

1978 S.C. Op. Att. Gen. 22 (S.C.A.G.), 1978 S.C. Op. Att. Gen. No. 78-13, 1978 WL 22499

Office of the Attorney General

State of South Carolina

Opinion No. 78-13

January 16, 1978

*1 County Attorney
Columbia, S.C. 29201

QUESTION PRESENTED:

Does Act 674 of the Acts and Joint Resolutions of 1976 limit traditional judgment creditor's rights to enforce a judgment?

AUTHORITIES:

[Independent Insurance Company vs. Independent Life & Accident Insurance Company](#), 218 S.C. 22, 61 S.E.2d 399, (1950);

[Stone and Clamp, General Contractors vs. Holmes](#), 217 S.C. 203, 60 S.E.2d 231 (1950);

[Act 674 of the Acts and Joint Resolutions of 1976; § 15–39–10, et seq. Code of Laws of South Carolina \(1976\);](#)

82 C.J.S. [Statutes](#) § 380 (1953).

DISCUSSION:

Act 674 of 1976 establishes a patient's compensation fund in which licensed health care providers, as defined by the Act, are permitted to participate in a fund which pays certain judgments or settlements arising out of malpractice suits brought against the participating health care provider. By the provisions of the Act, the fund is liable only for the amount of any judgment or settlement which exceeds One Hundred Thousand (\$100,000.00) Dollars per incident, or judgments or settlements which are in excess of Three Hundred Thousand (\$300,000.00) Dollars in the aggregate for one year. In the event the fund incurs liability exceeding \$100,000.00 to any person under a single occurrence, the fund may not pay more than \$100,000.00 per year until the claim has been satisfied in full; provided, that in its discretion the fund may pay an amount in excess of \$100,000.00 so as to avoid the payment of interest. The question presented is whether this Act limits the rights of the judgment creditor to initiate proceedings to collect his judgment by requiring him to enforce his judgment solely in accordance with the provisions of Act 674.

A statute which would impair rights should be strictly construed. [Independent Insurance Company vs. Independent Life & Accident Insurance Company](#), 218 S.C. 22, 61 S.E.2d 399 (1950). On the face of Act 674 there is no apparent intent to limit a judgment creditor's traditional remedies for enforcement of its judgment. Following the rule of strict construction presented, the Act's terms should be limited to their clear purpose, and speculation where legislative intent is not clear should be avoided.

[Section 15–39–10, et seq., of the S.C. Code of Laws](#) (1976) provide for the enforcement of judgments through writs of execution. These provisions of the Code would be totally useless in relation to malpractice judgments if Act 674 were to be construed to totally replace them. When apparent conflict exists between two statutes, they should be construed,

if reasonably possible so as to give effect to both. [Stone and Clamp, General Contractors vs. Holmes](#), 217 S.C. 203, 60 S.E.2d 231 (1950).

Section 8, para. 3 of the Act provides that a person who has recovered a judgment or settlement covered by the fund 'may' file a claim with the fund to recover that portion of his judgment or settlement for which the fund is liable. Use of the term 'may' ordinarily conveys discretionary intent. 82 C.J.S. Statutes, § 380 (1953). Since a judgment creditor is not required or forced to file a claim with the fund, it would appear that he is given the option of resorting to other remedies which may be available to enforce a judgment.

*2 This opinion does not express a position as to the effect Act 674 may have upon a judgment creditor who has received payment from the fund and then also seeks to execute his judgment against the property of the health care provider, where the fund has previously made payments on behalf of the provider.

CONCLUSION:

Act 674 of the Acts and Joint Resolutions of 1976 does not expressly limit the judgment creditor to the provisions of the Act as the sole means of enforcing its judgment.

Perry M. Buckner
Assistant Attorney General

ATTACHMENT

Agreement Between The South Carolina State Development Board and _____

THIS AGREEMENT is made between the South Carolina State Development Board, hereinafter referred to as the Board, and _____ hereinafter referred to as the Developer.

WITNESSETH, that the parties to this agreement, in consideration of services to be performed and payments to be made, all as hereinafter state, do hereby agree as follows:

1. The Developer agrees to construct a _____ sq. ft. industrial shell building to be located on that _____ acre parcel of land located _____, as to which property the Developer warrants a _____ estate to be in _____.
2. The Developer agrees to construct the aforesaid building in accordance with instructions and specifications contained in Appendix A, which is attached hereto and made a part hereof.
3. The Board agrees to reimburse the Developer for interest monies owed and paid by the Developer on its primary shell building. Such reimbursement to be for an amount not exceeding the first year's interest. Such reimbursement to be made by the Board to the Developer in twelve monthly payments, such payments being contingent upon the Developer's submission to the Board of a satisfactory progress report as delineated in Appendix B, which is attached hereto and made a part hereof.
4. In the event the building is sold, the Developer agrees to make a lump sum reimbursement to the Board of all interest payments furnished to the Developer by the Board, such reimbursement to be made within fourteen (14) days following the close of the sale.
5. In the event the building is leased, the Developer agrees to reimburse the Board for all interest payments furnished to the Developer by the Board, such reimbursement to be paid in 60 days following the signing of such lease.

6. The Developer agrees that the purchase or lease of the aforesaid shell building shall be for industrial manufacturing or processing operations as determined by the Board.

7. The Developer acknowledges the provisions of Castal Plains Regional Commission Negotiated Contract No. 10440001, a copy of which is attached hereto as Appendix C and made a part hereof, and the Developer does expressly agree to be bound by the terms and conditions imposed by subparagraphs H and I of the General Terms and Conditions and contained therein.

*3 8. The Developer acknowledges that the validity of this contract is dependent upon insulation of the State of South Carolina from any legal action for the monies agreed to be paid to the Developer hereunder, and accordingly the Developer does hereby waive forever any existing or future right whatsoever to bring any legal action of any kind against the Board for reimbursement of interest monies owed but unpaid.

WITNESS our hands and seals this ____ day of _____, 1977.

SOUTH CAROLINA DEVELOPMENT BOARD

Witness

By: _____

Director, State Development Board

Witness

By: _____

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