

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
G. Thomas Cooper, Circuit Court Judge

Case No. 2013-CP-40-0572
Appellate Case No. 2013-001607

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AUG 05 2013

SC Court of Appeals

International Paper Company, Inc.,.....Appellant,

v.

South Carolina State Energy Office,.....Respondent.

RETURN TO MOTION TO CONSOLIDATE

The Respondent, the South Carolina Energy Office, requests that the Court deny the motion to consolidate the two pending International Paper appeals. The Respondent disagrees with Appellant's contention that the same question is involved in both cases.

The first appeal concerns an order which was issued by the Administrative Law Court on December 19, 2012. Since an Initial Brief has yet to be filed in that case, the Appellant has not disclosed the issues it contends are controlling. However, in that case the ALC dismissed Appellant's request for a contested case hearing due to lack of subject matter jurisdiction and denied Appellant's attempt to treat its contested case request as an appeal.

In the second matter the Appellant attached a copy of the Administrative Law Court order currently under appeal and sought declaratory (and related) relief virtually identical to that which

it had requested in the Administrative Law Court. In that case the Circuit Court dismissed the action under S.C.R.Civ.P. Rule 12(b)(8). It is from that decision that the second appeal is taken.

The questions at issue in the two cases are very different. The first case deals with issues such as deserting an ongoing administrative process and filing with the Administrative Law Court asking it to hear the matter *de novo* and issue a ruling, while the second deals with an effort by Appellant to bring an action in circuit court to get a another bite at the apple after Appellant's first attempt failed before the ALC.

The decision in the first appeal concerns a number of issues, including the statutory jurisdiction of the Administrative Law Courts after an applicant refuses to supply requested information to an agency, abandons an ongoing administrative process and seeks to have the Administrative Law Court provide a new hearing on its application instead of waiting for an administrative decision. The first appeal was the result of the Administrative Law Court finding that it did not have subject matter jurisdiction to grant the Appellant's request to provide the requested hearing.

The second resulted when the Circuit Court recognized that the case before it was filed after the Appellant had already appealed the Administrative Law Court's decision and it was simply attempting to re-litigate the case in another court obviously seeking a different outcome. The issue in the second case is whether the Circuit Court properly dismissed the attempt to litigate the same case a second time while the first case was still pending and was on appeal.

Consolidating the two appeals will only confuse the issues and will diminish the ability to clarify and explain the issues on appeal. Consolidation will result in unnecessary confusion of the issues and require a greater effort by all concerned to address the legal issues involved.

Most importantly, the cases on appeal do not qualify for consolidation. Rule 214 authorizes consolidation “where the same question is involved in two or more appeals in different cases. . . .” Rule 214, SCACR (emphasis added). The two appeals at issue are taken from two very different orders and deal with very different questions of law: One with the subject matter jurisdiction of the Administrative Law Courts and the other the proper application of S.C.R.Civ.P. Rule 12(b)(8).

For the reasons set forth above, the Respondent respectfully requests that this Court deny the Appellant’s Motion to Consolidate the two appeals.

Respectfully Submitted,



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August 5, 2013
Columbia, SC

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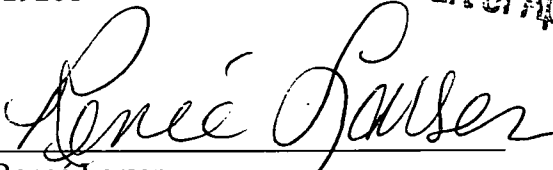
CERTIFICATE OF SERVICE

This will certify that I, Reneé Larsen, an employee of the South Carolina Budget and Control Board, Office of General Counsel, has this day delivered, via hand-deliver () U.S. Mail, postage prepaid, a copy of Respondent's Return to Appellant's Motion to Consolidate to:

Erik P. Doerring, Esquire
McNair Law Firm, P.A.
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Robert L. Widener, Esquire
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This the 5th day of August, 2013.



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