THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001189
Case No. 2019-CP-40-3032

South Carolina Coastal Conservation League, Inc., Elizabeth M. Smith, Abraham B. Jenkins, Jr., and South Carolina Public Interest Foundations, Appellants,

v.

Charleston County, South Carolina, South Carolina Transportation Infrastructure Bank, and South Carolina Department of Transportation, Respondents.

BRIEF OF RESPONDENT SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

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STATEMENT OF THE CASE

This is an action brought by the Appellant Coastal Conservation League, Inc., Elizabeth M. Smith, and Abraham B. Jenkins, Jr. seeking declaratory and injunctive relief against the Respondent Charleston County related to the County's use of proceeds from the Charleston County Transportation Sales Tax for the funding and construction of the Mark Clark Expressway Extension Project. In their Second Amended Complaint, the Appellants have joined the Respondent South Carolina Department of Transportation ("SCDOT"), as well as the Respondent South Carolina Transportation Infrastructure Bank ("SCTIB"), as "parties in interest" because "they are all signatories to the Amended IGA." *See,* Second Amended Complaint, ¶ 81. (R. 41).[1] The Second Amended Complaint includes no direct claims or causes of action against SCDOT.

The Respondent Charleston County filed a motion to dismiss which was heard by Circuit Court Judge L. Casey Manning on January 6, 2020. By Order filed February 24, 2020, the trial court granted the dismissal on several alternative and independent bases including (1) that the Appellants lack standing, (2) that the Appellants' claims related to the 2004 and 2016 Transportation Sales Tax Referenda and ordinances resulting therefrom are time-barred pursuant to election laws, and (3) that "the Plaintiffs' claims under all of their causes of action fail to state facts sufficient to constitute a cause of action regarding the County's authority or procedures used to fulfill the South Carolina Infrastructure Bank Act's requirements." (R. 3).

[1] This is a reference to the "First Amended Intergovernmental Agreement for Charleston County Mark Clark Expressway Extension Project in Charleston County, South Carolina," which was executed on January 10, 2019 by Charleston County, SCDOT, and SCTIB (hereafter referred to as "Amended IGA").

The Appellants thereafter filed a motion to alter or amend order pursuant to Rule 59(e), SCRCP. By Order filed August 3, 2020, the trial court denied that motion "based upon the failure of the Plaintiffs to comply with Rule 59(g) SCRCP." (R. 22).[2]

The Appellants then filed an appeal to this Court.[3]

[2] In their opening brief, the Appellants do not appeal from the trial court's denial of the Rule 59(e) motion. Thus, any issue raised specifically in the Rule 59(e) motion has been abandoned. *See*, *Glasscock, Inc. v. United States Fidelity & Guaranty Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

[3] The South Carolina Public Interest Foundation was also a plaintiff in the trial court but has not appealed from the order of dismissal.

STANDARD OF REVIEW

When reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Bishop of Charleston*, 407 S.C. 128, 754 S.E.2d 494, 497 (2014). "If the facts alleged and inferences reasonably deducible from the allegations set forth in the complaint, viewed in the light most favorable to the plaintiff, entitle him to relief on any theory, dismissal under Rule 12(b)(6) is improper." *Id.*

"When reviewing a motion to dismiss for failure to state facts sufficient to constitute a cause of action, the pleadings must be construed liberally, and all well pled facts must be presumed true." *Doe*, 754 S.E.2d at 497-498. However, only "well pled facts" are to be presumed true. In contrast, issues of law -- which are not "well pled facts" -- are for the Court and are reviewed *de novo*. 754 S.E.2d at 498. This Court has previously explained that, on a Rule 12(b)(6) motion, "the court is required to presume all well pled *facts,* not propositions of law, to be true." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 699 S.E.2d 699, 705 (Ct. App. 2010). (Emphasis in original).

ARGUMENTS

In their Second Amended Complaint, the Appellants have joined the Respondent SCDOT, as well as the Respondent SCTIB, as "parties in interest" because "they are all signatories to the Amended IGA." *See,* Second Amended Complaint, ¶ 81. (R. 41). No direct claims or causes of action are alleged against SCDOT. No specific declaratory or injunctive relief is sought against SCDOT.

Under the terms of the Amended IGA, SCDOT agrees to "administer the Extension Project for the County" (¶ 5.1) and, upon completion of the project, SCDOT agrees to accept the project into the State Highway System (¶ 5.6). (R. 57, 59). That is the extent of SCDOT's contractual responsibilities. Importantly, SCDOT has no responsibility for the funding of the Extension Project in any respect. SCDOT is not required to contribute any funding, nor can it dictate the source of any funding for the project.

On appeal, SCDOT takes the position that the trial court's dismissal of the Second Amended Complaint for lack of standing is correct and should be affirmed. SCDOT will not separately brief the issue of standing but relies on and adopts herein the arguments of the other Respondents under the authority of Rule 208(b)(6), SCACR.

However, even if this Court finds that the Appellants have standing and reverses on any of the alternative bases for dismissal as entered by the trial court, the dismissal of SCDOT as a party-defendant should still be affirmed. In *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), the South Carolina Supreme Court explained that a respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." 526

S.E.2d at 723. "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id*. *See also*, Rule 220(c), SCACR ("[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record"); Rule 207(b)(2), SCACR ("[r]espondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c)").

As an additional sustaining ground supporting its dismissal from this action, SCDOT submits that the Appellants' challenge to the County's use of sales tax revenues on the Extension Project, even if successful, cannot invalidate the Amended IGA. Paragraph 3.2(B) provides: "The County agrees to pay and shall pay from proceeds of the Sales Tax, *or any lawful source*, all of the costs incurred or to be incurred to complete the entire scope of the Extension Project in excess of the $420 million in grants from the Bank (including past and future)." (R. 52). (Emphasis added). Likewise, Paragraph 3.2(C) states: "The County Council shall adopt a budget for each Fiscal Year appropriating revenues of the Sales Tax, or any federal or state grant proceeds, or any lawful source to fund the payment obligations of the County under this Agreement." (R. 52). Thus, the County has agreed to pay the costs of the project in excess of the $420 million from the SCTIB from "any lawful source" including grant proceeds, and the Appellants are not challenging the legality of those provisions. The Appellants are only challenging the County's use of sales tax revenues as a funding source.

Therefore, the Respondent SCDOT is not an interested party nor a necessary party to this litigation. The Appellants' claims against the County, even if successful, will not invalidate the Amended IGA, and SCDOT has no contractual right or responsibility to determine or dictate the source of the County's funding for the Extension Project. As a result, regardless of this Court's

ultimate rulings on the merits of the Appellants' appeal, the dismissal of SCDOT as a party-defendant should be affirmed on this additional sustaining ground.

CONCLUSION

Based on the foregoing discussion and analysis, the Respondent South Carolina Department of Transportation respectfully requests that the Court affirm the dismissal of the Second Amended Complaint with prejudice.

Respectfully submitted,

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March 29, 2021

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Respondent South Carolina Department of Transportation certifies that the Final Brief of Respondent South Carolina Department of Transportation complies with Rule 211(b), SCACR.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Respondent South Carolina Department of Transportation certifies that the Final Brief of Respondent South Carolina Department of Transportation complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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CERTIFICATE OF SERVICE

Pursuant to Section (g)(3) of the Supreme Court's Order re: Operation of the Trial Courts During the Coronavirus Emergency (As Amended May 29, 2020), the undersigned employee of Lindemann & Davis, P.A., counsel for the Respondent South Carolina Department of Transportation, does hereby certify that service of the **Final Brief of Respondent South Carolina Department of Transportation** was made upon all counsel of record by email only at the below listed email addresses this the 29th day of March 2021:

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