THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Kristi Harrington, Circuit Court Judge
Case No.: 2011-CP-10-01528

Cynthia McNaughton . . . . . Respondent.

v.

Charleston Charter School for Math and Science. . . . . Appellant.

FINAL BRIEF OF RESPONDENT

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I. FACTS

The South Carolina Department of Education's PACE Program (Program for Alternative Certification for Educators) allows people who have worked in other fields to become certified teachers in South Carolina. (R. p. 93, line 4- p. 98, line 20.) Acceptance into the PACE program is rigorous and includes the following requirements: submission of job history; submission of prior transcripts; submission of examples of prior work and an essay; completion of two timed competency exams; a SLED, FBI and fingerprint check; and submission of three letters of recommendation. (R. p. 93, line 16- p. 94, line 3.) Respondent, who is in her mid to late 50's, had taught school for seven (7) years in Florida before working in the private sector as a graphic designer and wanted to return to teaching as her exit career. (R. p. 91, lines 5-10; p. 98, lines 6-14.) Respondent decided to leave her career in graphic design to become a certified teacher through PACE. (R. p. 91, line 22; p. 93, line 3.) Respondent testified it is difficult to get a teaching job while you are in the PACE program, but it is easier to get a teaching job once you finish PACE and become a certified teacher. (R. p. 97, lines 16-22.)

It took Respondent two years to complete the PACE admission process. (R. p. 94, lines 4-10.) After being accepted into PACE, Respondent was still required to take a series of PACE and ADEPT classes and take several graduate level classes. (R. p. 96, line 9- p. 97, line 15.) After Respondent was accepted into the PACE program as an inductee teacher, she signed an Employment Agreement to teach Art at Appellant School for the 2010-2011 school year and planned to teach for several years. (R. p. 94, line 4- p. 95, line 21; p. 98, line 21-p. 99, line 6; p. 101, line 13- p. 104, line 4; p. 405.) Appellant School knew Respondent

was an induction teacher in the PACE program. (R. p. 106, line 12- p. 107, line 25; pp. 407-408.)

Respondent's Employment Agreement stated it was contingent on enrollment and funding. (R. p. 405; p. 104, line 5- p. 105, line 8.) Appellant School admitted Respondent was not an at-will employee. (R. p. 198, lines 4-9.) Respondent's performance as an art teacher was excellent. (R. p. 108, lines 6-21; p. 120, lines 11-18; p. 183, line 4- p. 184, line 14; p. 201, lines 1-158; p. 411.)

In the middle of the school year, Appellant's Principal decided she wanted to hire another math teacher so she "reallocated" the funding for Respondent's salary to pay for a new math teacher and then terminated Respondent based on the contingency clause on the contract, asserting there had been a decrease in funding. (R. p. 181, lines 13-21; p. 206, line 11- p. 207, line 16; p. 184, line 23- p. 186, line 24.) Appellant's Principal told Respondent on December 1, 2010 that Appellant was terminating Respondent's employment and was going to use Respondent's salary to pay for another teacher. (R. p. 116, line 21- p. 117, line 1.) Respondent was shocked and started crying because she knew she would not be able to fulfill her PACE requirements and did not know how she could possibly find another teaching job after being fired in the middle of the school year as an induction teacher. (R. p. 117, lines 19-25.)

Shortly before Respondent was terminated, the November 2010 Appellant Board Minutes indicate Appellant School approved giving one teacher a raise of $5,000, approved $72,000 to hire a social studies and special education teacher, and voted to spend $11,000 to upgrade its website. (R. p. 184, line 18- p. 189, line 5; pp. 413-22.) Appellant never told Respondent there was a lack of funding; Appellant simply told Respondent that it was using

Respondent's salary for another teacher. (R. p. 123, lines 17-25.) Respondent later learned from reading the board minutes that Appellant had available money to pay Respondent at the time Appellant terminated Respondent. (Id.) Appellant School knew Respondent had to be rehired during the school year in order to continue in the PACE program. (R. p. 192, lines 5-17.)

When Respondent pursued a grievance against Appellant, Appellant's Principal told Respondent that Respondent was being laid off and the school had a legal right to move funding around as they wanted and could do whatever they wanted to Respondent because Respondent was an at-will employee. (R. p. 121, line 11- p. 122, line 18.) Despite calling Respondent's termination a layoff and providing Respondent with a letter of reference, Appellant never called Respondent back to employment or offered to rehire her. (R. p. 120, lines 14-24; p. 122, lines 3-7; p. 122, line 25- p. 123, line 4; p. 124, lines 1-11; p. 411.) Around the same time Appellant called Respondent's termination a lay-off, Appellant's gym teacher left and Appellant used its business teacher to teach the gym classes, but never offered to let Respondent teach the gym classes. (R. p. 124, lines 9-24.) Further, after Respondent was terminated in December of 2010, Appellant School hired an art teacher for its 2011-2012 school year, but did not call Respondent to see if Respondent was interested in the position. (R. p. 123, lines 3-9; p. 193, line 19- p. 194, line 2.) Respondent questioned whether she had really been "laid off." (R. p. 123, lines 10-16.)

Respondent applied for any teaching openings she could find, but it "looks very bad" that she lost her job after a half year as an induction teacher. (R. p. 125, line 19- p. 126, line 1.) Respondent has also looked for jobs in graphic design and any other entry level jobs. (R. p. 126, lines 2-15.) Respondent's annual teaching salary was $34,040, but, because she was

terminated during the school year, Appellant only paid her $15,472. (R. p. 135, line 14- p. 136, line 4; p. 412.) Respondent had income of $16,574 in 2011 and unemployment benefits of $15,000 in 2012. (R. p. 128, line 21- p. 129, line 4; p. 141, lines 16-22.)

Respondent would have received retirement if she had continued working for Appellant. (R. p. 131, lines 8-11.) Appellant contributed just over $1,000 to Respondent's retirement account during the fall of 2010 and would have contributed another $1,000 if Respondent had not been terminated. (R. p. 137, line 16- p. 138, line 3.) If Respondent had become a certified teacher, her salary would have been $35,000 for the first year and $36,000 for the second year. (R. p. 140, line 1- p. 141, line 1.) Respondent intended to teach for eleven or twelve years. (R. p. 132, lines 17-23.) After being terminated, Respondent had to purchase COBRA insurance for $250 per month, had to withdraw $800 of her retirement, had to defer her student loans which resulted in approximately $2,500 of additional interest, had to pay out of pocket for doctor's visits after she ran out of money to pay for COBRA, had to let her mortgage go to collections, lost her credit and could not refinance her house because she no longer had a job. (R. p. 129, line 19- p. 130, line 12- p. 139, line 9.)

The jury returned a verdict in Plaintiff's favor on her breach of contract claim awarding her $20,623 actual damages and $74,112 special damages. (R. p. 379, line 16- p. 380, line 1; p. 12.)

II. LEGAL ARGUMENT

A. Standard of Review

When reviewing a trial court's denial of a directed verdict motion, the reviewing court will reverse the trial court's ruling only when "there is no evidence to support the ruling below." Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373,

386, 520 S.E.2d 142, 148 (1999) (citing Creech v. S.C. Wildlife and Marine Resources Dep't, 328 S.C. 24, 491 S.E.2d 571 (1997)). The reviewing court will not reverse a trial court's decision to deny a motion for a new trial unless the decision is "wholly unsupported by the evidence or the court's conclusions of law have been controlled by an error of law." Id. (citing S.C. Dep't of Highways and Pub. Transp. v. E.S.I. Investments, 332 S.C. 490, 505 S.E.2d 593 (1998).

A breach of contract action is an action at law and, in an action at law, the appellate court can correct errors of law but will not disturb factual findings of the jury "unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." Townes Associates, Ltd. v. Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976); Sterling Development Co. v. Collins, 309 S.C.237, 421 S.E.2d 402 (1992).

B. The Trial Court Did Not Err in Denying Appellant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict on Respondent's Contract Claim.

Appellant moved for a Directed Verdict at the close of Respondent's case and then renewed the motion at the close of Appellant's case. (R. p. 220, lines 8-10; p. 336, lines 16-19.) Appellant initially presented two arguments in support of its Motion for Directed Verdict on Respondent's Breach of Contract cause of action.[1] The two arguments were as follows: 1) there was no breach of the Employment Agreement because it contained a contingency that allowed the contract to be ended if there was a lack of funding and Appellant's principal was authorized to make decisions about funding; and 2) because funding is a discretionary act pursuant to Section 15-78-60(5) of

[1] Appellant also presented argument regarding the scope of contract damages, but these issues are addressed separately in Section C of this Brief.

the Tort Claims Act, there can be no liability when the principal makes funding decisions. (R. p. 220, lines 8-10; p. 229, line 20- p. 231, line 10.) When Appellant renewed its Motion for Directed Verdict at the close of the case, Appellant made the following additional arguments: 1) no breach occurred because Appellant did not have an affirmative duty under the contract[2]; and 2) Appellant is not liable for discretionary acts pursuant to Section 15-78-60(5) of the Tort Claims Act and S.C. Code § 59-40-50(4)[3] and therefore cannot be held liable for its breach since decisions regarding funding were discretionary. (R. p. 336, line 16- p. 338, line 16.) After the jury returned its verdict, the Appellant made a Motion for Judgment Notwithstanding the Verdict (hereinafter, "JNOV") incorporating the same arguments made in its directed verdict motion. (R. p. 380, line 21- p. 381, line 2.)

On appeal, Appellant raised for the first time the following issues which were not raised at the trial below:

1) "Appellant, alone, has discretion to make its financial decisions, business and other decisions..." (App. Br. p. 8)

2) "A Court will not review the business judgment of a corporation when the

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[2] It is unclear, but it is possible that Appellant's "no affirmative duty" argument was the same as its earlier argument that the principal could move funding and once she had moved the funding for Respondent's position, there was no "ongoing" funding as Appellant argued to the Court that it was the principal's decision "regarding whether or not there was or was not funding." (R. p. 337, lines 20-22.)

[3] S.C. Code § 59-40-50 (B) (4) states, charter schools must "be considered a school district for purposes of tort liability under South Carolina law, except that the tort immunity does not include acts of intentional or willful racial discrimination by the governing body or employees of the charter school. Employees of charter schools must be relieved of personal liability for any tort or contract related to their school to the same extent that employees of traditional public schools in their school district or, in the case of the South Carolina Public Charter School District, the local school district in which the charter school is located are relieved."

corporation acts within its authority...and [Appellant] is entitled to the protection of the Business Judgment Rule." (Id.)

3) "[B]ecause Respondent failed to offer at trial any evidence of bad faith...the trial court improperly sent the case to the jury..." (App. Br. p. 8-9) and

4) "[B]ecause ...it was not [Respondent's] role to make funding decisions, there can be no question but that Appellant did not breach the Employment Agreement." (App. Br. p. 9)

1. The Lower Court did not err in denying Appellant's Motions for Directed Verdict and Judgment Notwithstanding the Verdict on the issues of discretionary acts and lack of affirmative duty because the only claim before the jury was a Breach of Contract Cause of Action.

Appellant has appealed a jury verdict for a breach of contract cause of action and, therefore, the Tort Claims Act and case law regarding duties pursuant to torts are inapplicable. The Lower Court did not err in denying Appellant's Motion for Directed Verdict and Motion for JNOV on the issue of immunity for discretionary acts because the Tort Claims Act applies to torts, not contracts. See S.C. Code § 15-78-50. Similarly, Appellant's argument regarding Respondent's failure to prove an "affirmative duty" was misplaced because there is no requirement that a party alleging a breach of contract prove any affirmative duty. The only cause of action before the jury was a breach of contract, so Appellant's argument regarding lack of duty should be disregarded because the existence of a "duty" is not an element of a breach of contract claim. As a matter of law, this court should disregard Appellant's arguments regarding these issues.

2. Appellant is barred from raising issues on appeal that were not raised or ruled on in its Directed Verdict Motions or Judgment Notwithstanding the Verdict Motion

An appellate court cannot address an issue unless first raised by appellant and

ruled on by the trial judge because without a ruling by the trial court, the reviewing court cannot determine whether the trial court made an error. Staubes v. City of Folly Beach, 339 S.C. 406, 529 S.E.2d 543 (2000).The Supreme Court has consistently held that the Court of Appeals should not address an issue which was not explicitly ruled on below. See, e.g. USAA v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (citing Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991)).

For the first time on appeal, Appellant raises the issue of the "business judgment rule" in its brief and alleges the business judgment rule applies to the employment contract at issue. (App. Br. p. 8.) Appellant did not argue to the trial court judge that the business judgment rule applied to Respondent's contract claim; rather, Appellant argued at trial that the business judgment rule required the dismissal of Respondent's negligent supervision claim. (R. p. 223, lines 5-21.) Even if the business judgment rule applies to contracts, Appellant is precluded from raising this argument for the first time on appeal.

Similarly, Appellant's argument that Respondent failed to prove Appellant acted in bad faith has nothing to do with Respondent's breach of contract claim and is not preserved for appeal. In Appellant's first directed verdict motion Appellant argued Respondent had to prove "dishonesty in fact, dealing or unlawful appropriation of her property" for Respondent's breach of contract accompanied by a fraudulent act claim, but this cause of action is not before this Court on appeal.[4] (R. p. 231, lines 11-24.)

[4] In the alternative, even if the Business Judgment Rule and the issue of bad faith were before this Court, Respondent submitted the following evidence of bad faith: funding actually existed at the time Respondent was terminated; Appellant first told Respondent she was terminated, then told her she was laid off; Appellant told Respondent she was an at-will employee, then admitted she was not an at-will employee; Appellant never "called back" Respondent from her layoff and never gave her the opportunity to fill a gym teacher position; Appellant claimed Respondent was laid off and had excellent

3. **The Jury's factual finding that Appellant breached Respondent's employment contract by terminating her when there was no decrease in funding is supported by evidence in the record.**

Respondent does not dispute that Appellant's Principal made funding decisions. However, the issue for the jury to decide was not who made the funding decision but whether the contingency clause in the Employment Agreement permitted the principal to terminate the contract when there was no decrease in funding but, rather, a reallocation of funding by giving the salary of one teacher to another teacher. The jury found such action was a breach of the contract and Appellant does not allege the jury's finding is unsupported by the evidence.

Contrary to Appellant's statement on page 8 of its Brief, there is no evidence in the record that there was a lack of "on-going" funding at Appellant school prior to Respondent's wrongful termination. In fact, there was ample evidence presented to the jury that there was on-going funding, and that there was no decrease in funding as Appellant's principal merely "reallocated" the funds available to pay Respondent's salary to another teacher. (R. p. 185, line 2- p. 186, line 24.)

There was significant evidence presented to the jury that Appellant had plenty of funds available to retain Respondent as a teacher at the time it contends there a decrease in funding. Respondent's Exhibit 16, the minutes from the Board of Director's Meeting of the School held on November 15, 2010, indicated that in November of 2010 shortly before Ms. McNaughton was terminated, and after the Board approved $72,000.00 for a

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performance, but did not contact her when a position in the Art Department came available the following year. (R. pp. 116-17; 120-124; 184-189; 192-194; 198.) Even if proof of bad faith is necessary, which Respondent contends it is not, then this evidence of bad faith was sufficient to submit the issue to the jury and the jury could have relied on it in reaching its verdict.

new social studies teacher and special education teacher, and a $5,000.00 raise for another teacher, the principal told the Board that the School was in solid financial position. (R. pp. 413-422; p. 184, line 15- p. 186, line 10.) The Board then voted to spend $11,000.00 to design a website. (R. pp. 413-412; p. 188, line 25- p. 189, line 17.) The Principal also testified during this time she had $1,300.00 available in a teacher account. (R. p. 189, lines 18-25.) The Principal acknowledged at trial that immediately before Respondent was terminated that there was $17,300.00 available to spend, which is more than the amount the Principal testified she needed to hire a new math teacher for the second semester. (R. p. 191, lines 2-21.)

Further, Respondent testified before she started teaching, she received a contract for the full academic year and she did not think Appellant School would have offered her a contract for the whole year if it did not have enough money to pay her for the whole year. (R. p. 147, lines 9-16.) Appellant's Principal testified she explained to Respondent when she terminated her that she did not have enough funding to hire an additional math teacher, (R. p. 153, lines 3-6.) but Respondent testified that the funding for her position was in place even after she was let go because her salary was given to another teacher. (R. p. 147, line 22- p. 148, line 4.)

Additionally, Exhibit 18, which was a copy of Appellant School's November 2010 budget report was introduced to the jury without objection. (R. p. 282, line 21- p. 283, line 8; pp. 427-431.) The Principal acknowledged that the total revenue Appellant School receives from Charleston County School District each year is approximately $2,674,000.00 and that in November of 2010 there was $1,526,000.00 of funding yet to be received. (R. p. 304, line 17- p. 305, line 10.)

Appellant's Principal also testified to the following facts regarding Appellant School's finances in November of 2010 just before Respondent was terminated:

a) none of Appellant School's $100,000.00 federal stabilization money had been yet spent (R. p. 305, lines 14-20.);

b) none of the $5,000.00 allocated for teacher salary increase fringe had been yet spent (R. p. 306, line 22- p. 307, line 4.);

c) none of the $25,000.00 allocated for teacher's salary supplement had been yet spent and the Principal did not know if that amount had ever paid to the teachers that school year (R. p. 307, lines 5-15); and

d) there was $18,000.00 allocated for administrative staff services none of which had been spent as of November of 2010 and that later this $18,000.00 amount was not spent on administrative staff services but was used instead to fill other areas. (R. p. 310, lines 12-24; p. 311, lines 12-18.)

Clearly, the jury had ample evidence from which to conclude there were sufficient funds available to pay Respondent's salary in December of 2010 for the second semester and Appellant breached Respondent's contract when it terminated her based on insufficient funds. (R. p. 186, lines 11-24.) As such, the jury's findings should not be disturbed because evidence exists to reasonable support the findings. See Townes Associates, Ltd. v. Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976); Sterling Development Co. v. Collins, 309 S.C.237, 421 S.E.2d 402 (1992).

C. The Trial Court Did Not Err in Charging and Allowing the Jury to Award Special Damages to Respondent for Her Breach of Contract Claim and Denying Appellant's Legal Motions Regarding Special Damages.

Appellant did not object to the trial judge giving the jury an instruction on special

damages and including special damages on the verdict form and told the judge he would argue that issue to the jury. (R. p. 343, line 1- p. 344, line 2.) Appellant argued at directed verdict and now argues on appeal that the case of Shivers v. John H. Harland Co., Inc., 315 S.C. 217, 423 S.E.2d 105 (1992) stands for the proposition that employees are always limited to damages equal to the remainder of the wages of their contract. The Court in Shivers examined a narrow question which had been certified by the United States Court of Appeals for the Fourth Circuit; specifically, Shivers examined the correct measure of damages for contracts with notice provisions. Id. Respondent's contract to teach for Appellant did not include a notice provision.

However, the Supreme Court in Shivers also outlined the purpose of contract damages and acknowledged that an employee should receive the "benefit of the bargain putting him in as good a position as he would have been had the contract been performed." Id. at 220, 423 S.E. 2d at 107. In its opinion, the Court cited to the Restatement of Contracts which describes the purposes of available remedies in contract cases. See generally Restatement (Second) of Contracts § 344 (1981) (explaining general contract remedies such as damages based on expectation interest, reliance interest, and restitution interest).

Contrary to Appellant's assertion, employees are not limited to recovering only the remainder of their salary when their employment contract is breached. The purpose of an award of damages for breach of contract is to put the Respondent in as good a position as she would have been in if the contract had been performed. The proper measure of compensation is the loss actually suffered by the Respondent as a result of the breach. Drews Co. v. Ledwith-Wolfe Assoc., 296 S.C. 207, 371 S.E.2d 532 (1988). Additionally,

this Court has held that a breach of contract cause of action does not fail where the precise amount of damages are difficult to ascertain as long as the damages from the natural consequences of the breach are established with reasonable certainty. S.C. Finance Corp. v. West Side Finance Co., 236 S.C. 109, 122, 113 S.E.2d 329, 336 (1960).

Though the Employment Agreement was only for one year, Respondent testified she had previously worked for seven (7) years under a year to year teaching contract in Florida and that when she was hired by Appellant School, the Principal told Respondent she hoped she would stay to develop the art curriculum. (R. p. 101, line 21- p. 102, line 20.) There was significant testimony about the PACE program by Respondent and the jury understood the importance of Respondent retaining a teaching position so she could finish that program and become certified. (R. p. 106, line 12- p. 108, line 3; pp. 407-408.)

Importantly, Appellant argues that special damages were never contemplated, yet the Principal knew that Respondent was an induction teacher in the PACE program when she hired her. (R. p. 192, lines 5-17.) Finally, Appellant argues for the first time in its Brief that the Statute of Frauds precludes special damages. (App. Br. p. 11) The Statute of Frauds was never mentioned by Appellant at trial and so this argument is not preserved. Even if Appellant had made this argument at trial, the Statute of Frauds is not relevant to Respondent's breach of contract claim. The Statute of Frauds only applies to contracts which are impossible to perform within one (1) year but Respondent's contract was for less than a year; it was for one (1) academic year. Joseph v. Sears Roebuck & Co., 224 S.C. 105, 77 S.E.2d 583 (1953).

The Lower Court's ruling in regards to damages was not an error of law as Respondent can recover damages to give her the benefit of her bargain and to put her in

as good of a position as she would have been if the contract had been performed. The evidence before the Court and the jury was sufficient to prove that Respondent suffered damages as a result of the breach and that Appellant was on notice of these potential damages.

D. The Trial Court Did Not Err in Awarding Attorney Fees Pursuant to S.C. Code Section 15-77-300 to Respondent.

Respondent is entitled to attorney fees as she prevailed in her breach of contract claim against a state entity. S.C. Code § 15-77-300. This statute provides in relevant part:

> In any civil action brought by the State, any political subdivision of the State or any party who is contesting state action, unless the prevailing party is the State or any political subdivision of the State, the court may allow the prevailing party to recover reasonable attorney's fees to be taxed as court costs against the appropriate agency if:
> (1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and
> (2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust.
>
> Id. (emphasis added)

Appellant contends in error that because a charter school is not a political subdivision, there can be no state action. Appellant ignores the second part of the statute which states attorney fees can be awarded against "any party who is contesting state action." Id. The trial court found that S.C. Code § 59-40-40 (1) defined a charter school as a public school and that S.C. Code § 59-40-40 (2) provides that charter schools are part of the local school district in which they are located (in this case, the Charleston County School District). (Attorney Fees Order, p. 3.) The lower court concluded that Appellant School was a public school and a state entity subject to the provisions of S.C. Code § 15-77-300. (Id.) All local school districts pursuant to S.C. Code Ann. § 59-17-10 are a body

politic and corporate of the State. Camp v. Sarratt, 291 S.C. 480, 354 S.E.2d 390 (1987). Therefore, Defendant, as part of the Charleston County School District, is a body politic and corporate of the State, as the trial judge concluded.

The Lower Court also analyzed the three (3) additional requirements which must be established before an attorney can recover attorney fees for contesting state action: 1) the contesting party must be the prevailing party; (2) the court must find that the agency acted without substantial justification; and 3) the court must find there are no special circumstances that would make an award of attorney fees unjust. Heath v. County of Aiken, 302 S.C. 178, 394 S.E.2d 709 (1990). The Lower Court found the Respondent was the prevailing party, the Appellant School acted without substantial justification and that there were no special circumstances that would make an award of attorney fees unjust. (R. pp. 5-8.) Appellant School tried to turn an issue of fact into a legal argument by arguing that notwithstanding the fact that the jury found Appellant School breached Respondent's contract, the School was merely "switching" funding and such action was substantially justified. The Supreme Court has held that an appellate court should not be persuaded by a party's attempt to convert a factual finding to a legal conclusion on appeal so that the appellate court may reverse a circuit court. See South Carolina Farm Bureau Mut. Ins. Co. v. Kennedy, 398 S.C. 604, 610 730 S.E.2d 862, 865 (2012) (where there is a question of fact before the lower court, and there is "any evidence" to support the lower court's finding of fact, the lower court's factual finding is dispositive and should not be converted to a legal conclusion on appeal). Finally, the lower court performed the necessary analysis under S.C. Code § 55-77-300 (B) and concluded that Respondent's counsel's hourly rate was reasonable and customary. (R. pp. 8-11.)

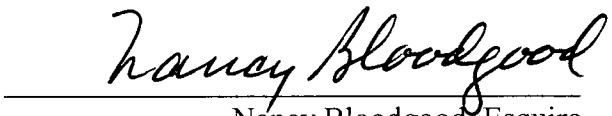
Appellant School argues in its Brief as it did at trial that "[i]t is an independent entity and is not supervised by anyone—including the state or the school district." (App. Br. p. 12.) However, Appellant School does admit it is part of the State's public school system (Id.) and was established pursuant to S.C. Code § 59-40-40, *et seq.* (Id. at p. 13)

Even though Appellant School's Principal testified the School is funded through revenue received from the Charleston County School District (R. p. 304, line 17- p. 305, line 4.), Appellant School contends in its Brief it receives no money from the State. (App. Br. p. 14) Appellant's citation to the case of Willis Construction Co., Inc. v. Sumter Airport Commission, 308 S.C. 505, 419 S.E. 2d 240 (Ct. App. 1992) is in error. In Willis, the Court of Appeals simply acknowledged that an airport is not a political subdivision. Respondent does not assert that Appellant School is a political subdivision and acknowledges a school cannot levy and collect taxes or condemn property.

Finally, no special circumstances exist that would make the award of attorney fees unjust. Appellant asserts that it relied on free legal advice received from a lawyer Board member before it breached Respondent's Employment Agreement; this only means Appellant School received information equal in value to what it paid. Further, to the extent Appellant argues it is exempt from all state law to which it does not consent, Appellant's argument is misplaced because Appellant cannot admit to be a public school and act as a public school (such as giving its teachers state retirement benefits) and simultaneously claim that it is exempt from statutory laws designed to protect individuals from improper state action. To do so would be inequitable, unjust, and in contradiction of the purpose of the statute.

III. CONCLUSION

For the reasons stated herein, Respondent respectfully requests this Court dismiss this appeal in its entirety and affirm the rulings of the Lower Court, the verdict of the jury, and the award of attorney fees and costs.



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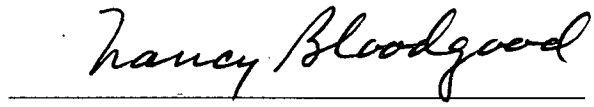
CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief complies with Rule 211(b), SCACR.



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I, Nancy Bloodgood, Esquire, certify that on February 15, 2013, I served a copy of the Respondent's Final Brief via First Class Mail by placing a copy of said documents in the United States mail with sufficient postage thereon to the following:

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