

## Exhibit A

Order Denying Durham's Petition for an Ex Parte Temporary Restraining Order dated 4.14.2020

Order dated 5.8.2020 Denying Durham's Motion to Reconsider

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
  
Durham School Services L.P., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Board of Trustees of the Charleston )  
County School District, a public body )  
as defined by law, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO: 2020-CP-10-01384

**RECEIVED**  
JUN 08 2020  
SC Court of Appeals

**ORDER DENYING PLAINTIFF'S PETITION  
FOR EX PARTE TEMPORARY RESTRAINING ORDER  
AND MOTION FOR PRELIMINARY INJUNCTION AND  
GRANTING DEFENDANT'S MOTION TO DISMISS**

This matter was convened before the Court for a hearing on April 1, 2020, via Zoom videoconference on Plaintiff Durham School Services L.P.'s Petition for *Ex Parte* Temporary Restraining Order and Motion for Preliminary Injunction and on Defendant Charleston County School District's Motion to Dismiss.

Present via videoconference for Plaintiff were Michael J. Anzelmo, Esquire, of McGuire Woods, LLP, and Mark A. Peper, Esquire, of The Peper Law Firm, PA. Present for Defendant were H. Brewton Hagood, Esquire, and Elizabeth J. Palmer, Esquire, both of Rosen Hagood, LLC; and Natalie Ham, Esquire, General Counsel for Defendant.

The following facts are not in dispute according to the pleadings filed in this case and the Affidavits submitted in support of Defendant's Motion to Dismiss and in opposition to Plaintiff's Motion for Preliminary Injunction. On August 8, 2019, Defendant announced a solicitation for Competitive Best Value bids for a student transportation services contract (the "Contract") with a

five-year term starting July 1, 2020. Plaintiff has the current contract with the Defendant to provide student transportation services which expires on June 30, 2020. Plaintiff submitted a bid, as did First Student, Inc. (First Student"). On December 18, 2019, Defendant announced that the Contract was to be awarded to First Student. By letter dated December 20, 2019, and pursuant to the Charleston County School District ("CCSD") Procurement Code, Plaintiff protested the award to First Student. The protest was denied by Defendant's Chief Procurement Officer. Plaintiff then sought review of the denial by the CCSD Procurement Review Panel (the "Panel"). On March 3, 2020, the Panel heard the matter *de novo*. Following the hearing, during which both Plaintiff and Defendant presented testimony and evidence, the Panel, by Order dated March 13, 2020, denied Plaintiff's protest. On March 16, 2020, Plaintiff appealed the Panel's Order by filing a Notice of Appeal in the circuit court as required by the CCSD Procurement Code. That action was given case number: 2020-CP-10-1385 and is currently pending (the "Appeal"). A copy of the Notice of Appeal and the Order of the Panel was attached as Exhibit 1 to CCSD's Motion to Dismiss Plaintiff's Petition, Motion and Complaint.

Separately from its Appeal, Plaintiff initiated this lawsuit by filing its Verified Petition for an *Ex Parte* Temporary Restraining Order, Motion for Preliminary Injunction, and Complaint for Declaratory and Injunctive Relief, also on March 16, 2020. The Complaint seeks an order declaring that CCSD Procurement Code § 4410.7 imposes a stay on Defendant's award of the Contract to First Student during the pendency of the separately pending Appeal to the Circuit Court and any further appeals, and seeks injunctive relief prohibiting Defendant from moving forward with the Contract with First Student.

**DENIAL OF PLAINTIFF'S PETITION FOR *EX PARTE* TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

“The remedy of an injunction is a drastic one and ought to be applied with caution.” Forest Land Co. v. Black, 216 S.C. 255, 57 S.E.2d 420, 426 (1950); Lefurgy v. The Long Cove Owners Ass’n., Inc., 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994). The party seeking the injunction has the formidable burden of proving each of the following elements: (1) an irreparable injury will occur in the absence of an injunction; (2) there is no adequate remedy at law; and (3) likelihood of success on the merits. Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

Plaintiff alleged in paragraph 34 of its Petition, Motion and Complaint that it would be irreparably harmed through the loss of its current student transportation services contract with the district and subjecting the District to potential legal action for its *ultra vires* action. William “Jeff” Scott, CCSD’s Executive Director of Student Transportation, stated in paragraph 20 of his Affidavit that CCSD had not threatened to terminate its current contract with the Plaintiff. I find that the Plaintiff has not made a showing of irreparable harm.

The sole purpose of a temporary injunction is to preserve the status quo. Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). The status quo at the time of filing of Plaintiff’s Petition, Motion and Complaint and at the time of the hearing before the Court on April 1, 2020 is that CCSD had already issued a Notice to Proceed with the contract with First Student on March 13, 2020 which was attached as Exhibit 1 to the Affidavit of Sonja Bauer. CCSD and First Student had both signed a Services Agreement for B22002 Student Transportation Services on March 16, 2020, a copy of which was attached as Exhibit 5 to the Affidavit of Wayne Wilcher. In addition, Ms. Bauer stated in paragraph 10 of her Affidavit that First Student had

placed an order for a total of 156 new buses with Thomas Built Buses for approximately \$15.6M. I find that the injunctive relief sought by Plaintiff would alter, rather than preserve, the status quo.

As to the lack of an adequate remedy at law, CCSD submitted the Affidavit of Wayne Wilcher to show that that Plaintiff has pursued, and continues to pursue, its exclusive remedy under CCSD's Procurement Code to file a Protest of the Intent to Award. The initial Protest dated December 20, 2019 was attached as Exhibit 1 to Mr. Wilcher's Affidavit. Mr. Wilcher's decision denying the protest was attached as Exhibit 2 to his affidavit. The request for administrative review of Mr. Wilcher's decision and review by the CCSD Procurement Review Panel was attached as Exhibit 3 to Mr. Wilcher's Affidavit. The Notice of Appeal from the Order of the Procurement Review Panel was attached as Exhibit 1 to CCSD's Motion to Dismiss. I find that the Plaintiff is pursuing its exclusive remedy at law under the CCSD Procurement Code.

As to likelihood of success on the merits of its claim, Plaintiff argued that it would succeed in establishing that CCSD Procurement Code § 4410.7 mandates that a stay be imposed, preventing CCSD from moving forward with the Contract with First Student during the pendency of Plaintiff's appeal. The basis of Plaintiff's argument is that the language of § 4410.7 at the time it filed its Appeal must be interpreted to require such a stay. That language was as follows: "The filing of an appeal does to [sic] automatically stay a decision of the panel." Plaintiff's argument is unpersuasive and the Court finds that the above quoted language from § 4410.7, as it existed at the time Plaintiff filed its Appeal, is a scrivener's error and was intended to state as follows: "The filing of an appeal does *not* automatically stay a decision of the panel." The Court's finding is based on its review of the CCSD Procurement Code, the S.C. Consolidated and Model School District Procurement Codes on which CCSD's Procurement Code is based, as well as the Affidavit of Wayne Wilcher, Defendant's Director of Contracts, Procurement & Records Services. The

Court further recognizes that it was the filing of Plaintiff's Appeal that brought the scrivener's error to the Defendant's attention, and that the error has since been corrected by a motion passed at CCSD's regularly scheduled Board of Trustees meeting on March 23, 2020. A copy of the corrected version of § 4410.7 was attached as Exhibit 6 to Mr. Wilcher's Affidavit.

Because I find that Plaintiff is unlikely to succeed on the merits of its claim (i.e., that CCSD Procurement Code § 4410.7 imposes a stay on Defendant moving forward with the Contract during the pendency of Plaintiff's appeal), Plaintiff's request for injunctive relief is **DENIED**.

**DEFENDANT'S MOTION TO DISMISS IS GRANTED**

Dismissal under Rule 12(b)(8), SCRCP, is proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim or substantially the same claim. Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009). Because Plaintiff's Appeal from the decision of the CCSD Procurement Review Panel involves the same claims, the same parties, and seeks the same relief (i.e., preventing CCSD from proceeding with the Contract) as the present lawsuit, Rule 12(b)(8) requires that the present action be dismissed. See Unisys Corp. v. S.C. Budget and Control Bd., 346 S.C. 158, 176-77, 551 S.E.2d 263, 273 (2001) (dismissing action brought in circuit court pursuant to 12(b)(8) where another action pending pursuant to the S.C. Consolidated Procurement Code). Therefore, Defendant's Motion to Dismiss is **GRANTED**.

**AND IT IS SO ORDERED.**

April \_\_\_\_, 2020  
Charleston, SC

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Judge Bentley D. Price  
Presiding Judge, Ninth Judicial Circuit



Charleston Common Pleas

**Case Caption:** Durham School Services Lp VS Board Of Trustees Of The  
Charleston County School District  
**Case Number:** 2020CP1001384  
**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766