IN THE STATE OF SOUTH CAROLNA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas
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,

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INITIAL BRIEF OF RESPONDENT PIEDMONT TECHNICAL COLLEGE AND WILLIAM CRAIG MAYO

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INTRODUCTION

Appellants entered a contract through state procurement to provide Respondents Piedmont Technical College ("PTC") with certain landscaping maintenance services. William Craig Mayo ("Mayo") and Brian Scott McKenna ("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 requires that all disputes be settled pursuant to said Consolidated Procurement Code. In violation to the applicable law, Appellants filed a contract claim in Circuit Court. PTC and Mayo moved to dismiss the claim and the circuit court, following the applicable law dismissed the case.

PTC and Mayo contend that the Circuit Court properly dismissed this matter and request that this Court affirm the lower Court's decision.

PARTIES TO THIS APPEAL

This Appeal involves six different parties. The Respondents submitting this brief are PTC and Mayo. The Materials Management office is part of the Division of Procurement Services within the agency. PTC is a state technical college. Mayo was the Interim Director of Facilities and McKenna was the Procurement Manager at PTC. According to the Complaint, both Mayo and McKenna were "acting in the course and scope of their [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 The State Fiscal Accountability Authority ("SFAA") to provide services for Piedmont Technical College. The parties to the contract were PTC and Holtzclaw. As stated in its Initial Brief, SFAA 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 occurred. "Ultimately, a representative of SFAA served a "cure letter" on Holtzclaw pursuant to the Contract. Holtzclaw responded, asserting that he was not in default, but 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 Lawn 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."[1]

FACTS

"The Contract between the parties contains 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.

[1] All language shown in quotation marks in this Brief is taken from the SFAA Initial Brief.

(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

As stated in the Initial Brief of SFAA, "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 regard 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)."

RELEVANT STATUTORY LANGUAGE IN SECTION 11-35-4230

Also, as stated in the Initial Brief of SFAA, "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 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

Based on the above, the Respondents, as a matter of law, are entitled to a dismissal of this action for the following reasons:

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

As also set forth in the Motion to Dismiss and the Initial Brief of SFAA, "the Plaintiffs have failed to exhaust the administrative remedies afforded to them under the Consolidated Procurement Code. Exhaustion of these remedies is required "as a matter of law." For this reason, Plaintiffs are not entitled to proceed in court and their case must be dismissed because this is a contract controversy between a governmental body and a contractor."

As set forth in the SFAA brief, "While *Unisys v. South Carolina Budget and Control Bd.,* 346 S.C.158, 551 S.E.2d. 263 (2001)[2] 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,

[2] "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."

> only with the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina…

The Initial Brief of SFAA states, and PTC and Mayo concur, that "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 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 has determined that, when a party fails to exhaust the exclusive administrative remedy provided by the Consolidated Procurement Code, it is appropriate for a Circuit Court to dismiss the action pursuant to Rule 12(b)(6). The Court held:

> Since Unisys is required to exhaust its administrative remedies as a matter of law, dismissal under Rule 12(b)(6) for failure to state a claim was proper. Further, because an action was pending pursuant to the Procurement Code as required when this action was brought, dismissal was also proper under Rule 12(b)(8). *See Southern Ry. Co. v. Order of Ry. Conductors*, 210 S.C. 121, 41 S.E.2d 774 (1947) (exhaustion of remedies will preclude original resort to courts where statute by express terms gives exclusive jurisdiction to administrative agency).

Unisys, id at 346 S.C. 158, 176-177."

SFAA, in its Initial Brief, and PTC and Mayo concur that "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."

The Plaintiffs' Complaint fails to allege any claim for relief against PTC and Mayo "as a matter of law because it fails to allege any set of facts that can demonstrate that Plaintiffs are or can be entitled to any relief against these Defendants. *S.C. Code Ann*. §11-35-4340 provides:

> There is no remedy against the State other than those provided in this chapter in any case involving a procurement subject to this code. The rights and remedies granted in this article are to the exclusion of all other rights and remedies against the State for matters arising out of or related to this code. (Emphasis added)."

This statute precludes any remedy against the PTC and Mayo in any case involving a procurement subject to the Consolidated Procurement Code.[3] Based upon the above reasoning and authority, the contract in question is subject to the Consolidated Procurement Code as a matter of law, and this Court should properly dismiss the Plaintiffs' case and affirm the decision of the Lower Court.

II. APPELLANT MISREPRESENTS 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 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). As stated in the Initial Brief of SFAA and concurred in by PTC and Mayo, "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, Appellants waited beyond the claim period in the statute[4] and filed this lawsuit in circuit court."

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[3] Except through the procedure established in the Code.

[4] 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

"Second, 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 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 well established 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," but Holtzclaw failed to do so.

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.

As argued by SFAA and concurred in by PTC and Mayo, "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

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the date the contractor last performs work under the contract or within one year after the claim accrues, whichever is later; . . ."

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.[5] 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 AND/OR CIVIL CONSPIRACY DO NOT PROPERLY LIE AGAINST PTC AND/OR MAYO.

Even considering all of the allegations contained in the Plaintiffs' Complaint in a light most favorable to them, it is impossible to identify allegations alleging any set of facts that amount to a cognizable claim under any legal theory of defamation and/or civil conspiracy against PTC and/or Mayo. "The Plaintiffs' Complaint fails to allege any duty, breach of duty, damages, or facts sufficient to set out any legal, equitable, common law, or statutory cause of action as a matter of law and create jurisdiction pursuant to the South Carolina Tort Claims Act against PTC and/or Mayo. These Defendants also incorporate the Arguments advanced in all of the proceeding issues."

[5] 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, all phases of contract administration.

CONCLUSION

Piedmont Technical College and William Craig Mayo respectfully request that this Court affirm the Circuit Court's Order and dismiss this case against them pursuant to Rule 12(b)(6), SCRCP.

Respectfully Submitted,

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