

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
SEP 19 2016
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-40-3102

Richland County, South Carolina,Appellant,

v.

The South Carolina Department of Revenue and
Rick Reames, III, in his official capacity as its Director Respondents,

v.

Richland PDT, a joint venture consisting of
M.B. Kahn Construction, Co., Inc., ICA Engineering, Inc.,
and Brownstone Construction Group, LLC,
as a unit and IndividuallyRespondent.

MOTION FOR INCLUSION AS A PARTY IN THE APPEAL

Pursuant to Rules 240 and 203(e) of the South Carolina Appellate Court Rules, Plaintiff Intervenor Central Midlands Regional Transit Authority (hereinafter "CMRTA") moves this Court for an order allowing CMRTA to participate in this appeal as a party. CMRTA seeks to be included in the appeal since it is a party in the lawsuit.

On July 7, 2016 CMRTA moved to intervene as plaintiff-intervenor in the underlying lawsuit, Case No. 2016-CP-40-3102. On July 15, 2016, the Honorable G.

Thomas Cooper, Jr. signed an Order granting CMRTA's request to become a party in the instant case. Attached as **Exhibit A**.

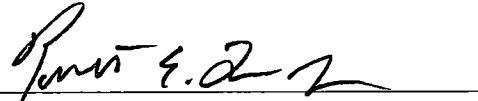
Plaintiff Richland County filed a Notice of Appeal, and subsequently an Amended Notice of Appeal, of an Order Granting Plaintiff's Petition for Writ of Mandamus, Denying Plaintiff's Motion for Temporary Injunction, and Denying Defendants' Motion for Injunction and in the Alternative Appointment of Receiver issued by the Honorable G. Thomas Cooper, Jr., filed on June 30, 2016 and an Amended Order Granting Plaintiff's Petition for Writ of Mandamus, Denying Plaintiff's Motion for Temporary Injunction, and Denying Defendants' Motion for Injunction and in the Alternative Appointment of Receiver issued by the Honorable G. Thomas Cooper, Jr., filed on August 2, 2016. Neither of the two Orders contained CMRTA in the caption, although CMRTA had been authorized to intervene in the lawsuit between the issuance of the two Orders.¹

Rule 203(e)(1)(E) provides that the Notice of Appeal shall contain the following information, "[T]he names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each." Clearly, Rule 203 maintains that the notice of appeal shall contain all parties in the case. Rule 203 does not provide that a party shall not be included in an appeal if the trial court utilizes the outdated caption on an Order that is subsequently appealed. Thus, CMRTA respectfully requests the Court of Appeals grant an Order including CMRTA as a party to this appeal and amend the caption accordingly.

¹ Additionally, the Honorable G. Thomas Cooper, Jr. issued an Order on August 16, 2016, granting each of the third-party Defendants' motions to dismiss the third-party Complaint. Attached as **Exhibit B**.

Counsel for Appellant-Intervenor has consulted with counsel for Appellant and Appellee, and they have consented to CMRTA's inclusion as a party of record in this appeal.

SOWELL GRAY STEPP & LAFFITTE, LLC



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S.C. Bar No. 2434
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Columbia, South Carolina
September 19, 2016

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JAMES E. SMITH JR., P.A.
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-and-

Milton G. Kimpson
SC DOR
Post Office Box 12265
Columbia, SC 29211

Counsel for Respondents SC DOR and Rick Reames, II, its Director

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003102

Richland County South Carolina

South Carolina Department Of Revenue

CMRTA

Richard Reames III

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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 JUDGMENT 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 2126 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 day of July, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Edward Nicholson V
Mary Elizabeth (Liz) Crum
Larry Cornell Smith

Ray Nelson Stevens
Ray E. Jones

James Emerson Smith Jr.
Elizabeth Van Doren Gray

Milton Gary Kimpson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Richland County, South Carolina,) Civil Action No. 2016-CP-40-3102
Plaintiff,)

vs.)

The South Carolina Department of Revenue, and Rick Reames, III, in his official capacity as its Director,)

Defendants/Third Party Plaintiff,)

vs.)

Richland PDT, a joint venture consisting of M. B. Kahn Construction, Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC, as a unit and individually,)

Third Party Defendants.)

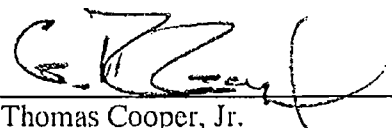
ORDER

RICHLAND COUNTY
FILED
2016 JUL 15 PM 4:39
JEMELIA H. BRIDGE
C.C.P. & G.S.

On July 7, 2016, Central Midlands Regional Transit Authority ("CMRTA") moved to intervene as a plaintiff-intervenor in the above-captioned matter. CMRTA informs the Court that all parties either consent or do not object to the motion; thus, the Court having considered this Motion, finds that it is meritorious and should be granted.

THEREFORE IT IS ORDERED that CMRTA is permitted to intervene in this action as a plaintiff. CMRTA shall file and serve the pleading attached as Exhibit A to its motion.

AND IT IS SO ORDERED.


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

Columbia, South Carolina
July 15, 2016

SCANNED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003102

Richland County South Carolina

South Carolina Department Of Revenue

CMRTA

Richard Reames III

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:

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This order ends does not end the case.

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INFORMATION FOR THE JUDGMENT INDEX

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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 2126 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 17 day of August, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Edward Nicholson V
Mary Elizabeth (Liz) Crum
Larry Cornell Smith

Ray Nelson Stevens
Ray E. Jones

James Emerson Smith Jr.
Elizabeth Van Doren Gray
Robert T. Strickland

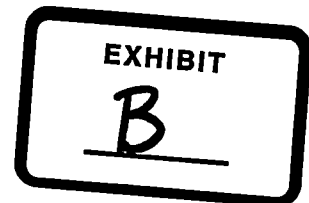
Milton Gary Kimpson
Tara C. Sullivan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette Williams



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C.C.P. & G.S.
CORRIDOR
2016 AUG 15 PM 4:21
RICHLAND COUNTY
FILED

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Richland County, South Carolina,)
Plaintiff,)
Central Midlands Regional Transit Authority,)
Intervenor Plaintiff,)
v.)
The South Carolina Department of Revenue,)
and Rick Reames, III in his official capacity as)
its Director,)
Defendants/Third Party)
Plaintiff,)
v.)
Richland PDT, a joint venture consisting of)
M.B. Kahn Construction Co., Inc., ICA)
Engineering, Inc., and Brownstone)
Construction Group, LLC, as a unit and)
individually,)
Third-Party Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2016-CP-40-3102

**ORDER GRANTING THIRD-PARTY
DEFENDANTS' MOTIONS TO DISMISS
THE THIRD-PARTY COMPLAINT**

RICHLAND COUNTY
FILED
2016 AUG 16 PM 4:11
JENNIFER L. MCBRIDE
C.C.P. & G.S.

This matter comes before the Court by way of four (4) Motions to Dismiss, pursuant to Rules 12(b)(6), and 9(b), SCRCP, filed by Third-Party Defendants Richland PDT, M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC.¹ The Court held a hearing on these motions on August 4, 2016. Keith M. Babcock, Esquire, and David L. Paavola, Esquire, appeared for Richland PDT. Robert T. Strickland, Esquire, and Catherine Ava Kopiec, Esquire, appeared for M. B. Kahn Construction Co., Inc. Erik T. Norton, Esquire,

¹ Richland County, Plaintiff, also filed a motion to dismiss that is addressed in a separate Order.

appeared for ICA Engineering, Inc. John Julius Pringle, Jr., Esquire, and Kirby D. Shealy, III, Esquire, appeared for Brownstone Construction Group, LLC. James E. Smith, Jr., Esquire, Milton G. Kimpson, Esquire, Dana R. Krajack, Esquire, and Lauren Acquaviva, Esquire, appeared for the South Carolina Department of Revenue and Rick Reames, III in his official capacity as its Director (collectively referred to as "SCDOR").

For the reasons set forth below, I GRANT Third-Party Defendants' Motions to Dismiss because I find that SCDOR lacks standing to pursue a third-party complaint against Richland PDT or its individual members—M.B. Kahn Construction Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC (collectively "PDT Members").² As alternative grounds, SCDOR's third-party complaint is dismissed for the following reasons: (1) SCDOR's third-party complaint is improper under Rule 14, SCRCF; (2) SCDOR's third-party complaint does not allege any wrongdoing by the PDT Members in their individual capacities.

LAW/ANALYSIS

I. SCDOR Does Not Have Standing to Proceed Against the Private Parties in this Action.

In order for SCDOR to institute and maintain a lawsuit against Richland PDT and the PDT Members, it must demonstrate that it has the legal standing to do so. *South Carolina Pub. Interest Found. v. South Carolina Dep't of Transp.*, 412 S.C. 18, 24, 770 S.E.2d 399, 402 (Ct. App. 2015). Standing is the fundamental legal requirement that a party bringing a lawsuit must have a personal stake in the subject matter of the lawsuit, *id.*, also known as being the real party in interest. "A real party in interest is one with a real, material, or substantial interest." *Baird v. Charleston Cnty.*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). SCDOR has the burden of proving that it has

² The PDT Members have joined Richland PDT's Motion to Dismiss in full. As such, this Order addresses all four (4) motions together except where specifically noted.

standing to bring this lawsuit. *South Carolina Pub. Interest Found. v. South Carolina Transp. Infrastructure Bank*, 403 S.C. 640, 645, 744 S.E.2d 521, 524 (2013).

In reviewing a motion to dismiss, this Court considers “only the allegations set forth on the face of the plaintiff’s complaint.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citation omitted). Richland PDT is a joint venture of the three PDT Members. Richland PDT is a private entity formed for the purpose of contracting with Richland County to perform program development and program management services for Richland County’s transportation improvement program (“Transportation Penny Program”). Richland PDT was awarded a contract with Richland County pursuant to Richland County’s designated penny sales tax procurement process. SCDOR does not allege any facts showing a relationship between it and Richland PDT, or between it and the PDT Members.

SCDOR’s third-party complaint against Richland PDT and the PDT Members is based entirely on contractual representations made by Richland PDT to Richland County. While SCDOR asserts that in entering the contract with Richland County, Richland PDT made certain representations to SCDOR, I find no factual or legal support for this conclusion from the allegations in the third-party complaint. The absence of any allegation concerning a direct connection between Richland PDT’s contractual representations to Richland County and SCDOR is fatal to SCDOR’s attempt to maintain a lawsuit against Richland PDT and the PDT Members. Richland County is the proper party to enforce the contractual obligations owed to it by Richland PDT, not SCDOR.

During the hearing on this matter, SCDOR argued that Richland PDT owes a duty directly to SCDOR because Richland PDT is paid with, or is expending, public funds pursuant to its contract with Richland County. Standing premised on this basis alone could conceivably extend

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to any private entity contracting with any public entity in South Carolina. SCDOR has provided no authority, and this Court has found none, that would grant SCDOR such expansive oversight over the expenditure of public funds.

Additionally, while this Court has ruled that SCDOR has standing as against Richland County based upon a “special interest” in Richland County’s use of the Penny Tax Revenue,³ I find that this special interest does not extend to private entities contracting with Richland County. This Court has also ruled that the public importance exception gives SCDOR standing concerning the limited purpose of the resolution of the unique issues concerning Richland County raised by this case.⁴ I find that the public importance exception does not grant standing to SCDOR to sue a private entity (or its members) based solely on the private entity’s contract with a separate public body.

SCDOR has failed to allege the existence of a relationship between it and Richland PDT or the PDT Members from which could arise a legal duty necessary to maintain tort causes of action. Accordingly, SCDOR does not have standing to maintain a third-party complaint against Richland PDT or the PDT Members.

II. Richland PDT and the PDT Members Are Not Proper Third-Party Defendants Under Rule 14, SCRCP.

Richland PDT and the PDT Members are not properly named third-party defendants in this action. Rule 14, SCRCP, permits the defendant (SCDOR) as a third-party plaintiff to “cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him.” SCDOR has not alleged that

³ Order Granting Plaintiff’s Petition for Writ of Mandamus, Denying Plaintiff’s Motion for Temporary Injunction, and Denying Defendants’ Motion for Injunction and in the Alternative Appointment of Receiver 14 (August 2, 2016).

⁴ *Id.* at 15.



Richland PDT would be liable to SCDOR if SCDOR is ultimately liable to Richland County. *First Gen. Servs. Of Charleston, Inc. v. ServiceMaster, Inc.*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (“Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability.”). Accordingly, dismissal of the third-party complaint against Richland PDT and the PDT Members is alternatively granted on this basis.

III. CONCLUSION

ACCORDINGLY, THIS COURT FINDS:

1. SCDOR does not have standing to institute and maintain a lawsuit against Richland PDT or the PDT Members.
2. Richland PDT and PDT Members are improper third-party defendants in this action under Rule 14, SCRCP.

THEREFORE,

Richland PDT’s and the PDT Members’ motions to dismiss are **GRANTED**.

AND IT IS SO ORDERED.



Judge G. Thomas Cooper, Jr.
Fifth Judicial Circuit

August 16, 2016
Columbia, South Carolina

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SEP 19 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2016-CP-40-3102

Richland County, South Carolina,Appellant,

v.

The South Carolina Department of Revenue and
Rick Reames, III, in his official capacity as its Director Respondents,

Richland PDT, a joint venture consisting of
M.B. Kahn Construction, Co., Inc., ICA Engineering, Inc.,
and Brownstone Construction Group, LLC,
as a unit and IndividuallyRespondent.

PROOF OF SERVICE

I certify that I have caused to be served a copy of Appellant-Intervenor's Motion for
Inclusion as Party in Appeal by serving as indicated below, on September 19, 2016,
addressed to all counsel of records as follows:

Via US Mail and Email

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Davidson & Lindemann, P.A.
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Post Office Box 8568
Columbia, South Carolina 29202

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Columbia, South Carolina 29211
(803) 929-1400 Telephone
(803) 929-0300 Fax
Appellant - Intervenor

September 19, 2016

Via Hand Delivery

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

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SEP 19 2016
SC Court of Appeals

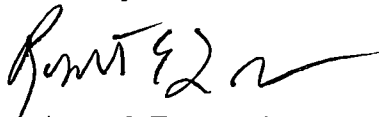
Re: Richland County, SC vs SCDOR, and Rick Reames, III, in his official capacity as its Director, vs. Richland PDT, a joint venture consisting of M. B. Kahn Construction, Co., Inc., ICA Engineering, Inc., and Brownstone Construction Group, LLC, as a unit and individually
Civil Action No. 2016-CP-40-03102
Appellate Case No. 2016-001839
Our File No. 6908/1501

Dear Ms. Kitchings:

I enclose for filing the original and seven copies of a Motion for Inclusion as a Party in the Appeal and Proof of Service in the above matter. I have also enclosed our firm's check in the amount of Twenty-Five (\$25.00) Dollars in payment of the associated filing fee.

By copy of this letter and as evidenced by the Certificate of Service, we are serving all counsel of record with a copy of same.

Sincerely,



Robert E. Tyson, Jr.

Enclosures

cc: Benjamin E. Nicholson, V, Esquire
M. Elizabeth Crum, Esquire
Ray N. Stevens, Esquire
Ray E. Jones, Esquire
Andrew F. Lindemann, Esquire
James E. Smith, Jr., Esquire
Dylan W. Goff, Esquire
Milton G. Kimpson