

South Carolina Public Interest Foundation

John E Courson

William B DePass Jr

Darrell Jackson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 19 March 2014 to attorneys of record or to parties (when appearing pro se) as follows:

James G. Carpenter

Michael Robert Hitchcock

J. Emory Smith Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Janette W. McBride

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 South Carolina Public Interest)
 Foundation, and William B. DePass,)
 Jr., Individually, and on behalf of all)
 similarly situated,)
 Plaintiffs,)
)
 v.)
)
 Senator John E. Courson, Senator)
 Darrell Jackson, Senator Joel Lourie,)
 Senator John L. Scott, Jr., and The)
 State of South Carolina,)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-7790

ORDER DENYING PLAINTIFFS'
 MOTION FOR FEES AND COSTS

RICHLAND COUNTY
 FILED
 2014 MAR 19 AM 9:45
 JEANNETTE W. McBRIDE
 C.C.P. & G.S.

Plaintiffs who were successful in the underlying action, move the Court pursuant to SCRCP 54, S.C. Code Ann. § 15-77-300 and § 15-37-10 for costs and attorneys' fees from the Defendant Senators. The Court finds Plaintiffs' Motion for Attorney's Fees and Costs is denied for the following reasons:

I

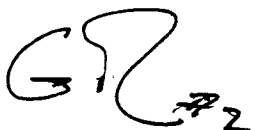
Individual members of the General Assembly are immune from a recovery for attorney's fees and costs under Sections 15-77-300 and 15-37-10 of the South Carolina Code.

The doctrine of legislative immunity provides federal, state, and local officials with immunity for any action taken in the sphere of legitimate legislative activity. *See Tenney v. Brandhove*, 341 U.S. 367, 377-78 (1951); *Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998). As Justice Frankfurter stated in *Tenney*, "Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good." 341 U.S. at 377.

The South Carolina Supreme Court is in accord with the United States Supreme Court and has recognized that legislators enjoy immunity for their actions taken within the scope of their legislative duties. *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979). In *Richardson*, a local official sued a state legislator for defamatory remarks. The court held that the state legislator was protected by legislative immunity because he made the statement during the conduct of legislative activities. In so holding, the Court stated that “[a] sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties.” *Id.*

South Carolina Federal Courts have noted that there have been few, if any, cases before the South Carolina Supreme Court that "consider[] legislative immunity in a suit against legislators for actions taken in the performance of their legislative duties." *Bruce v. Riddle*, 464 F. Supp. 745, 748 (1979). Speaking for the court in *Riddle*, District Judge Hemphill opined that the "probable explanation for this lack of precedent is the virtually universal acceptance of the doctrine of legislative immunity which has prevented the consideration of this question at the appellate level in South Carolina." *Id.* See also 81A C.J.S. § 96 ("Legislators have an absolute common law immunity against civil suit for their legislative acts.") (citation omitted).

In the present case, the actions taken by the Defendant Senators were within the sphere of their legislative duties. The present action simply challenges the constitutionality of Act 17 of 2011 and does not allege that Defendant Senators took any action other than their involvement in the legislative process. Their actions were limited to the introduction of the bill that ultimately became Act 17 of 2011 and voting for the bill on the floor of the Senate, which squarely falls within the scope of their legislative responsibilities.



Thus, legislative immunity applies and thus prevents the recovery of attorney's fees and costs against the individual Senator Defendants.

II

Section 15-77-300 applies to state agencies and does not apply to members of the General Assembly.

Section 15-77-300 provides in relevant part:

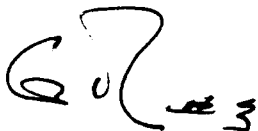
(A) In any civil action brought by the State, any political subdivision of the State or **any party who is contesting state action**, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against **the appropriate agency** if:

- (1) the court finds that **the agency** acted without substantial justification in pressing its claim against the party; and
- (2) the court finds that there are no special circumstances that would make the award of attorney's fees unjust.

The agency is presumed to be substantially justified in pressing its claim against the party if the agency follows a statutory or constitutional mandate that has not been invalidated by a court of competent jurisdiction.

S.C. Code Ann. § 15-77-300 (Supp. 2013) (emphasis added).

The cardinal rule of statutory construction is to ascertain the intent of the General Assembly. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), citing *Charleston County School District v. State Budget and Control Board*, 313 S.C. 1, 437 S.E.2d 6 (1993). When interpreting a statute the Court must give words their plain and ordinary meaning. *Id.* The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *S. Mut. Church Ins. Co. v. South Carolina Windstorm & Hail Underwriting Ass'n*, 306 S.C. 339, 343, 412 S.E.2d 377, 379 (1991). Courts should consider not merely the language of the particular clause




being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 789 (1997). Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and given effect, if it can be done by any reasonable construction. *Higgins v. State*, 307 S.C. 446, 448-49, 415 S.E.2d 799, 801 (1992).

Section 15-77-300 allows a prevailing party who is contesting “state action” to recover reasonable costs and fees. However, the statute allows fees and costs to be recovered against “the appropriate agency” and only if “the agency” acted without substantial justification. The plain and ordinary meaning of “agency” is a “state agency” operating within the executive branch of government.¹ The statute is intended to allow a prevailing party to recover costs and fees from a state agency or department, not individual members of the General Assembly.

The contention that “agency” means “state agency” is also supported by the Court’s analysis of substantial justification in *Layman v. State*, 376 S.C. 434, 658 S.E.2d 320 (2008). In that case, the Court reasoned: “in deciding whether a state agency acted with substantial justification, the relevant question is whether the agency’s position in litigating the case had a reasonable basis in law and fact.” *Id.* at 445, 658 S.E.2d at 326 (emphasis added).

Further, fee-shifting statutes are an exception to the American Rule that provides that litigants are responsible for their own fees. *Jackson v. Speed*, 326 S.C. 289, 307, 486 S.E.2d 750, 760 (1997) (“Attorney’s fees are not recoverable unless authorized by contract or statute.”) Further, government fee-shifting statutes also constitute a waiver of sovereign immunity. *M.A.*

¹ See, Section 1-23-10(1): “Agency” or “State Agency” means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases. S.C. Code Ann. § 1-23-10 (Supp. 2013).



Mortenson Co. v. U.S., 996 F.2d 1177, 1180 (D.C. Cir 1993). As a result, government fee-shifting statutes should be strictly construed to only provide the relief necessary to serve the purpose of providing litigants access to the courts to challenge governmental action. See *U.S. v. Horn*, 29 F.3d 754, 762 (1st Cir. 1994) (analyzing claim for fees against federal government requires application of rule that “a waiver of sovereign immunity always is to be construed strictly in favor of the federal government, and must not be enlarged beyond such boundaries as its language plainly requires.”)

There is no indication from the plain language of this statute that the General Assembly ever intended to waive legislative immunity and subject individual members of the General Assembly to a recovery of fees and costs for actions taken solely within the sphere of their legislative duties. There is no reasonable construction of the terms “appropriate agency” or “agency” that would support any contention that this section applies to an individual or a group of members of the General Assembly.

Thus, the Plaintiffs’ Motion for Attorneys Fees and Costs is denied because, by its plain terms, Section 15-77-300 does not apply to individual members of the General Assembly.


Plaintiffs apparently are not seeking attorneys’ fees and costs directly from the State, and therefore, this Order Denying Plaintiffs Motion for Attorneys Fees and Costs from Defendant Senators includes the State because it is a named party.

CONCLUSION

For the reasons stated above herein, Plaintiffs’ Motion for Fees and Costs is **DENIED**.

IT IS SO ORDERED.

Columbia, South Carolina
March 14, 2014


G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit