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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

The Honorable Roger M. Young, Sr., Circuit Court Judge

Case No.: 2019-CP-10-6592

Charleston Advancement Academy High School,.....Appellant,

v.

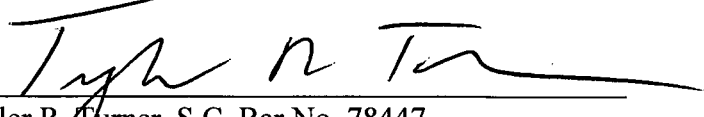
South Carolina Public Charter School District,.....Respondent.

NOTICE OF APPEAL

Charleston Advancement Academy High School, by and through its undersigned counsel, hereby appeals the Order of the Honorable Roger M. Young, Sr., dated November 3, 2021. Appellant received written notice of entry of this order on November 3, 2021. A copy of the Order on Appeal is provided herewith. A copy of this Notice is being provided to the Clerk of Court of Charleston County Court of Common Pleas and all counsel of record.

Respectfully submitted,

TURNER & CAUDELL, LLC

By: 

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December 3, 2021

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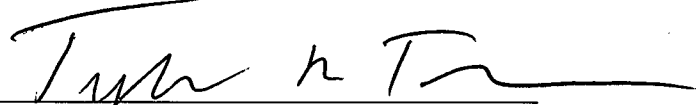
PROOF OF SERVICE

We hereby certify that we have served the Respondent, South Carolina Public Charter School District, the Appellant's Notice of Appeal in the above-captioned matter by electronic mail on December 3, 2021 to the below-named parties at their address of record:

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TURNER & CAUDELL, LLC

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Columbia, South Carolina
December 3, 2021

Sheri Smithson

From: Tyler Turner
Sent: Friday, December 3, 2021 11:20 AM
To: Erik Norton, Esq.
Subject: Charleston Advancement Academy High School v. SCPCSD
Attachments: Notice of Appeal - SC Court of Appeals.pdf

Good morning, Erik,

Attached and served on you as counsel for the South Carolina Public Charter School District (the "SCPCSD"), please find the Notice of Appeal that will be filed with the Court of Appeals of South Carolina appealing The Honorable Roger Young's Order granting the SCPCSD's Motion to Dismiss in the above-referenced matter. Please let me know if you would like to discuss.

Thank you and have a good weekend,

Tyler

TURNER / CAUDELL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Charleston Advancement Academy High)
School,)

Plaintiff,)

vs.)

South Carolina Public Charter School)
District)

Defendant.)

C.A. No. 2019-CP-10-6592

ORDER

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SC Court of Appeals

This matter is before the Court on Defendant’s Motion to Dismiss pursuant to S.C. R. Civ. P. 12(b)(1), 12(b)(2) and 12(b)(6). A hearing was held on this motion on October 2, 2021 via WebEx. Both Plaintiff and Defendant were represented by counsel at the hearing. After considering the written submissions of the parties and the arguments of counsel, Defendant’s Motion is **GRANTED** for the reasons set forth below.

LEGAL STANDARD

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (citation omitted). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* at 395, 645 S.E.2d at 247–48 (quoting Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999)).

The proper procedure for raising lack of jurisdiction is to file a motion to dismiss. Woodard v. Westvaco Corp., 319 S.C. 240, 450 S.E.2d 392 (1995). In some circumstances, affidavits and

other evidence outside the pleadings may be considered in support of a motion to dismiss based on lack of jurisdiction. Swicegood v. Thompson, 431 S.C. 130, 847 S.E.2d 104 (Ct. App. 2020). However, in the present case, no affidavits or evidence outside the pleadings is needed.

DISCUSSION

Plaintiff Charleston Advancement Academy (“CAA”) is a public charter school. Defendant South Carolina Public Charter School District (“District”) is a sponsor of public charter schools. As a sponsor, the District granted a charter to CAA to operate as a charter school in South Carolina. The operations of CAA and District, and the relationship between them, is governed by the South Carolina Public Charter School Act of 1996, S.C. Code Ann. § 59-40-10 to -240 (the “Act”).

The Act requires the District to monitor and oversee operations of CAA for compliance with the Act and other state and federal laws. The Act requires the District to notify CAA of noncompliance, require corrective actions, issue sanctions short or revocation or revoke the CAA’s charter in certain situations.

CAA’s Amended Complaint asserts three causes of action against the District: (1) Breach of Contract; (2) Violation of Due Process; and (3) Declaratory Judgment. CAA alleges it incurred damages because the District made rulings against it that infringed on its authority to terminate a private management company with whom it contracted. The District asserts that the Act does not provide this Court jurisdiction over Plaintiff’s claims. By prior Order, this Court denied Plaintiff’s Motion for Temporary Restraining Order based on lack of jurisdiction. While the Order denying the Motion for Temporary Restraining Order is not binding in this circumstance, at least part of the reasoning in the Order is persuasive and equally applicable at the motion to dismiss stage.

Four sections of the Act bear directly upon District’s argument. First, Section 59-40-90 provides that a charter school may challenge any final decision of the District in the Administrative

Law Court. Second, Section 59-40-40(4) defines sponsors like the District as “Local Education Agencies” or “LEAs,” which are subject to oversight and authority of the State Educational Agency, the South Carolina Department of Education. See, generally, 34 CFR 76; 34 CFR 81. Third, Section 59-40-140 provides authority for the South Carolina Department of Education to fine District in certain circumstances if it withholds funds from a charter school. Fourth, Section 59-40-190(C) states that the District is immune from civil liability “with respect to all activities related to the charter school they sponsor.”

The four sections of the Act cited above preclude any possibility of jurisdiction in this Court. Section 59-40-90 provides exclusive jurisdiction to the Administrative Law Court for any challenge to a sponsor’s final decision by a charter school. Further, actions by the sponsor that are subject to federal grants or administrative processes of the State Department of Education are subject to the State Department of Education adjudicative processes, which would not be subject to challenge in this Court. Finally, the Act’s provisions immunizing sponsors from civil liability further indicate the Legislature’s intent to prevent sponsors like the District from being sued in civil court.

Therefore, I find that this Court lacks jurisdiction over the subject matter at issue in Plaintiff’s complaint. Because I find the Court does not have jurisdiction, the Court does not need to address the remaining grounds asserted in the Motion to Dismiss.

CONCLUSION

For all of the foregoing reasons and all reasons stated on the record at the hearing on this motion, the District’s motion is **GRANTED**, and Plaintiff’s Amended Complaint is **DISMISSED**.

IT IS SO ORDERED.

Roger M. Young, Sr.
Circuit Court Judge
Ninth Judicial Circuit

November __, 2021.
Charleston, South Carolina.



Charleston Common Pleas

Case Caption: Charleston Advancement Academy High School VS South Carolina
Public Charter School District
Case Number: 2019CP1006592
Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134