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Jan 25 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2023-000569
Case No. 2019-CP-26-07075

Meswaet Abel, as Personal Representative of the Estate
of Zerihun Wolde and as Natural Parent and Legal
Guardian of Adam Wolde and Wubit Wolde.....Respondent,

v.

Lack’s Beach Service, Inc., City of Myrtle Beach, and
John Doe Lifeguard, Defendants,

Of which Lack’s Beach Service is the.....Appellant.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to Rules 240 and 213 of the South Carolina Appellate Court Rules (“SCACR”), the Municipal Association of South Carolina (the “Association”), respectfully requests the permission of this Court to file and serve an *amicus curiae* brief in the above-captioned matter, currently pending before this honorable Court. As allowed by Rule 213, SCACR, the Association also conditionally files its brief with this Motion for Leave to File.

I. Interest of *Amicus Curiae*

The Municipal Association of South Carolina (the “Association”) is a nonpartisan, nonprofit association of South Carolina’s incorporated cities and towns. All 271 municipalities in South Carolina are members of the Association. The Association provides services and programs directly to its member municipalities, offers education and training resources, and represents the collective interests of municipalities throughout the State before the General Assembly and in the courts of this State.

As provided by Rule 213, SCACR, the Association’s interest in this case is to provide the Court with a broader perspective on the views and interests of South Carolina municipalities with respect to their right to outsource or delegate public services, particularly when a state statute directly authorizes the scope and terms of the delegation in question.

II. Desirability of Brief of *Amicus Curiae*

The Association’s mission is to protect and advance the interests of its member municipalities. The municipal interest in this case is that coastal municipalities have the right to determine, as a matter of policy, whether to provide lifeguard services themselves or through a private party. Act 113 of 1999 established a comprehensive framework for the provision of lifeguard services within “[e]ach municipality bordering on the Atlantic Ocean.” See 1999 South Carolina Laws Act 113 (H.B. 3357), § 21, *now codified at* S.C. Code § 5-7-145. Under this framework, each such municipality “is authorized,” but is not required, “to provide lifeguard and other

safety related services on and along the public beaches within its corporate limits.”

Id. If the municipality does provide such services, they “may be provided using municipal employees or by service agreement with a private beach safety company.”

Id. Finally, the municipality may defray the expenses of its lifeguarding program by awarding an exclusive franchise for designated commercial activities on the beach.

Respondent’s case depends on the argument that a municipality may not award a franchise to a private party for lifeguard services that allows some of the lifeguards to engage in a “dual role” of providing lifeguard services and performing commercial rentals. In the Association’s view, S.C. Code § 5-7-145 and the franchise with Appellant both contemplate such a dual role for some of the lifeguards on duty. As such, allowing the full verdict against Appellant to stand would frustrate the policy determinations of both the State, as expressed in S.C. Code § 5-7-145, and the City of Myrtle Beach, as expressed in the franchise agreement. Such a result would also inhibit the ability of South Carolina’s municipalities to outsource or delegate public services. If private contractors are subject to unlimited liability when providing services to local governments, particularly under specific statutory authorization, then these companies will either refuse to provide such services or dramatically increase the costs payable under the contract.

For these reasons, the Association seeks to articulate the municipal perspective on the issues raised in this case.

WHEREFORE, the Association respectfully requests that the Court grant leave for the Association to file and serve an *amicus curiae* brief and, further, to accept for filing the Association's conditionally filed brief.

Respectfully submitted,

s/ Bryan Eric Shytle

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January 25, 2024
Columbia, South Carolina