

1997-16C(VII)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
HASS CONSTRUCTION COMPANY,)
INC.; CLONTZ-GARRISON)
MECHANICAL, INC.; and UTILITIES)
CONSTRUCTION COMPANY, INC.,)

Appellants and Plaintiffs,

vs.

SOUTH CAROLINA STATE)
UNIVERSITY,)

Respondent and Defendant,

and

THE SOUTH CAROLINA)
PROCUREMENT PREVIEW PANEL,)

Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO. 98-CP-40-2380

FILED
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BRESNARA & SCOTT
C.C.C. & G.S.

Order Dismissing South Carolina State
University's Motion for Reconsideration

SOUTH CAROLINA STATE)
UNIVERSITY,)

Third-Party Plaintiff,

v.

INTERNATIONAL FIDELITY)
INSURANCE COMPANY,)

Third-Party Defendant.

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South Carolina State University ("SCSU") has moved this Court for Reconsideration of its Order dismissing IFIC from these proceedings. Having fully reviewed this matter, and the supporting law and materials, this Court denies the Motions of SCSU.

BACKGROUND

On October 2, 2001, this Court issued an order dismissing IFIC from these proceedings, specifically holding that the Court "lacks subject matter jurisdiction over the Third Party Defendant [IFIC]." SCSU has now moved for reconsideration of that Order, suggesting that the Court failed to address the propriety of IFIC's dismissal before the Procurement Review Panel ("the Panel"), or, alternatively, failed to properly express its ruling by including "extraneous" and "ambiguous" language in its Order. Because SCSU is incorrect on both counts, its motion should be denied.

THE PROPRIETY OF THE PANEL'S DISMISSAL OF IFIC

The Court's Order of October 2, 2001, addressed all of SCSU's arguments when it held that there is no jurisdiction over IFIC. That holding, necessarily, includes two other conclusions: first, that the Panel did not err in dismissing IFIC on the basis of lack of jurisdiction (rather than waiver as argued by SCSU), and, second, that because there is no jurisdiction over IFIC, the Panel did not err in concluding that IFIC's rights and liabilities cannot be determined herein.

SCSU had requested IFIC's dismissal before the Panel. While the order dismissing IFIC ultimately arose out of IFIC's motion (rather than SCSU's), that does not change the fact that SCSU, in fact, had argued for IFIC's dismissal. Therefore, reference to SCSU's position in the Panel's Order on remand is not error in fact.

Second, the Panel's passing reference to the party at whose request dismissal took place,

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assuming *arguendo* that it was confusing or in error, is clarified and/or corrected when read in context. The Panel's order clearly states that it "adopts the report and recommendation of the hearing officer as incorporated herein." The Hearing Officer issued two reports, the first of which expressly rejected SCSU's argument that dismissal of IFIC should be based on a waiver of any right to participate, Report of Motions Hearing of 12/16/97 (dated 12/24/97) at 1, and the second of which expressly adopted IFIC's position on lack of jurisdiction:

I concur *with IFIC in its position* that the CPOC and this panel do not have jurisdiction or authority to make findings relating specifically to IFIC's liability under its bond unless IFIC voluntarily joins in the process and agrees to be bound thereby pursuant to the procurement code.

Report of Telephone Motion Hearing January 7, 1998, (dated January 24, 1998) (emphasis added). Thus, it is quite clear that the hearing officer was dismissing IFIC in keeping with IFIC's argument that jurisdiction was lacking, and the Panel's adoption of the hearing officer's decision vitiates any possible confusion arising from the concurrent reference to SCSU's position.

Third, and perhaps most importantly, the identity of the party that argued in favor of dismissal is completely irrelevant. Lack of subject matter jurisdiction may be raised at any time, by any party, and may be raised by the Court *sua sponte*. *In re Matthews*, 345 S.C. 638, 643, n.4, 550 S.E.2d 311, 313, n. 4 (S.C. 2001). The panel's passing reference to SCSU's position, therefore, has absolutely no affect on the substance of the ruling, i.e., that the Panel and the CPOC lacked subject matter jurisdiction over claims against IFIC.

Finally, SCSU's argument about the Panel's Order is not new. SCSU fully briefed this issue in its Memorandum in Support of Petition for Judicial Review and the February 25, 2001,

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Memorandum in Support of SCSU's Opposition to IFIC's Motion to Dismiss, had the opportunity to discuss it at the oral argument on February 26, 2001, and repeated its arguments in writing in its Summary of SCSU's Arguments for Second Petition for Judicial Review, March 23, 2001. The Court's Order of October 2, 2001, rejected SCSU's arguments in their entirety.¹ The Order requires no reconsideration. IFIC was properly dismissed from this action by the Panel and by this Court. As a result, there can be no binding ruling against IFIC in this proceeding. SCSU's motion has no basis in fact or law and should be denied.

**THE COURT'S ORDER CONTAINS NOTHING AMBIGUOUS
OR EXTRANEOUS WARRANTING RECONSIDERATION**

SCSU also argues that the Court's Order of October 2, 2001, warrants reconsideration because it contains the following sentence:

While the Court recognizes the limited appearance made by International before the Panel previously, the Panel did not pass on the merits of SCSU's claim against International below.

SCSU claims that this sentence is "extraneous" and "ambiguous."

First, is it correct as a matter of fact, IFIC did make a "limited appearance before the Panel" for the purpose of contesting jurisdiction. Having agreed with IFIC's argument that the CPOC and the Panel lacked jurisdiction, the Panel, as noted in this Court's Order, "did not pass on the merits of SCSU's claims against s against [IFIC]." There is nothing ambiguous or unnecessary about the Court's sentence. It clearly and accurately states the procedural history of

¹ This is evidence, not only by the Order of October 2 regarding IFIC, but by the fact that the Court excluded any discussion of SCSU's arguments related to IFIC in its Second Order of Remand, which addressed the other substantive issues raised in the parties' Petitions for Judicial Review and was also dated October 2, 2001.

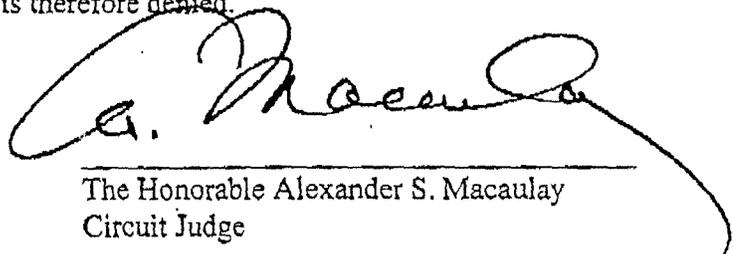
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IFIC's participation in these proceedings.² Second, SCSU's suggestion that the sentence is "ambiguous" or "problematic" because it "acknowledges that SCSU's arguments with respect to International . . . are preserved in the APA action," does not make sense. By concluding that the Court lacks subject matter jurisdiction and acknowledging that the Panel properly did *not* address the merits (and by excluding any discussion of the merits of SCSU's claims against IFIC in its Second Order of Remand) this Court specifically concluded that claims against IFIC are *not* preserved in the APA action. A claim cannot be preserved where there is no jurisdiction to hear it in the first place. SCSU's motion should, therefore, be denied on these grounds as well.

CONCLUSION

The Court's Order of October 2, 2001, expressly states that the court "reviewed the Motion and the applicable law" and "heard oral argument." The court concluded that there is no jurisdiction over IFIC in these proceedings. SCSU motion for reconsideration presents no new arguments and has no basis in law or fact and is therefore denied.

AND IT IS SO ORDERED.



The Honorable Alexander S. Macaulay
Circuit Judge

May 19, 2002
Wadeville, South Carolina

² SCSU having made a particular point of arguing there was some inconsistency in IFIC's limited appearance should not now complain that this Court considered the issue and found the "limited appearance" neither improper nor inconsistent. Indeed, parties often make special or limited appearances for the sole purpose of contesting jurisdiction. See, e.g., Knoth v. Knoth, 297 S.C. 460, 461, 377 S.E.2d 340, 341 (S.C. 1989); Bratten Apparel Corp. v. Bankers Trust Co., 273 S.C. 663, 666, 259 S.E.2d 110, 112 (S.C. 1979).