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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Court of Common Pleas

The Honorable Frank R. Addy, Jr.

Circuit Court Judge

Appellate Case No. 2024-001273

Circuit Court Case No. 2024-CP-24-00214

Carey Holtzclaw and Holtzclaw Lawn Service, LLC, ……. Appellants,

v.

Piedmont Technical College, William Craig Mayo, Brian McKenna, and State Fiscal Accountability Authority……. Respondents.

INITIAL BRIEF OF RESPONDENT STATE FISCAL ACCOUNTABILITY AUTHORITY

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June 30, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Treatises

STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly dismiss the Plaintiffs' claims against the South Carolina State Fiscal Accountability Authority.
2. Did the Disputes Clauses in the Appellant's Contract require Appellant to Resolve its Disputes before the Chief Procurement Officer?

INTRODUCTION

Appellants entered a contract through state procurement to provide respondent Piedmont Technical College with certain landscaping maintenance services. Mr. Mayo and Mr McKenna were employed by PTC. A dispute arose as to Holtzclaw's performance and PTC and Holtzclaw had disagreements about performance. That contract was terminated pursuant to the Consolidated Procurement Code (S.C. Code Ann. §11-35-10, et. seq). Both the contract language and the law require that all disputes be settled pursuant to the Code. Ignoring the applicable law, Appellants filed a contract claim in Circuit Court. SFAA moved to dismiss the claim and the circuit court, following the law dismissed the case.

The Circuit Court properly dismissed this matter below. This Court should affirm the lower Court's correct decision.

PARTIES TO THIS APPEAL

This Appeal involves six different parties. For ease of identification, the brief uses "Appellants" and "Respondents" as much as possible for the sake of clarity. Where more precision is required, the brief identifies parties by specific names. The Respondent submitting this brief is the State Fiscal Accountability Authority ("SFAA"). The Materials Management office is part of the Division of Procurement Services within the agency. Piedmont Technical College ("PTC") is a state technical college, Mr. Mayo was the Interim Director of Facilities and Brian McKenna was

the procurement manager at PTC. According to the Complaint, both Mayo and McKenna were "acting in the course and scope of his [sic] employment at all times relevant to this complaint (ROA Complaint ¶4 and ¶5)".

STATEMENT OF THE CASE

Holtzclaw Lawn Service, LLC received a contract solicited through SFAA to provide services for Piedmont Technical College (ROA. ____). The parties to the contract were PTC and Holtzclaw. SFAA merely acted to solicit the contract for PTC as the Using Governmental Entity (§11-35-310(18) and (38)) pursuant to the South Carolina Consolidated Procurement Code (S.C. Code Ann. §11-35-10 et. seq.) The Contract was annually renewable. The Contract included a dispute resolution provision which provided that all disputes were to be resolved in accordance with the Consolidated Procurement Code. (See Contract Dispute Provision ROA _____) A dispute arose relating to PTC's determination that Holtzclaw was not performing according to the terms and conditions of the contract. Several meetings ensued. Ultimately, a representative of SFAA served a "cure letter" on Holtzclaw pursuant to the Contract. Holtzclaw responded, asserting that he was not in default, although he admitted some deficiencies. Following the procedures outlined in the Contract and in State law, SFAA terminated the contract on January 4, 2023.

On March 1, 2024 Holtzclaw and Holtzclaw Law Service, LLC filed the instant action alleging causes of action against PTC, its employees Mayo and McKenna and SFAA for Breach of Contract, Defamation and Civil Conspiracy While he was not a party to the contract, Holtzclaw joined the suit with personal complaints. SFAA moved to dismiss the case on March 27, 2024. McKenna answered the Complaint on April 19, 2024. PTC and Mayo answered and moved to dismiss the case on May 17, 2024. The Circuit Court heard the motions to dismiss on June 4,

2025. After the hearing, on July 3, 2024 the Court issued its Order dismissing the case pursuant to Rule 12(b)(6), SCRCP, holding that S.C. Code Ann. §11-35-4230(1) was controlling and that each of the claims made by Appellants was subject to the exclusive remedy provided therein. Appellants filed their notice of appeal on August 6, 2024. This appeal followed.

FACTS

The Contract between the parties includes the following relevant clauses:

> DISPUTES (JAN 2006) (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only with the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. . . .
>
> DEFAULT (JAN 2006)
>
> (a) (1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:
>
> (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
>
> (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
>
> (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).
>
> (2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.
> …
>
> (e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the

> Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
>
> (h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

STANDARD OF REVIEW

A complaint must be dismissed where it fails to "state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRCP.

The trial court must construe the complaint in a light most favorable to the nonmovant and determine if the "facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Williams v. Condon* 347 S.C. 227, 233, 553 S.E. 2d 496, 499 (S.C. App. 2001); *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 464, 433 (2009)

The same standard of review applies when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRCP. *See Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRCP); *Hambrick v. GMAC Mortg. Corp*., 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). A ruling on a Rule 12(b)(6) motion must be based solely on the allegations set forth on the face of the complaint. *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). When considering a motion for judgment on the pleadings under Rule 12(c), SCRCP, the court must regard all properly pleaded factual allegations as admitted. *Falk v. Sadler*, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

In construing a statute conferring power on an administrative agency, the court will assume that the legislature did not overlook the constitutional provisions with respect to separation of

powers, and did not intend to transfer the jurisdiction of a court to such agency but intended at most to confer quasi-judicial powers." 16 C.J.S., *Constitutional Law* § 372 (2005).

THE RELEVANT STATUTORY LANGUAGE IN SECTION 11-35-4230

The procedure set forth in Section 11-35-4230 constitutes the exclusive means of resolving controversies between a governmental body and a contractor which arise under or by virtue of a contract governed by the provisions South Carolina's Consolidated Procurement Code. In relevant part, it states:

> **§ 11-35-4230. Authority to resolve contract and breach of contract controversies.**
> (1) Applicability. This section applies to controversies between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. The procedure set forth in this section constitutes the exclusive means of resolving a controversy between a governmental body and a contractor or subcontractor, when the subcontractor is the real party in interest, concerning a contract governed by the provisions of the South Carolina Consolidated Procurement Code. . . .
> * * *
> (4) Administrative Review and Decision. If, in the opinion of the appropriate chief procurement officer, after reasonable attempt, a contract controversy cannot be settled by mutual agreement, the appropriate chief procurement officer or his designee promptly shall conduct an administrative review and issue a decision in writing within ten days of completion of the review. . . .
* * *
> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected requests further administrative review by the Procurement Review Panel . . .
> S.C. Code Ann. § 11-35-4230

If a contractor requests further administrative review by the Procurement Review Panel, the review is *de novo*, with further right to judicial review by the Court of Appeals. S.C. Code Ann. § 11-35-4410.

ARGUMENT

I. THE PARTIES CONTRACTUALLY AGREED TO RESOLVE ANY DISPUTE BEFORE THE CHIEF PROCUREMENT OFFICER

While *Unisys v. South Carolina Budget and Control Bd.,* 346 S.C.158, 551 S.E.2d. 263 (2001)[1] applies here, the Court can resolve this matter without considering it. That is because the method of dispute resolution in the Procurement Code is written in the parties' contract. As part of its contract with the PTC, Holtzclaw agreed that the CPO would resolve all disputes relating to their agreements. The disputes clauses (ROA _____) state in relevant part:

> **DISPUTES (JAN 2006)** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only with the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. . . .

It is black letter law that parties can agree on how they will resolve disputes. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 354 (2001) ("Arbitration agreements, like other contracts, are enforceable according to their terms."). Further the Procurement Code

[1] In *Unisys*, the Court rejected Unisys's argument that the dispute clause in that case—providing that actions should be brought in circuit court—controlled the dispute. 346 S.C. at 171, 551 S.E.2d at 270-71. The Court reasoned that, due to the important public interests served by the Procurement Code, any contract formed thereunder incorporated § 11-35-4230 and other applicable provisions. In this case, of course, not only is § 11-35-4230 incorporated by law, but the parties also expressly provided that the CPO would first decide their disputes.

and the contracts solicited thereunder inform a contractor wanting to do business with the State how contract disputes will be resolved.

"Contractual provisions such as these have long been used by the Government. No congressional enactment condemns their creation or enforcement." *U.S. v. Moorman*, 338 U.S. 457, 460 (1950) (upholding disputes clause authorizing final determination by the Secretary of War). Far from condemning, the United States Supreme Court has recognized that having an expert in government contracting resolve these disputes "will lead to greater uniformity in the important business of fairly interpreting government contracts." *U.S. v. Anthony Grace & Sons*, 384 U.S. 424, 429 (1966).

In *Anthony Grace & Sons*, the Department of the Air Force issued the respondent a letter of acceptability containing a disputes clause providing for resolution by the Department with appeal to the Board of Contract Appeals. After the Department dismissed respondents' claim for the return of a deposit, an issue arose about whether the appeal should be heard by the Board of Contract Appeals or the Court of Claims. The Supreme Court held that it was one "which should be heard and decided by the administrative process." *Id.* at 429. "Barring some compelling policy reason to disregard [the disputes] provision, *the contractor should be held to its contractual agreement even at this stage in the litigation*." *Id.* (emphasis added); *see also U.S. v. Wunderlich*, 342 U.S. 98 (1951) (enforcing disputes clause in government contract—"they have contracted for the settlement of disputes in an arbitral manner"—and holding that, in the absence of allegations of fraud, the contracting officer's decision was final); *U.S. v. Ulvedal*, F.2d 131, 134 (8th Cir. 1967) ("We know of no rule of law preventing the government and a contractor, such as Ulvedal, from entering into an agreement which, by its terms, makes final a contracting officer's decision

in a dispute involving a question of fact arising under their contract. The Supreme Court has consistently upheld this very kind of provision.").

In this case, Appellant voluntarily chose to do business with the government. With eyes wide open, it submitted offers in response to solicitations providing that the CPO will first resolve all disputes. These were not take-it-or-leave-it consumer transactions; they are contracts that were entered after a mandated statutory process and involved arms-length transactions. Appellants willingly sought and accepted this business with full knowledge that they agreed for the CPO to handle any disputes.

When a contractor chooses to contract with the government, that contractor agrees to play by the rules. Both the Procurement Code and the contract informed the Appellants that claims by the government would be resolved by the CPO. Having accepted the benefits of contracting with the government, the Appellants should not be allowed to cry foul as soon as a dispute arises. Appellants contracted for the CPO to resolve all disputes arising out of the Contract and, even in the absence of *Unisys*, this Court can affirm on this basis alone.

Our Supreme Court recently affirmed that §11-35-4230 and the disputes clause in this contract reflect the unambiguous legislative intent that the CPO has exclusive jurisdiction over "all disputes, claims, or controversies relating to the Agreement". "This provision unambiguously gives [*11] the CPO exclusive authority to determine "[a]ll disputes, claims, or controversies relating to" Appellants' contracts with Respondents. *See Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993) ("Where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect."). *Richards v. Spicer*, 915 S.E.2d 486, ___ S.C. ___ (2025). Because all of Appellant's claims relate to the contract, the Circuit Court properly dismissed Plaintiff's case and should be affirmed.

Unisys and the statute both lead to the correct conclusion. This Court's decision is correct and should be affirmed.

II. APPELLANT MISAPPREHENDS THE LAW IN ASSERTING THAT THE STATE IS OBLIGATED TO FILE A CONTRACT CONTROVERSY TO AVAIL ITSELF OF THE CONSOLIDATED PROCUREMENT CODE.

Appellant argues that "State Procurement Services just terminated the contract with Holtzclaw rather than availing itself of the option of letting the chief procurement officer resolve the dispute" (Brief of Appellant p.6). That statement misstates not only procurement law but basic contract law. First, it is clear that PAC had a right to terminate the contract for non-performance. The contract contains a provision that allows the state to terminate a contract for default if after notice, the contractor does not cure the default within ten days. Notably, Appellant never alleged that any of the Defendants breached the Contract by failing to properly apply the default provisions of the contract and the Appellant does not make such an argument in its brief. Likewise, Holtzclaw notes in his Complaint that this method was follows. (See Comp. ¶¶24-31). Holtzclaw's exclusive means to contest this determination was to proceed under S.C. Code Ann. §11-35-4230. Instead, he waited beyond the claim period in the statute[2], and instituted this lawsuit in circuit court.

Secondly, the default provision specifically states that "The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this

[2] S.C. Code Ann. 11-35-4230(2) provides "Either the contracting state agency or the contractor or subcontractor, when the subcontractor is the real party in interest, may initiate resolution proceedings before the appropriate chief procurement officer by submitting a request for resolution to the appropriate chief procurement officer in writing setting forth the specific nature of the controversy and the specific relief requested with enough particularity to give notice of every issue to be decided. A request for resolution of contract controversy must be filed within one year after the date the contractor last performs work under the contract or within one year after the claim accrues, whichever is later; . . ."

contract." (ROA ____) So, the State may terminate the contract at is election if the contract is in default. In *Bannon v. Knauss*, 289 S.C. 589, 592, 320 S.E. 2d 470, 472 (Ct. App. 1984) the late Chief Judge Bell wrote, "In the absence of clear language in the contract to the contrary, a nonbreaching party may normally elect either to pursue a remedy specified in the contract or to sue for any other remedy available for the breach." (Cites omitted).

It is black letter law that the choice as to how to proceed in the event of default fell with the respondents, and the party breaching the contract has no right to object to the choice. Default is avoided by performing the contract as agreed, Holtzclaw failed in this respect.

III. THE EXCLUSIVITY PROVISION OF THE PROCUREMENT CODE EXTENDS TO ANY CLAIM ARISING UNDER THE CONTRACT, WHICH INCLUDES HOLTZCLAW'S DEFAMATION AND CIVIL CONSPIRACY CLAIMS

In *Unisys v. South Carolina Budget and Control Bd.*, 346 SC 158, 170, 551 S.E.2d 263,270 (2001) the Court held that the phrase "exclusive means" in the Contract Controversy provision "must therefore be strictly construed to limit suits on contracts with the State to the forum provided in §11-35-4230." The Court concluded that this administrative procedure was the appropriate forum for a claim of fraud in the inducement and a claim for punitive damages. Likewise, in *Aiken Tech. College v. Two State Constru.*, Co., 2005 S.C. App. Unpub. LEXIS 143 *5-6, the Court noted that even though the claim brought was for negligence, that claim arose out of the contract between the parties and it was not a separate tort that existed out of the contract.

Since both the defamation and civil conspiracy claims arise directly out of the alleged contractual relationship and since all the allegations regarding civil conspiracy directly involve

administration of the contract[3], Appellant's argument that the Procurement Code does not govern these causes of action is misplaced. The Procurement Code governs "all phases of contract administration" S.C. Code Ann §11-35-310(25) and because it does, proceeding under S.C. Code Ann. §11-35-4210 is the exclusive (and only) means of proceeding on those claims.

IV. HOLTZCLAW'S CLAIMS FOR DEFAMATION DOES NOT PROPERY LIE AGAINST SFAA.

The only allegations in the Complaint relating to the Appellant's Defamation claim are allegations that lie only against Respondent Mayo. (Compl. ¶¶40,42) Even were the Court to hold that the lower Court erred in Dismissing this cause of action, it should not affect the dismissal of SFAA.

V. HOLTZCLAW'S CLAIMS FOR CIVIL CONSPIRACY DO NOT PROPERLY LIE AGAINST SFAA.

The allegations in the Complaint for Civil Conspiracy likewise cannot include SFAA. The Contract clearly states that

> The Procurement Officer is an employee of the Authority acting on behalf of the Using Governmental Unit(s) pursuant to the Consolidated Procurement Code. Any contracts awarded as a result of this procurement are between the Contractor and the Using Governmental Units(s). The Authority is not a party to such contracts, unless and to the extent that the Authority is a using governmental unit, and bears no liability for any party's losses arising out of or relating in any way to the contract.
>
> Invitation for Bids, P.6 AUTHORITY TO ACT AS PROCUREMENT AGENT (ROA ___)

[3] S.C. Code Ann. §11-35-310(25) provides: "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information, technology, or construction. It also includes all functions that pertain to the obtaining of any supply, service, information technology or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

SFAA is not a using governmental unit nor is it a participant in the contract it necessarily can not be responsible for "commit[ed]ing overt acts of intentionally failing to provide Plaintiffs with sufficient materials needed to comply with his contractual duties" (Complaint ¶47); Using their own "sabotaging of Plaintiffs' ability to maintain the grounds to terminate the contract to Plaintiff's detriment (Complaint ¶48). Because the only allegations that Appellant's based their Civil Conspiracy claim cannot apply to SFAA. Even were the Court to hold that the lower Court erred in dismissing this cause of action, it should not affect the dismissal of SFAA.

CONCLUSION

Based on the foregoing, this Court should affirm the Circuit Court's order. The case against SFAA was properly dismissed pursuant to Rule 12(b)(6), SCRCP.

Respectfully submitted:

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