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Oct 03 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2021-000053

Sarah Sharper..... Appellants,

v.

City of North Charleston, County of Charleston, Department of Health and Environmental Control, South Carolina Department of Transportation, Banks Construction Company, United Contractors, Inc., Banks/United Joint Venture and HLA, Inc., Coleman-Snow Consultants, LLC and ICA Engineering, Inc, f/k/a Florence & Hutcheson Company, Inc.,.....Respondents.

MOTION TO ENFORCE SETTLEMENT AGREEMENT

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*Attorneys for South Carolina Department of
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CASES

American Agric. Chem. Co. v. Thomas, 206 S.C. 355, 34 S.E.2d 592 (1945)5

Charleston County Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).....4

Citizens for Responsibility & Ethics v. FEC, 363 F. Supp. 3d 33, 39 (D.D.C. 2018)5

Gantt v. Selph, 423 S.C. 333, 338, 814 S.E.2d 523, 525 (2018)4

Gnoc Corp. v. Estate of Rhyne, 312 S.C. 86, 88, 439 S.E.2d 274, 275 (1994) (emphasis added) ..5

Jeter v. S.C. DOT, 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006).....4

Lujan v. Defs. of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)4

Petroleum Transp., Inc. v. Public Service Comm'n, 255 S.C. 419, 179 S.E.2d 326 (1971).....5

Shekoyan v. Sibley Int'l Corp., 217 F. Supp. 2d 59, 63 (D.D.C. 2002).....5

STATUTES

SC Code Ann. §15-78-70(d)4

RULES

Rule 12(b)(1), SCRCP4, 5

Rule 43(k), SCRCP3, 5

You will please take notice that Defendant South Carolina Department of Transportation (“SCDOT”), as soon hereafter as the Court may require, will move to enforce the Settlement Agreement reached by and among the parties to the above-captioned matter and filed with the court on November 22, 2022, as more fully set forth below. In the alternative, SCDOT moves to dismiss for a lack of subject matter jurisdiction under Rule 12(b)(1), SCRPC.

I. MOTION TO ENFORCE SETTLEMENT AGREEMENT

SCDOT moves to enforce the current settlement agreement. The stipulation of partial settlement was signed by counsel pursuant to Rule 43(k), SCRPC which provides as follows:

THAT the Homeowners, for the sole consideration of a total of Two Hundred Fifty Thousand and no/100's Dollars (\$250,000.00) paid to the Homeowners collectively, by or on behalf of the City of North Charleston, the County of Charleston, and DHEC ("Government Defendants") do fully and finally release and discharge the Government Defendants from any and all claims arising out of the alleged damages set forth in these lawsuits. In addition, the Homeowners agree to the following:

- *To provide Medicare Insurance Verification Forms, and any other requirements to comply with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.*
- *To sign all documents and cooperate in the filing of any documents with the Register of Deeds for Charleston County necessary to effectuate attachment of the settlement agreement with the land that is the subject of these lawsuits.*
- *To release and hold harmless the Governmental Defendants from any and all claims by Homeowners' successors, heirs, devisees, purchasers, insurers, and assignees, including but not limited to subsequent purchasers of the properties.*
- *To dismiss the Homeowners' appeal of the Court's order granting SCDOT's motion for summary judgment and ending all litigation with SCDOT in these lawsuits.*¹

Although the Governmental Defendants fulfilled their obligations under the settlement stipulation, Plaintiff has not dismissed this appeal, pursuant to the above agreement. SCDOT prays this honorable court enforces the settlement agreement and dismiss Plaintiffs’ appeal of the trial

¹ Exhibit A.

court's order granting SCDOT's motion for summary judgment and end all litigation between Plaintiffs and SCDOT.

II. MOTION TO DISMISS
SCRCP 12(b)(1) – Subject Matter Jurisdiction

In the alternative, SCDOT moves to dismiss the Plaintiffs' action against SCDOT for lack of subject matter jurisdiction. Subject matter jurisdiction may be raised at any time during litigation. Gantt v. Selph, 423 S.C. 333, 338, 814 S.E.2d 523, 525 (2018). The issue of interpretation of a statute is a question of law for the court. Jeter v. S.C. DOT, 369 S.C. 433, 438, 633 S.E.2d 143, 146 (2006), citing Charleston County Parks & Rec. Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

Jurisdiction over the subject matter of this litigation was lost when Plaintiffs settled their claims against the Department of Health and Environmental Control (DHEC). *See*, SC Code Ann. §15-78-70(d) stating:

“A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.”
SC Code 15-78-70(d)

Plaintiffs' settlement with DHEC, the County of Charleston, and the City of North Charleston (collectively “Governmental Defendants”) in this action constitutes a complete bar to any further action by the Plaintiffs against the Governmental Defendants. A complete bar to further action deprives the Court of subject matter jurisdiction in any claim against an entity of the State for the same occurrence.

Under Rule 12(b)(1), SCRCP, the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See*, Lujan v. Defs. of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); Shekoyan v. Sibley Int'l Corp., 217 F. Supp. 2d 59, 63 (D.D.C. 2002); Citizens for Responsibility & Ethics v. FEC, 363 F. Supp. 3d 33, 39 (D.D.C. 2018). “The

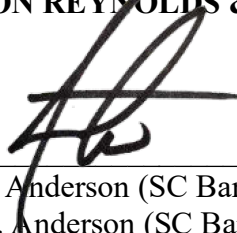
question of lack of subject matter jurisdiction may be raised at any time during the action and cannot be **waived or conferred by consent**. . .”. Gnoc Corp. v. Estate of Rhyne, 312 S.C. 86, 88, 439 S.E.2d 274, 275 (1994) (emphasis added), citing Petroleum Transp., Inc. v. Public Service Comm’n, 255 S.C. 419, 179 S.E.2d 326 (1971); American Agric. Chem. Co. v. Thomas, 206 S.C. 355, 34 S.E.2d 592 (1945).

As Plaintiff settled with DHEC, there is no further case-in-controversy; they have settled with the State of South Carolina and this Court does not have subject matter jurisdiction over this action. SCDOT respectfully moves this Court to dismiss this action under SCRCP 12(b)(1) for a lack of subject matter jurisdiction.

III. CONCLUSION

SCDOT requests this court enforce the settlement agreement lawfully entered by the parties under Rule 43K, SCRCP as Plaintiff’s bound themselves to dismiss their appeal against SCDOT. Further, SCDOT requests the dismissal of this action under Rule 12(b)(1), SCRCP for a failure of subject matter jurisdiction.

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3 October 2023
Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

SARAH SHARPER,

Plaintiff,

vs.

CITY OF NORTH CHARLESTON,
COUNTY OF CHARLESTON,
DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL, SOUTH
CAROLINA DEPARTMENT OF
TRANSPORTATION, BANKS
CONSTRUCTION COMPANY, UNITED
CONTRACTORS, INC, BANKS/UNITED
JOINT VENTURE AND HLA, INC.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
)

) CASE NO. 2017-CP-10-4820
)

) **STIPULATION OF PARTIAL**
) **SETTLEMENT**
)

) Other case numbers:

-) 2017-CP-10-4821
-) 2017-CP-10-4822
-) 2017-CP-10-4823
-) 2017-CP-10-4824
-) 2017-CP-10-4825
-) 2017-CP-10-4826
-) 2017-CP-10-4827
-) 2017-CP-10-4835
-) 2017-CP-10-4836
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)	2017-CP-10-4926
)	2017-CP-10-4927
)	2017-CP-10-4928
)	2017-CP-10-4929
)	2017-CP-10-4930
)	2017-CP-10-4931
)	2017-CP-10-5108

The matters involved in the above captioned actions have been resolved as they relate to the Defendants, City of North Charleston, the County of Charleston, the South Carolina Department of Health and Environmental Control (“DHEC”) and the South Carolina Department of Transportation (SCDOT) by reason of the agreement by and between Keith I. McCarty and Jarrel L. Wigger, Attorneys for the Plaintiff Homeowners (Homeowners); Amanda R. Maybank and Catherine H. Chase, Attorneys for County of Charleston, Phillip Ferderigos, Attorney for City of North Charleston, and Jonathan J. Anderson, Attorney for SCDOT and DHEC, it is hereby agreed and stipulated:

THAT the Homeowners, for the sole consideration of a total of Two Hundred Fifty Thousand and no/100’s Dollars (\$250,000.00) paid to the Homeowners collectively, by or on behalf of the City of North Charleston, the County of Charleston, and DHEC (“Government Defendants”) do fully and finally release and discharge the Government Defendants from any and all claims arising out of the alleged damages set forth in these lawsuits. In addition, the Homeowners agree to the following:

- To provide Medicare Insurance Verification Forms, and any other requirements to comply with Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.
- To sign all documents and cooperate in the filing of any documents with the Register of Deeds for Charleston County necessary to effectuate attachment of the settlement agreement with the land that is the subject of these lawsuits.
- To release and hold harmless the Governmental Defendants from any and all claims by Homeowners’ successors, heirs, devisees, purchasers, insurers, and assignees, including but not limited to subsequent purchasers of the properties.

- To dismiss the Homeowners' appeal of the Court's order granting SCDOT's motion for summary judgment and ending all litigation with SCDOT in these lawsuits.

These cases remain pending against Banks Construction Company, United Contractors, Inc./United Joint Venture, Coleman Snow Consultants LLC, ICA Engineering Inc., Florence & Hutchinson Inc., and HLA, Inc.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Bentley D. Price, Circuit Court Judge

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Sarah Sharper..... Appellants,

v.

City of North Charleston, County of Charleston, Department of Health and Environmental Control, South Carolina Department of Transportation, Banks Construction Company, United Contractors, Inc., Banks/United Joint Venture and HLA, Inc., Coleman-Snow Consultants, LLC and ICA Engineering, Inc, f/k/a Florence & Hutcheson Company, Inc.,Respondents.

PROOF OF SERVICE

I hereby certify that on October 3, 2023, I served a copy of Respondent South Carolina Department of Transportation’s **Motion to Enforce Settlement Agreement** on the following:

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-And-

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by electronic mail and by placing a copy of said documents in the United States mail with sufficient postage thereon.

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Molly Jankowski

Molly Jankowski, Paralegal

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(843) 723-0185 –phone

Molly C. Jankowski

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Sent: Tuesday, October 3, 2023 3:55 PM
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Cc: JJ Anderson; Jonathan L. Anderson; Rebeca Powell; Teresa; tbates@ycrlaw.com; ajustman@ycrlaw.com; dconlee@ycrlaw.com; Gaye W. DuPre; jharvey@hsblawfirm.com; nkingsley@hsblawfirm.com; maria.keeve@nelsonmullins.com; kmn@lylesfirm.com
Subject: Sarah Sharper v. City of North Charleston, et al (Appellate case #: 2021-000053) re: Service of SCDOT's Motion to Enforce Settlement Agreement
Attachments: 2023.10.03_Motion to compel settlement_motion to dismiss..pdf
Importance: High
Follow Up Flag: Follow up
Flag Status: Flagged

Good afternoon,

Pursuant to Rule 262, for service upon you please see attached South Carolina Department of Transportation's Motion to Enforce Settlement Agreement, which will be filed with the Appellate Court today (10/3). A copy of the attached will also be mailed to the addresses listed on the Proof of Service.

Thank you!

Respectfully,

Molly Jankowski

Paralegal

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