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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Civil Action No. 2019-CP-22-01116
Appellate Case No. 2020-001166

Ex Parte: DeBordieu Colony Community Association, Inc., Appellant,

In Re: The Belle W. Baruch Foundation..... Plaintiff,

v.

The State of South CarolinaDefendant,

Of which The Belle W. Baruch Foundation is the Respondent.

**FINAL REPLY BRIEF OF APPELLANT TO THE STATE OF
SOUTH CAROLINA**

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INTRODUCTION

DeBordieu appreciates the State’s consent to its intervention. DeBordieu also recognizes that the State’s Initial Brief does not address any of the substantive arguments underlying the merits of this appeal. Nevertheless, DeBordieu responds to clarify certain points raised by the State. First, DeBordieu has not mischaracterized the record or relied on “baseless speculation” in arguing that the State would not adequately represent its interests. Second, DeBordieu does not argue that the State’s interests in this litigation are somehow unimportant or that the State is incapable of protecting those interests. Rather, DeBordieu argues that the State’s interests are substantively different from its own and that it cannot rely on the State to protect DeBordieu’s interests. The State does not appear to dispute this central point. However, to the extent the State’s Initial Brief might be read to argue otherwise, the Court should reject it and reverse the decision of the trial court.

ARGUMENT

The State claims that DeBordieu’s concerns are rooted in “baseless speculation.” State’s Initial Br. 1. Yet, the State does not actually contest any of the factual assertions underlying DeBordieu’s arguments. The State does not deny that, unlike DeBordieu, it is willing to forgo a jury trial, and unlike DeBordieu, it has no plans to engage experts to challenge the analyses offered by Respondent in the case below. While the State has provided citations to cases showing that it *can* engage experts, *id.*, the State has provided nothing to indicate that it actually intends to do so in this case. The State also does not deny that it joined Respondent in submitting a proposed order to bifurcate the trial. The State claims that this proposal was not an effort to “fast-track the title determination for trial.” *Id.* However, Respondent advanced that process for the very purpose of accelerating the proceedings. In fact, Respondent made its intent clear from the outset when it

sought to impress upon the trial court why it did not want to litigate the issues DeBordieu sought to have heard in this action. (R. p. 228, lines 19-24 (“[I]n the mode of trial that Mr. Smith and I had agreed to, we could be before a judge trying this case ten days from now ... if this motion to intervene is granted, it will bog down this simple issue for [] who knows how long.”)). The State does not dispute this point.

Most importantly, the State does not deny that DeBordieu possesses unique knowledge, experience, and perspective in this litigation, or that DeBordieu has raised arguments and defenses that the State has not raised. This is the heart of the issue: The State does not adequately represent DeBordieu’s interests because the State and DeBordieu do not have the same interests. DeBordieu does not seek to diminish the importance of the State’s interests in this litigation. Nor does DeBordieu seek to question whether the State’s approach to this litigation is appropriate to protect *its own interests*. DeBordieu simply demonstrates that it seeks to take a different approach, commensurate with its unique interests. This showing is more than enough to satisfy the “minimal burden” of demonstrating that the State’s representation of *DeBordieu’s* interests *may be* inadequate. *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990).

CONCLUSION

For the foregoing reasons, and for the reasons set forth in DeBordieu's Initial Brief and Reply Brief, this Court should reverse the trial court's denial of DeBordieu's Motion to Intervene and remand with directions to allow DeBordieu to intervene as a party to this action.

Respectfully submitted,

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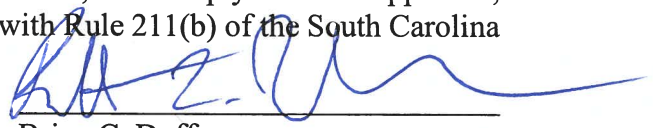
v.

The State of South CarolinaDefendant,

Of which The Belle W. Baruch Foundation is the Respondent.

CERTIFICATE OF COUNSEL

I, Robert L. Wehrman, certify that the Final Brief, Final Reply Brief of Appellant, and Final Reply Brief to the State’s Brief comply with Rule 211(b) of the South Carolina Rules of Appellate Practice.



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