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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
William P. Keesley, Circuit Court Judge

Appellate Court Case No. 2024-001057

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.

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INTRODUCTION

In its brief, the Respondent Aiken Design Review Board ("DRB") characterizes the Appellants' case as an appeal of its decision to issue a certificate of appropriateness ("COA") by an avenue other than the normal appellate process.

Appellant agrees that the only avenue for appealing that decision is through S.C. Code § 6-29-900(A) (2004).

The Respondent then cites several reported decisions that are irrelevant and inapplicable to this case. These decisions stand for the principle that a declaratory judgment action cannot be substituted for another legislatively provided process applicable to the dispute and available to the litigants at the time the declaratory judgment action is filed.

Appellants also agree that is the law for the cases to which that principle applies.

Where the Appellants differ from the Respondent is that in this case, a declaratory judgment action challenging actions of the DRB that are contrary to law is not barred because the Appellants did not choose to appeal a decision to issue a particular COA. The Appellants detailed in their Complaint the various actions of the DRB beyond the COA issuance that are violations of law appropriate for review by the Circuit Court under the Uniform Declaratory Judgments Act ("the Act"), S.C. Code Ann. § 15-53-20 (2005)(courts "shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed."); *see* Rule 57, SCRCP ("The procedure for obtaining a declaratory judgment pursuant to Code §§ 15-53-10 through 15-53-140, shall be in accordance with these rules, and . . . [t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."). Those actions are also described in the Appellants' Brief. None of those actions run afoul of the law as described in the cases cited in Respondent's brief, and all are factually distinguishable from this case.

ARGUMENT

I. The Appellants seek a review of the DRB's illegal actions, not a reversal of the decision to issue the COA.

As argued in the Appellants' Brief, the Appellants, in their complaint, sought to have specific actions of the DRB declared illegal in this declaratory judgment action. These are described in the First Amended Complaint, paragraphs 104 to 155, and are summarized in the first cause of action's request for a declaration concerning the DRB's actions. First Amended Complaint ("FAC"), paragraph 169.

These actions include:

- Holding public meeting "Work Sessions" (subject to FOIA) with voluminous packages containing information about pending applications that do not allow public comment. FAC, para. 103.
- Allowing the developer to present Project Pascalis to the DRB at the first DRB meeting at which it was mentioned, even though the project was not on the agenda, and the meeting minutes do not thereafter mention the discussion of that project. FAC, para. 107.
- Approving a flawed and incomplete application for demolition after less than six minutes of deliberation at that meeting by using an unprecedented and unauthorized form of "conditional" COA not authorized by the Zoning Ordinance and is contrary to Zoning Ordinance Section 5.2.4(A)(3). FAC, para. 105, 129, 135.
- Making a site visit to the Project Pascalis location without the Project being listed on the agenda and omitting discussion of the Project from the meeting minutes. FAC, para. 108.
- Allowing the developer to make a presentation at a Work Session the following week advocating for the demolition of a historic structure as part of Project Pascalis without clearly identifying Project Pascalis on the agenda and making no reference to demolition, Project

Pascalis, the developer ("RPM") or the City's economic development authority, AMDC, and thereafter failing to mention the discussion or Project Pascalis in the meeting minutes. FAC, para. 109.

- Accepting and acting on a limited and incomplete application, in violation of local ordinance, for demolition of the Hotel Aiken, which is listed on the Aiken Historic Register as a Contributing Structure in a Historic Site. FAC, para. 112.
- Expediting the process to favor the developer and unlawfully making decisions regarding Project Pascalis outside the regular and noticed public meetings of the DRB for which there are no agendas, minutes, record of notice, discussion, or deliberation of these decisions as required for a public meeting under the South Carolina Freedom of Information Act and the laws regulating the DRB. FAC, para. 131-133.
- Removing DRB Member Knowles in retaliation for her vote against the COA and failing to follow the requirements of local ordinances or state law in naming her replacement. FAC, para. 141-144.
- Allowing members to serve on the DRB and vote on matters coming before the DRB who were ineligible to serve because they were not residents of the City of Aiken. FAC, para. 146, 148.

These facts were pled in the First Amended Complaint before the circuit court. These facts, too, were the basis of the Appellants' request in the First Cause of Action for declaratory relief, declaring that the DRB had violated both state statute and local ordinances in numerous ways. FAC, para. 169(a)-(s).

At least the Circuit Court recognized that the FOIA cause of action directed at the DRB was not like an "appeal" of the COA approval, so it allowed that cause of action to stand. The same should have been true regarding the other instances of illegal conduct outlined above.

Again, none of the above allegations seek to reverse or appeal the "conditional" COA issued by this flawed DRB sitting with at least two ineligible members. Rather, the complaint seeks a declaration, on numerous counts, that the DRB failed to follow the ordinances of the City of Aiken or the state's statutes in its operation regarding Project Pascalis, so that those violations of law will not be repeated in the future because of a mistaken belief that those actions are not illegal.

II. The cases cited by the Respondent are not relevant and do not bar the declaratory judgment action as pled.

The first substantive case cited by the Respondents as authority that this declaratory judgment action is inappropriate and not supported by law **supports the use of a declaratory judgment** to challenge local government action under a state-enabling statute. The Supreme Court, in *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 431, 593 S.E.2d 462, 470 (2004), affirmed the Plaintiff's right to bring the declaratory judgment action and found that a justiciable controversy existed in that case, such that the challenge to the facial validity of the ordinance was appropriate under the Declaratory Judgments Act. The *Sunset Cay* developer's challenge to the validity of a local government's passage of an ordinance under state law is very similar to the Plaintiffs' challenge here, and both are justiciable controversies.

The *Tourism Expenditure Review Comm. v. City of Myrtle Beach*, 403 S.C. 76, 82, 742 S.E.2d 371, 374 (2013), is distinguishable because, in that accommodations tax challenge, the legislature provided an exclusive method for challenging A-Tax funds expenditures. No such exclusive remedy statute applies here to challenge these alleged illegal actions of this local government board of architectural review.

In *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634, 636-637 (Ct. App. 2020), the court did not question the ability of the plaintiff to challenge the sheriff's requirement that she post 5% of a sheriff's sale bid in cash or pay the homestead exemption to the clerk of court when she alleged she was

indigent. The court did discuss whether the action was in the nature of a request for a writ of mandamus but did not hold that seeking a declaratory judgment was not justified or inappropriate.

The cases associated with *Wessinger v. Rauch*, 288 S.C. 157, 160, 341 S.E.2d 643, 644 (Ct. App. 1986) are likewise distinguishable because they stand only for the proposition that courts will not generally entertain an action for declaratory judgment if there is pending, at the time the action is commenced, another action between the same parties in which the same issues presented in the action for declaratory judgment can be adjudicated. *Wessinger*, 341 S.E.2d at 644, citing *State ex rel. Edmisten v. Tucker*, 312 N.C. 326, 323 S.E. (2d) 294 (1984). Cf. *Williams Furniture Corp. v. Southern Coating & Chemical Co.*, 216 S.C. 1, 56 S.E. (2d) 576 (1949) (court may refuse to render declaratory judgment where the remedy is invoked to try issues or determine the validity of defenses in pending cases).

Here, no proceeding existed at the time the declaratory judgment action was filed that could have adjudicated these issues, nor was there a proceeding to adjudicate these issues that the legislature provided as an exclusive forum for such challenges.

That recognition also distinguishes *Med. Univ. of S.C. v. Taylor*, 294 S.C. 99, 105, 362 S.E.2d 881, 884-85 (Ct. App. 1987). In that case, an employee filed a grievance with his employer's Grievance Committee and an unemployment claim with the South Carolina Employment Security Commission (ESC) for unemployment benefits. The ESC found the employee had been discharged for cause. The Grievance Committee then notified the employer it would hear the employee's appeal. The employer instituted a declaratory judgment action, and the court enjoined the Grievance Committee from entertaining the employee's request for a hearing. The Court of Appeals reversed, holding that the trial court erred in granting the employer declaratory and injunctive relief where there were pending before the Grievance Committee the cause of the employee's discharge. Specifically, the Court found that the declaratory judgment action was not appropriate where there were pending before the Grievance Committee, the administrative agency vested with primary jurisdiction of the question in issue, i.e., the

cause of Taylor's discharge, proceedings in which both Taylor and MUSC were parties and in which the issue raised by MUSC in the within action could have been raised. MUSC. *Id.*

Here, there was no such pending action that the Appellants could have used to adjudicate the wrongs they claim the DRB committed.

CONCLUSION

For the reasons stated in Appellants' Brief and this Reply, Appellants request that this Court reverse the grant of Partial Summary Judgment and remand this case to the lower court for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Reply Brief of Appellants has been served upon opposing counsel by emailing a digital copy on November 14, 2024, to:

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