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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

RETURN TO RESPONDENTS' PETITION FOR REHEARING

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Appellants Mark Gregory Thompson and Jane Page Thompson, individually and on behalf of all those similarly situated, respectfully submit this Return in opposition to Respondents' Petition for Rehearing at the Court's request. "In order to prevail on a petition for rehearing, [the party seeking rehearing] must demonstrate the Court overlooked or misapprehended their argument." *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Rule 221(a), SCACR). Respondents identify no points overlooked or misapprehended by the Court. Respondents have failed to meet their burden under Rule 221(a), SCACR. Apart from advancing new arguments, Respondents seek merely to relitigate issues the Court has already considered and rejected, reflecting nothing more than their disagreement with the result. Accordingly, Respondents' Petition for Rehearing must be denied.

I. The Court correctly held that section 12-60-80(C) does *not* bar class actions brought against political subdivisions outside the scope of the Revenue Procedures Act.

Respondents argue that this Court adopted an improper and "narrow" reading of section 12-60-80(C) by limiting its application to class actions involving the Department of Revenue and property taxes.[1] *See* Resp. Petition for Rehearing at 2. Respondents claim this reading "effectively strikes" the words "political subdivisions or their instrumentalities" from the statute and permits class actions to proceed when the General Assembly and the RPA did not intend for it. *Id*. at 3. Respondents further insist that this interpretation "in effect overrules" *Aiken v. South Carolina Department of Revenue*, 429 S.C. 414, 839 S.E.2d 96 (2020). *Id*. Respondents misconstrue the Court's opinion and, in doing so, seek to have the Court ignore the legislative intent of the RPA, articulated through the unambiguous text therein. This Court should reject an

[1] "'Property tax' means ad valorem taxes on real and personal property." S.C. Code Ann. § 12-60-30(18).

invitation to ignore the RPA's plain language, and if Respondents believe any issue remains, the remedy lies with the General Assembly.

A. The Court did not strike "political subdivisions or their instrumentalities" from section 12-60-80(C).

Respondents claim the Court's decision "strikes" the phrase "political subdivisions or their instrumentalities" from section 12-60-80(C). Petition at 2-3. The Court neither removed nor ignored any statutory language; Respondents simply disagree with the Court's interpretation. The Court clearly considered and rejected the argument that subsection (C) bars all class actions in which a political subdivision is a defendant. *See* Op. at 9. Recognizing that the "main goal of statutory interpretation is to give effect to the legislature's intent," and by giving effect to the RPA as a whole—the RPA's stated intent clearly limits the application of the RPA to disputes concerning property taxes and disputes with SCDOR. Op. at 7-8. The phrase "political subdivisions or their instrumentalities" remains operative in the RPA but only as applied to those cases concerning property taxes as the General Assembly intended.

Reading section 12-60-80(C) consistently with the rules of statutory construction, definitions in section 12-60-30(18), and the legislative intent in section 12-60-20, the Court correctly limited the application of the RPA (and its class action bar) to disputes involving property taxes and disputes with SCDOR. *See* Op. at 8-10. Respondents' Petition simply restates the same position the Court already rejected, and it must be denied.

B. The Court's opinion does not overrule *Aiken v. South Carolina Department of Revenue*.

Respondents also contend that by declining to apply subsection (C) outside the RPA's limited scope, the Court has "effectively overruled" *Aiken v. SCDOR* without saying so. Petition at 8-9. Not true. The opinion discusses *Aiken*, reiterates its holding, and distinguishes it from this

case. Op. at 8-9. As the Court noted, *Aiken* addressed "whether subsection (C)'s catchall provision barred a class action ***against the Department of Revenue*** for the refund of money it collected on behalf of two political subdivisions." *Id.* (emphasis supplied). The Court applied subsection (C) and recognized that doing so was "sound in cases involving the Department of Revenue, as the legislature intended the RPA to govern all claims against that agency." Op. at 8-9 (quoting *Aiken*, 429 S.C. at 416–20, 839 S.E.2d at 97–99). Far from overruling *Aiken*, the Court faithfully applied it.

Aiken falls squarely within the RPA because it involved SCDOR—the very entity to which the Act is directed. Respondents' continued refusal to acknowledge this basic distinction underscores the central flaw in their argument. Respondents' arguments ultimately reflect nothing more than a disagreement with the Court's analysis, not a demonstration of error. Respondents invite the Court to disregard the RPA's text, its structure, its purpose, and its legislative history. The Court correctly declined to do so. Rehearing is therefore unwarranted.

II. The Court correctly held that the Road Maintenance Fees at issue are not "taxes" under the RPA.

Respondents' next argument rests on a misuse of the term "tax" and a conflation of the Road Maintenance Fees with "taxes" as defined in the RPA. Petition at 5. However, the Court is clear:

> The RPA defines "tax" or "taxes" as "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." § 12-60-30(27). A tax under the RPA, therefore, must be either established under title 12, or be assessable or collectible by the Department of Revenue. *Id.* **The road maintenance fees here meet neither condition**.

Op. at 6 (emphasis supplied).

The Road Maintenance Fees at issue arise under Titles 4 and 6 of the South Carolina Code, which govern local government service or user fees, not Title 12; and the Department of Revenue has no authority to assess or collect them. *See* Op. at 6-7; *see also Richland Cnty. v. South Carolina Department of Revenue*, 422 S.C. 292, 306, 811 S.E.2d 758, 765 (2018) (discussing SCDOR's regulatory oversight over Title 12 taxes).

In any event, the funds at issue are not "taxes" at all. Respondents themselves adopted these charges as fees because local governments lack the authority to impose new taxes absent express authorization from the General Assembly. *See* S.C. Code Ann. § 6-1-310 ("A local governing body may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly."). As the Court recognized, *Burns* held only that Greenville County's road-maintenance charge was an unlawful tax under Title 6 because it failed to qualify as a uniform service charge or user fee. *Burns v. Greenville County Council*, 433 S.C. 583, 585–90, 861 S.E.2d 31, 31–34. But *Burns* never addressed whether such a charge is a "tax" under the RPA. Op. at 7. And while *Burns* held that a purported fee may be unlawful because it functions like a tax under Title 6, that does not convert the charge into a "tax" under the RPA's section 12-60-30(27). *Id*. Thus, Respondents cannot adopt a charge as a fee—because they lack authority to adopt a new tax—and then, when sued, recast that same charge as a "tax" to bar a class action under the RPA. Accordingly, "[t]he road maintenance fees do not fall within the RPA's definition of 'taxes,' and therefore the jurisdictional bars of the RPA do not apply." Op. at 7. Respondents have raised no argument that warrants the Court's rehearing on this issue.

A. Respondents raise new arguments that are improper on a Petition for Rehearing.

Respondents next argue—*for the first time*—that the term "taxes," as defined in the RPA, is far broader and more flexible than the statute's express definition because section 12-60-30

contains a qualifier stating, "except when the context clearly indicates otherwise." Petition at 5-6. A petition for rehearing is not a vehicle for presenting new legal theories. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citing Toal, Vafai & Muckenfuss, *Appellate Practice in South Carolina* 309 (1999); *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)). This was not raised and ruled upon in the lower court or the appellate courts. Put simply, there is no context to consider, and even if there were, context cannot overrule the Legislature's expressly defined terms.

B. Substantively, this new argument fails.

Even setting aside the procedural impropriety, Respondents' argument fails for multiple reasons. First, this Court's decision in *Lightner v. Hampton Hall Club, Inc.* confirms the RPA's limits. In *Lightner*, the Court held—based squarely on section 12-60-20—that the RPA "applies to disputes with the SCDOR, which may not concern property taxes, *and* to disputes concerning property taxes, which may involve the SCDOR or a county or municipality." 419 S.C. 357, 365, 798 S.E.2d 555, 559 (2017) (emphasis supplied). *Lightner* reinforces exactly what the Court recognized here: the RPA's coverage is expressly confined to SCDOR matters and to property tax disputes as defined by statute. Respondents' after-the-fact attempt to expand that definition—through a qualifier they never previously raised—cannot override the statute's plain text.Further, this case was dismissed at the Rule 12(b)(6) stage, where "[t]he question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Patterson v. Witter,* 425 S.C. 213, 225, 821 S.E.2d 677, 684 (2018)

(quoting *Doe v. Marion,* 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007)).Under that standard, if there is any question of the status of the road maintenance fees, then any doubt must be resolved in favor of the plaintiff-appellants. Nevertheless, as discussed at length *supra*, the Court properly recognized that the statutory definition of "taxes" in section 12-60-30(27) controls for RPA purposes, and that the Road Maintenance Fees do not satisfy either prong of that definition.

Respondents next pivot to an entirely new theory concerning the supposed lack of a statutory mechanism to recover unlawfully collected taxes. This argument has no bearing on whether the RPA applies here or whether the plaintiffs may ultimately recover under some other claim. As the Court reiterated, "the guiding principle of statutory interpretation is to give effect to the legislature's intent." Op. at 6 (citing *Gordon v. Philips Utils., Inc.,* 362 S.C. 403, 406, 608 S.E.2d 425 (2005)). "The best evidence of legislative intent is the statute's text, and when the text is clear, courts must apply its plain meaning without resorting to tools of statutory construction." *Id.* (citing *Miller v. Aiken,* 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005); *Bayle v. S.C. Dep't Of Transp.,* 344 S.C. 115, 122, 542 S.E.2d 736, 739–40 (Ct. App. 2001)).

Here, the RPA's scope, intent, and definitions are unambiguous, and the Court correctly applied its plain meaning. The statute cannot be reinterpreted through case law issued twenty years before the RPA even existed. *See* Petition at 5-6 (citing *C.W. Matthews Contracting Co., Inc. v. South Carolina Tax Commission,* 267 S.C. 548, 230 S.E.2d 223, 226 (1976)). *C.W. Matthews* construed the then-existing "pay under protest" statute; it did not—and could not—address the RPA, which was enacted nearly two decades later. This Court may not read case law from 20 years prior to the enactment of the RPA to ascertain "context" for interpreting not only a clear and unambiguous statute, but a statute that did not exist at the time the *C.W. Matthews* case was decided. *C.W. Matthews* therefore offers no insight into the Legislature's intent regarding the

RPA. If anything, the Legislature's numerous post-*C.W. Matthews* amendments confirm that the RPA is narrower, not broader, than Respondents suggest.

Respondents then cite Act No. 60 of 1995—the original enactment of the RPA—as "context," arguing that the repeal of the former "pay under protest" statutes supposedly demonstrates legislative intent for the RPA to serve as the *exclusive* mechanism for recovering *any* unlawfully collected tax from 1995 to the present. Petition at 5-6. Again, Respondents never raised this argument below or suggested that the original enactment language provides the "context" needed to broaden the term "taxes" beyond its clear definition in section 12-60-30(27). *Id.* (citing 1995 Act No. 60, § 4.I). Because it appears nowhere in the record, it is therefore improper on rehearing. *See Kennedy,* 349 S.C. at 532, 564 S.E.2d at 322.

Even if considered, the argument fails on the merits. Respondents' reliance on an outdated version of the statute is selective and incomplete. The RPA has been amended multiple times since 1995—including amendments that removed or altered the very language Respondents now invoke. *Compare* 1995 Act No. 60, § 4(I)[2] *with* 2000 Act No. 399, § 3(M)(2)[3] (emphasis

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[2] SECTION 4. A. Title 12 of the 1976 Code is amended by adding:
"CHAPTER 60
The South Carolina
Revenue Procedures Act
Article 1
Section 12-60-10. This chapter may be cited as the South Carolina Revenue Procedures Act.
Section 12-60-20. It is the intent of the General Assembly to provide the people of this State with a straightforward procedure **to determine any disputed revenue liability**. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent."

[3] 2. Section 12-60-20 of the 1976 Code, as added by Act 60 of 1995, is amended to read:
"Section 12-60-20. It is the intent of the General Assembly to provide the people of this State with a straightforward procedure **to determine any dispute with the Department of Revenue**. The South Carolina Revenue Procedures Act must be interpreted and construed in accordance with, and in furtherance of, that intent."

supplied). The statute must be interpreted as it exists today, not by reference to provisions the General Assembly has since revised or repealed. *See Boatwright v. McElmurray*, 247 S.C. 199, 207, 146 S.E.2d 716, 720 (1966) ("The construction of a statute is a judicial function and responsibility. … [A] legislative interpretation of one previously enacted may not prevail over the clear meaning of the statutory language."); *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 582 (2000) ("[T]his Court should not completely disregard the text of an unambiguous statute based on an alleged conflict with an earlier statute."). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

In short, Respondents' attempt to broaden the RPA through a qualifier they never previously mentioned is improper on rehearing and unpersuasive on the merits. Even if the Court were to entertain this new theory, Respondents have provided no "context" that would compel treating every local charge as a tax under the RPA—an interpretation that would contradict the statute's text, its definitions, its legislative intent, and this Court's established rules of statutory construction. Their argument amounts to a last-ditch effort to force an RPA overlay onto a case that falls entirely outside the Act. It fails procedurally and substantively.

CONCLUSION

For the reasons stated above, Respondents' Petition for rehearing must be denied.

Respectfully submitted,

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