

9

78814

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

John A. Massalon, Esquire, Limited Special Referee

RECEIVED

FEB 29 2016

SC Court of Appeals

Case No. 2012-CP-10-5093

~~Charleston County School District,~~

Plaintiff/Respondent,

v.

Clemson University and City of North Charleston,

Defendants,

Of Whom, Clemson University is

Appellant.

NOTICE OF APPEAL

Clemson University appeals the Orders of John A. Massalon, Esquire, Limited Special Referee dated October 22, 2015 and February 23, 2016. Appellant received written notice of the Order denying the Motion to Alter or Amend on February 23, 2016. The orders are attached. Mr. Massalon was appointed as Limited Special Referee pursuant to a Consent Order of Limited Reference and Scheduling Order dated April 23, 2014. A copy of this order is also attached.

While the Consent Order of Limited Reference and Scheduling Order in this case provided that "any Order of the Limited Special Referee deciding those issues would not be appealable until the entire actions themselves are resolved by the Circuit Court," that language

conflicts with the statutory provisions on appeals from special referees. The South Carolina Code provides that:

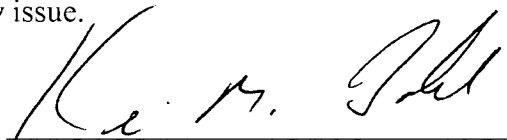
[w]hen some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action, and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals as provided by the South Carolina Appellate Court Rules. A matter may not be referred to a master or referee for the purpose of making a report to the circuit court.

S.C. Code Ann. § 14-11-85. In addition, the Rules of Civil Procedure state:

When a matter has been referred, any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Rule 53(e), SCRPC.

Because it is unclear as to whether the language of the Limited Order of Reference or the South Carolina state law and court rules control, Appellant has filed this Notice of Appeal to insure that no right of appeal is lost as to any issue.



Keith M. Babcock
Ariail E. King
LEWIS BABCOCK L.L.P.
1513 Hampton Street
Post Office Box 11208
Columbia, South Carolina 29211
(803) 771-8000

Newman Jackson Smith
Wendy Wilkie Parker
NELSON MULLINS RILEY &
SCARBOROUGH LLP
Post Office Box 1806
Charleston, South Carolina 29402-1806
(843) 853-5200

Stephen A. Spitz
STEVENS & LEE
151 Meeting Street, Suite 350
Charleston, SC 29401
(843) 414-5080

Attorneys for Appellant

February 29, 2016

Other Counsel of Record

Abigail B. Walsh
WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
(843)711-0157
Attorneys for Plaintiff/Respondent Charleston County School District

Richard D. Bybee, Esquire
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
(843)881-1623
Attorneys for City of North Charleston

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

John A. Massalon, Esquire, Limited Special Referee

Case No. 2012-CP-10-5093

RECEIVED

FEB 29 2016

SC Court of Appeals

Charleston County School District,

Plaintiff/Respondent,

v.

Clemson University and City of North Charleston,

Defendants,

Of Whom, Clemson University is


Appellant.

PROOF OF SERVICE

I, Connie W. Grugan, legal assistant to the law firm of Lewis Babcock L.L.P., hereby certify that I have served **Notice of Appeal** upon opposing counsel by mailing a copy of same, postage prepaid and return address clearly indicated, to opposing counsel addressed as follows:

Abigail B. Walsh, Esquire
WILLIAMS & WALSH, LLC
125-A Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412

Richard D. Bybee, Esquire
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542



Connie W. Grugan

This 29th day of February, 2016.



LAW OFFICES OF
**LEWIS
BABCOCK**
L.L.P.

KEITH M. BABCOCK
ATTORNEY AT LAW

Post Office Box 11208
Columbia, South Carolina 29211
o. 803-771.8000 f. 803-733-3534
KMB@lewisbabcock.com

February 29, 2016

RECEIVED
FEB 29 2016
SC Court of Appeals

HAND DELIVERED

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Charleston County School District v. Clemson University and City of North
Charleston, Civil Action No. 2012-CP-10-5093, Our File No. 12-141

Dear Ms. Kitchings:

Enclosed please find a Notice of Appeal in regard to the above-referenced matter for filing with your office, along with a \$100.00 filing fee. Please return a clocked copy via our courier.

By copy of this letter, we are hereby serving a copy of same upon opposing counsel.

With best regards, I am

Very truly yours,

Keith M. Babcock

KMB:cg
Enclosure

cc: Honorable Julie J. Armstrong
Richard D. Bybee, Esquire
Abigail B. Walsh, Esquire