

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BAMBERG COUNTY  
In The Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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Case No. 2011-CP-05-00160

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Dr. Robert W. Denton and Dr. John P. May, Appellants,  
d/b/a Edusystems, a general partnership,

v.

Denmark Technical College and South Carolina State Board for Technical and Comprehensive Education, Respondents,

v.

Dr. John K. Waddell, Third Party Defendant.

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REPLY TO RESPONDENTS RETURN TO  
APPELLANTS PETITION FOR REHEARING

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JAN 31 2014

**SC Court of Appeals**

Petitioners respectfully Reply to Respondents Return to Appellants Rehearing Petition.

1. The Respondent casts the jurisdictional requirements of the procurement code as a requirement to exhaust administrative remedies which may be waived. Petitioners would respectfully urge that this is not an administration remedy, any more than a workman's compensation claim can be filed in the circuit court in the first instance.

2. Respondent cites hoary case of Carolina National Bank v. State, 60 S.C. 465, 38 S.E. 629, 633 (1901) for the proposition that vendors dealing with the state “assume the peril” of doing so. This case refers to “dealing with them outside their authority”. Here, it is undisputed that the President of the College had the authority to enter into contracts for it. This case does not involve, i.e. a lower level clerk who had no authority to enter the contract. Respondent’s contention seems to be that an authorized signatory by his witting and unwitting acts can induce considerable reliance on a contract which then could be voided, leaving the vendor with no remedy. The State, it is respectfully submitted, is not a minor whose contracts can be abrogated nolens voleas.
3. Respondent does not appear to contest Petitioner’s points that there was non-compliance by Respondent in not giving Petitioner written notice with reasons for terminating of a contract, or that the record is forfeit of fraud, contrary to the Circuit Court’s undue relying on this ground. Rather, the Respondent’s appear to rely on the “voidness” of the contract which is inapposite to determine this case by summary judgment, and has been fully argued in, e.g. Petitioner’s discussion of paragraph 4 of the Court’s opinion. The Sloan case cited by the Respondents, defines emergency as an unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action. As Dr. Waddell testified and as Petitioner’s demonstrate that the school was in “grave danger” of being closing or consolidated if certain actions were not taken. Sloan involved construction hazards likely to have been present to some degree in any major construction project of this type. The instant case involves the fairly new College President being advised his school could be closed or consolidated. A most unusual situation and for our

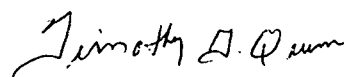
purposes should not be decided on summary judgment.

4. In response to issue preservation, this has been fully argued in the Petition for Rehearing. Petitioner's note that the issue of being in violation of state procurement requirements was raised at Respondent's Second Defense (R. p. 30) and was thus before the Circuit Court. Petitioners raised the Court's failure to address this issue in the then Rule 59 Motion. On the merits, Petitioners note that much more than a looming audit deadline was facing President Waddell when he took office. See Appellants Petition for Rehearing at page 5-6.
5. As to Respondents paragraph 5, the purpose of discovery is to determine the facts. It is a bit of a catch twenty-two to argue that facts would not be relevant to a summary judgment determination or that we do not know what they could reveal. Additionally, the Petitioners submit they have presented adequate argument why there are material facts, so to preclude summary judgment.

At a point in time one must ask if a prudent person has the right to rely on a contract(s) entered into with the President of a State institution. Particularly when they have been told that such was approved by the local Board, the State governing agency, the Budget and Control Board and when they have been paid for twenty months of a twenty-four month period.

It is suggested that the right to rely is obvious, yet here the Trial Court says that there is no right to rely. This is not the message that we want to send about our State. This matter should be reheard and the Order of the Trial Court reversed.

Respectfully Submitted,



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Attorneys for Appellants

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Third Party Defendant.

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PROOF OF SERVICE

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I certify that I have served the Reply to Respondents Return to Appellants Petition for Rehearing on the other parties by depositing a copy of it in the United States Mail, postage prepaid, on January 29, 2014, addressed to their attorney of record as follows:

David Duff  
Joseph Daniel Dickey, Jr.  
PO Box 1486  
Columbia, SC 29202

Robert Tyson, Jr.  
Thornwell Sowell, III  
PO Box 11449  
Columbia, SC 29211

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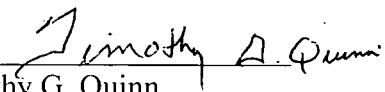
JAN 31 2014

**SC Court of Appeals**

and

Margaret Fox  
James M. Griffin  
1513 Hampton Street  
Columbia, SC 29201

January 29, 2014

  
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Natalie J. Quinn  
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January 29, 2014

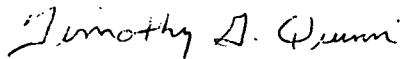
Honorable Jenny Kitchings  
1015 Sumter Street  
PO Box 11629  
Columbia, SC 29211

RE: Denton, Robert v. Denmark Tech. College  
2012-207846

Dear Ms. Kitchings:

Enclosed for filing are an original and seven copies of the Reply to Respondents Return to Appellants Petition for Rehearing and Proof of Service with regards to the above referenced matter. Please file the same and return the clocked in copy in the self-addressed stamped envelope provided. If you have any questions or need anything further please do not hesitate to call.

Very truly yours,



Timothy G. Quinn, Esq.

TGQ/lm  
Enclosure

cc: David Duff  
Joseph Dickey, Jr.  
Robert Tyson, Jr.  
Thornwell Sowell, III  
Margaret Fox  
James Griffin  
Edusystems

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