 798 S.E.2d 555 (2017) construing that statutory provision. The Supreme Court in *Lightner* was asked to determine whether S.C. Code § 12-60-**20** applied only to disputes with DOR concerning property taxes, or if it applied *both* to disputes with DOR (regardless of whether property taxes are at issue) *and* disputes over property taxes (regardless of whether DOR is a party). *Lightner*, 419 S.C. at 363-366, 798 S.E.2d at 558-59. The Court found that the plain language of S.C. Code § 12-

60-**20** supported the latter, broader reading. The Court then found that a class action for the refund of taxes is expressly prohibited under the first clause of S.C. Code 12-60-80(C) and therefore **never reached** the catchall clause at issue in this case and at issue in *Aiken v. S.C. Dep't of Revenue*. *Id.* at 367-68, 798 S.E.2d at 560. Simply put, *Lightner* is not instructive whatsoever on the meaning or applicability of the catchall clause in S.C. Code § 12-60-80(C), whereas *Aiken v. S.C. Dep't of Revenue* is directly on-point.

In *Aiken v. S.C. Dep't of Revenue*, the Supreme Court closely examined the catchall clause of S.C. Code § 12-60-80(C). The Supreme Court employed the rules of statutory interpretation and determined that the plain and unambiguous language of the catchall clause controlled the analysis. The Court determined "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' set forth in the first portion of subsection (C)." 429 S.C. at 415, 839 S.E.2d at 99. In fact, the Supreme Court declared that "[t]o interpret the catchall clause in this fashion would simply amount to an unnecessary re-recitation of the first portion of subsection (C); this would be an absurd and forced construction of the catchall clause." *Id.* Thus, the Supreme Court already analyzed the catchall clause and found that it plainly applies to all class actions against a political subdivision, not just those related to property taxes or taxes more generally. To ***not*** read it that way would lead to an absurd result. *See Grier*, 397 S.C. at 535, 725 S.E.2d at 695 (According to the rules of statutory interpretation, courts can only deviate from the plain meaning when applying the words literally would lead to a result so patently absurd that the General Assembly could not have intended it.). Accordingly, there is no need to look to other sections of the RPA or extrinsic

evidence to discern the General Assembly's intent. It is clear.[3] Moreover, Appellants' argument that S.C. Code § 12-60-80(C) should be interpreted in a different manner is nothing more than an argument to overrule *Aiken v. S.C. Dep't of Revenue*.

In an additional effort to overcome the Supreme Court's holding in *Aiken v. S.C. Dep't of Revenue*, Appellants ask this Court to limit the applicability of the case. Appellants argue that the Court in *Aiken v. S.C. Dep't of Revenue* only precluded "the instant action" from proceeding as a class action. Appellants argue that these three words—"the instant action"—evidences an intent by the Court to limit the application of the case. (**Appellants' Reply Brief, p. 6**). Appellants put more weight on the phrase "the instant action" that it can bear.

As an initial matter, the Supreme Court could have easily decided that its opinion in *Aiken v. S.C. Dep't of Revenue* had no precedential value if that is what the Court intended. When the Supreme Court makes such a decision, it does so unambiguously. *See Conits v. Conits*, No. 2018-001468, 2019 WL 6188646, at *1 (S.C. Nov. 20, 2019) (noting decision has no precedential value); *S.C. Elec. & Gas Co. v. Anson Constr. Co.*, No. 2015-001456, 2017 WL 877324, at *1 (S.C. Mar. 1, 2017) (same). Likewise, the Supreme Court could have said its decision in *Aiken v. S.C. Dep't of Revenue* was a narrow holding as it has done in other cases, but it did not. *See Hardee v. Bio-Med. Applications of S.C., Inc.*, 370 S.C. 511, 516, 636 S.E.2d 629, 632 (2006) (noting that the Court's decision was "a very narrow holding"). The Supreme Court could have said that its decision in *Aiken v. S.C. Dep't of Revenue* was limited to the facts at issue in that particular case as it has done in other cases, but it did not do that either. *See Linda Mc Co. v. Shore*, 390 S.C. 543,

[3] Notably, if the General Assembly disagreed with the Supreme Court's reading of the catchall clause in *Aiken v. S.C. Dep't of Revenue*, the General Assembly could have amended the statute to better reflect legislative intent. This is what the General Assembly did in the wake of *Burns* when it adopted Act 236 in 2022 to amend S.C. Code § 6-1-300(6). But the General Assembly did not do that here.

554, 703 S.E.2d 499, 505 (2010), overruled by *Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018) ("We want to stress that this is a narrow holding limited to facts similar to those at issue in this case.").

In sum, there was no attempt by the Court in *Aiken v. S.C. Dep't of Revenue* to limit its decision. Furthermore, Appellants' argument disregards the reality that the Court's decision in *Aiken v. S.C. Dep't of Revenue* had nothing to do with the ***facts*** of that particular case. In *Aiken v. S.C. Dep't of Revenue*, the Supreme Court sought to interpret S.C. Code § 12-60-80(C), which is a question of law. *See Univ. of S. California v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) ("An issue regarding statutory interpretation is a question of law."). Questions of law by definition have nothing to do with facts. Likewise, cases requiring statutory interpretation have nothing to do with facts. In interpreting S.C. Code § 12-60-80(C), the Court looked only to the plain language of the provision at issue, and not to any other statutory provisions. *Aiken v. S.C. Dep't of Revenue*, 429 S.C. at 421, 839 S.E.2d at 100. The Court did not look to any of the facts particular to *Aiken v. S.C. Dep't of Revenue* in interpreting S.C. Code § 12-60-80(C). Rather, based on the plain language of S.C. Code § 12-60-80(C), the Court determined "the instant action" could not proceed as a class action. *Aiken v. S.C. Dep't of Revenue*, 429 S.C. at 421, 839 S.E.2d at 100. The Court's decision was based on its statutory interpretation of S.C. Code § 12-60-80(C), not on any facts particular to that case. And, the Court's interpretation of S.C. Code § 12-60-80(C) is binding in this case.

Based on all of the foregoing, Appellants' class action claims were properly dismissed by the circuit court.

III. It does not matter whether or not the road fees are determined to be "property taxes" subject to the RPA; Appellants' pleadings cannot survive a motion to dismiss.

Appellants and Respondents both dedicate significant space in their briefing to argue whether the challenged road fees are "property taxes" subject to the exclusive remedies set forth in the RPA. If the road fees are property taxes, then Appellants failed to exhaust their available remedies under the RPA and their case should be dismissed for lack of subject matter jurisdiction. *See* **(Respondents' Initial Brief, pp. 6-11)**. Appellants argue that the road fees are not property taxes, and indeed are not taxes at all under the definition of "tax" in the RPA, and therefore the exclusive remedies provided in the RPA do not bar Appellants' case from proceeding in circuit court. **(Appellants' Initial Brief, pp. 14-19)**. Assuming that Appellants are correct that the RPA does not apply but the Aiken County road fee is nonetheless an unlawful tax like the Greenville County road fee in *Burns*, Appellants claims are still barred by the voluntary payment rule and cannot survive a motion to dismiss.

The voluntary payment rule provides that a voluntary payment of a tax or fee, even if that tax or fee is declared illegal, is not recoverable in the absence of statutory authority providing for recovery. *Baker v. Allen*, 220 S.C. 141, 149, 66 S.E.2d 618, 621 (1951); *City of Columbia v. Peurifoy*, 148 S.C. 349, 146 S.E. 93, 94 (1928); *S.C. Self Storage Assoc. v. City of Forest Acres*, No. 2007-CP-40-00316, 2010 WL 9499364, at *9 (S.C. Com. Pl. Apr. 13, 2010); Re: Your Letter of March 2, 2001, WL 790268, at *2 (S.C.A.G. June 22, 2001). All payments of taxes or fees are presumed voluntary. *Baker*, 220 S.C. at 151, 66 S.E.2d at 622. The burden is on the payer to demonstrate involuntariness. *Id.* "This is a difficult burden to overcome ...." *Church of God v. Estes*, No. 2013-CP-10-01686, 2015 WL 13669160, at *3 (S.C.Com.Pl. May 11, 2015) (citing *Baker*, 220 S.C. at 151, 66 S.E.2d at 622). If the payer can demonstrate the payment was made involuntarily, the amount of the tax or fee can be recovered. *Baker*, 220 S.C. at 149, 66 S.E.2d at 622.

To demonstrate involuntary payment, the payer must show the payment was made under coercion or duress. *Id.*, 66 S.E.2d at 621-22. Traditionally, courts have found duress of payment existed in two limited circumstances: (i) where payment was necessary to avoid threatened interference with present liberty of person, and (ii) where payment was necessary to avoid loss of property. *Joy Apartments, LLC v. Town of Cornwall*, 160 A.D.3d 958, 960, 75 N.Y.S.3d 249 (2018). South Carolina only recognizes duress in these two limited circumstances. *Baker*, 220 S.C. at 151-52, 66 S.E.2d at 623. In South Carolina, payment made under protest alone, "unaccompanied by other circumstances, is insufficient to convert a voluntary payment into an involuntary one so as to authorize recovery." *Id.* at 150, 66 S.E.2d at 622. Of course, on some level, "the payment of a tax or municipal fee is by nature involuntary." *Video Aid Corp. v. Town of Wallkill*, 85 N.Y.2d 663, 666 (1995). "Whether a payment is considered involuntary in the context of an action for reimbursement of taxes or fees paid to a governmental entity is a question of intention to be resolved upon consideration of the totality of the circumstances." *Id.* at 666-67. In *Baker*, the Supreme Court of South Carolina noted "whether duress or compulsion exists in a ***particular transaction*** is ordinarily a ***question of fact*** depending on the situation of the parties and all the surrounding circumstances." 220 S.C. at 152, 66 S.E.2d at 623 (emphasis added).

In the road fee cases across the State (including the one presently on appeal), the individual plaintiffs have not pled ***any facts***, even viewed in the light most favorable to the plaintiffs, to support a finding or an inference that the plaintiffs paid the road fees involuntarily (*i.e.*, under duress). The plaintiffs in these cases do not even allege payment of the road fees under protest. Thus, Appellants failed to create a question of fact that would preclude dismissal.[4]

[4] Not only does the voluntary payment rule bar the individual plaintiffs' claims in these cases, it also precludes proceeding as a class action because even if the plaintiffs had alleged payment of the road fees under duress in their individual capacities, the assessment of whether a taxpayer paid

In summary, Appellants' claims cannot survive as a matter of law regardless of whether the road fees are subject to the RPA or not. If the former, the circuit court does not have subject matter jurisdiction; if the latter, Appellants' claims are on their face insufficient to overcome the voluntary payment rule.[5] Thus, in either scenario, the circuit court was correct to dismiss Appellants' claims.

IV. The statutory penalty in S.C. Code § 8-21-30 invoked by Appellants does not allow for a 10x recovery in this case.

Appellants in this case and in the other road fee cases across the State are seeking not only repayment of their road fees going back many years; they are also seeking to bootstrap an unrelated statute that allows recovery of ten-times the amount of an improperly charged fee in certain circumstances. *See* S.C. Code § 8-21-30. In this case, Appellants rely on this statutory multiplier to seek tens of millions of dollars in penalties. The parties dedicate a significant amount of space in their briefs arguing whether the statutory multiplier at S.C. Code § 8-21-30 is applicable to road fees collected by a county treasurer. *See* (**Appellants' Initial Brief, pp. 22-27**); (**Respondents' Initial Brief, pp. 14-19**). Beaufort County concurs with Respondents' arguments about why the statutory multiplier is not applicable in this case and the other road fee cases (*e.g.*, only enumerated public officers charging fees for enumerated services are subject to the statutory penalty), and will not repeat that analysis here. Instead, Beaufort County offers an additional reason the statutory multiplier does not apply in this case or the other road fee cases.

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under duress is a question of fact particular to specific parties and surrounding circumstances. *See, e.g.*, *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 22, 577 S.E.2d 190, 201 (2003) (A representative class cannot exist where the court must investigate each plaintiff's claim.).

[5] Notably, the issue of the voluntary payment rule did not arise in the *Burns* case, as the plaintiffs there sought only a declaratory judgment and not a refund of any road fee payments.

S.C. Code § 8-21-30 states "[i]f any officer herein named shall charge any other fee or fees for any services herein mentioned, such officer shall be liable to forfeit ten times the amount so improperly charged, to be recovered by suit in the court of common pleas, by attachment or by sale ***when the penalty does not exceed twenty dollars***." (emphasis added). The first section of the sentence explains the trigger ("if any officer herein named shall charge any other fee or fees for any services herein mentioned"); the second section of the sentence explains the penalty ("such officer shall be liable to forfeit ten times the amount improperly charged"); the third section of the sentence explains the mechanism for recovery ("to be recovered by suit in the court of common pleas, by attachment or by sale"); and, finally, the fourth section of the sentence imposes a limitation on the recovery ("when the penalty does not exceed twenty dollars.").

Again, South Carolina law is clear that courts do not need to apply the rules of statutory construction when the plain language of a statute is clear. *Grier v. AMISUB*, 397 S.C. at 535-36, 725 S.E.2d at 695-96. South Carolina law is also clear that courts must give effect to all of the words in a statute. *See, e.g., CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.") (internal citations omitted). The only way to give full effect S.C. Code § 8-21-30 is to impose the twenty dollar limitation on the statutory penalty applied to improperly charged fees. Otherwise, that final clause would be superfluous.

There are very few cases interpreting the statutory penalty on fees improperly charged by public officers, and the cases that exist are quite old. The leading cases are *Dean v. Todd*, 49 S.C. 461 (1897) and *Tinsley v. Kirby*, 8 S.C. 113 (1877). *Dean* involved whether a magistrate judge in Oconee County could charge a fee that is not contemplated by statute. *Kirby* involved whether a Constable could charge a fee not contemplated by statute. Thus, neither is directly on point. There

has never been a case where a party has attempted to recover ten times the amount collected when challenging a municipal, county, or state fee or tax. This dearth of cases reflects the limited circumstances in which S.C. Code § 8-21-30 can be invoked. Many of those limitations are set forth in Respondents' Initial Brief, and the twenty-dollar limitation is surely another.

Here, even if Appellants were to argue for applying the statutory multiplier on each individual tax payment, the penalty would be still be in excess of the twenty dollar limitation in each instance. The annual Aiken County road fee was between fifteen and twenty-five dollars, depending on the assessment year. Applying a ten-times multiplier to each individual fee payment would therefore result in a penalty far in excess of twenty dollars, which is not allowed under S.C. Code § 8-21-30. For example, in a year where the Aiken County road fee was fifteen dollars, a ten-times penalty would amount to one hundred and fifty dollars, far in excess of the statutory limit of twenty dollars for a penalty. For this reason, as well as the reasons explained in Respondents' brief, the circuit court was correct to dismiss Appellants' claims for a statutory multiplier pursuant to S.C. Code § 8-21-30.

CONCLUSION

For the reasons set forth herein, as well as the reasons explained in Respondents' Initial Brief, Beaufort County respectfully urges the Court to uphold the circuit court's order dismissing all of Appellants' individual and class causes of action.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442

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

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 Counsel, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken Respondents.

CERTIFICATE OF COUNSEL

This Final *Amicus Curiae* Brief on behalf of Beaufort County complies with Rules 208(b) and 211, SCACR.

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