

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
Civil Action No.: 2016-CP-14-198

REBECCA J. ROBBINS and MARIE
BABAYAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

TOWN OF TURBEVILLE, THE
TURBEVILLE POLICE DEPARTMENT,

Defendants/Third Party
Plaintiffs

vs.

The State of South Carolina,

Third Party Defendants.

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SC Court of Appeals

**ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT,
GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT, AND
DENYING PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

This matter came before the Court on Motion of the Plaintiff for Class Certification and Summary Judgment on their claims for injunctive relief. Plaintiff further seeks a judgment declaring unconstitutional Turbeville traffic ordinances under which Plaintiffs received citations. Also before the Court was a Motion for Summary Judgment filed by the Defense. The issues having been fully briefed and having heard argument from all parties, the Court orders as follows:

THE PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

Turbeville has repealed the ordinances in question hence, there is nothing for this Court to enjoin. The claims of the Plaintiff for injunctive and declaratory relief are moot. The Motion of the Plaintiff for Summary Judgment is **DENIED** and the Motion of Turbeville for Summary Judgment is hereby **GRANTED**.

MOTION FOR CLASS CERTIFICATION

Under Rule 23 of South Carolina Rules of Civil Procedure, certification of a class requires that Plaintiff establish (1) the class is so numerous that joinder of all members is impractical (“numerosity”); (2) there are questions of law and fact that are common to the class (“commonality”); (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class (“typicality”); (4) the representative parties will fairly and adequately represent the interests of the class (“adequacy”).¹ In addition, where, as here, the class representative is seeking monetary relief, South Carolina has an additional requirement that the amount in controversy must exceed \$100 for each class member.² The proposed representative of the class has the burden of establishing each prerequisite for class certification.³ The Court is required to conduct and apply a rigorous analysis to assure that Plaintiff has established each of the Rule 23 prerequisites.⁴ The failure to establish any one of the prerequisites is fatal to class certification.⁵ Since, Plaintiff cannot establish the Rule 23 requirements for class certification the Motion for Class Certification is **DENIED**.

Rule 23(a)(2) Commonality. “To establish commonality, [the Plaintiff] must show that there are questions of law or fact common to the class. In practical terms this means the party must articulate the existence of *significant* common legal or factual issues that bind the class

¹ Rule 23(a), SCRPC.

² Rule 23(a)(5), SCRPC.

³ *Waller v. Seabrook Island Property Owners Association*, 388 S.E.2d 799 (S.C. 1990).

⁴ *Gardner v. South Carolina Dep’t of Revenue*, 577 S.E.2d 190, 200 (S.C. 2003); and *Waller*, 388 S.E.2d at 801, citing *General Tel. Co of Southwest v. Falcon*, 457 U.S. 147 (1982). The Court of Appeals blessed the conclusions of the *Gardner* decision in *BLH by Hensley v. South Carolina Dep’t of Social Services*, 814 S.E.2d 638 (Ct. App. 2018) cert. granted Nov. 9, 2018.

⁵ *Gardner*, 577 S.E.2d at 200; see also *Ferguson v. Charleston Lincoln/Mercury, Inc.*, 544 S.E.2d 285 (Ct. App. 2001) and *Waller v. Seabrook Island Prop. Owners Ass’n*, 388 S.E.2d 799, 801 (S.C. 1990).

together.”⁶ The common issues must be determinative, and most importantly, “a representative plaintiff *cannot* establish commonality if the court must investigate each [class member’s] claim.”⁷ The Court of Appeals held in *BLH v. South Carolina Dep’t of Soc. Services*, “the necessity of . . . individualized inquiries ‘negates the benefits of a class action suit.’”⁸

Rule 23(a)(4) Adequacy of Representation. The courts have noted that one factor to be examined is whether the putative class representative must actually be a member of the class she seeks to represent.⁹ A class representative who is not a member of the class cannot be an adequate representative. Plaintiff Robbins cannot be a class representative as her claims are herein denied. Further, if a claim cannot succeed as a matter of law, the Court should not certify a class on the issue, and the purported class representative should not be considered “adequate.”¹⁰ The claims of Plaintiff Babayan cannot succeed therefore she cannot be an adequate representative.

Rule 23(a)(5) Amount in Controversy. Rule 23(a)(5) of the South Carolina Civil Procedure is unique in that it requires Plaintiff to establish that the amount in controversy for each plaintiff exceeds \$100. While the Rule does not define the term, the South Carolina Supreme Court has held that the Court should look to the “amount to be gained by the lawsuit” to determine whether the claim of class members is for more than \$100.¹¹

1. **Plaintiff “Damages Subclass” must be denied because the claims are prohibited under the South Carolina Tort Claims Act.**

⁶ *Id.*

⁷ *Id.* at 201.

⁸ *BLH v. SCDSS*, 814 S.E.2d at 643 quoting *McGann v. Mungo*, 340 S.E.2d 154, 158 (S.C. 1986).

⁹ See *Wright, Miller, and Kane Federal Practice and Procedure* § 1761.

¹⁰ See e.g. *Grant v. New York Times Co.*, 329 F.R.D. 27 (S.D.N.Y. 2018); *Chen-Oster v. Goldman Sachs & Co.*, 877 F.Supp.2d 113 (S.D.N.Y. 2012). Also *Wright, Miller & Kane, Federal Practice and Procedure*, § 1785.1 (a party must have standing to assert the claim in order to serve as a class representative).

¹¹ *Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200, 202 (S.C. 1991).

There is no legal or equitable basis for a court to order a town or other political subdivision of the State to reimburse or provide restitution to those who were cited for violations of the law. There is no statute commanding, or permitting the government to reimburse. Additionally, there is no statute waiving the sovereign immunity of the Town of Turbeville for the acts alleged in the Complaint. The Tort Claims Act affords the Town complete immunity from liability to the Plaintiffs.

The Tort Claims Act, S.C. CODE ANN. §15-78-60 prohibits claims of the Plaintiff for money damages. Pertinent provisions of the Tort Claims Act are as follows:

The governmental entity *is not liable for a loss resulting from:*

- (1) legislative, judicial, or quasi-judicial action;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (23) institution or prosecution of any judicial or administrative proceeding;

Thus, the Tort Claims Act specifically prohibits this action against the Town. The issue of traffic citations falls under the protections of § 15-78-60(4), and it does not matter whether the now-rescinded Traffic Ordinance was valid or invalid. Collecting the fines for violating the Ordinance falls squarely within the immunity afforded under §§15-78-60(3) and 15-78-60(23), for the Town cannot be liable for collecting judicially ordered fines or prosecuting crimes. The claims arising from the enactment of the Ordinance by the Town are barred under § 15-78-60(4).

2. **The constitutional challenge of Plaintiff to the Town of Turbeville Traffic Ordinance is preempted and completely barred by the Post Conviction Relief Act, and, on that basis, class certification must be denied.**

The proposed class-wide claims of the Plaintiff for a retroactive declaration that the Town Traffic Ordinance was invalid and unenforceable from the time it was adopted constitutes an improper collateral attack on potentially thousands of final judgments. Because neither she, nor any member of the putative class, can mount such a challenge to their convictions, class certification is inappropriate. When a claim cannot succeed as a matter of law, the Court should not certify a class on the issue.¹² Pursuant to S.C. CODE ANN. 56-5-6220, paying a traffic ticket or forfeiting the bond is the legal equivalent of entering a guilty plea and being convicted of the crime.¹³

The remedy that would have been available to Plaintiff Babayan, and ostensibly to the members of the putative class who likewise pled guilty or paid their fines, is under the Post-Conviction Relief Act. The clear language of the PCR statute establishes that bringing a PCR action is the exclusive remedy for challenging the constitutionality of the statute under which one was convicted.¹⁴

3. Motion of the Plaintiff to certify should be denied because she has failed to establish all the prerequisites for certification under Rule 23.

¹² See e.g. *Grant v. New York Times Co.*, 329 F.R.D. 27 (S.D.N.Y. 2018); *Chen-Oster v. Goldman Sachs & Co.*, 877 F.Supp.2d 113 (S.D.N.Y. 2012).

¹³ A very similar post-conviction challenge was filed in U.S. District Court challenging the validity of traffic tickets issued by the Town of Ridgeland based upon traffic cameras hidden along I-95. Judge Blatt dismissed the claims of all those who had paid their fines because the statutory guilty plea precluded them from challenging the traffic ordinance and the procedures used to issue tickets. See *Ahlum v. Town of Ridgeland*, 10-cv-3227, Transcript of Hearing, pp. 50-54, oral Order on Defendants' Motions to Dismiss (*Exhibit 2*).

¹⁴ S.C. CODE ANN. § 17-27-10 et seq. provides as follows:

- (A) Any person who has been convicted of, or sentenced for, a crime and who claims:
 - (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (B) This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in this chapter, it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

Plaintiff cannot establish that there are common issues of law or fact that bind the class together and ultimately determine the case. Rather, because of the impenetrable morass of individual issues, Plaintiff cannot satisfy her burden of showing sufficiently common issues of law or fact to support class certification. It appears based upon the handful of depositions of members of the putative class, all that can be determined from the digital records are the names and addresses of the cited persons; the date of the arrest; the citation number; the amount of the fine on the citation; and a description of some sort of disposition. However, the data has shown to be inaccurate in many respects, for the disposition and fine actually paid by several of the deponents was different from the amount shown on the citation.

As Turbeville established, there are any number of individual inquiries that the Court would have to undertake in order to determine whether any person is in the class or not. Included among these are: whether the person pled guilty; entered an *Alford* plea; struck some deal for a reduction in the charge; or pled not guilty. Without an extensive individual inquiry, no one can determine which members of the putative class must be excluded from the class. That individual inquiry effectively destroys claim of commonality by the Plaintiff.

Plaintiff has failed to establish that each member of the putative class has a claim of more than \$100. Plaintiff Babayan seeks restitution or a refund of the fines levied by Turbeville for violations of its Ordinance. Plaintiff Babayan is not challenging her guilt, only the law under which she was convicted. The only proper measure of the real value of the relief is the difference between the fine that each individual class member paid as part of their guilty plea and conviction under the Town Traffic Ordinance and the fine they would have received under State law.¹⁵ In

¹⁵ It is important to note that State law mandates a number of assessments that must be added to the uniform traffic statute – Babayan could have been fined between \$50 and \$75 for speeding (S.C. CODE ANN. § 15-5-1520(G)(3)), plus the mandatory fee for the Victim’s Compensation Fund (\$25) (S.C. CODE ANN. § 14-1-211), the conviction charge (\$25) (S.C. CODE ANN. § 14-

order to determine whether any of the putative class members satisfy the amount in controversy requirement, the Court would have to conduct an impermissible individual inquiry into each and every traffic citation. This individual inquiry militates against class certification.

Plaintiff *cannot* establish the requisite \$100 amount-in-controversy for each class member. Because of that failure of proof, certification must be denied.

Based on the foregoing, the motion of the Plaintiff for Class Certification is likewise **DENIED.**

AND IT IS SO ORDERED.

Clifton Newman
Presiding Judge

October __, 2019

1-212), the Criminal Justice Academy fee (\$5) (S.C. CODE ANN. § 14-1-240), and the mandatory Assessment of 107.5% of the base fine (S.C. CODE ANN. § 14-1-208). Thus Babayan's State penalty would have ranged between \$158.75 and \$210.63.



Clarendon Common Pleas

Case Caption: Rebecca J. Robbins , plaintiff, et al VS Turbeville Town of ,
defendant, et al

Case Number: 2016CP1400198

Type: Order/Class Certification

So Ordered

s/ Clifton B. Newman, 2127