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Sep 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
William P. Keesley, Circuit Court Judge

Appellate Case No. 2023-000442
Case No. 2021-CP-02-02323

Mark Gregory Thompson and Jane Page Thompson, individually and
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 Council, and Stuart
Bedenbaugh, in his official capacity as City Manager of Aiken, Respondents.

**RETURN TO APPELLANTS' MOTION
TO CERTIFY TO SOUTH CAROLINA SUPREME COURT**

The Appellants have filed a motion to certify this appeal to the South Carolina Supreme Court pursuant to Rule 204(b), SCACR. For the reasons discussed below, the Respondents believe that this is an appropriate case for certification.¹

¹ As a procedural matter, the Respondents note that this motion was filed in the Court of Appeals rather than the Supreme Court which is the proper court to adjudicate a Rule 204(b) certification motion. It would appear that the Appellants will need to re-file this motion with the Supreme Court unless the motion has been transferred by the Court of Appeals. The parties, however, have not been given notice that this motion has been transferred to the Supreme Court for consideration and adjudication.

Rule 204(b), SCACR, provides that "[i]n any case which is pending before the Court of Appeals, the Supreme Court may ... on motion of any party to the case ... certify the case for review by the Supreme Court before it has been determined by the Court of Appeals." Rule 204(b) further provides that "[c]ertification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance." *See*, Rule 204(b), SCACR.

To presumably support their position, the Appellants proceed to argue the merits of the appeal as part of their motion to certify. The Appellants, in fact, have chosen to make numerous inflammatory statements that defy common sense and have no support in the record. Thus, the Respondents dispute the characterizations and legal positions taken by the Appellants in their motion, but this return is not the appropriate avenue to address the merits. In actuality, the merits of the brief have been fully briefed by the parties, and to the extent that the Supreme Court wishes to consider the issues raised and the merits of the appeal in its adjudication of the Rule 204(b) motion, the Supreme Court can refer to the briefs rather than to this motion and return.

The Respondents will focus instead on whether this appeal is an appropriate candidate for certification under Rule 204(b). Ultimately, this appeal is appropriate for certification for two primary reasons.

First, as the Supreme Court has already recognized, there are currently pending in the circuit courts ten similar or related lawsuits brought as purported class actions against local governments to challenge the collection of road maintenance fees in the aftermath of the Supreme Court's decision in *Burns v. Greenville County Council*, 433 S.C. 583, 861 S.E.2d 31 (2021). Those lawsuits include claims for the recovery of road maintenance fees collected in Beaufort County, Florence County, Georgetown County, Horry County, Kershaw County,

Orangeburg County, Richland County, and Spartanburg County. On May 17, 2023, then Chief Justice Donald W. Beatty issued an Order identifying the current lawsuit and the others still pending in the circuit courts in an order consolidating those cases for the adjudication by a single circuit court judge, Judge Roger Young, with regard to the retroactivity provision in Section 2(E) of Act No. 236. That order by the Chief Justice thus acknowledged that there are multiple lawsuits raising similar claims and defenses that impact multiple local governments and the taxpayers of those counties and municipalities. The Respondents herein thus acknowledge that the decision in the case at bar, which is the only case to have reached final judgment, will significantly impact the other pending lawsuits. It is that impact, together with the significant government resources at issue, that merit careful consideration of Rule 204(b) certification. In the Respondents' view, it is that impact that satisfies the requirement under Rule 204(b) for a significant public interest or a legal principle of major importance.

Second, based on the aforementioned order issued by former Chief Justice Beatty, there was a recent order issued by Judge Young in only one of the ten consolidated cases, specifically in *Butts v. Mace*, Civil Action Number 2021-CP-22-928 arising out of Georgetown County, in which Judge Young granted partial summary judgment to the Plaintiffs in that action finding that Section 2(E) of Act No. 236 is unconstitutional. That Order by Judge Young was appealed by the Defendants in that action, and that appeal has been docketed in the Supreme Court because the constitutionality of a state statute is at issue. *See*, Appellate Case Number 2024-001481. Thus, the Supreme Court already has before it one of the related cases on a constitutional question, and it would seem both prudent and a matter of judicial economy for both cases to be before the Supreme Court on appeal, rather than have one case docketed in the Court of Appeals and the other in the Supreme Court.

For these reasons, the Respondents consent to the certification of this appeal to the Supreme Court pursuant to Rule 204(b).

Respectfully submitted,

s/ Andrew F. Lindemann

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s/ Bradley T. Farrar

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

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court’s Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for Respondents City of Aiken, Aiken City Council, and Stuart Bedenbaugh in his official capacity as City Manager of Aiken, does hereby certify that service of the **Return to Appellants’ Motion to Certify to Supreme Court** in the above-captioned matter was made upon all counsel of record by email only this the 26th day of September 2024, as follows:

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**Also Admitted in North Carolina*

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SC Court of Appeals

Via Email Only

The Honorable Jenny Abbott Kitchings

Clerk of Court

South Carolina Court of Appeals

Email: ctappfilings@sccourts.org

RE: Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated 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 Council, and Stuart Bedenbaugh, in his official capacity as City Manager of Aiken
SCCA Appellate Case Number: 2023-000442
Civil Action Number: 2021-CP-02-2323
Claim Number: SF-21-1122-0001
Our File Number: 321.20529

Dear Ms. Kitchings:

Pursuant to Section (b)(2) of the Supreme Court's Order RE: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (as Amended April 24, 2024), please find enclosed for filing the **Return to Appellants' Motion to Certify to Supreme Court** in the above referenced matter. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

By copy of this letter, I am also filing a copy with the Clerk of the South Carolina Supreme Court. I would note that Appellants' counsel appears to have filed their Rule 204(b) motion only in the Court of Appeals, and I am unaware whether that motion has been transferred to the Supreme Court for a decision.

If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosure

The Honorable Jenny Abbott Kitchings
September 26, 2024
Page Two

cc: The Honorable Patrica A. Howard (*w/Enclosure, via Email Only*
- suptfilings@sccourts.org)
Terry E. Richardson, Jr., Esquire (*w/ Enclosure, Via Email Only*)
William C. Lewis, Esquire (*w/ Enclosure, Via Email Only*)
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