

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

CASE NO. 2011-CP-10-1528

Cynthia McNaughton Respondent,

v.

Charleston Charter School For Math And Science, Inc. Appellant.

REPLY BRIEF OF APPELLANT

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FEB 20 2013

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I. ARGUMENTS

1. Appellant Did Raise The Arguments In The Trial Below.

Respondent claims that Appellant did not raise in the trial below the arguments that “Appellant, alone, has discretion to make its financial decisions, business and other decisions . . . “ and that “because . . . it was not [Respondent’s] role to make funding decisions, there can be no question but that Appellant did not breach the Employment Agreement.” (Resp. Br. P. 7) The record shows that Appellant made these arguments in the trial below and argued that it was entitled to a directed verdict on these issues.

Appellant argued that because “Respondent admits that it’s the principal who makes the decision on funding” (R. p. 230 lines 4-9), because Respondent admitted that “it was the school and not her who decided whether the funding exists” (R. p. 230 lines 13-15), because “funding teacher salaries and setting budgets are discretionary acts,” (R. p. 230 lines 13-15) and because the Appellant’s charter allows Appellant to make the very decisions on funding that were made in this case (R. p. 223 lines 12-21), it was entitled to directed verdict.

Respondent also raised in the trial below the other two grounds argued by Respondent. Page 190 of the Trial Transcript reads:

A court will not review the business judgment of a corporation when it acts within its authority, and acts without corrupt motives or in good faith.

(R. p. 223 lines 9-11)

Therefore, Respondent’s arguments on these issues must fail.

2. Appellant's Argument That Respondent Failed To Prove An Affirmative Duty And Discretionary Acts Are Properly Placed.

Respondent argues that she was not required to prove and "affirmative duty" in order to recover on her breach of contract claim. (Resp. Br. P. 7). Because it was Respondent's duty to prove each element of her contract claim by a preponderance of the evidence (R. p. 336 lines 1-6) and because one element of a contract cause of action was that Appellant breached a promise without justification (R. p. 371 lines 15-23), there can be no question but that the Respondent was required to prove that the Appellant had a contractual duty to employ her for the full year of her contract.

Because Respondent admitted that it was the Appellant's Principal and not the Respondent who was solely responsible for making the decision of whether or not there was ongoing funding for her position (R. p. 148 lines 19-23) and because she admits that Appellant made no promise to her that funding was in place for her position for the entire one year term of her contract (R. p. 148 lines 8-15), Appellant's argument that it had discretion to determine whether or not continued funding existed for Respondent's job was well placed.

3. All Of The Evidence Shows That Appellant Did Not Have Funding To Continue To Pay For Respondent's Position.

Respondent argues that there was "no evidence in the record that there was a lack of 'ongoing' funding." In fact, the only evidence in this case shows that there was not even an extra penny available to fund Respondent's position as a teacher:

Q: And in our line item for teachers' salary, November of 2010, do we have the funding to hire an additional math teacher and keep Ms. McNaughton?

A: No, there was no play in that line. There was no cushion.

(R. p. 288 lines 21-25; R. p. 289 1-15) (R. p. 427-431) Thus, Respondent's position that there was funding available for her teacher position cannot be supported by any evidence in the record.

4. Appellant Did Object The First Time Respondent Raised The Issue Of Special Damages.

The Respondent did not offer any evidence of special damages in her case-in-chief, rather, for the first time during the trial the Respondent raised the issue of special damages during her closing statement and Appellant immediately objected:

MS. BLOODGOOD:

But she also had something else and I call them lost -- career damages. And these are what the Court is going to tell you are special damages. This is something that because of the situation that she was in, she suffered more than most people.

She had been a certified teacher with years of experience, she wouldn't have had these career damages.

MR. SMITH: Object, Your Honor. Career damages are not claimed.

(R. p. 350 lines 6-15)

When an objection is timely made once, there is no requirement that it be made again. Parr v. Gaines, 309 S.C. 477, 424 S.E.2d 515, 518-19 (Ct. App. 1992) Thus the

record is clear that Appellant objected the first time “career damages” or special damages was claimed.

Arguendo, it appears that Respondent attempted to raise this same issue and offer evidence as to career damages in her case-in-chief, at which time Appellant also objected and the court below initially overruled the objection but then sustained the objection as to evidence of future damages being offered. (R. p. 131 lines 17-25; R. p. 133 lines 4-25; R. p. 134 lines 1-25; R. p. 135 lines 1-13; R. p. 140 lines 6-22; R. p. 141 lines 5-14)

Specifically,

MS. BLOODGOOD

Q: And from reading that website and looking at the public information, what is your understanding of what you would, approximately -- I know we don't know what the cost of living would be, and some of this is a little bit of a guess -- but what did you think your salary going to be while you were a certified teacher in South Carolina?

MR. SMITH: Objection, your Honor, best evidence rule.

THE COURT: Sustained.

(R. p. 141 lines 5-15) Thus Respondents argument that Appellant failed to preserve the issue that special damages were not available in this matter is misplaced.

5. The Trial Court Did Err In Failing To Limit The Damages To The One Year Contract Term.

Contrary to Respondent's assertion that Appellant failed to properly raise in the court below the issue that Shivers v. John H. Harland Co., Inc., 315 S.C. 217, 423 S.E.2d 105 (1992) limits the Respondent to damages only for the stated contract term of one year, the record shows that Appellant raised the issue in its trial motions (R. p. 230 lines 24-25; R. p. 231 lines 1-10; R. p. 336 lines 20-25; R. p. 337 lines 1-7) and during the pre-charge conference:

THE COURT: What's your position on that, Mr. Smith? I was going to -- it's in the charge prepared now.

MR. SMITH: Well I think it's a straight contract damages under Easter Distribution case. I can argue it. But for special damages, things outside the contract, I think I can argue it.

THE COURT: It's going to be included in the charge.

(R. p. 343 lines 15-21)

Appellant incorporates into this Section the arguments in its Initial Brief to once again submit that, based upon the Shivers case, Respondent was limited to damages for only the term of her one-year written employment contract. Importantly, Respondent's opposition to this argument is that her "contract to teach for Appellant did not include a notice provision." (Resp. Br. P. 12) However, the clear terms of the contract notifies her that she is being hired only for one-year - thus she was notified that she had a contract for a term just like the Shivers plaintiff. Moreover, Respondent admitted during trial that she

was hired only for one year (R. p. 145 lines 17-18), that she had a contract with Appellant only for one year and for no other years (R. p. 161 lines 18-25; R. p. 162 lines 1-9) and that Appellant agreed to pay her a salary only for the one year contract (R. p. 163 lines 4-25; R. p. 164 lines 1-10). Therefore, Respondent's argument that she was not limited to damages for the remainder of her one-year contract terms is misplaced.

6. Respondent Offered No Evidence To Prove State Action.

Appellant incorporates into this Section those arguments in its Initial Brief.

Appellant further notes that Respondent altogether failed to address S.C. Code Section 59-40-50 which exempts the Appellant from the Attorney Fee Statute in question.

II. CONCLUSION

For the reasons stated herein, Appellant respectfully requests that this Court grant its appeal in its entirety.

Respectfully submitted,



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February 15, 2013
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CERTIFICATE OF COUNSEL

The undersigned certifies that the final Reply Brief of Appellant complies with Rule 211(b), SCACR.

February 19, 2013



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