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JUL 16 2015

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Appellate Case No. 2015-001225
Case No. 09-ALJ-07-0332-CC

Trident Medical Center, LLC, d/b/a
Berkeley Medical Center, Petitioner,

v.

South Carolina Department of Health and
Environmental Control and Roper St. Francis
Hospital-Berkeley d/b/a Roper St. Francis Hospital, Respondents.

Case No. 09-ALJ-07-0333-CC

Trident Medical Center, LLC, d/b/a
Berkeley Regional Medical Center, Petitioner,

v.

South Carolina Department of Health and
Environmental Control, and Roper St. Francis
Hospital-Berkeley, Inc. d/b/a Roper St. Francis
Hospital-Berkeley, Respondents.

Case No. 09-ALJ-07-0336-CC

CareAlliance Health Services and Roper
St. Francis Hospital-Berkeley, Respondents,

v.

South Carolina Department of Health and
Environmental Control and Trident Medical Center, LLC,

Of whom South Carolina Department of Health and
Environmental Control is Respondent,

and Trident Medical Center, LLC is the Petitioner.

**PETITIONER'S REPLY TO THE RESPONDENTS'
RETURNS TO PETITION FOR CERTIORARI**

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Argument

In their Returns to Trident's Petition for Certiorari, both Respondents mischaracterize Trident's introductory discussion of the issues as an "admission" that no grounds exist for certiorari. To the contrary, Trident discusses many aspects of this matter that warrant exercise of the certiorari power by the Court. The primary justification is the presence of significant constitutional issues regarding the limits of judicial deference to any agency and the role of the courts in providing checks and balances against rogue agency actions. The degree to which this case raises these issues is illustrated by the Respondent Roper's argument that, because DHEC wrote the *Plan*, "there can be no other meaning" given the Bed Transfer Standard than the one the DHEC Board ascribes. (See, Return of Respondent Roper, pp 7-8).

Trident will not repeat in this Reply its numerous arguments supporting its Petition for Certiorari but incorporates those arguments by reference herein. Instead, Trident addresses below the several new issues raised by Respondents.

In its Return, the Respondent Roper contends that Trident is incorrect in its assertion that Roper has waived its cross-appeal of the award of a Certificate of Need ("CON") for Trident's project by Roper's failure to file a Petition for Rehearing with the Court of Appeals and its failure to timely file a Petition for Certiorari to this Court. Roper asks the Court to grant certiorari of its appeal despite its noncompliance with the requirements of Rules 221 and 242, SCACR. In support of its position, Roper cites *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C.406, 526 S.E.2d 716 (2000) for the proposition that a prevailing party is not required to preserve its additional sustaining grounds for appeal by raising them in a motion to reconsider before the trial court.

Roper's cross-appeal in this case is not analogous to additional sustaining grounds that do not need to be preserved.¹ Roper filed its cross-appeal contesting the award of a CON to Trident on the grounds that such award allegedly violates the requirements of the *State Health Plan*. Roper seeks to overturn the Administrative Law Court's decision to award a CON to Trident. Whether or not Roper intended that its cross-appeal be addressed by the Court only in the event the Court first found in favor of Trident, Roper was required to timely follow the requirements of Rules 221 and 242 in order to preserve this separate cross-appeal. Roper has waived its appeal by failing to do so.

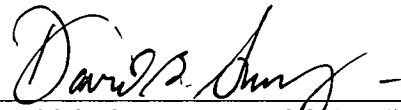
In its Return, the Department cites the newly issued decision of the United States Supreme Court in *King v. Burwell*, No. 14-114, 2015 WL 2473448 at *12 for the proposition that the plain language of a provision of a statute need not prevail if the context of the whole statute requires otherwise. Even assuming that the Department's reading of the *King* case is accurate, the context of the *State Health Plan* requires the Court to reject the Department's interpretation of the Bed Transfer Standard. The general hospital section of the *Plan* contains two explicit methods by which a satellite hospital can be created. Both require need. Allowing Roper to create a new hospital in the absence of any need through the use a provision that on its face does not provide for such action ignores the context of the Plan.

¹ As stated by the Court in *I'On*, "In raising an additional sustaining ground in an appeal, the party who prevailed in the lower court urges an appellate court to affirm the lower court's ruling for a reason other than one primarily relied upon by the lower court." *Id.* at 338 S.C. at 417, 526 S.E.2d at 722.

Conclusion

For the reasons set forth in its Petition for Certiorari, Trident respectfully requests that the Court grant certiorari to review this matter and, ultimately, reverse the opinion of the Court of Appeals to uphold approval of Roper's Certificate of Need.

Respectfully submitted,



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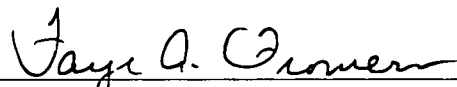
and Trident Medical Center, LLC is the Petitioner.

PROOF OF SERVICE

The undersigned hereby certifies that on July 16, 2015 s/he has caused a copy of **PETITIONER'S REPLY TO RESPONDENTS' RETURNS TO PETITION FOR CERTIORARI** to be served upon all counsel of record by hand delivering a copy of the same, addressed as follows:

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