THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar W Dickson, Circuit Court Judge

Case No 2009-CP-18-2674

The Home Builders Association of South Carolina and
the Charleston-Trident Home Builders Association, Inc — Appellants,

v

School District No 2 of Dorchester County and
the Board of Trustees for Dorchester School District No 2 — Respondents

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BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1 Did the trial court apply the correct standard in its order dismissing this challenge to the constitutionality of an impact fee authorized by legislation?

2 Did the trial court correctly dismiss this action based on its determination that the legislation authorizing the impact fee in question was constitutional?

STATEMENT OF THE CASE AND FACTS

Respondents School District No 2 of Dorchester County and the Board of Trustees for Dorchester School District No 2 (collectively, 'School District) hereby adopt the statements of the case and facts presented by the Appellants Home Builders Association of South Carolina and Charleston-Trident Home Builders Association Inc (collectively, "Home Builders)

ARGUMENT

This is an appeal from an order dismissing this action pursuant to Rule 12(c), SCRCP As such, the question is whether there is any issue of fact in the complaint that could entitle Home Builders to judgment *Sapp v Ford Motor Co* , 386 S C 143, 146, 687 S E 2d 47, 49 (2009) On appeal this Court 'applies the same standard of review implemented by the circuit court *Hambrick v GMAC Mortgage Corp* , 370 S C 118, 122, 634 S E 2d 5, 7 (Ct App 2006) Courts may exercise their discretion and dismiss an action if 'the pleadings disclose all facts necessary or where the pleadings present no issue of fact *Rosenthal v Unarco Indus Inc* , 278 S C 420, 422, 297 S E 2d 638, 640 (1982) (upholding the dismissal pursuant to Rule 12(C), SCRCP of an action challenging the constitutionality of a state statute) As argued below, the pleadings disclose all of the necessary facts, and Home Builders have failed to state a claim

I The trial court correctly applied the Rule 12(c), SCRCP standard to the allegations of the complaint in dismissing this action

In their complaint, Home Builders provide the full text of Act No 99, 2009 S C Acts 1024 ("Act 99") (R at 14-16) Act 99 authorizes the School District to impose an impact fee on new residential construction within the School District s boundaries Following the passage of Act 99, the School District passed a resolution implementing

the permitted fee, which is also quoted in full in the complaint (R at 16-28) Home Builders allege they have been charged the fee as a condition precedent to being issued a certificate of occupancy on new homes built in the School District since June 23 2009 (R at 29) These are the factual allegations of the complaint [1]

The trial court limited its ruling to the factual allegations of the complaint and found that based on those allegations Home Builders had failed to state a claim The trial court did not weigh evidence, nor did it consider matters falling outside the allegations of the complaint Accordingly, the trial court applied the correct standard and acted within its discretion in dismissing this action pursuant to Rule 12(c), SCRCP *See Rosenthal* 278 S C at 422, 297 S E 2d at 640 This adherence to the allegations in the complaint is one factor distinguishing this case from *Charleston County School District v Harrell*, 393 S C 552 713 S E 2d 604 (2011) in which the South Carolina Supreme Court reversed an order dismissing a case challenging a provision relating to Charleston County Charter Schools because it found the trial court went outside the four corners of the complaint

[1] In addition to the factual allegations found in the "*Facts*' section of the complaint, the complaint includes a section titled "**FOR A CAUSE OF ACTION**' which contains conclusory allegations stating that general legislation would have accomplished the same funding goals as Act 99 (R at 29-30) These conclusory statements should be disregarded when ruling on a motion to dismiss *Stroud v Riddle* 260 S C 99, 102, 194 S E 2d 235, 237 (1973)

II The General Assembly properly authorized the School District to impose an impact fee on new residential construction

Home Builders have challenged Act 99 as impermissible special legislation in violation of S C Const art III, § 34(IX)[2] In assessing Act 99, the trial court acknowledged the South Carolina Supreme Court s respect for the legislative function of the General Assembly, citing *Medical Society of South Carolina v Medical University of South Carolina*, 334 S C 270, 513 S E 2d 352 (1999) (R at 6) There, the South Carolina Supreme Court held it "will not declare a statute unconstitutional as a special law unless its repugnance to the Constitution is clear beyond a reasonable doubt ' *Id* , 334 S C at 279, 513 S E 2d at 357 Moreover, "[the Court] will not overrule the legislature's judgment that a special law is necessary unless there has been a clear and palpable abuse of legislative discretion *Id*

In addition to the standards set forth in *Medical Society*, the trial court employed further guidance provided by the South Carolina Supreme Court as follows

> In construing an act of the General Assembly, 'all reasonable doubt must be resolved in favor of the constitutionality of the act If a constitutional construction of a statute is possible, that construction should be followed in lieu of an unconstitutional construction *Crow v McAlpine*, 277 S C 240, 242 285 S E 2d 355 (1981) (quoting *Bauer v South Carolina State Housing Authority*, 271 S C 219, 226, 246, 246 S E 2d 869 (1978)) The Constitution and all laws concerning local governments are to be liberally construed in the local entity's favor S C

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[2] The complaint also alleged Act 99 was in violation of S C Const art VIII, § 19(6), and the trial court's order addressed that argument in its order dismissing this action Home Builders have not raised that ruling here, therefore, any claim that Act 99 violates S C Const art VIII, § 19(6) has been abandoned Rule 208(b)(1)(B), SCACR, *Video Gaming Consultants Inc v S C Dep t of Revenue*, 342 S C 34, 42 n 7, 535 S E 2d 642, 646 n 7 (2000) (finding appellant abandoned issue not argued in brief), *State v Bray*, 342 S C 23, 27 n 2, 535 S E 2d 636, 639 n 2 (2000) (holding appellate court may not consider issues not raised to it)

> Constitution, Article VIII, § 17 In addition, the Court must give great deference to the legislatively created classifications in the statute and must sustain them if they are not plainly arbitrary or if any reasonable hypothesis can be found to support them *Foster v S C D H P T*, 306 S C 519, 413 S E 2d 31 (1992)

(R at 5) Based on the application of these standards, the trial court held that Act 99 " is constitutional under South Carolina Supreme Court precedent regardless of the outcome of any disputed facts " (R at 5)

Moreover, "the scope of the legislative power is much broader in dealing with school matters than is the scope in dealing with various other subjects ' *McElveen v Stokes*, 240 S C 1, 11, 124 S E 2d 592, 596 (1962) ' Accordingly, this Court traditionally sustains local laws relating to the state's public education system ' *Sch Dist of Fairfield County v State*, Op No 27035 (S C Sup Ct filed August 29 2011) (Shearouse Adv Sh No 29 at 48, 63) (Toal, C J , dissenting and citing *Bradley v Cherokee Sch Dist No 1*, 322 S C 181, 470 S E 2d 570 (1996), *Smythe v Stroman*, 251 S C 277, 289, 162 S E 2d 168, 173 (1968), *Moseley v Welch*, 209 S C 19, 33, 39 S E 2d 133, 140 (1946), *Walker v Bennett*, 125 S C 389, 118 S E 779 (1923))

Given this framework, the trial court's ruling is consistent with the prior holdings of the South Carolina Supreme Court In *Bradley*, the South Carolina Supreme Court considered Act No 588, 1994 S C Acts 6039 ("Act 588'), permitting Cherokee School District No 1 to impose a sales tax It was challenged as unconstitutional special legislation pursuant to S C Const art III, § 34(IX) The Supreme Court concluded otherwise

> A law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not

> contravene the provisions of Article III, § 34(IX) *Hay v Leonard*, 212 S C 81, 46 S E 2d 653 (1948) Individual districts may impose a legal tax limited in application and incidence to persons or property within the prescribed area *Shillito v Spartanburg* 214 S C 11, 51 S E 2d 95 (1948)

Id 322 S C at 186, 470 S E 2d at 573-74

In the present case, Act 99 authorizes the School District to impose an impact fee on any developer for each new residential dwelling unit constructed within the School District The funds may only be used for the benefit of public education facilities within the district, i e , (1) for the construction of public education facilities for grades K-12 within the district, and (2) for the payment of principal and interest on existing or new bonds issued by the district

Home Builders argue that *Bradley* is distinguishable from this case because the goals of Act 588 were not appropriate for general legislation However, the school district there had similar funding concerns to the School District here and similar abilities to raise funds absent special legislation Both acts permit a school district to implement a district-specific funding mechanism to repay bonded indebtedness Substitution of the sales tax in *Bradley* with the impact fee here provides a fact situation identical to that approved by the South Carolina Supreme Court The controlling legal principle in *Bradley* applies in this case because the impact fee permitted by Act 99 is limited to persons or property within the School District for the benefit of all persons residing within the School District just as the sales tax permitted by Act 588 was so limited to Cherokee School District No 1

Although Home Builders assert the "bonds issued by the Cherokee School District are unique to that district and provisions for their repayment would not lend

themselves to statewide legislation,' they offer nothing to support this statement and fail to explain why bonds issued by the School District here are not equally unique This assertion alone will not distinguish the instant case from *Bradley* given the obvious factual similarities and the preference for finding legislation constitutional as held in *Medical Society*

Home Builders further rely on *Charleston County School District* In that case, plaintiffs alleged Act No 189, 2005 S C Acts 1024 (' Act 189") 'was special legislation in violation of Article III, § 34 and Article XIII, § 7 of the South Carolina Constitution ' An analysis of Act 189 as compared to Act 99 demonstrates that such reliance is misplaced

Unlike Act 99 here and Act 588 in *Bradley*, Act 189 was limited to charter schools within the district and specifically whether charter schools could be charged rent by the school district *Charleston County School District*, 393 S C at 555-56, 713 S E 2d at 606-07 The thrust of Charleston County School District's complaint was that the subject of charter schools was addressed by existing statewide legislation and therefore Act 189 was special legislation in conflict with general legislation As observed by the Supreme Court, "[t]he complaint alleged that Act 189 was special legislation in violation of Article III, § 34 and Article VIII, § 7 of the South Carolina Constitution because the subject of charter schools was already comprehensively addressed by the Charter Schools Act and Act 189 only applied to Charleston County s charter schools without any reasonable basis for doing so *Id* After determining the trial court had erroneously considered evidence outside the complaint, the majority concluded that the complaint stated "a sufficient cause of action challenging the constitutionality of Act 189 to

withstand a Rule 12(b)(6) motion to dismiss" and "has stated a sufficient prima facie case that Act 189 is unconstitutional special legislation *Id* 393 S C at 560, 713 S E 2d at 609 As a result the court remanded the case without addressing the substance of the constitutional challenge

The complaint in the present matter does not allege that Act 99 addresses a subject already addressed by statewide legislation Rather the complaint alleges that the ' purpose to be served by the Act can be equally fulfilled by general legislation applicable to all school districts within the State of South Carolina (R at 30) Whether the subject of Act 99 could be addressed by statewide legislation is not determinative of the Rule 12(c), SCRCP analysis The fact of the matter is that there is no general legislation addressing the subject and there is no actual conflict with general legislation Moreover, the court in *Bradley* considered whether the provisions of Act 588 could be addressed by statewide legislation and found in the negative, as follows

> Individual districts may impose a legal tax limited in application and incidence to persons or property within the prescribed area Statutes upheld as constitutional were not only applied uniformly to all persons and property within the area affected, but the specific taxes were used for the benefit of all persons residing within the area The funds in this case are not confined to the sole use and benefit of any particular class but would benefit the entire county of Cherokee Accordingly, the trial court did not err in concluding that Act 588 imposes a lawful tax limited in application and incidence to persons or property in Cherokee County and as such is not a special law in violation of Article III, § 34(IX)

Bradley, 322 S C at 186, 470 S E 2d at 573 (citations omitted) The same is true here

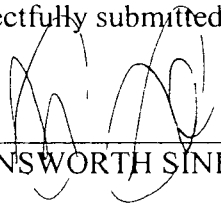
In further support of their contention that Act 99 is unconstitutional, Home Builders cite a July 7, 2009 Attorney General Opinion As an initial matter, ' Attorney

General opinions, while persuasive, are not binding upon this Court *Charleston County School District*, 393 S C at 560-61, 713 S E 2d at 609 Further, the July 7, 2009 opinion is based on the following "The legislation [Act 99] itself is devoid of any findings as to why Dorchester School District No 2 in particular should be granted such authority However, this reasoning ignores the fact that Act 588 in *Bradley* contained no findings as to whether the school district should be granted authority to impose a sales tax, a circumstance that did not prevent the Supreme Court from finding Act 588 constitutional Moreover, the implementing resolution passed by the School District and quoted in full in the complaint provides a more detailed explanation of why the legislation was necessary (R at 16-28)

CONCLUSION

For all of the above reasons and those found by the trial court, the allegations in the complaint do not present any legally viable claim which could entitle Home Builders to the relief requested regardless of the outcome or construction of any of the facts presented Accordingly, this Court must affirm the order of the trial court dismissing this action

Respectfully submitted



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