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Feb 04 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Circuit Court Judge

Case No. 2021-01414

Charleston Advancement Academy, Inc. Appellant.

v.

South Carolina Public Charter School District, Respondent,

RESPONDENT’S REPLY TO RESPONSE TO MOTION TO DISMISS

Respondent filed for dismissal because this matter is not ripe for appeal and CAA waived the right to appeal the Circuit Court’s Order in this Court by appealing the same issues in the Administrative Law Court. CAA should not be permitted to continue forum shopping after losing in arbitration and having its court claims dismissed. The proper procedure should be for the ALC to rule on CAA’s motion and then, if CAA still desires review by this Court, it can appeal from the ALC to this Court as contemplated by the Charter Schools Act.

INTRODUCTION

On December 3, 2021, School filed both this appeal and an appeal in the Administrative Law Court. Both appeals seek review of the District's decisions made at board meetings held on November 14, 2019 and December 13, 2019. The District has filed for dismissal of both appeals based on the failure of the School to comply with the requirement to file an appeal of final decisions by the District within thirty days to the Administrative Law Court.

The District disagrees with many of the alleged facts and characterizations of fact in the Response, but the dismissal is based on the undisputed procedural posture of the case. CAA's failure to seek timely relief before the proper court when the decisions at issue were rendered more than two years ago should not be an excuse for it to file multiple litigations against the District now.

DISCUSSION

I. The appeal is not ripe.

This case is postured similarly to *Spivey ex rel. Spivey v. Carolina Crawler*, 367 S.C. 154, 160, 624 S.E.2d 435, 438 (Ct. App. 2005), cited and discussed in the Motion to Dismiss. In *Carolina Crawler*, the appellant filed dual appeals before the Court of Appeals and the Workers Compensation Commission following an adverse decision in the Circuit Court. This Court determined the issues regarding jurisdiction were not ripe for appeal because matters regarding the same subject matter, the enforceability of a "clincher agreement," remained pending before the Worker's Compensation Commission. *Id.* at 160-161, 624 S.E.2d at 438.

CAA makes no effort in the response to distinguish *Carolina Crawler*, and this Court should follow the same logic as it used in *Carolina Crawler*:

The rights of the parties have not been fully adjudicated, and any decision by this court would be premature. Therefore, pending the outcome of the hearing before the full commission, we find this issue not ripe for our review.

Id. at 160-161, 624 S.E.2d at 438. Similarly, in this case, CAA challenged the decisions of the District in the Circuit Court, where its claims were dismissed based on jurisdiction. CAA has filed an appeal in this Court as well as the Administrative Law Court regarding these same decisions. The decision of the Administrative Law Court remains pending. Therefore, the issues are not ripe for review at this time.

II. CAA waived its right to appeal directly from the Circuit Court.

A party that acquiesces to a court ruling or takes a position inconsistent with the right to appeal waives or is estopped to assert the right to appeal. *See In re Estate of Boynton*, 355 S.C. 299, 304, 584 S.E.2d 154, 157 (Ct. App. 2003) (citing 4 C.J.S. *Appeal & Error* § 185). In its Response, CAA does not oppose the District’s position that it acquiesced to the Circuit Court Order by filing in the Administrative Law Court. In fact, the Notice of Appeal to the Administrative Law Court states it is filed “pursuant to an Order by the Honorable Roger M. Young, Sr., in the Charleston County Court of Common Pleas dated November 3, 2021.”¹ This language expressly indicates acquiescence to the Order inconsistent with an intent to appeal the Order.

Importantly, CAA would not be foreclosed from seeking review in this Court after dismissal. The impact of granting the motion to dismiss would be no more than requiring CAA to appeal from the ALC rather than the Circuit Court if CAA once again is unsuccessful. This is precisely what Section 59-40-90 of the Charter Act requires and exactly what CAA was told to do

¹ The Notice of Appeal to the Administrative Law Court is Exhibit C to the Motion to Dismiss.

in the Circuit Court's Order denying its Motion for Temporary Restraining Order and Preliminary Injunction on February 26, 2020. See Exhibit E to Motion to Dismiss at ¶¶ 17-20, 32-33.

Therefore, CAA waived its right to appeal directly from the Circuit Court by acquiescing to the Circuit Court's Order and filing in the Administrative Law Court.

CONCLUSION

For the reasons set forth above, Appellant's appeal should be dismissed.

Respectfully submitted,

HARRELL MARTIN & PEACE, PA



By: _____

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Chapin, South Carolina
February 4, 2022.

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Appellate Case No. 2021-01414

Charleston Advancement Academy, Inc.....Plaintiff/ Appellant,

v.

South Carolina Public Charter School District.....Defendant/ Respondent.

PROOF OF SERVICE

I, Tracy Slice Moore, an employee with the firm of Harrell, Martin & Peace, P.A., do hereby certify that on February 4, 2022, I served a copy of the Respondent's Reply to Response to Motion to Dismiss in the above captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

Tyler R. Turner, Esq.
TURNER& CAUDELL, LLC
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By: 

Tracy Slice Moore Paralegal

February 4, 2022



HARRELL, MARTIN
& PEACE, P.A.
ATTORNEYS AT LAW

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SC Court of Appeals

L.K. "Trey" Harrell, III
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M. Alan Peace **
Taylor A. Peace
Andrea "Andi" Cornelison
Erik T. Norton

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III *

*Of Counsel
**Certified Mediator/Arbitrator

February 4, 2022

VIA EMAIL AND REGULAR, FIRST CLASS MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Charleston Advancement Academy, Inc. v. South Carolina Public Charter
School District.
C/A No.: 2021-01414**

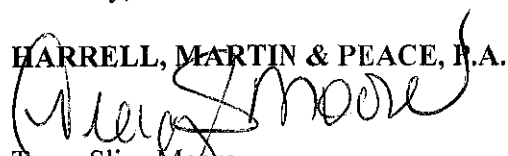
Dear Ms. Kitchings:

Enclosed for filing please find Respondent's Reply to Response to Motion to Dismiss in regard to the above referenced case.

By copy of this letter and as evidenced by the Proof of Service, these filings have been served upon counsel for Appellant.

Thank you for your time and attention in this matter. If you have any questions, please do not hesitate to contact our office at the phone number below.

Sincerely,

HARRELL, MARTIN & PEACE, P.A.

Tracy Slice Moore
Paralegal to Taylor A. Peace, Esq.

/tsm
Enclosures

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