

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT  
Civil Action No.: 2013-CP-40-057

**RECEIVED**

JUL 25 2013

**SC Court of Appeals**

International Paper Company, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
South Carolina State Energy Office, )  
 )  
Defendant. )

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS AND DENYING  
PLAINTIFF'S MOTION TO STAY**

RICHLAND COUNTY  
FILED  
JUL 16 PM 4:25  
CLERK OF COURT  
& S.S.

This matter is before the Court upon Defendant's Motion to Dismiss pursuant to SCRCP 12(b)(6) and 12(b)(8) and Plaintiff's Motion to Stay. At hearings on May 16, 2013 and June 15, 2013 attended by counsel for the parties, this Court heard oral argument on the parties' motions. Based on the pleadings and arguments of counsel, this Court finds that Defendant's Motion to Dismiss should be granted and Plaintiff's Motion to Stay should be denied.

Under SCRCP 12(b)(8) dismissal is ordinarily appropriate when another action is pending between the same parties for the same claim. "[T]he claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39, 45 (Ct. App. 2010).

Plaintiff's Complaint alleges:

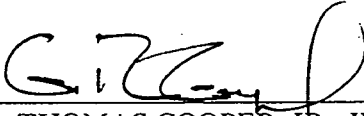
18. On or before January 31, 2011 International Paper filed an Application for Biomass Resource Credit with the State Energy Office requesting that the State Energy Office certify that the 2010 Costs qualified for the Biomass Resource Credit ("2010 Application").
19. On March 1, 2011 the State Energy Office responded to International Paper's 2010 Application by email ("2010 Decision").
20. The 2010 Decision did not certify that the 2010 Costs qualified for the Biomass Resource Credit.

21. On March 25, 2011 International Paper filed a request for a contested case hearing with the South Carolina Administrative Law Court ("ALC"), stating that the 2010 Decision should have certified that the 2010 Costs qualified for the Biomass Resource Credit ("2010 Case").
26. On or before January 31, 2012 International Paper filed an Application for Biomass Resource Credit with the State Energy Office requesting that the State Energy Office certify that that the 2011 Costs qualified for the Biomass Resource Credit ("2011 Application").
27. On March 1, 2012 the State Energy Office responded to International Paper's 2011 Application for Biomass Resource Credit by email ("2011 Decision").
28. The 2011 Decision did not certify that the 2011 Costs qualified for the Biomass Resource Credit.
29. On March 2, 2012 International Paper filed a request for a contested case hearing with the ALC, stating that the 2011 Decision should have certified that the 2011 Costs qualified for the Biomass Resource Credit ("2011 Case").
34. On December 19, 2012 the ALC issued an order, a copy of which is attached as Exhibit A, granting the State Energy Office's October 3, 2012 Motion to Dismiss and remanding to the State Energy Office ("ALC Order").
37. On January 17, 2013 International Paper appealed the ALC Order ("Appeal").
39. Upon information and belief, either this Court or the ALC has jurisdiction over the State Energy Office when it performs its functions under S.C. Code Ann. § 12-6-3620.
42. The time limit for commencing a civil action in this Court may expire before the Appeal is resolved and International Paper may then have no opportunity for judicial review if it does not commence an action with this Court and a court ultimately determines that the ALC does not have jurisdiction over the State Energy Office.

As can be seen by the allegations of the Complaint, Plaintiff admits that the current action involves the same claim made before the ALC, which is presently pending on appeal. Dismissal under SCRCF 12(b)(8) is therefore appropriate and Defendant's Motion to Dismiss is granted and Plaintiff's Motion to Stay is denied.

GR #2

**IT IS SO ORDERED:**



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G. THOMAS COOPER, JR., JUDGE  
FIFTH JUDICIAL CIRCUIT

July 16, 2013  
Columbia, South Carolina