

**RECEIVED**

**Nov 13 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2020-001323  
Case No. 18-ALJ-07-0358-CC  
Case No. 18-ALJ-07-0360-CC  
Case No. 18-ALJ-07-0366-CC

---

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant Hospital. ....Respondent,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, .....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center, .....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, .....Respondents,

AND

Trident Medical Center, LLC, d/b/a Trident Medical Center and Summerville Medical Center, .....Appellants,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, .....Respondents,

---

REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL

---

## REPLY ARGUMENT

Respondent Medical University Hospital Authority (MUHA) moved to dismiss Appellants' appeals for the following reasons: (1) § 44-7-220(B) required Appellants to post a bond; (2) the General Assembly had the power to require this bond, because it created all of Appellants' rights in this matter, and that power is not "clearly excluded" by Article I, 22; and (3) Appellants have not filed the statutory bond and concede that they will not file the bond. In their response, Appellants do not dispute the meaning of § 44-7-220(B) – they concede it requires them to post a bond. They also concede that the General Assembly created their rights in this matter and that the General Assembly generally has the power to place conditions upon rights that it created. They argue, however, that the General Assembly has exceeded that power here, because Article I, § 22 of the South Carolina Constitution grants them an "unfettered right" to the appeal before this Court. Appellants are mistaken.<sup>1</sup>

Appellants cite two cases in support of their claim to an "unfettered right" to the present appeal. First, they cite *Gaud v. Walker*, 53 S.E.2d 316 (S.C. 1949) for the general rule that the General Assembly has plenary power absent a limitation imposed by the state or federal constitution.<sup>2</sup> This is true but proves too much, because nothing in either constitution limits the General Assembly's power to impose the appeal bond at issue here. It is firmly established that

---

<sup>1</sup> Appellants moved for relief from the statutory bond upon the grounds that they had the "unfettered right" to an appeal in this matter, and that the bond requirement in § 44-7-220(B) deprived them of due process and equal protection under the state and federal constitutions. MUHA filed a return to those arguments in conjunction with its motion to dismiss for failure to comply with § 44-7-220(B).

<sup>2</sup> *Gaud* was a pre-Home Rule case involving a taxpayer's challenge to an Act providing for a system of government in Charleston County. *Id.* at 319. The Supreme Court struck part of the Act as "special legislation" that delegated police powers upon one county but not all other counties. *Id.* at 326-327; see also *Ruggles v. Padgett*, 126 S.E.2d 553, 558 (S.C. 1962) ("The real vice of the legislation [in *Gaud*] was the fact that it permitted a county agency to define crimes."). Nothing in *Gaud* relates specifically to the question here presented on the General Assembly's power to impose a bond requirement in CON appeals, or any appeals.

the General Assembly may regulate the right to an appeal and may impose a bond requirement as a condition precedent to an appeal “unless such power is *clearly excluded* by the constitution.” *Horn v. Blackwell* 48 S.E.2d 322, 323 (S.C. 1948) (emphasis added). Nothing in Article I, § 22 “clearly excludes” the General Assembly’s power to impose a bond requirement. Moreover, the appellate courts have no discretionary power over mandatory appeal bonds imposed by statute and must dismiss the appeal if the appellant does not post the statutory bond. *Wheeler v. Hyde*, 91 S.E.2d 265, 265-266 (S.C. 1956). In short, nothing in Article I, § 22 “clearly excludes” the power of the General Assembly to regulate CON appeals. Therefore, the General Assembly has plenary power to impose a bond requirement in CON appeals.<sup>3</sup>

Second, Appellants cite *Fullbright v. Spinnaker Resorts, Inc.*, 802 S.E.2d 794 (S.C. 2017) for the general proposition that Article I, § 22 requires some level of judicial review. This is true but this does not mean that Appellants’ right to an appeal in this case is “unfettered.” In *Fullbright*, the Supreme Court answered certified questions from the South Carolina District Court, including the question of whether determinations by the South Carolina Real Estate Commission (REC) under the Timeshare Act were binding on the courts. *Id.* at 796. The appellant argued that the REC’s decisions were not subject to *any* judicial review. Not surprisingly, the Supreme Court rejected this “no review” argument, but it did not adopt the “unfettered right” rule advocated by Appellants here. To the contrary, the Supreme Court held that “[o]ur law *only requires* there be *some avenue* for a court to determine the validity of the [administrative agency’s] ruling.” *Id.* at 802 (emphasis added). Nothing in *Fullbright* or Article I, § 22 limits the plenary power granted

---

<sup>3</sup> Appellants complain that *Horn* and *Wheeler* were landlord-tenant cases, not ALC cases. (App. Resp. at 6 & n. 4). Their point is unclear – they cited and discussed *Horn* in their motion for relief from the appeal bond. (See Jt. Mot. at 8-10). More importantly, *Horn* and *Wheeler* state the general law on the General Assembly’s power regarding appeals and appeal bonds, and then apply that law to landlord-tenant cases. Nothing in either opinion limits the rules applied therein to landlord-tenant cases, and applying those long-standing rules requires the dismissal of Appellants’ appeals.

to the General Assembly by the South Carolina Constitution, including the power to impose conditions on the right to appeal afforded by § 44-7-220(B).

Here, Appellants have a right to judicial review provided they satisfy the requirements imposed by the General Assembly, including the bond required by § 44-7-220(B), a requirement that is not “clearly excluded” by Article I, § 22. Section 44-7-220(B) provides the “avenue” for review contemplated in *Fullbright*, but Appellants have not complied with the conditions imposed on this avenue, and they concede they will not do so. Thus, their appeals must be dismissed.

In summary, Appellants contend that they have an “unfettered right” to the current appeal, but nothing in Article I, § 22 or any other constitutional provision “clearly excludes” the power of the General Assembly to impose conditions on their right to appeal. Absent a clear limitation imposed by the constitution, and there is none, the General Assembly has the power to regulate appeals under long-standing and widely accepted principles of constitutional jurisprudence:

Under its general authority to regulate appellate procedure the legislature has the power to require the giving of a bond or undertaking as a condition precedent to the right to appeal or sue out a writ of error, unless such power is clearly excluded by the constitution. Such statutes do not violate constitutional provisions granting the right of appeal, as they do not restrict or deny the right, but merely regulate the manner of exercising it ....

*Horn*, 48 S.E.2d at 323, quoting 4 C. J. S., Appeal and Error, § 502. The wisdom of § 44-7-220(B), including any presumed hardship in pursuing an appeal, is a matter for the General Assembly. *Id.* (“We are not unaware of the fact that [the] requirement [of a bond in appeals from eviction orders] may impose a hardship upon some tenants, but we are here dealing with the power of the General Assembly and not with the question of whether such power was wisely exercised.”).<sup>4</sup>

---

<sup>4</sup> Appellants complain that the bond is “onerous and arbitrary”. It is not. The General Assembly imposed a rational scheme based on five percent of the project’s cost with a cap of \$1.5 Million. This methodology is neither onerous nor arbitrary. Indeed, Appellants benefit from this rational scheme and its cap, because 5% of the total project cost would require an appeal bond of \$16.25 Million Dollars for the \$325 Million Dollar project approved by DHEC and the ALC for the benefit of the people of South Carolina. DHEC and the ALC did so in a detailed process specifically designed by the General Assembly to best serve and achieve its public policy determinations on public health.

## CONCLUSION

Section 44-7-220(B) affords Appellants an avenue for judicial review by appeal to this Court, but it requires them to post a bond before perfecting the appeal. The General Assembly had the power to impose this requirement, because Article I, § 22 does not “clearly exclude” this power, and because the General Assembly created all of Appellants’ rights in this matter in the first instance. For these reasons, and for the reasons set forth above and in MUHA’s motion to dismiss and return to Appellants’ joint motion for relief from § 44-7-220(B), MUHA respectfully submits that this Court should dismiss Appellant’s appeal.

Respectfully Submitted,

/s/Robert L. Widener

Robert L. Widener  
Celeste T. Jones  
M. Elizabeth Crum  
Pamela A. Baker  
BURR & FORMAN, LLP  
Post Office Box 11390  
Columbia, South Carolina 29211  
(803) 799-9800

November 13, 2020  
Columbia, SC

ATTORNEYS FOR RESPONDENT MEDICAL  
UNIVERSITY HOSPITAL AUTHORITY d/b/a  
MUHA COMMUNITY HOSPITAL

**RECEIVED**

**Nov 13 2020**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph King Anderson, III, Administrative Law Judge

Appellate Case No. 2020-001323  
Case No. 18-ALJ-07-0358-CC  
Case No. 18-ALJ-07-0360-CC  
Case No. 18-ALJ-07-0366-CC

---

CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant Hospital. ....Respondent,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, .....Respondents,

AND

Walterboro Community Hospital, Inc., d/b/a Colleton Medical Center, .....Appellant,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, .....Respondents,

AND

Trident Medical Center, LLC, d/b/a Trident Medical Center and Summerville Medical Center, .....Appellants,

v.

South Carolina Department of Health and Environmental Control and Medical University Hospital Authority, d/b/a MUHA Community Hospital, .....Respondents,

---

CERTIFICATE OF SERVICE

---

I, Robert L. Widener, Counsel for Respondent Medical University Hospital Authority, hereby certify that a true and correct copy of Respondent’s Reply in Support of Motion to Dismiss

Appeal was served upon counsel for all parties in the above-captioned matter, via email at the email addresses listed below pursuant to Supreme Court Order 2020-05029-02, this 13th day of November 2020, addressed as follows:

David B. Summer, Jr.  
William R. Thomas  
Faye A. Flowers  
Parker Poe Adams & Bernstein LLP  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, SC 29202  
[davidsummer@parkerpoe.com](mailto:davidsummer@parkerpoe.com)  
[willthomas@parkerpoe.com](mailto:willthomas@parkerpoe.com)  
[fayeflowers@parkerpoe.com](mailto:fayeflowers@parkerpoe.com)  
Attorneys for Appellants

Vito M. Wicevic  
Rupinderjit S. Grewal  
South Carolina Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
[wicevism@dhec.sc.gov](mailto:wicevism@dhec.sc.gov)  
[grewalrs@dhec.sc.gov](mailto:grewalrs@dhec.sc.gov)  
Attorneys for Respondent South Carolina Department of Health and Environmental Control

Jennifer J. Hollingsworth  
Shannon V. Lipham  
Nexsen Pruet, LLC  
1230 Main Street  
Suite 700 (29201)  
Post Office Drawer 2426  
Columbia, SC 29202  
[jhollingsworth@nexsenpruet.com](mailto:jhollingsworth@nexsenpruet.com)  
[svlipham@nexsenpruet.com](mailto:svlipham@nexsenpruet.com)

Cheryl D. Shoun, Esquire  
Nexsen Pruet, LLC  
205 King Street, Suite 400  
Charleston, SC 29401  
[cshoun@nexsenpruet.com](mailto:cshoun@nexsenpruet.com)  
Attorneys for Responent CareAlliance Health Services, d/b/a Roper St. Francis Healthcare, Roper Hospital, Inc., Bon Secours-St. Francis Xavier Hospital, Inc., Roper St. Francis Berkeley Hospital, and Roper Mount Pleasant Hospital

Columbia, SC  
November 13, 2020

/s/Robert L. Widener  
Robert L. Widener