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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2024-000871

Horry Georgetown Technical College.....Appellant,

v.

Claycon Pharma RE, LLC, Pathway Treatment Center, LLC
Pathway Clinic, LLC, and City of Conway Respondents,

RESPONDENTS' RETURN TO MOTION FOR COSTS OF APPELLANT

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INTRODUCTION

On July 28, 2025, Appellant, Horry Georgetown Technical College (“HGTC”), filed a Motion For Costs of Appellant seeking an award of its attorney’s fees and costs expended in this matter in the amount of \$2,639.06 (“Motion For Costs”). Pursuant to Rule 222 of the South Carolina Appellate Court Rules (“SCACR”), Respondents, Claycon Pharma RE, LLC, Pathway Treatment Center, LLC, and Pathway Clinic, LLC (collectively, “Respondents”), respectfully request Appellant’s Motion For Costs be denied in its entirety; or, *in the alternative*, that the Court award Appellant a reduced amount (i.e., only its printing/copying costs in this matter, which Appellant has stated are \$139.06).

PERTINENT BACKGROUND

This appeal concerned a dispute over Respondents’ plan to establish and operate an opioid treatment center (“OTC”) on real property located at 1800 Husted Road, Conway, South Carolina 29526 (the “Subject Property”). (R. pp. 21-29, 32-40). HGTC filed this lawsuit on October 10, 2024, seeking a declaratory judgment prohibiting Respondents from operating an OTC on the Subject Property. (R. pp. 21-29).¹ HGTC’s Complaint is based upon local and state spacing requirements, which apply to secondary schools. (R. pp. 21-29, 32-40).

On December 4, 2023, in lieu of filing an Answer to HGTC’s Complaint, Respondents filed a Motion to Dismiss, in which they sought dismissal of HGTC’s case.² (R. pp. 41-44). In their Motion to Dismiss, Respondents argued: (1) HGTC, by and through its own admission and marketing, is a college and/or post-secondary school, which has grades higher than the twelfth;

¹ HGTC filed an Amended Complaint on October 12, 2023, which only added the City of Conway, South Carolina as a defendant in the case. (R. pp. 32-40). For simplicity, Respondents shall refer to the October 12, 2023 Amended Complaint as the “Complaint” herein.

² Respondents’ Motion to Dismiss alternatively sought judgment on the pleadings. (R. p. 41).

and (2) because of the foregoing, none of the local and state spacing requirements for OTCs apply to HGTC. (R. pp. 41-44).

More than four (4) months later, on March 15, 2024, HGTC filed a Memorandum in Opposition to Respondents' Motion to Dismiss. (R. pp. 53-59). Within the last line on the last page of its Memorandum in Opposition to Respondent, after seeking denial of Respondents' Motion to Dismiss, HGTC states, "In the alternative, HGTC requests that this Court allow HGTC leave to amend its Complaint for Declaratory Relief." (R. p. 59). However, during the more than (4) months that passed after Respondents' filing of their Motion to Dismiss on December 4, 2023 and the hearing on such Motion, HGTC never filed a formal Motion to Amend, never provided the Circuit Court with a proposed amended complaint, and never provided the Court with any facts it intended to allege in a proposed amended complaint.

Respondents' Motion to Dismiss was heard by the Horry County Court of Common Pleas, via the Court's WebEx Virtual Courtroom, on March 26, 2024. (R. pp. 98-119). During the March 26, 2024 hearing, counsel for each of the parties presented their respective arguments to the Court. (R. pp. 98-119). **It is important to note that there is no record within the Hearing Transcript that counsel for HGTC sought leave to amend to amend HGTC's Amended Complaint during the March 26, 2024 hearing.**³ (See R. pp. 98-119).

On March 26, 2024, the Circuit Court entered a Form 4 Order granting Respondents' Motion to Dismiss, which stated a formal order was to follow. (R. pp. 1-3). On April 5, 2024, HGTC filed a Motion to Reconsider and For Leave to Amend Complaint ("Motion to Reconsider"). (R. pp. 60-64). HGTC's April 5, 2024 Motion to Reconsider and For Leave to

³ During the March 26, 2024 hearing on Respondents' Motion to Dismiss, *counsel for the City of Conway, SC*, David Sligh, Esq., asked the Circuit Court if HGTC had a right to amend. (R. pp. 98, 119).

Amend Complaint marked the very first time HGTC filed a formal motion seeking leave to amend. (R. pp. 60-64). However, HGTC failed to serve a copy of its April 5, 2024 Motion to Reconsider and For Leave to Amend Complaint on Judge Culbertson within ten (10) days of its filing. See Rule 59(g), SCRCP.

On April 26, 2024, the Circuit Court entered its formal Order Granting Respondents' Motion to Dismiss or Judgment on the Pleadings. (R. pp. 4-15). Several hours after the Court entered its April 26, 2024 Order Granting Respondents' Motion to Dismiss, HGTC filed an Amended Motion to Reconsider and For Leave to Amend Complaint ("Amended Motion to Reconsider"). (R. pp. 65-88). Neither HGTC's April 5, 2024 Motion to Reconsider, nor its April 26, 2024 Motion to Reconsider contain any proposed amended complaint or set forth facts demonstrating that amendment *would not* be futile. (R. pp. 63, 68).

On May 28, 2024, HGTC filed its Notice of Appeal in this case, which removed jurisdiction of this case from the Circuit Court and rendered the Circuit Court unable to rule upon HGTC's pending Motion to Reconsider and Amended Motion to Reconsider. (See R. pp. 16-17).

On July 2, 2025, this Honorable Court issued Unpublished Opinion No. 2025-UP-222 herein, in which it vacated and remanded the Circuit Court's April 5, 2024 Order Granting Respondents' Motion To Dismiss Plaintiff's Amended Complaint. In its Unpublished Opinion, the Court of Appeals found that the Circuit Court committed a procedural error by denying HGTC the opportunity to amend its complaint. (Id. at p. 3).

HGTC has now filed its pending Motion For Costs against Respondents, seeking an award of its printing and copying costs in the amount of \$139.06 and attorney's fees in the amount of \$2,500.00, for a total of \$2,639.06 in costs and fees. Respondents oppose the Motion For Costs as set forth herein.

APPLICABLE LAW

Pursuant to Rule 222(a), SCACR, when an appeal is vacated, costs shall be allowed *only as ordered by the appellate court*. (emphasis added). A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under Rule 222, SCACR. The non-moving party may oppose the request for costs or seek a reduction of the amount of costs to be awarded. Rule 222(d), SCACR.

ARGUMENT

Respondents respectfully request that the Court of Appeals deny HGTC's Motion For Costs in this matter. Respondents oppose HGTC's Motion on the ground that to award such costs to HGTC and against Respondents would be unjust and unfair given the facts and procedural history in this case.

Respondents do not seek to relitigate this appeal and have the utmost respect for the Court of Appeals' ruling herein. However, it is critical that the Court of Appeals consider the procedural history in this case as it evaluates Appellant's Motion For Costs. Such history demonstrates Respondents' actions in no way caused HGTC to incur the costs and fees of this appeal. *Conversely, the procedural history in this case makes clear that HGTC could have prevented this appeal by simply filing a formal Motion to Amend, together with a proposed amended pleading, at any time during the more than four (4) month period following HGTC's notice of Respondents' Motion to Dismiss.* As is argued in detail in this Return, HGTC did not do so and all of the parties in this matter have had to incur the cost of this appeal. Accordingly, it is neither just, nor fair, to hold one party accountable for the costs of another herein.

It is evident from the facts and procedural history of this case that HGTC had ample time and opportunity to: (1) not only seek to amend its complaint prior to any ruling was issued on

Respondents' Motion to Dismiss; but also (2) to provide the parties and Circuit Court with a proposed amended complaint. More than four (4) months passed between the time Respondents moved to dismiss Plaintiff's lawsuit on December 4, 2024 and March 26, 2024, the date on which Respondents' Motion to Dismiss was heard by the Circuit Court. At no point during such four-month window of time did HGTC file a formal motion seeking to amend its complaint or provide the Circuit Court or Respondents with any proposed amended complaint to consider. At the very least, HGTC could have provided the Circuit Court and parties with a basic description of the facts it would add to and/or revise in a proposed amended pleading.

HGTC made, *at best*, only a feeble attempt to ask for amendment in this case. Prior to the March 26, 2024 hearing on Respondents' Motion to Dismiss, HGTC's only mention of leave to amend can be found in the very last line of its Memorandum In Opposition to Respondents' Motion To Dismiss, as an alternative form of relief. HGTC then never asked for leave to amend at the hearing on Respondents' Motion to Dismiss.⁴ Further, when questioned about its arguments with regard to a high school operating on its campus, counsel for HGTC asserted conflicting positions, on the one hand arguing that such high school was operated by a separate entity, on the other hand arguing it may be operated by HGTC. (See R. pp. 112-114). It is important to note that HGTC had more than four (4) months to confirm these key facts prior to the Motion to Dismiss hearing. It is unknown why HGTC did not confirm such facts, did not file a motion to amend its complaint prior to the Motion to Dismiss hearing or ask for such relief at the hearing, and has never, throughout the entire history of this case, provided a proposed amended complaint to the Circuit Court or the other parties in this case.

⁴ See fn 3.

Had HGTC done any of the foregoing, Respondents would have been provided the opportunity to consent to HGTC's filing of an amended pleading and the Circuit Court may have reached a different conclusion in this matter. Instead, Respondents were not provided such an opportunity and the Circuit Court granted Respondents' Motion To Dismiss. This appeal followed and, as a result, all of the parties had to incur the costs and fees associated therewith.

It is worth repeating that Respondents do not argue the foregoing in an effort to relitigate this appeal. Respondents respect the time and consideration the Court of Appeals has given to this matter. Respondents only implore this Honorable Court to review the facts and procedural history set forth herein because such history demonstrates Respondents' actions did not cause HGTC to incur costs and fees on appeal. If anything, HGTC could have potentially prevented this appeal by filing a Motion to Amend with a proposed amended pleading at any time during the more than four (4) month period following HGTC's notice of Respondents' Motion to Dismiss. Unfortunately, every party herein has had to incur the costs and fees of this appeal; and the facts in this case demonstrate it would not be just or fair to hold one party accountable for the costs of another.

CONCLUSION

Respondents respectfully request HGTC's Motion For Costs be denied. *In the alternative*, Respondents seek that this Honorable Court reduce the amount of costs awarded in favor of HGTC

and against Respondents to solely HGTC's copying and printing costs, which are alleged to be \$139.06.

Respectfully Submitted,



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