

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
In The Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2011-CP-05-00160

Dr. Robert W. Denton and Dr. John P. May,
d/b/a Edusystems, a general partnership,

Appellants,

v.

Denmark Technical College and
South Carolina State Board for Technical
and Comprehensive Education,

Respondents,

v.

Dr. John K. Waddell,

Third Party Defendant.

APPELLANT'S RETURN TO
RESPONDENT'S MOTION TO STRIKE ARGUMENT IN APPELLANTS'
FINAL REPLY BRIEF

RECEIVED

FEB 11 2013

SC Court of Appeals

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As acknowledged by the Respondent, it did not raise the exhaustion defense and the failure to do so constitutes a waiver of such defense, even though the Respondent continues to use it for a “sword”.

The Respondent has opted to rely on a law defense to this action; however when the facts appear to defeat their counterclaims, the Respondent reverts to the administrative law.

As a matter of justice and fairness, the Appellant’s are entitled to know which rules of procedure the Respondent has chosen to follow. If it is the administrative route, this matter should be remanded to the appropriate administrative agency. If it is the legal route, the rules of law should prevail.

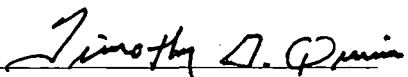
The second argument in their final brief simply urges that if the Respondent is utilizing the Consolidated Procurement Code then it should be argued before that governing body. As that avenue was waived, the Respondent should be precluded from any perceived benefits of the code.

The Trial Court’s Order is based solely on the Consolidated Procurement Code and obviously concludes that it is the responsibility of the Appellant’s to insure that the Respondent properly followed the Code procedures. Particularly is this, the President of the Respondent assured Appellants that everything was properly done. (Waddell’s Affidavit pp. 168-169 Record on Appeal).

Both under the Consolidated Procurement Code and the rules of law, there are rules of procedure that must be followed. In this matter, the Respondent’s attempt to combine two separate and distinct venues results in no such rules being followed.

The Respondent's motion to strike is simply an attempt to elude the orderly process of justice.

The Appellants pray that the Respondent's Motion be denied.


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February 11, 2013

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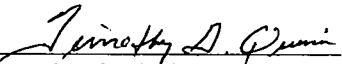
I certify that I have served the Appellant's Return to Respondent's Motion to Strike Argument in Appellant's Final Reply Brief on the other parties by depositing a copy of it in the United States Mail, postage prepaid, on February 11, 2013, addressed to their attorney of record as follows:

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February 11, 2013


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