

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

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SC Court of Appeals

Jefferson Davis, Jr. Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40..... Respondents.

**INITIAL BRIEF OF RESPONDENT FIRST IMPRESSIONS, INC. D/B/A
RICHARD QUINN & ASSOCIATES**

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TABLE OF CONTENTS

COUNTER-STATEMENT OF THE ISSUES ON APPEAL2

STATEMENT OF THE CASE3

STATEMENT OF THE FACTS3

ARGUMENT.....3

CONCLUSION4

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against Richard Quinn & Associates because Mr. Davis failed to serve the Amended Complaint within the time frame required by the trial court's prior order?
2. Was the dismissal of Mr. Davis' claims against Richard Quinn & Associates further supported by the additional sustaining ground that the Amended Complaint fails to make any factual allegations against Richard Quinn & Associates whatsoever?
3. Was the dismissal of Mr. Davis' claims against Richard Quinn & Associates further supported by the additional sustaining ground that the claims Mr. Davis attempts to assert are fatally deficient?
4. Did the trial court properly dismiss Mr. Davis' claims against Richard Quinn & Associates with (rather than without) prejudice because Mr. Davis failed to comply with a prior order of the court, failed timely to serve Richard Quinn & Associates, has already been given an opportunity to amend his Complaint and *still* failed to assert viable claims or to allege facts capable of supporting them, and has identified no new facts in his post-dismissal filings that could remedy his deficient claims?

STATEMENT OF THE CASE

In the interest of economy and efficiency, Richard Quinn & Associates adopts and incorporates herein by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich. To that Statement, Richard Quinn & Associates adds only that it filed its own Motion to Dismiss on January 29, 2019, arguing dismissal was warranted because the Amended Complaint failed to state facts sufficient to constitute a cause of action against Richard Quinn & Associates; failed to make any factual allegations against Richard Quinn & Associates with the degree of specificity necessary to assert a valid and plausible claim for relief; and that the claims alleged against First Impressions are barred by the applicable statute of limitations. *See* First Impressions Mot. to Dismiss (R. ____).

STATEMENT OF THE FACTS

In the interest of economy and efficiency, Richard Quinn & Associates adopts and incorporates by reference the Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich.

ARGUMENT

Rather than reasserting arguments and authorities already asserted by other Respondents and which are equally applicable to Richard Quinn & Associates, this brief adopts and incorporates by reference the Arguments found in the brief of co-Respondents Cato Institute and Howard S. Rich, which are applicable to Richard Quinn & Associates as well, and any other applicable arguments asserted by other co-Respondents. To those arguments, Richard Quinn & Associates adds only the following:

As an additional sustaining ground,¹ Richard Quinn & Associates asserts that dismissal of the Amended Complaint was warranted for failure to state facts sufficient to constitute a cause of action against Richard Quinn & Associates and for failure to make any factual allegations against Richard Quinn & Associates with the degree of specificity necessary to assert a valid and plausible claim for relief. Specifically, Richard Quinn & Associates is mentioned in only seven paragraphs of the Amended Complaint, none of which allege any action or omission by Richard Quinn & Associates, much less one affecting Mr. Davis or injuring him, either directly or vicariously. *See* Am. Compl. ¶¶ 21, 90, 175-179 (R. ____). In each instance, Mr. Davis failed to allege *any* factual allegation that could support *any* claim against Richard Quinn & Associates. Nor is there any allegation that Richard Quinn & Associates employed, directed, encouraged, or was even aware of any alleged conduct directed at Mr. Davis). In the absence of such allegations, no claim may lie against Richard Quinn & Associates, and dismissal of the claims is appropriate. *See generally* the authorities cited in the Brief of Cato Institute and Mr. Rich at Argument II.A; Brief of SCRG Foundation n/k/a Donors Enriching Students Knowledge at Argument.

CONCLUSION

For the foregoing reasons, Respondent First Impressions, Inc. d/b/a Richard Quinn & Associates respectfully requests this Court affirm the trial court's Order dismissing Mr. Davis' claims against it.

[SIGNATURE PAGE FOLLOWS]

¹ *See* Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”); *Dreher v. S.C. Dep’t of Health and Envtl. Ctrl.*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) (“[B]ecause an appellate court may affirm the lower court’s decision for any reason appearing in the record, the prevailing party may ... raise additional sustaining grounds to support the lower court’s decision.”).



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November 8, 2019
Columbia, South Carolina

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PROOF OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the Initial Brief and Designation of Matter to be Included in the Record on Appeal of Respondent First Impressions, Inc. d/b/a Richard Quinn & Associates via the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

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November 8, 2019

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VIA HAND DELIVERY

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

Re: *Jefferson Davis, Jr. v. Ellen Weaver, et al.*; Appellate Case No. 2019-00648

Dear Ms. Kitchings:

Enclosed to be filed in the above referenced action please find an original and one (1) copy of the Initial Brief and Designation of Matter to be Included in the Record on Appeal of Respondent First Impressions, Inc. d/b/a Richard Quinn & Associates. I would appreciate your accepting the originals for filing and returning the extra copies of these documents bearing your file-stamp.

By copy of this letter, I am serving a copy of this letter on all parties of record and enclose a Proof of Service to that effect. If you have any questions, or need additional information, please do not hesitate to contact me.

Very truly yours,



Benjamin P. Mustian

enclosures

cc: All Parties of Record
(with enclosure and via first class mail)