

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Joseph S. Azar, Frank J. Cumberland, Jr.,
and Michael A. Letts, Individually and as
Class Representatives,

Civi. Action No. 2011-CP-40-5705

Plaintiffs,

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vs.

SC Court of Appeals

City of Columbia,

Defendant.

ORDER DENYING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

This matter came before the Court for a hearing on Plaintiffs' Motion for Class Certification. Specifically, the motion before the Court seeks to certify a class of water customers of the City of Columbia, past and present as of three years prior to the filing of the Complaint. Having reviewed the pleadings, the motion, and the memoranda submitted by Plaintiffs and Defendant, I find and conclude that class certification is not necessary or appropriate in this case.

The primary issue presented in the case is whether the City of Columbia's water and sewer charges are subject to limitations found in Section 6-1-330 of the South Carolina Code, which provides that service fees collected by local governments must be used for costs related to the service or program for which it was paid. Plaintiffs allege that the City of Columbia violated this statute by using some of its water and sewer revenues for purposes that they contend are unrelated to water and sewer service, such as funding economic development activities. Plaintiffs also allege that the City's annual transfer of up to \$4.5 million dollars from its water and sewer enterprise fund to its

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general requirements Section 6-1-330 of the South Carolina Code. Plaintiffs seek a permanent injunction requiring Defendant in the future "to place all fees collected for operations of and/or capital improvement of the water and sewer system in a segregated account and to only be used for such purposes," and to replace all monies Defendant expended in the past for other purposes.

Plaintiffs are seeking to have a class certified in connection with their claim for injunctive relief. South Carolina appellate courts have not had an opportunity to address a situation involving a proposed class action seeking an injunction against a municipality. However, other courts have held in such cases that, regardless of whether the elements of Rule 23(a) are satisfied, a class should only be certified if there is a need for the complexities and extra costs associated with class suits. See *Craft v. Memphis Light, Gas and Water Division*, 534 F.2d 684 (6th Cir. 1976); *United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 812 (5th Cir. 1974). These courts concluded that class certification was unnecessary because any declaratory or injunctive relief given in the individual action of the named plaintiffs would inure to the benefit of other similarly situated individuals.

The principle set forth in cases like *Craft v. Memphis Light, Gas and Water Division* and *United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach* is directly applicable in this case. Plaintiffs seek injunctive relief directing the City of Columbia to comply with Section 6-1-330 of the South Carolina Code. The named Plaintiffs can fully and adequately present this claim, and the Court can assume that the City will comply with an injunction if the Court ultimately deems it appropriate to enter

such relief. Thus, there is no need for the complexities and extra costs associated with class actions, and no useful purpose will be served by class treatment.

Not only is class certification unnecessary in this case, but Plaintiffs have not established all five of the requirements of Rule 23(a), SCRPC, which are necessary for class certification. The South Carolina Supreme Court has held that proponents of class certification bear the burden of proving five prerequisites under South Carolina law. *Waller v. Seabrook Island Property Owners Ass'n*, 300 S.C. 465, 388 S.E.2d 799 (1990); Rule 23(a), SCRPC. The prerequisites are: 1) the class must be so numerous that joinder of all members is impracticable; 2) there must be questions of law or fact common to the class; 3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; 4) the representative parties must fairly and adequately protect the interests of the class; and 5) in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy must exceed one hundred dollars for each member of the class. Rule 23(a), SCRPC. In deciding whether class certification is proper, the court must apply a rigorous analysis to determine whether each prerequisite is satisfied. Failure to satisfy even one prerequisite is fatal to class certification. *Gardner v. South Carolina Department of Revenue*, 353 S.C. 1; 577 S.E.2d 190 (2003).

Plaintiffs seek to certify a class of "all Columbia water customers, past and present as of three years prior to the filing of the Complaint." However, Plaintiffs cannot establish the third and fifth requirements for class certification. The third element is that the claims of the representative parties are typical of the claims of the class. No evidence has been presented that any other potential class members wish to assert a claim.

Plaintiffs are complaining about the manner in which the City is spending water and sewer revenues. Plaintiffs have not shown that other citizens have presented similar complaints.

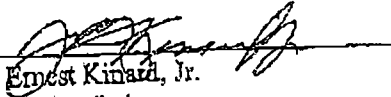
Plaintiffs also fail to meet the fifth requirement for class certification because the relief sought is not primarily injunctive or declaratory with respect to the class as a whole, and the amount in controversy does not exceed one hundred dollars for each class member. Plaintiffs apparently concede that the amount in controversy does not exceed one hundred dollars for each class member. In their Motion, they state that "Plaintiffs request injunctive relief such that the amount in controversy is not in issue." However, a review of Plaintiffs' Second Amended Complaint indicates that the relief primarily sought is not injunctive or declaratory, as required by Rule 23(a)(5), SCRPC.

In their First Cause of Action, the relief primarily sought by Plaintiffs is injunctive relief. However, Plaintiffs allege three additional causes of action which do not seek injunctive or declaratory relief. In the Second Cause of Action, Plaintiffs assert a claim for breach of contract and seek "a refund of all fees collected." In the Third Cause of Action, Plaintiffs assert a claim for "Unconstitutional Collection." The relief sought in that cause of action is the creation of a common fund of all fees collected by the City for water improvements for the past three years. Finally, in the Fourth Cause of Action, Plaintiffs assert a claim for "Unconstitutional Tax." That cause of action asks for "judgment for the class and a common fund and for actual damages and the costs of the action." Thus, only one of the four causes of action alleged by Plaintiffs seeks an injunction as its primary relief. As such, Plaintiffs fail to satisfy the requirement set forth in Rule 23(c)(5) of the South Carolina Rules of Civil Procedure.

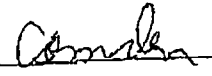
Based on the foregoing, class certification is both unnecessary and inappropriate in this case. If it is ultimately determined that the relief sought by Plaintiffs in this case should be granted, the Court may presume the good faith of government officials to respect such a ruling without the necessity of making this a class action. Moreover, a review of the record in this case indicates that Plaintiffs cannot establish all five elements required for class certification. Accordingly,

Plaintiffs' Motion for Class Certification is DENIED.

AND IT IS SO ORDERED.


J. Ernest Kinard, Jr.
Presiding Judge
Fifth Judicial Circuit

June 27 2012

 South Carolina