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August 19, 2024

RECEIVED
Aug 19 2024
SC Court of Appeals

Via Email Only
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Email: ctappfilings@sccourts.org

RE: David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation v. City of Aiken; Aiken Municipal Development Commission; Aiken Design Review Board
Appellate Case Number: 2024-000082
Civil Action Number: 2022-CP-02-1498
Our File Number: 79.20599

Dear Ms. Kitchings:

Pursuant to Section (b)(2)the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), please find enclosed for filing the **Final Brief of Respondent Aiken Design Review Board** with regard to the above referenced appeal. One bound copy, as requested by the Court, has been placed in the U.S. Mail. By copy of this letter, I am serving copies on all counsel of record by email only pursuant to Section (d)(1) of the same Supreme Court Order.

If you have any questions, please advise. Thank you for your assistance.

Sincerely,

LINDEMANN LAW FIRM, P.A.

Andrew F. Lindemann

AFL/jmb
Enclosures

cc: W. Andrew Gowder, Jr., Esquire *(w/ Enclosures, Via Email Only)*
Michael T. Rose, Esquire *(w/ Enclosures, Via Email Only)*
James G. Carpenter, Esquire *(w/ Enclosures, Via Email Only)*
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2024-000082
Case No. 2022-CP-02-1498

David W. Blake, Luis E. Rinaldini, Dudley Richard Dewar, Jenne Stoker, Beatrice B. McGhee, Gail King, Historic Aiken Foundation, Inc., Green Boundary Foundation, and South Carolina Public Interest Foundation, ... Appellants,

v.

City of Aiken; Aiken Municipal Development Commission; Aiken Design Review Board; Gary Smith,..... Defendants,

Of which City of Aiken; Aiken Municipal Development Commission; and Aiken Design Review Board are..... Respondents.

BRIEF OF RESPONDENT AIKEN DESIGN REVIEW BOARD

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STATEMENT OF THE CASE

On July 5, 2022, the Appellants filed a Complaint against multiple governmental entities and individuals including the Respondent Aiken Design Review Board ("DRB") seeking only declaratory and injunctive relief with respect to the redevelopment project in downtown Aiken known as "Project Pascalis." There were several additional versions of the Complaint that were subsequently filed. At the time that the Respondent City of Aiken's motion for summary judgment was heard, the Second Amended Complaint filed June 29, 2023, was the operative pleading. (R. 216-336). The individual DRB members had been voluntarily dismissed from the action at that point.

Based on the Second Amended Complaint, the non-FOIA-related allegations asserted against the DRB are summarized in Paragraph 136, which states:

> On March 1, 2022, the DRB ignored (a) its duties as a quasi-judicial entity, (b) all the above-referenced Sections of the Zoning Ordinance, (c) all the above-referenced Sections of the S.C. Code of Laws, (d) all the above-referenced guideline documents, and (e) all the above-referenced plans adopted by the City to approve a fatally flawed and incomplete application by granting the unprecedented and unauthorized form of "conditional" COA for demolition of a Contributing Structure in a Historic Site and three other Contributing structures based on very limited and biased information, in one meeting, with less than half an hour of total consideration and less than six minutes of deliberation. The structures approved for demolition are among the most prominent structures on the most prominent block in the City.

See, Second Amended Complaint, ¶ 136. (R. 299). Similarly, in Paragraph 106 of the Second Amended Complaint, the Appellants allege as follows:

> The DRB hastily approved, in its first Meeting on Project Pascalis, with less than six minutes of deliberation, a fatally flawed and incomplete application for demolition by using an unprecedented and unauthorized form of "conditional" COA that is not allowed by the Zoning Ordinance and is contrary to expressed provisions of

> the Zoning Ordinance Section 5.2.4(A)(3), which states that "the **application shall be denied**" (emphasis added). In approving the COA on March 1, 2022, the DRB ignored questions as to (a) the applicability of certain provisions of the Zoning Ordinance and certain guidelines and procedures and (b) pleas by its own members and by members of the public to slow the DRB process down and provide and review more complete information about RPM's demolition application.

See, Second Amended Complaint, ¶ 106. (R. 282).[1]

Thus, in their non-FOIA-related causes of action, the Appellants are suing the DRB for declaratory and injunctive relief related to a vote taken at a March 1, 2022 DRB meeting to grant a conditional Certificate of Appropriateness ("COA") and proceedings leading up to that vote. The Appellants never filed an appeal from the decision of DRB, and that failure is the subject of other motions that have been adjudicated in the circuit court, but are not at issue in this appeal.

As for the procedural history with respect to the motion for summary judgment and the termination of Project Pascalis, the DRB adopts herein the Statement of Case of the Respondent City of Aiken under the authority of Rule 208(b)(6), SCACR.

[1] These same allegations were included in the original Complaint. (R. 63-64, 79-80).

STANDARD OF REVIEW

"A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 662 S.E.2d 40, 41 (2008). "An appellate court reviews the grant of summary judgment under the same standard applied by the trial court." *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826, 829 (Ct. App. 2009). "The trial court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id*.

"When the circuit court grants summary judgment on a question of law, we review the ruling de novo." *Stoneledge at Lake Keowee Owners' Association, Inc. v. Builders Firstsource - Southeast Group*, 413 S.C. 630, 776 S.E.2d 434, 437 (Ct. App. 2015).

Moreover, contrary to the Appellants' assertion, in *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023), the South Carolina Supreme Court clarified that "the 'mere scintilla' standard does not apply under Rule 56(c). Rather, the proper standard is the 'genuine issue of material fact' standard set forth in the text of the Rule." 892 S.E.2d at 301. "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Id*.

ARGUMENTS

On appeal, the Respondent DRB takes the position that the circuit court's dismissal of the first and second causes of action on the basis that such claims are moot and non-justiciable is correct and should be affirmed. The DRB will not separately brief in detail the issue of mootness but relies on and adopts herein the arguments of the Respondent City of Aiken under the authority of Rule 208(b)(6), SCACR.

Suffice it to say, the DRB agrees with the City and the circuit court that this action, including the declaratory and injunctive relief claims asserted by the Appellants against the DRB, are controlled by the Supreme Court's 2021 decision in *Croft v. Town of Summerville*, 433 S.C. 473, 860 S.E.2d 352 (2021). Notably, the plaintiffs in *Croft*, consisting of citizens and public interest groups, were represented by the same attorneys representing the Appellants in the case at bar. The factual history in the *Croft* case is remarkably the same as the case at bar, where the plaintiffs disagreed with an adverse decision of Town of Summerville Board of Architectural Review, which is a quasi-judicial body like the DRB in this case. In adjudicating the plaintiffs' numerous and varied challenges to the decision of the Board related to a proposed development project much like Project Pascalis, the Supreme Court concluded that the plaintiffs' claims seeking reversal of the Board's approval of the project were barred based on mootness. Recognizing that the developer had abandoned the development project, the Supreme Court explained:

> At its core, the fight in this case is over whether the Developer can build the Project as currently approved by the Board, or whether the Developer must return to the Board and obtain new approval before building the Project. This controversy ended when the Developer decided not to build the Project. A decision rendered for either party would not provide any practical relief and would be a purely academic exercise by this Court.

860 S.E.2d at 356. The same is true in this case. The controversy ended when Project Pascalis was abandoned. Thus, as the circuit court correctly found, the Appellants' claims for declaratory and injunctive relief are subject to dismissal based on the mootness doctrine. As the Supreme Court held in *Croft*, a decision for the Appellants or for that matter any party "would not provide any practical relief and would be a purely academic exercise by this Court" because Project Pascalis is not proceeding. Claims presenting academic or hypothetical theories which provide no concrete relief to the parties are non-justiciable.[2]

The Supreme Court in *Croft* also addressed and rejected the same exceptions to the mootness doctrine as argued by the Appellants in this case. The same rationale applies. In short, the circuit court was correct in ruling that the Appellants' first and second causes of action are barred as moot. That ruling is correct not only in favor of the City but in favor of the DRB as well.

[2] The South Carolina Supreme Court has explained that the Declaratory Judgment Act clearly "has its limits." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462, 466 (2004). "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Id.* As the Supreme Court has explained, "[a] justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Id.* "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." *Id.*

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent Aiken Design Review Board requests that this Court affirm the orders of Circuit Court Judge B. Alex Hyman, finding that the Appellants' first and second causes of action for declaratory and injunctive relief are properly dismissed as moot.

Respectfully submitted,

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August 19, 2024

CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent Aiken Design Review Board certifies that the Final Brief of Respondent Aiken Design Review Board complies with Rule 211(b), SCACR.

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August 19, 2024

CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent Aiken Design Review Board certifies that the Final Brief of Respondent Aiken Design Review Board complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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August 19, 2024

CERTIFICATE OF SERVICE

Pursuant to Section (d)(1) of the Supreme Court's Order Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), the undersigned employee of Lindemann Law Firm, P.A., counsel for the Respondent Aiken Design Review Board, does hereby certify that service of the **Final Brief of Respondent Aiken Design Review Board** was made upon all counsel of record by email only this the 19th day of August 2024, as follows:

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