

In the State of South Carolina
In the Supreme Court

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FEB 14 2019

Appeal from Orangeburg County
Court of Common Pleas

S.C. SUPREME COURT

Diane S. Goodstein, Circuit Court Judge

Case No. 2012-CP-38-00837

Jimmie Aiken, Leila Brown, Vernonda Cohen,
Carla David, Anthony Sabb, James Ginn, and
Shirley Rice, as named Plaintiffs representing a
class of South Carolina citizens..... Petitioner/Respondents

vs.

South Carolina Department of Revenue..... Appellant

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FEB 14 2019

SC Court of Appeals

Rule 204(b), SCACR, Petition to Transfer

This case challenges the Department of Revenue's ability to hire itself out to collect hospital bills and other third-party debts by garnishing wages. The DOR argues that the Revenue Procedures Act applies and moved to dismiss, and to strike the class action allegations, asserting that these debts are taxes. The circuit court ruled that the debts are not taxes such that it could consider whether to certify a class action and could order a refund if warranted. The DOR appealed before a final judgment. Plaintiffs then moved the circuit court to add a party who avers under oath that the DOR collected an over 10-year-old debt for a private hospital. The circuit court ruled that the appeal deprived it of jurisdiction to consider the motion.

The Court should transfer the appeal to this Court, dispense with further briefing, and grant oral argument on the issues presented.

Statement of the Case

The DOR garnished the Plaintiffs' wages to collect medical bills that they allegedly owed the Orangeburg Regional Medical Center and the Allendale County Hospital. ROA 30-32, ¶¶ 5-11.¹ They are informed that the DOR since 2003 has garnished wages to collect third-party debts as diverse as medical bills, tenant rent, and childcare costs. The statute ostensibly allowing this also allows the DOR to impose liens, levy bank accounts, suspend or revoke business licenses, and employ other methods that it uses to collect taxes. S.C. Code Ann. § 12-4-580(A). It currently charges creditors a 22% fee to collect their debts this way. *See* <https://dor.sc.gov/about/setoff-debt-and-gear>.

On January 9, 2013, Plaintiffs filed a Second Amended Complaint and prayed for a declaration that § 12-4-580 violates the one-subject rule in S.C. Const. Article III, § 17 and that it and § 12-54-130 are also unconstitutional in other ways. ROA 32-33, ¶ 12. Plaintiffs also pray for a refund of the garnished wages, with prejudgment interest, and seek to certify a class of "all persons who are South Carolina citizens who have had their wages garnished by the Defendant on behalf of any governmental entity pursuant to § 12-4-580 and § 12-54-130, the last garnishment having occurred since 2003, and the putative debt to be collected

¹Citations to the "ROA" are to the Record filed in the Court of Appeals.

exceeding \$100.00.” ROA 33, ¶ 16, ROA 36-37. Plaintiffs do not challenge the Setoff Debt Collections Act or the DOR’s ability to collect third-party debts by setting off a debtor’s tax refund.

The DOR moved to dismiss for failure to state a claim, arguing that § 12-60-80(A) barred the action because in its view the case alleges the illegal or wrongful collection of taxes or attempt to collect taxes. It also sought to apply § 12-60-80(C), a bar to class actions for a refund of taxes. ROA 27-28, ¶¶ 1, 6.

On January 7, 2013, the circuit court denied the motion to dismiss, ruling that the medical bills and other debts at issue are not taxes. ROA 2, 4-5. The court also denied the motion to strike the class allegations because the parties disputed whether § 12-60-80(C) applies. ROA 10.

Plaintiffs later moved for a ruling on whether § 12-60-80(C) applies. ROA 12. The circuit court ruled that, "This Court may consider whether to certify this action as a class action" because the debts at issue are not taxes. ROA 12-18. This second ruling was entered July 10, 2017. ROA 12.

On August 24, 2017, the DOR appealed the second order. The Court of Appeals asked *sua sponte* for memoranda on whether the order was immediately appealable. After briefing, a member of the Court of Appeals denied a motion to dismiss the appeal without prejudice for the parties to raise the issue in their briefs to the panel.

The DOR’s subsequent brief on the merits argued that the second order was appealable, asked the Court to reverse both circuit-court orders, and prayed that

the Court of Appeals direct the action's dismissal. Plaintiffs responded in part that they no longer contested appellate jurisdiction. The appeal was fully submitted by April 9, 2018.

As this was going on, the DOR in February 2018 levied on Dawn Ridge's assets for bills that she purportedly incurred in 2004 and 2007 at a hospital in Hampton, South Carolina. Petition pp. 8-11.² That hospital's website states that it since 1995 has been a "private, not for profit hospital (a 501(c)3 corporation)." See "HRMC History" at <http://www.hamptonregional.com>.

Plaintiffs moved the circuit court to add Ridge as a named plaintiff and to allege that § 12-4-580 does not authorize the DOR to collect debts for private entities. Petition pp. 12-17. In December 2018, the circuit court ruled that the appeal deprived the circuit court of jurisdiction to consider the motion. Petition pp. 12-17.

Plaintiffs now petition this Court for a Rule 204(b), SCACR, transfer.

Argument

This Court has repeatedly granted Rule 204(b) transfers in appeals by or against the DOR.³ This case likewise justifies a transfer.

²An affidavit from Ridge was submitted to the circuit court and is attached to this Petition. It is numbered consecutively in the bottom right-hand corner.

³See *Richland Cty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 811 S.E.2d 758 (2018); *CareAlliance Health Servs. v. S.C. Dep't of Revenue*, 416 S.C. 484, 787 S.E.2d 475 (2016); *Sloan v. S.C. Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014); *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 750 S.E.2d 65 (2013); *Home Med. Sys. v. S.C. Dep't of Revenue*, 382 S.C. 556, 677 S.E.2d 582 (2009).

Countless South Carolina citizens from across the state know the pain of getting surprised by a medical bill, either by the bill's amount or because the bill was miscoded when submitted to their health insurer. As it is now, the DOR may—for a 22% fee—garnish the patient's wages for the full amount of the disputed bill before the dispute is resolved.

This is unusual. Garnishing earnings for an employee's personal services is normally a crime. S.C. Code Ann. § 15-39-420(3). Wages may likewise not be garnished to collect certain consumer debts. S.C. Code Ann. § 37-5-104. And even courts normally may not order that earnings for personal services be garnished to pay a final judgment. S.C. Code Ann. § 15-39-410.

The DOR will respond that these restraints do not apply because it is collecting "taxes." Yet it then argues that S.C. Code Ann. § 12-60-30 defines "taxes" to mean anything and everything that the DOR collects. The statute defines "taxes" as:

All 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, including property subject to collection pursuant to Chapter 18 of Title 27.

Whether the "other amounts" clause broadly includes medical bills and other ordinary debts owed to third parties is a pure issue of statutory construction. So an intermediate opinion on what the statute means may be less helpful to this Court than intermediate opinions on other issues.

The DOR's view also breaks down on Ridge's sworn averments that the DOR

collected for a private hospital. This collection is not for “taxes” because S.C. Code Ann. § 12-4-580, by its terms, does not authorize collections for private entities.

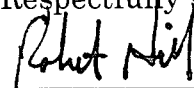
The averred ultra vires collection in February 2018 also shows that the DOR’s third-party debt collections are continuing unabated during its appeal. Because the appeal was taken before a final judgment, there has been no ruling on whether the Plaintiffs are entitled to a refund with pre-judgment interest. If the Plaintiffs are not entitled to this relief, the preliminary skirmishes that the DOR raises on appeal will be rendered moot. If, however, Plaintiffs are entitled to the relief sought, then the unlawful collections and pre-judgment interest have been multiplying throughout the DOR’s piecemeal appeal. This counsels for a final resolution of this appeal sooner rather than later.

Plaintiffs lastly understand that oral argument is not ordinarily granted when an appeal is taken before a final judgment. Rule 215, SCACR. Oral argument is in the Court’s discretion, however, and Plaintiffs respectfully ask for the opportunity to answer any questions the Court may have about the issues presented.

Conclusion

The Court should grant a Rule 204(b) transfer, dispense with further briefing, and entertain oral argument on the DOR’s appeal.

Respectfully submitted



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Attorneys for the Petitioners/
Respondents

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

)

CASE NO.: 2012-CP-38-00837

Jimmie Aiken, Leila Brown, Veronda Cohen,
Carla Davis, Anthony Sabb, James Ginn, and
Shirley Rice, as named Plaintiffs representing
a class of South Carolina citizens,

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)
)
)
)

AFFIDAVIT OF DAWN RIDGE

Plaintiffs,

)

vs.

)

South Carolina Department of Revenue,

)

Defendant.

)

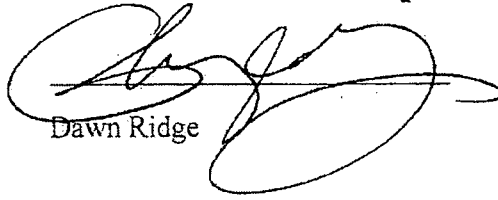
FILED FOR RECORD
VICTOR S. ALLEN
CLERK OF COURT
JAN 14 2013 10 17 AM
COURT OF COMMON PLEAS
ORANGEBURG COUNTY

Dawn Ridge, after being duly sworn, states:

1. I am over eighteen years old and reside at 145 Herrick Court, Lexington, South Carolina. This affidavit is based on my personal knowledge.
2. Exhibit A to this affidavit is a "Notice of Levy on Intangibles" that I received from the South Carolina Department of Revenue dated February 28, 2018. It states that I have a "GEAR" account with the South Carolina Department of Revenue and owe the Department \$781.18.
3. After receiving the Notice, I spoke with a representative from the South Carolina Department of Revenue. The representative told me that the Notice of Levy involved a debt that I purportedly owe the Hampton Regional Medical Center. A representative from the Hampton Medical Center later told me that the purported debt was for services rendered in March 2004, April 2004, and in the year 2007.

Further affiant sayeth not.

Exhibit B



Dawn Ridge

Sworn to and subscribed before me
this 6 day of April 2018.

Annie Catherine Spalde

Notary Public for South Carolina

My Commission expires Feb 26, 2023

1350



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Notice of Levy on Intangibles

AW-149
(Rev. 02/21/18)
2189

SSN: ***-**-2864
Letter ID: L0005636430
Date Issued: February 28, 2018

DAWN RIDGE
145 HERRICK CT
LEXINGTON SC 29072-8260



ID: ***-**-2864
Balance Due: 781.18

ASSET HOLDER: SQUARE INC
1455 MARKET ST STE 600 MSC 410 SAN
FRANCISCO CA 94103 USA

FILED FOR RECORD
FEB 28 2018 10 11 AM
RECORDS SECTION

JP:5209E:02348S:010IN:0A#:A0470235A23J:0000047262

Taxpayer:

You owe debts to the South Carolina Department of Revenue. The Department is seizing all assets that are due or will become due to you up to the amount of debt owed. An asset holder has been notified to send the Department the property or rights to property of yours not to exceed the amount on the levy. This applies to accounts payable payments, 1099 payments, bank accounts, rent payments, investment accounts, etc.

Actions need to be taken to satisfy your legal requirements:

- Pay electronically for free at MyDORWAY.dor.sc.gov. To pay by check, send payment to the address listed below with a copy of this notice.
- Include clear identifying information on payment (Name, SSN/FEIN, Bill Item Number).
- The balance on this notice may be different than the notice sent to the asset holder based on adjustments, penalty and interest accruals, or payments.

Failure to comply:

- The asset holder can be held responsible for the balance listed above.
- DOR will notify the asset holder and enforce collection, which includes filing a lien and/or issuing a garnishment.

For additional information, see the following Code Sections listed on the back of this notice: 12-53-20, 12-54-25, and 12-54-43.

REMIT THE AMOUNTS PAYABLE TO:

South Carolina Department of Revenue
P.O. Box 2535
Columbia, SC 29202-2535

FOR ASSISTANCE CONTACT:

Central Collections
PHONE: (803) 898-5403
FAX: (803) 896-0289



Ex. A to Affidavit

12-53-20: Notwithstanding any other provision of law, the department, or its duly authorized representatives, may attach, levy upon, or seize bank deposits and all other choses in action, except for salaries and wages, on property incapable of manual levy or delivery, hereinafter called intangible, belonging, owing, or to become due to any taxpayer, subject to any provisions of any tax or license law of which the administration, enforcement, and collection is imposed upon the department. The person owning such intangible, matured or unmatured, or having the same in possession or control, shall become liable for all sums due by the taxpayer to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer, subject to the setoff of any matured or unmatured indebtedness of a taxpayer to said person. To effect such attachment or levy, the department, or its duly authorized representative, shall serve, or cause to be served upon the taxpayer and upon such person, notice of such attachment and levy, which notice may be served by any authorized representative of the department, or by any officer having authority to serve summonses.

12-54-25: Whenever the Department issues a tax lien under its hand, interest is due on the unpaid portion of tax from the time the tax was due until paid in its entirety. Any person who fails to remit the tax due or additional tax as provided by law must be charged interest at the underpayment rate provided under Internal Revenue Code Sections 6621 and 6622. Interest must be calculated on the full amount of tax or portion thereof, exclusive of penalties from the time the tax or additional tax was due until paid in its entirety. The interest rate is published quarterly in a Department Informational Bulletin.

12-54-43 (D): In the case of failure to pay any tax on or before the date prescribed by law (determined with regard to any extension of time for paying), there must be added to the tax due a penalty of one-half of one percent of the amount of the tax if the failure is not for more than one month, with an additional one-half of one percent for each additional month or fraction thereof, during which the failure continues, not exceeding twenty-five percent in the aggregate.

The notice of levy does not apply if the taxpayer is currently in bankruptcy.

ACCOUNT TYPE	ACCOUNT NUMBER	PERIOD ENDED	BILL ITEM	DEBT DUE	PENALTY	INTEREST	COSTS	TOTALS DUE
GEAR	0002778407	11-Jan-2017	1	\$781.18	\$0.00	\$0.00	\$0.00	\$781.18
				\$781.18	\$0.00	\$0.00	\$0.00	\$781.18

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Jimmie Aiken, Leila Brown,)
 Veronda Cohen, Carla Davis,)
 Anthony Sabb, James Ginn, and)
 Shirley Rice, as named Plaintiffs)
 Representing a class of South Carolina)
 citizens,)
 Plaintiffs,)
)
)
)
 vs.)
)
)
 South Carolina Department of Revenue,)
)
 Defendant.)
 _____)

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT**

CASE NO: 2012-CP-38-00837

**ORDER ON PLAINTIFFS'
MOTION FOR LEAVE TO FILE A
THIRD AMENDED COMPLAINT**

This matter came before me on November 13, 2018, upon Plaintiffs' Motion for Leave to File a Third Amended Complaint, pursuant to SCRCP, Rule 15.¹ Present at the hearing on behalf of the Plaintiffs were Robert Hill, Esquire, who presented oral argument, Mark Williams, Esquire and Charles Williams, Esquire. Present on behalf of the Defendant, the South Carolina Department of Revenue, was Dana R. Krajack, Esquire, who presented oral argument. For the reasons that follow, the Court denies the Plaintiffs' Motion for Leave to File a Third Amended Complaint.

¹ The Plaintiffs sought, for the first time and without notice to the Defendant, at oral argument to amend their Motion so as to include the grounds or basis for their amendment as being brought pursuant to SCRCP Rule 20. The Defendant, by and through their counsel, objected to same.

BACKGROUND

This case was initially commenced on June 19, 2012, by the Plaintiffs filing of a Summons and Complaint. Plaintiffs filed an Amended Summons and Complaint on October 25, 2012, and then a Second Amended Complaint on January 9, 2013. Currently, the Plaintiffs seek to amend their complaint.

In each of the three prior iterations of their Complaint, the Plaintiffs allege that the Department has wrongfully collected or is wrongfully attempting to collect certain delinquent debts (e.g. hospital debts) that are owed to various claimant or governmental agencies of the State. In addition, the Plaintiffs seek (1) a declaration that the statutes authorizing the Department to collect these debts are unconstitutional; (2) a refund of those amounts that have been collected; and (3) to bring their claims as putative members of a class action. In its Answer(s), the Department has consistently raised several defenses, including that the Plaintiffs had failed to pursue their administrative remedies under the Revenue Procedures Act; and that S.C. Code Ann. § 12-60-80(C) statutorily bars the Plaintiffs from bringing their claims as a class action.

By Order dated July 5, 2017, this Court granted the Plaintiffs' Motion to Strike the Department's defense it had raised under S.C. Code Ann. § 12-60-80(C). The Court also held that delinquent debts owed to claimant agencies are not "taxes". Therefore, this Court determined that the Plaintiffs were not required to pursue their administrative remedies under the Revenue Procedures Act, and for that reason S.C. Code Ann. § 12-60-80(C) does not bar the Plaintiffs from bringing their claims as a class action. The Department timely filed a Notice of Appeal on August 23, 2017, appealing these rulings, and the matter is now pending before the S.C. Court of Appeals, Case Number 2017-001790. It is significant to note, at this juncture, that the Plaintiffs have sought to supplement the Court of Appeals record with a copy of the Third Amended Complaint. It is the

very same Third Amended Complaint that the Plaintiffs are now seeking leave of this Court to allow; and that the Plaintiffs' Motion to Supplement the Record has been denied by the Court of Appeals.

The Plaintiffs' proposed Third Amended Complaint re-alleges similar claims previously asserted in their prior Complaint(s), but significantly, the Third Amended Complaint also seeks to add a new plaintiff (Dawn Ridge) whose debt is owed to a different claimant agency (Hampton Regional Medical) than all of the prior plaintiffs, and alleges (for the first time) that the entity for which the Department collected the debt is not a "claimant agency" or "governmental entity" (as defined by the SDCA or GEAR). The Third Amended Complaint also attempts to add several new allegations that are wholly distinct from the prior Complaint(s). In this regard, the Plaintiffs seek to add an additional "unlawful taking claim" and requests "restitution" for any monies collected by the Department (as to all plaintiffs).

1. **The Court denies the Motion because South Carolina Appellate Court Rule (SCACR) 205 prohibits the Plaintiffs from amending their complaint, regarding matters which are affected by the appeal, while the appeal is pending.**

Rule 205, SCACR provides that "[u]pon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal" Under Rule 205, the trial court is deprived of the power to proceed with matters that are affected by the appeal. The leading case, which addresses this question, is the Arnal v. Fraser, 371 S.C. 512, 518–19, 641 S.E.2d 419, 422 (2007) (per curiam), wherein the Supreme Court explained that Rules 205 and 241(a) prohibit action on matters that are affected by the appeal; and that the lower court may not act or issue orders that affect an issue on appeal. This case was subsequently followed in Tillman v. Oakes, 398 S.C. 245, 255, 728 S.E.2d 45 (Ct. App. 2012), which reaffirmed Arnal. In other words, this Court's ability to proceed regarding the matters contained in the Plaintiff's Motion for Leave to

File a Third Amended Complaint is determined by whether the issues sought to be litigated in the proposed complaint relate to matters affected by the current appeal.

Here, the matters litigated under the prior pleadings (both the allegations of the Plaintiffs and the defenses raised by the Department) that are now on appeal are closely related to the matters raised in the proposed amended third complaint. Although the Third Amended Complaint contains several new facts and causes of action that were not previously asserted, the Department has proffered that it will raise the same defenses that it previously raised—that the Plaintiffs’ claims seek the refund of those monies collected, or sought to be collected by the Department, for medical indebtedness – and therefore the Plaintiffs are required to exhaust their administrative remedies, and are barred from bringing their claims as a class action. Underlying each such defense is the assertion that these hospital bills are quintessentially “taxes” – as statutorily defined. These are the specific matters that this Court ruled upon in its July 5, 2017 Order - that is now the subject of the pending appeal.

It is self-evident that if the Court of Appeals decides the pending appeal in favor of the Department, then the Plaintiffs would necessarily be required to pursue their claims individually under the RPA *and* not as a class action. This ruling would affect all of the Plaintiffs—whether currently named or those proposed to be added, and their causes of action, whether contained in the prior pleadings or the (proposed) Third Amended Complaint. On the other hand, if the Court of Appeals decides the pending appeal in favor of the Plaintiffs, then the class action could proceed as requested by the Plaintiffs and there would be no need to add Dawn Ridge as an additional plaintiff because she would (presumably) be a member of the class. Either way, the matters alleged in Plaintiffs’ Third Amended Complaint are related to and affected by those matters now pending before the Court of Appeals.

For the above stated reasons, this court finds it fails to have jurisdiction to decide the Plaintiff's instant motions.

AND IT IS SO ORDERED this 19th day of December, 2019.

Diane S. Goodstein, Judge
First Judicial Circuit

_____, South Carolina



Orangeburg Common Pleas

Case Caption: Jimmie Aiken , plaintiff, et al VS South Carolina Department of Revenue
Case Number: 2012CP3800837
Type: Order/Other

Presiding Judge

s/Diane S. Goodstein (2112)

Electronically signed on 2018-12-19 12:47:06 page 6 of 6

In the State of South Carolina
In the Supreme Court

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Court of Common Pleas

S.C. SUPREME COURT

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SC Court of Appeals

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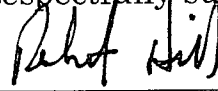
Petitioner/Respondents' Certificate of Service

I on February 14, 2019 served the Rule 204(b), SCACR, Petition to
Transfer by first class mail addressed to Dana R. Krajack, Esq. and
Jason P. Luther, Esq, of the South Carolina Department of Revenue,
Offices of General Counsel for Litigation, P.O. Box 12265, Columbia, SC
29211-9979.

February 14, 2019

Lexington, SC

Respectfully submitted



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February 14, 2019

South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RECEIVED
FEB 14 2019
S.C. SUPREME COURT

Re: Aiken, et. al. v. South Carolina Department of Revenue
Appellate Case No. 2017-001790

Dear Clerk of Court:

Enclosed for filing is the unbound original and six copies of the
Petitioner/Respondents' Rule 204(b), SCACR, Petition to Transfer. The
Certificate of Service and \$25 filing fee are also enclosed.

Please call me if you have any questions.

My best,

Robert Hill

Robert Hill

RECEIVED

FEB 14 2019

SC Court of Appeals

cc: Mark B. Tinsley, Esq.
Charles H. Williams, Esq.
Daniel W. Williams, Esq.
Dana R. Krajack, Esq.
Jason P. Luther, Esq.