

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
THE TOWN OF HILTON HEAD)
ISLAND, SOUTH CAROLINA,)
)
Plaintiff,)
)
vs.)
)
BEAUFORT COUNTY, SOUTH)
CAROLINA,)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2020-CP-07-_____

SUMMONS
(A Non-Jury Matter)

TO: BEAUFORT COUNTY, SOUTH CAROLINA:

You Are Hereby Summoned and required to Answer the Complaint for this case, a copy of which is herewith served upon you and to serve a copy of your Answer to the Complaint upon the subscriber, Curtis L. Coltrane, at Coltrane & Wilkins, LLC, Post Office Drawer 6808, Hilton Head Island, South Carolina, 29938, or 2 Park Lane, Suite 200, Hilton Head Island, SC, 29928, within thirty (30) days after the service of this Summons and Complaint upon you, exclusive of the day of such service, and if you fail to serve your Answer the Summons and Complaint within that time, The Town of Hilton Head Island, South Carolina, will apply to the Court for the relief demanded therein, and judgment by default may be entered against you for the relief demanded in the Complaint.

(Signature Page Follows)

COLTRANE & WILKINS, LLC

By: s/Curtis L. Coltrane
Curtis L. Coltrane
South Carolina Bar Number: 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (facsimile)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 17th day of September, 2020.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CASE NUMBER: 2020-CP-07-_____
)	
THE TOWN OF HILTON HEAD)	
ISLAND, SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	COMPLAINT
vs.)	(A Non-Jury Matter)
)	
BEAUFORT COUNTY, SOUTH)	
CAROLINA,)	
)	
Defendant.)	

The Town of Hilton Head Island, South Carolina, complaining of Beaufort County, South Carolina, alleges as follows:

1. The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”), is a municipality and political subdivision of the State of South Carolina, organized and existing under the Constitution and statutes of the State of South Carolina.
2. Beaufort County, South Carolina (hereinafter, the “Beaufort County”), is a county and political subdivision of the State of South Carolina, organized and existing under the Constitution and statutes of the State of South Carolina.
3. The Town lies within and is a part of Beaufort County.
4. The Hon. P. J. Tanner (hereinafter, the “Sheriff”) is the duly elected Sheriff of Beaufort County and he heads the Beaufort County Sheriff’s Office (hereinafter, the “BCSO”).
5. The Town has a quasi-sovereign interest in the health and well-being, both physical and economic, of its residents and taxpayers, and has standing to bring this suit in its own name for the benefit of taxpayers in the Town.

6. Under S.C. Const. art. V, § 24, the Sheriff is a constitutional officer, whose duties are set out in S. C. Code Ann. § 23-13-10 *et seq.* (Supp. 2020), and § 23-15-10 *et seq.* (Supp. 2020).
7. Among the statutory duties of sheriffs in South Carolina is the duty to patrol the entire county under the sheriff's jurisdiction, set out in S. C. Code Ann. 23-13-70 (Supp. 2020).
8. The BCSO, under the direction of the Sheriff, patrols the entirety of Beaufort County, including areas within the municipal limits of any city or town in Beaufort County.
9. The BCSO, under the direction of the Sheriff, provides a uniform level of service throughout the County, and the personnel and assets of the BCSO are utilized throughout the entirety of Beaufort County, as the Sheriff determines the needs of any particular time and place require.
10. The Town does not have a municipal police department.
11. The Town does contract with the BCSO for enforcement of Town ordinances within the municipal limits of the Town.
12. Enforcement of Town ordinances is a separate and distinct function from the Sheriff's duty to patrol the entirety of Beaufort County.
13. The annual Budget for Beaufort County for fiscal year 2020 was \$135,162,698.00.
14. Taxes paid by taxpayers within the municipal limits of the Town, totaled \$53,255,174.00, and represented 39% of the total annual budget for Beaufort County for fiscal year 2020.
15. The annual budget for the BCSO for fiscal year 2020 was \$33,399,342.00.
16. The cost of delivery of the uniform level of service by the Sheriff within the municipal

limits of the Town was \$4,383,257.00, for Fiscal Year 2020.

17. The cost of delivery of the uniform level of service by The Sheriff within the municipal limits of the Town is approximately 13.01% of the total annual budget for the BCSO for fiscal year 2020.

18. The annual Budget for Beaufort County for fiscal year 2021 is \$130,300,431.00.

19. Taxes paid by taxpayers within the municipal limits of the Town, are anticipated to total \$53,787,726.00, and will represent 41% of the total annual budget for Beaufort County for fiscal year 2021.

20. The annual budget of the BCSO is a part of the annual budget for Beaufort County. There is no separate millage stated to fund the operations of the BCSO, it is a part of the overall Beaufort County budget, which exceeds the 13% of the BCSO's budget consumed by the delivery of services in the municipal limits of the Town.

21. For fiscal year 2020, taxpayers in the Town contributed 39% of the budget of the BCSO, and for fiscal year 2020, it is anticipated that taxpayers in the Town will contribute 41% of the budget of the BCSO, which exceeds the 13% of the BCSO's budget consumed by the delivery of services in the municipal limits of the Town.

22. On August 24, 2020, Beaufort County adopted an Ordinance entitled: "Establishing a Beaufort County Law Enforcement Service Charge and Uniform User Fee" (hereinafter the "Law Enforcement Service Charge").

23. S. C. Code Ann. § 6-1-300(6)(Supp. 2020) authorizes a "service or user fee": in return for a particular government service or program made available to the payer that benefits the payer in some manner different from the members of the general public not paying the fee.

24. Under the authority of S. C. Code Ann. § 4-9-30(5)(a)(Supp. 2020), Beaufort County has the authority:

to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of Beaufort County, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above. However, prior to the creation of a special tax district for the purposes enumerated in this item, one of the following procedures is required: (emphasis supplied)

(i) When fifteen percent of the electors in a proposed special tax district sign and present to Beaufort County council a petition requesting the creation of a special tax district, an election must be held in which a majority of the electors in that area voting in the election shall approve the creation of the special tax district, the nature of the services to be rendered and the maximum level of taxes or user service charges, or both, authorized to be levied and collected. The petition must contain a description of the proposed special tax district, the elector's signature and address. If Beaufort County council finds that the petition has been signed by fifteen percent or more of the electors resident within the area of the proposed special tax district, it may certify that fact to Beaufort County election commission. Upon receipt of a written resolution certifying that the petition meets the requirements of this section, Beaufort County election commission shall order an election to be held within the area of the proposed special tax district. The election ordered pursuant to this section is a special election and must be held, regulated, and conducted with the provisions prescribed by Chapters 13 and 17 of Title 7, except as otherwise provided in this section. Beaufort County election commission shall give at least thirty days' notice in a newspaper of general circulation within the proposed special tax district. Beaufort County election commission shall certify the result of the election to Beaufort County council and county council by written resolution shall publish the result of the election.

(ii) When a petition is submitted to Beaufort County council signed by seventy-five percent or more of the resident freeholders who own at least

seventy-five percent of the assessed valuation of real property in the proposed special tax district, Beaufort County council upon certification of the petition may pass an ordinance establishing the special tax district. For the purposes of this item, "freeholder" has the same meaning as defined in Section 5-3-240. The petition must contain a designation of the boundaries of the proposed special tax district, the nature of the services to be rendered, and the maximum level of the taxes or user service charges, or both, authorized to be levied and collected.

(iii) When the area of the proposed special tax district consists of the entire unincorporated area of Beaufort County, county council may pass an ordinance establishing a special tax district. For the purposes of this item "unincorporated area" means the area not included within the corporate boundaries of a municipal corporation created pursuant to Chapter 1 of Title 5 or within a special purpose district created before March 7, 1973, to which has been committed the governmental service which Beaufort County council intends to provide through the proposed special taxing district unless the special purpose district has been dormant for five years or more. If, however, the same service intended to be rendered by the special taxing district is being rendered or is intended to be rendered within any portion of the territory of the special purpose district, then no such service may be rendered by the special taxing district without consent of the governing body of the special purpose district.

25. Although styled as a "Law Enforcement Service Charge," the Law Enforcement Service Charge is not a user fee, but is actually a special tax district.

26. Beaufort County has not complied with the requirements of S. C. Code Ann. § 4-9-30(5)(a)(Supp. 2020), for the creation of a special tax district.

27. Even if the Law Enforcement Service Charge is construed to be a user fee or uniform service charge, the same is invalid because:

(a) The Sheriff provides a uniform level of service throughout Beaufort County;

(b) The Sheriff does not provide a level of service in the Town that is different from what he provides throughout Beaufort County;

(c) The existence of police departments in some municipalities does not change the duties imposed by statute on The Sheriff, or result in the Town receiving a level of service from The Sheriff in excess of any other area in

Beaufort County; and,

(d) Taxpayers in the Town contributed an amount equal to 39% of the BCSO's budget in fiscal year 2020, and is anticipated to contribute an amount equal to 41% of the BCSO's budget in fiscal year 2021, which exceeds the 13% of the BCSO's budget consumed by services of the BSCO delivered in the Town.

BY WAY OF A FIRST CAUSE OF ACTION

28. Each and every allegation of Paragraphs 1 through 27 is re-alleged, as if fully repeated herein.
29. S. C. Code Ann. § 15-53-30 (Supp. 2020), reads:
- Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.
30. The Town seeks a declaratory judgment that the August 24, 2020, Law Enforcement Service Charge is invalid and illegal on its face because the Law Enforcement Service Charge seeks to impose a fee for the entire cost of delivery of a countywide service provided by The Sheriff within the municipal limits of Hilton Head Island, not for any defined enhancement or additional service delivered by The Sheriff over and above the uniform level of service provided by The Sheriff throughout Beaufort County.
31. The text of the Law Enforcement Service Charge states that the cost of delivery of the uniform level of service by The Sheriff within the municipal limits of the Town is \$4,383,257.00, for Fiscal Year 2020. That figure is approximately 13.01% of the 2020 budget for the BCSO.
32. Taxpayers in the municipal limits of the Town contribute an amount to the budgets

of Beaufort County and the BCSO that exceed the cost of delivery of services by the BCSO in the municipal limits of the Town, and the delivery of a county wide service by the Sheriff does not benefit the taxpayers in the Town in a manner different from any person who will not pay the fee.

33. The Town is entitled an Order of the Court of Common Pleas declaring that Beaufort County's Law Enforcement Service Charge does not comply with the requirements of the South Carolina Code governing the imposition of uniform service charges.

34. The Town is entitled an Order of the Court of Common Pleas declaring that Beaufort County's Law Enforcement Service Charge is an illegal tax imposed only on the taxpayers in the Town, in violation of the Constitution and statutes of South Carolina.

BY WAY OF A SECOND CAUSE OF ACTION

35. Each and every allegation of Paragraphs 1 through 34 is re-alleged, as if fully repeated herein.

36. Beaufort County's Law Enforcement Service Charge is invalid and illegal on its face because the Law Enforcement Service Charge seeks to impose a fee for the entire cost of delivery of a countywide service provided by the Sheriff within the municipal limits of Hilton Head Island, not for any defined enhancement or additional service delivered by the Tanner over and above the uniform level of service provided by The Sheriff throughout Beaufort County.

37. The text of the Law Enforcement Service Charge is invalid and illegal because:

(a) The Sheriff provides a uniform level of service throughout Beaufort County;

(b) The Sheriff does not provide a level of service in the Town that is different from what he provides throughout Beaufort County;

(c) The existence of police departments in some municipalities does not change the duties imposed by statute on The Sheriff, or result in the Town receiving a level of service from the Sheriff in excess of any other area in Beaufort County; and,

(d) Taxpayers in the Town contributed an amount equal to 39% of the BCSO's budget in fiscal year 2020, and is anticipated to contribute an amount equal to 41% of the BCSO's budget in fiscal year 2021, which exceeds the 13% of the BCSO's budget consumed by services of the BSCO delivered in the Town.

38. The Town is entitled an Order of the Court of Common Pleas granting a temporary and permanent injunction, enjoining collection of the Law Enforcement Service Charge because it is invalid on its face and does not comply with the requirements of the South Carolina Code governing the imposition of uniform service charges or the creation of a special tax district, and is an illegal tax imposed only on the taxpayers within the Town, in violation of the Constitution and law of South Carolina.

39. No adequate remedy at law exists to halt the illegal and unconstitutional imposition of the Law Enforcement Service Charge on taxpayers in the Town. Because this is characterized as a fee and is not an assessment of real property, no method exists for a taxpayer to appeal the imposition of the fee. There are approximately 40,965 tax parcels in the Town, and thus 40,695 payments under protest and lawsuits would be required for the taxpayers to defend individually against this invalid and illegal tax.

CONCLUSION

Wherefore, The Town of Hilton Head Island, South Carolina, prays that this Court inquire into the matters set forth herein, and that it enter its Order as follows:

1. Granting a temporary and permanent injunction, enjoining the collection of the Beaufort County, South Carolina, Law Enforcement Service Charge.

2. Finding that the Beaufort County, South Carolina, Law Enforcement Service Charge, is invalid and unenforceable; and,
3. For all other and further relief as this Court may deem just and proper.

COLTRANE & WILKINS, LLC

By: s/Curtis L. Coltrane
Curtis L. Coltrane
South Carolina Bar Number: 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (facsimile)
curtis@coltraneandwilkins.com

Hilton Head Island, South Carolina

This 17th day of September, 2020.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) VERIFICATION

Personally appeared before me, Joshua A. Gruber, who being duly sworn, deposes and says: that he is the Deputy Town Manager for The Town of Hilton Head Island, South Carolina, and that he has authority to act on behalf of The Town of Hilton Head Island, South Carolina, that he has read the within Complaint, and that the facts are true of his own knowledge, except those matters and things therein alleged upon information and belief, and as to those, he believes them to be true.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: _____
 Joshua A. Gruber

Its: Deputy Town Manager

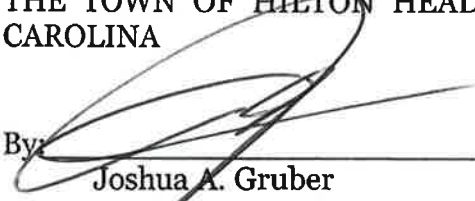
Sworn to and Subscribed
Before me on this ____ Day of
September, 2020.

Krista M. Wiedmeyer
Notary Public for South Carolina
My Commission Expires:_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) VERIFICATION

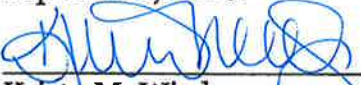
Personally appeared before me, Joshua A. Gruber, who being duly sworn, deposes and says: that he is the Deputy Town Manager for The Town of Hilton Head Island, South Carolina, and that he has authority to act on behalf of The Town of Hilton Head Island, South Carolina, that he has read the within Complaint, and that the facts are true of his own knowledge, except those matters and things therein alleged upon information and belief, and as to those, he believes them to be true.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

By: 
Joshua A. Gruber

Its: Deputy Town Manager

Sworn to and Subscribed
Before me on this 17th Day of
September, 2020.


Krista M. Wiedmeyer
Notary Public for South Carolina
My Commission Expires: 5/21/2023

