

RECEIVED

Jul 10 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE ROGER M. YOUNG, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001414

Charleston Advancement Academy High School.....Appellant,

v.

South Carolina Public Charter School District..... Respondent.

FINAL REPLY BRIEF OF APPELLANT

PRITCHARD LAW GROUP, LLC

Edward K. Pritchard, III, Esquire
Bar No. 9710
8 Cumberland Street, Suite 200 (29401)
Post Office Box 630
Charleston, South Carolina 29402-0630
Phone: (843) 722-3300
Fax: (843) 722-3379
epritchard@pritchardlawgroup.com

-AND-

TURNER & CAUDELL ATTORNEYS AT LAW

Tyler R. Turner, Esq.

South Carolina Bar No. 78447

E-Mail: [tturner\(a\),turnercaudell.com](mailto:tturner(a),turnercaudell.com)

Mary Allison Caudell, Esq.

South Carolina Bar No. 101187

E-Mail: [macaudell\(a\),turnercaudell.com](mailto:macaudell(a),turnercaudell.com)

914 Richland Street, Suite A-101

Columbia, South Carolina 29201

(803) 828-9708

***ATTORNEYS FOR APPELLANT,
CHARLESTON ADVANCEMENT
ACADEMY HIGH SCHOOL***

June 29, 2023

Charleston, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

CASES i

STATUTES i

Rules i

ARGUMENT !

**APPELLANT MISAPPREHENDS THE NATURE OF SUBJECT
 MATTER JURISDICTION** 1

CONCLUSION 4

TABLE OF AUTHORITIES

CASES

Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92,
674 S.E.2d 524 (Ct. App. 2009) 1, 2

Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40 (2012) 3

Jensen v. SC Dep't of Soc. Servs., 297 S.C. 323,333,377 S.E.2d 102, 108 (Ct. App. 1988) 3

Sabb v. South Carolina State Univ., 350 S.C. 416, 567 S.E.2d 231 (2002) 3

STATUTES

Section 59-40-40(4), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended 1, 2

Section 59-40-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended 1, 2

Section 59-40-140, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended 1, 2

Section 59-40-190(C), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended 3, 4

RULES

Rule 12(b), S.C.R.Crv.P 3

ARGUMENT

APPELLANT MISAPPREHENDS THE NATURE OF SUBJECT MATTER JURISDICTION

The South Carolina Public Charter School District (hereinafter referred to as the "SCPCSD") argues that Sections 59-40-40(4), 90, 140 and 190(C), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, divest the Circuit Court of jurisdiction over this action. In so doing, the SCPCSD conflates subject matter jurisdiction with an affirmative defense.

A reexamination of the law relating to statutory construction - which was adequately covered the Initial Brief of Appellant - is unnecessary in this Reply Brief. The principal rule of statutory construction which repudiates SCPCSD's position is the well settled rule that the Circuit Courts have subject matter jurisdiction over a breach of contract action in the absence of clear legislative intent to strip the Circuit Court of subject matter jurisdiction over the same. *See Capital City Ins. Co. v. Bp Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). Contrary to what the SCPCSD maintains, there is absolutely nothing in the South Carolina Charter Schools Act of 1996, as amended (hereinafter referred to as the "Act") which divests the Circuit Court over Charleston Advancement Academy High School's (hereinafter referred to as "CAA") breach of contract action.

The crux of the SCPCSD's rebuttal to this well settled principal of law is as follows:

Not only is this factually incorrect, it also turns the correct legal analysis on its head. Because the District and CAA are created by statute, their authority is limited to that granted by the legislature. Therefore, absent the specific right by the General Assembly for a charter school to bring a claim against its sponsor under the Act or appeal a decision by its sponsor under the Act, the charter school would not have the right to do so.

Initial Brief of Respondent, pp. 12 of 23 - 13 of 23. This completely misses the point.

That the SCPCSD or CAA are created by statute which define their respective duties,

powers and authorities has no bearing whatsoever on the inquiry at hand. The determination of turns not on whether the Act specifically grants CAA the authority to bring such a cause of action, but rather whether the Act expressly divests the Circuit Court of jurisdiction. The SCPCSD's claim that the Circuit Court lacks subject matter jurisdiction over a dispute between CAA and the SCPCSD in the absence of an express grant of jurisdiction by the Act is, therefore, repugnant to the well settled rule that the Circuit Courts have subject matter jurisdiction over a breach of contract action in the absence of clear legislative intent to strip the Circuit Court of subject matter jurisdiction over the same. *Id.*

The SCPCSD's reliance on Sections 59-40-40(4) and 59-40-140 is meritless. Nothing in either statute purports to divest the Circuit Courts of subject matter jurisdiction over a breach of contract action between CAA and the SCPCSD.

The SCPCSD's reliance on Section 59-40-90 is, likewise, misplaced. Section 59-40-90 gives CAA the right, but imposes no obligation on CAA to appeal "a final decision" of the District to the Administrative Law Court. Section 59-40-90 deals with exhaustion of an administrative remedy. Section 59-40-90 unquestionably requires exhaustion of an administrative remedy. Consequently, it in no way strips the Circuit Court of subject matter jurisdiction. *See Id.*

A claim seeking damages for breach of contract is not a wrong for which the administrative scheme set forth in Section 59-40-90 - appealing a decision of the SCPCSD to the Administrative Law Court seeking to have the same overturned - was designed to redress. CAA is, therefore, not required, as a matter of law, to appeal the SCPCSD's actions to the Administrative Law Court

¹ The SCPCSD attempts to distinguish this case on the basis that it did not involve public bodies. This argument is premised on the previously refuted claim that since public bodies are creatures of statute, the Circuit Court's jurisdiction must be granted by the statutory scheme which creates them. This, of course, has no support in the law as it is axiomatic that the exact opposite is the case: a Circuit Court has subject matter over a cause, unless the statutory scheme which creates the relevant public bodies specifically divests the Circuit Court of subject matter jurisdiction over a cause.

seeking damages for breach of contract. It is simply not a remedy the Administrative Law Court is authorized to provide.

No final decision of the SCPCSD is in issue in this matter. What is in issue is the unjustified failure of the SCPCSD to perform its obligations under the Charter Contract giving rise to damage to CAA. The remedy sought is not to have the court reverse a decision of the SCPCSD, but rather to award CAA damages for the SCPCSD's conduct.

The Circuit Court's holding that Section 59-40-190(C) renders the District immune from CAA's breach of contract cause of action is similarly without merit.

Section 59-40-190(C), likewise, lends no support to the SCPCSD's positions. Section 59-40-190(C) simply provides the SCPCSD, the members its board, and its employees immunity from civil liability when acting in their official capacity with respect to activities related to a charter school the SCPCSD sponsors. Immunity goes not to subject matter jurisdiction, but rather is an affirmative defense which the SCPCSD has the burden of establishing. *See Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). Thus, dismissal under a Rule 12(b), S.C.R.C1v.P., motion "is seldom appropriate when the defense of immunity is pleaded. In such cases the court must determine whether the public official acted within the scope of his discretionary authority." *Jensen v. S.C. Dep't of Soc. Servs.*, 297 S.C. 323, 333, 377 S.E.2d 102, 108 (Ct. App. 1988); *accord Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012). Whether the SCPCSD and/or its Board were acting within the scope of his discretionary authority is at the core of the dispute in this action. Thus, this is a question for the trier of fact. Clearly the Court's dismissal based on Section 59-40-190(C) was misplaced.

Section 59-40-190(C) does not necessarily render the SCPCSD immune from suit but rather from suit arising out of the activities of a charter school it sponsors provided the SCPCSD

is acting in its official capacity. Section 59-40-190(C) does nothing more than shield the SCPCSD from criminal or civil liability to a third party for CAA's conduct.

The SCPCSD's arguments relating to the declaratory judgment and due process causes of action are essentially the same as they are as to the breach of contract cause of action: that because the SCPCSD and CAA are creatures of statute, Circuit Courts have no subject matter jurisdiction over disputes between them in the absence of an express grant of jurisdiction to the Circuit Courts in the Act. The SCPCSD's argument in this is demonstrably abhorrent to the well settled proposition that a Circuit has subject matter jurisdiction over a cause unless a statutory scheme expressly strips it of the same.

Finally the SCPCSD asserts several additional sustaining grounds for affirmance of the Circuit Court's erroneous order. All of these sustaining grounds go to the merits of this case, were not considered by the Circuit Court or any trier of fact and are not appropriate for consideration in this appeal.

CONCLUSION

The Circuit Court improperly dismissed this matter for lack of subject matter jurisdiction. Accordingly, the November 3, 2021, Order of the Circuit Court must be reversed and remanded for further proceedings consistent with the relief sought in the Amended Complaint.

[THIS SPACE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON NEXT PAGE]

Respectfully Submitted,

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III, Esquire
Bar No. 9710
8 Cumberland Street, Suite 200 (29401)
Post Office Box 620
Charleston, South Carolina 29402
Phone: (843) 722-3300
Fax: (843) 722-3379
epritchard@pritchardlawgroup.com

June 29, 2023
Charleston, South Carolina

- AND -

TURNER & CAUDELL ATTORNEYS AT LAW

Tyler R. Turner, Esq.
South Carolina Bar No. 78447
E-Mail: tturner@turnercaudell.com
Mary Allison Caudell, Esq.
South Carolina Bar No. 101187
E-Mail: macaudell@turnercaudell.com
914 Richland Street, Suite A-101
Columbia, South Carolina 29201
(803) 828-9708

***ATTORNEYS FOR APPELLANT,
CHARLESTON ADVANCEMENT
ACADEMY HIGH SCHOOL***

June 29, 2023
Columbia, South Carolina

RECEIVED

Jul 10 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE ROGER M. YOUNG, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001414

Charleston Advancement Academy High School..Appellant,

V.

South Carolina Public Charter School District.. Respondent.

CERTIFICATE OF RULE 211(A), SCACR, COMPLIANCE

I hereby certify that the *Final Reply Brief of Appellant* complies with Rule 211(b), SCACR.

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III, Esq.

June 29, 2023
Charleston, South Carolina

RECEIVED

Jul 10 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE ROGER M. YOUNG, CIRCUIT COURT JUDGE

Appellate Case No. 2021-001414

Charleston Advancement Academy High School..Appellant,

V.

South Carolina Public Charter School District.. Respondent.

PROOF OF SERVICE

I certify that I have served The *Final Reply Brief* on Respondent, South Carolina Public Charter School District, by e-mail to its attorney of record, Erik T. Norton, Esq., addressed to Harrell, Martin & Peace, P.A., Post Office Box 1000, Chapin, South Carolina 29036, e-mail address Erik@hmp-law.com on June 29, 2023.

PRITCHARD LAW GROUP, LLC


Edward K. Pritchard, III, Esq.