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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Docket No. 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,..... Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc.....Respondents.

RECORD ON APPEAL- VOLUME III

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF CHARLESTON	)	**CASE NO.: 2021-CP-10-00426**
Kevin Dion Hollinshead, Senior, Plaintiff, v. Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc., Defendants.	)	**DEFENDANTS CHARLESTON COALITION FOR KIDS, THOMAS J. BELL, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT UNDER SCRCP RULE 12(B)(6)**

Defendants Charleston Coalition for Kids, Thomas J. Bell, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, and Loren R. Ziff (collectively, the "Coalition Defendants") respectfully submit this Memorandum in Support of their Motion to Dismiss Plaintiff's Second Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRP") for failure to state a claim upon which relief can be granted. For the following reasons, as well as those set forth in the Motion to Dismiss and in arguments, the Coalition Defendants hereby request an Order dismissing Plaintiff's Second Amended Complaint, *with prejudice*.

As set forth in the Coalition Defendants' Motion to Dismiss, the Second Amended Complaint fails to state a claim upon which relief can be granted under SCRCP Rule 12(b)(6). Plaintiff, a public official and/or public figure, purports to assert claims for defamation, civil conspiracy, and outrage based on a political advertisement, but fails to set forth facts, even considered in the light most favorable to Plaintiff, that could constitute any such claims.

Specifically, documents in the public record that are referred to and incorporated into the Second Amended Complaint establish that the statements made in the political ad are true as a matter of law. As a result, the Court must dismiss this action.

FACTS

A. Plaintiff's Allegations

The Second Amended Complaint alleges the following facts:

Plaintiff, a then-current member of the Charleston County School Board, was running for re-election on November 3, 2020. (Second Am. Compl. ¶ 17 [hereinafter, "SAC"].) Defendant Courtney Waters was also a candidate in the election. (*Id.* ¶ 18)

Defendant Charleston Coalition for Kids (the "Coalition") is a non-profit 501(c)(4) that is committed to the mission of "improving our schools and bringing more opportunities to our students." *See* https://www.chskids.org/about-our-coalition, last visited on March 22, 2021. Defendant Bell is the executive director of the Coalition, and Defendants Bell, Colwell, Deas Gibbison, Strickland, and Ziff are members of the board of directors for the Coalition (collectively, the "Board Members"). (SAC ¶¶ 3, 16.) Due to its work in support of children's education, the Coalition had a vested interest in the outcome of the election. Because the Coalition believed that Waters' vision for children's education in the region was more consistent with its mission than Plaintiff's views, it endorsed Waters in the election. (*Id.* ¶ 19.)

As part of its support for Waters's candidacy, the Coalition funded the creation of a political ad that was critical of Plaintiff. The ad aired on various television networks and was uploaded to the Coalition's Youtube channel. (SAC ¶ 20- 22.)[1] As relevant here, the ad opened with Defendant Leeza Steward speaking about the election. Then the ad stated, in an anonymous voiceover:

[1] The ad is no longer available on Youtube.

> [B]ut Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing [nearly] one-hundred fifty thousand dollars ($150,000) from a local HBCU[2] and lied to cover it up.

(SAC ¶ 38.) During the voiceover, the ad displayed the following text:

> Hollinshead was successfully sued for stealing [nearly] one-hundred fifty thousand dollars ($150,000) from Benedict College.

(SAC ¶ 39.)[3] At the bottom of the text, the ad referenced the case number of the lawsuit in question ("Case 2006-CP-10-3980, Charleston County 10/9/06"). The ad then went back to Defendant Steward, who says "We can't have someone like that managing the tax dollars for our schools." (SAC ¶ 40.)

B. <u>The SAS Lawsuit</u>

The lawsuit referenced in the ad is captioned *Student Assurance Services, Inc. v. Kevin Hollinshead, Sr., et al.* (hereinafter, "SAS Lawsuit"). A copy of the Complaint in the SAS Lawsuit is attached to the Motion to Dismiss as Exhibit A ("SAS Complaint"). The docket for this case is available on the Court's public index website.[4]

The SAS Lawsuit pertains to Plaintiff's dealings with a company called Student Assurance Services ("SAS") and Benedict College in the early 2000's. In its Complaint, SAS alleged it procured health and accident insurance coverage for Benedict College and its students. (SAS Compl. ¶¶ 3-7.) The insurance carrier appointed Plaintiff as the insurance agent. (*Id.* ¶ 7.) Under the business arrangement, Benedict would write premium checks to the order of SAS, send them

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[2] HBCU is an acronym for "Historically Black Colleges and Universities."

[3] In the Amended Complaint, Plaintiff omits the word "nearly" before the $150,000 figure from the text of the ad, but the ad clearly contains the word "nearly." The Coalition will bring an electronic copy of the ad to play for the Court at the hearing on this motion.

[4] A trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment. *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014).

to Plaintiff to distribute to SAS, and SAS would submit a commission to Plaintiff after receiving full payment. (*Id.* ¶¶ 8, 13-14.)

At some point in time, Plaintiff began cashing Benedict College's checks directly to his own accounts and then cutting smaller checks to SAS. (*Id.* ¶ 25-26; *see also* SAC ¶¶ 49, 51.) In other words, he was taking Benedict College's money—which was meant for SAS—and using it for his own purposes. All told, SAS alleged that Plaintiff had failed to remit $144,677.75 in premiums paid by Benedict College to SAS. (SAS Compl. ¶ 37, *see also* SAC ¶ 56.) SAS also alleged that Plaintiff told it that the reason the premiums had not been paid was because Benedict College was having "severe cash problems," despite the fact Benedict College submitted all owed premiums to him. (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.)

In response to the SAS Complaint, Plaintiff executed (1) a Promissory Note, a copy of which is attached to the Motion to Dismiss as Exhibit B, and (2) an Agreement and Confession of Judgment, a copy of which is attached to the Motion to Dismiss as Exhibit C. In the Promissory Note and Agreement and Confession of Judgment, Plaintiff admitted that he owed SAS $144,677.75, agreed to pay it back, and authorized the entry of judgment in favor of SAS. (*See* Promissory Note ¶ 1.1, 2.1; Agreement and Confession of Judgment ¶ 2-3, 5; *see also* SAC ¶¶ 59-60.) Further, in neither the Promissory Note nor the Agreement and Confession of Judgment did Plaintiff dispute the facts alleged in the SAS Complaint.

In sum, according to the public record, it is demonstrably true that: (1) Plaintiff was sued in the amount of nearly $150,000 for stealing money from Benedict College, an HBCU; (2) the lawsuit alleged that Plaintiff lied to cover up the fact that he had stolen the money; and (3) the lawsuit was successful in that it resulted in a confession of judgment for the entire amount alleged in the Complaint.

LEGAL STANDARD

In order to survive a motion to dismiss pursuant to SCRCP Rule 12(b)(6), the court should consider whether Plaintiff has "state[d] facts sufficient to constitute a cause of action." Unlike the more lenient standard under the federal rules, SCRCP preserve the Code pleading standard. *Paradise v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613, 819 S.E. 2d 147, 153 (Ct. App. 2018). "When a plaintiff states nothing more than legal conclusions, a claim should fail." *Id.* (*citing Talbott v. Padgett*, 30 S.C. 167, 171, 8 S.E. 845, 847 (1889)). Stated simply, "Rule 12(b)(6) requires the plaintiff to allege facts." *Id.* at 614, 819 S.E. at 153.

Moreover, a trial court may properly consider documents that are referenced in the complaint without converting a motion to dismiss to a motion for summary judgment. *Brazell v. Windsor*, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009) ("[A]llowing a trial court to consider documents that are incorporated by reference in the complaint but not actually attached thereto [without converting a motion to dismiss to one for summary judgment] prevents a plaintiff from benefiting from his own oversight or from surviving a motion to dismiss by intentionally omitting documents upon which their claims are based."). "[R]eliance on [] court orders in the underlying [] action d[oes] not convert the motion to one for summary judgment." *Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497-98 (2014).

However, if the Court does find that the documents attached to the Motion Dismiss were not incorporated in the Second Amended Complaint, the Court must treat the motion as one for summary judgment. SCRCP Rule 12(b) provides in part that,

> [i]f, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56.

SCRCP 56(c) states that the Court will grant summary judgment where "there is no genuine issue as to any material fact and [] the moving party is entitled to judgment as a matter of law."

ANALYSIS

In his Amended Complaint, Plaintiff alleges three causes of action for (1) defamation, (2) civil conspiracy, and (3) outrage. Each fails as a matter of law.

I. PLAINTIFF'S DEFAMATION CLAIM FAILS AS A MATTER OF LAW.

Plaintiff's defamation claim fails as a matter of law because the allegations in the Second Amended Complaint, taken in consideration with the documents referenced therein, which are part of the public record, clearly establish that the allegedly defamatory statements are true or at least substantially true. Generally, the elements of a defamation claim are: "(1) a false and defamatory statement concerning another, (2) an unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication." *Boone v. Sunbelt Newspapers, Inc.*, 347 S.C. 571, 580, 556 S.E.2d 732, 737 (Ct. App. 2001).

A. The allegedly defamatory statements are true as a matter of law.

As for the first element, in some cases, a defamatory statement is presumed to be false and truth is an affirmative defense. *Fountain v. First Reliance Bank*, 398 S.C. 434, 443, 730 S.E.2d 305, 310 (2012); *accord Haulbrooks v. Overton*, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988). When, however, the alleged defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and "the ***plaintiff*** must prove the statement was false." *Parker v. Evening Post Pub. Co.*, 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994) (emphasis added) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986)). Further,

the South Carolina Supreme Court has explained that, in evaluation of defamation claims in the context of a political election, "***free speech is particularly important***." *George v. Fabri*, 345 S.C. 440, 455, 548 S.E.2d 868, 876 (2001) (emphasis added). The Supreme Court touted "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 720 (1964).

Here, Plaintiff is undoubtedly a public figure and a public official. Indeed, he was a member of the Charleston County School Board running for re-election. (SAC ¶ 17.) Thus, he is a public figure and a public official. *See George*, 345 S.C. 440, 548 S.E.2d 868 (defamation claim by candidate for city council analyzed as a public official); *Anderson v. The Augusta Chronicle*, 364 S.C. 589, 619 S.E.2d 428 (2005) (analyzing defamation claim by a candidate for public office as a public figure). Accordingly, under *Parker*, Plaintiff bears the burden of showing that the statements in the political ad were false.

Plaintiff cannot satisfy that burden. In sum and substance, the facts stated in the political ad are that Plaintiff (1) was successfully sued, (2) for stealing nearly $150,000 (3) from Benedict College, a HBCU, and (4) lying to cover it up. (SAC ¶¶ 38.) Based on the face of the Second Amended Complaint and documents referenced therein and available in the public record, each of these statements is true, or at the very least substantially true.

First, Plaintiff was undoubtedly "successfully sued." Indeed, the SAS Lawsuit resulted in Plaintiff entering into a Promissory Note and Agreement and Confession of Judgment wherein he admitted that he was liable in the amount of $144,677.75, the exact amount alleged in the SAS Lawsuit. This fact is supported by the allegations in the Complaint and confirmed in the public

record. (SAC ¶ 59 ("Hollinshead [] confessed judgment…"); Agreement and Confession of Judgment at 1.) Because the SAS Lawsuit resulted in a judgment in SAS's favor, the SAS Lawsuit was successful. Thus, on the face of the Second Amended Complaint, the statement that Plaintiff was "successfully sued" is true.

Second, the SAS Lawsuit alleged that Plaintiff had stolen $144,677.75, the Promissory Note was for that amount, and the Agreement and Confession of Judgment was for that amount. (Confession at 1.) That amount of money is—as the political ad says—"nearly $150,000." The difference in $144,677.75 and $150,000 is a difference of only approximately 3.59%, thus making the statement that the amount in question was "nearly $150,000" substantially true. *See* 20 S.C. Jur. *Libel and Slander* § 34 (2021) ("Under the standard of substantial truth, '[i]t is not necessary to establish the literal truth of the precise statement made. Slight inaccuracies . . . are immaterial provided that the defamatory charge is true in substance." (quoting Restatement Second, Torts § 581A Comment f (1977))); *see also Anderson v. Stanco Sports Library, Inc.*, 542 F.2d 638, 641 (4th Cir. 1976) (interpreting South Carolina law and holding that minor inconsistencies in the alleged defamatory statements did not defeat the defense of substantial truth). Thus, Plaintiff's allegations, coupled with the public record referenced therein, plainly show that this statement, too, is true or substantially true.

Third, the SAS Lawsuit alleged that Plaintiff had stolen the money from Benedict College, an HBCU. As an initial matter, it is unquestionably true that Benedict College is an HBCU. *See* https://www.benedict.edu/about-benedict/, last visited on March 22, 2021. Moreover, it is also true that the SAS Lawsuit alleged the Plaintiff had stolen Benedict College's money. (*See* SAC ¶ 51 ("[T]he [SAS] Lawsuit alleges Hollinshead [] breached a contract . . . by misappropriating insurance premium checks paid by Benedict."); SAS Complaint at ¶ 36 ("Hollinshead had over-

billed Benedict for the health insurance premium for the Plan…").) "Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights. . . Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel." *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975). Thus, the SAS Lawsuit alleges that he committed conversion, *i.e.* he stole from Benedict College and/or its students.

As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. (SAS Comp. ¶ 7.) In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. (*Id.* ¶ 8.) SAS alleged that Plaintiff received those payments from Benedict College but, rather than forward the money to SAS, Plaintiff stole that money and used it for his own purposes. (*Id.* ¶ 34.) In other words, Plaintiff improperly assumed control over funds belonging to Benedict College and its students, since he had no right to use the money or do anything more than submit it to SAS. Accordingly, the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.

In the Second Amended Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money ***from Benedict College,*** but, rather, that he stole the money from ***SAS***. This argument, however, is demonstrably false. The money at issue was Benedict College's money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS. Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money ***from Benedict College***. Even more, the SAS Complaint alleges that Plaintiff "over-billed

Benedict," *i.e.* took money from Benedict College above and beyond what was owed to SAS. (SAS Compl. ¶ 36.) There is no reasonable way to read the SAS Lawsuit such that it did not allege that Plaintiff stole from Benedict College and/or its students. Accordingly, the Second Amended Complaint coupled with the public record establishes that, as a matter of law, the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College is true.

Fourth, the SAS Lawsuit alleged that Plaintiff lied about stealing the money. Specifically, SAS alleged that Plaintiff falsely told SAS that the reason the premiums had not been paid was because Benedict was having "severe cash problems." (SAS Compl. ¶ 28; *see also* SAC ¶¶ 47, 52.) Thus, the statement in the political ad that the SAS Lawsuit alleged that Plaintiff had lied to cover up his theft is true as a matter of law.

For these reasons, based solely on the Second Amended Complaint and the public record, the allegedly defamatory statements at issue here are true or substantially true as a matter of law. Thus, Plaintiff cannot satisfy his burden of establishing that they were false, and in fact has established the truth of all factual statements. Accordingly, Plaintiff cannot state a claim for defamation.

B. <u>The allegedly defamatory statements are protected under the doctrine of fair speech.</u>

Further, even if the statements at issue here were false (and they were not), Plaintiff also fails to state a claim upon which relief can be granted because the ad at issue here is protected speech under the fair comment doctrine, *Oswalt v. State-Rec. Co.*, 250 S.C. 429, 435, 158 S.E.2d 204, 207 (1967), and *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and is subject to a qualified privilege, *see Fountain v. First Reliance Bank*, 398 S.C. 434, 444, 730 SE.2d 305, 310 (2012) (statement is not defamatory if subject to qualified privilege). "When a citizen holds a

public office he becomes subject to criticism; any citizen [] is privileged to criticize his acts, fitness and qualifications for the office he holds. . .” *Oswalt*, 250 S.C. at 435, 158 S.E.2d at 207. A privilege defense can properly be decided on a motion to dismiss, especially where the text / video / audio of the actual allegedly defamatory statements and the underlying public records are available for review, as they are here. *See Cobin v. Hearst-Argyle Television, Inc.*, 561 F. Supp. 2d 546 (granting a motion to dismiss defamation claim based on the fair report privilege after review of the news reports and public records attached to the motions).

As demonstrated above, in this case,Plaintiff is a citizen holding public office and is therefore “subject to criticism.” The Coalition Defendants, therefore, were “privileged to criticize [Plaintiff’s] acts, fitness and qualification for the office he holds. . .” *See Oswalt*, 250 S.C. at 435, 158 S.E.2d at 207. Again, based on the allegations in the Second Amended Complaint, any criticism of Plaintiff’s acts, fitness, and qualification for the office of Charleston County School District North Area, therefore, are privileged as a matter of law. As Plaintiff alleges, the speech at issue was a political ad in the heat of an election for public office. Therefore, any statements by any citizen that criticize Plaintiff’s acts, fitness, and qualification for the office he holds are privileged.

C. Any remaining statements in the political ad were mere opinions and cannot form the basis of a defamation claim.

The remaining statement alleged (other than the statements that Plaintiff was successfully sued for stealing nearly $150,000 from an HBCU, and lied to cover it up), is protected opinion speech under the First Amendment to the United States Constitution. “[A] statement of opinion relating to matters of public concern that does not contain a provably false connotation will receive full constitutional protection.” *Garrard v. Chas. County School District*, 429 S.C. 170, 199-200, 838 S.E.2d 698, 713 (Ct. App. 2019) (internal citations omitted). Thus, “[i]f the defendant’s words

cannot be described as either true or false, they are not actionable. . ." *Potomac Valve & Fitting Inc. v. Crawford Fitting Co.*, 829 F.2d 1280, 1288 (4th Cir 1987).

The only other allegedly defamatory statement in the Second Amended Complaint is the statement that: "[w]e can't have someone like that managing the tax dollars for our school." (SAC ¶ 40.) That statement is not provably true or false, but is a matter of opinion. Accordingly, it is not actionable and cannot form the basis for a defamation claim.

For all of these reasons, Plaintiff's allegations, coupled with the public record referenced in those allegations, cannot form the basis of a defamation claim. While it is clear from the face of the Second Amended Complaint and the documents referenced and incorporated therein, if the Court determines that consideration of the documents attached to the Coalition Defendants Motion to Dismiss (or those attached to motions filed by any of the Co-Defendants), then the Court should convert the motion to one for summary judgment. *See* SCRCP 12(b). As demonstrated above, there is no genuine issue of material fact as to the truth of the allegedly defamatory statements (or that they are opinions), and Defendants are therefore entitled to judgment as a matter of law under SCRCP Rule 56.

II. PLAINTIFF HAS NOT STATED A CLAIM FOR CIVIL CONSPIRACY.

Plaintiff cannot state a claim for civil conspiracy because the unlawful act upon which it relies, the political ad, was not unlawful or committed by unlawful means. The elements of a claim for civil conspiracy are: "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff." *Paradis v. Charleston County School District*, Case No. 2018-002025, __ S.E.2d __, 2021 WL 3668152, at *7 (S.C. Aug. 18, 2021). Further, while "[t]here are, of course, some activities, legal

if engaged in by one, yet illegal if performed in concert with others, [] political expression is not one of them." *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkely, Cal.*, 454 U.S. 290, 296, 102 S.Ct. 434, 437 (1981).

Here, the only action about which Plaintiff complains is the act of publishing the political ad. The ad, however, is not unlawful (as described above) and is in fact protected by the First Amendment to the United States Constitution and Article 1 § 2 of the Constitution of the State of South Carolina. As the Supreme Court stated in *Citizens Against Rent Control / Coalition for Fair Housing*, the political ad, which is undoubtedly political expression, is not an act that can become illegal by virtue of being performed with others. The political ad, therefore, cannot stand as the basis for a civil conspiracy claim and this cause of action also fails as a matter of law under both the Rule 12(b)(6) standard for a motion to dismiss and Rule 56 standard for summary judgment.

III. PLAINTIFF HAS NOT STATED A CLAIM FOR OUTRAGE/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

The elements of a claim of outrage / intentional infliction of emotional distress are:

> (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of defendant caused the plaintiff's emotional distress; and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable person could be expected to endure it.

Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 401, 596 S.E.2d 42, 48 (S.C. 2004). The Supreme Court has held that "public figures and public officials may not recover for the tort of intentional infliction of emotional distress by reason of publication [] without showing in addition that the publication contains a false statement of ***fact*** which was made with "actual malice. . ." *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56, 108 S.Ct. 876, 882 (1988) (emphasis added).

Plaintiff's claim for outrage / intentional infliction of emotional distress fails because Plaintiff failed to allege facts to support the elements of his claim. Instead, he merely recited the elements of the claim in a conclusory fashion. (SAC ¶ 96.) Moreover, as demonstrated above, Plaintiff cannot establish that the political ad contained any false statement of fact, and in fact establishes that the statements of fact were true as a matter of law. Accordingly, Plaintiff's claim for outrage / intentional infliction of emotional distress must also fail as a matter of law.[5]

Plaintiff has failed to state a claim for any of the three causes of action in the Second Amended Complaint and the Court must therefore dismiss this action. Moreover, even if the Court determines that consideration of the documents attached to the Motion to Dismiss require conversion to a motion for summary judgment, the Court should grant summary judgment in favor of Defendants and dismiss this action.[6]

CONCLUSION

For the foregoing reasons as well as those set forth in the Coalition Defendants' Motion to Dismiss and those argued at the hearing on the motion, the Court should DISMISS the Second Amended Complaint.

[5] In addition, the facts as alleged here clearly do not meet the high threshold to establish that anyone inflicted severe emotional distress, that any conduct was so extreme and outrageous (especially in the form of a political ad), or that the emotional distress allegedly suffered was so severe and pervasive that no reasonable person could be expected to endure it.

[6] The Coalition Defendants also incorporate herein all arguments made by Co-Defendants in their respective motions and supporting briefs.

Dated: December 10, 2021

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FOR THE NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON)	**CIVIL ACTION NO.: 2021-CP-10-00426**

Kevin Dion Hollinshead, Senior, Plaintiff, vs. Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc. Defendants.	**MEMORANDUM OF PLAINTIFF, KEVIN DION HOLLINSHEAD SENIOR, IN OPPOSITION TO THE MOTIONS TO DISMISS PURSUANT TO RULE 12(B)(6), S.C.R.CIV.P., OF DEFENDANTS, THOMAS J. BELL, CHARLESTON COALITION FOR KIDS, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, LOREN R. ZIFF, COURTNEY S. WATERS, LEEZA D. STEWARD, AND TEACH FOR AMERICA, INC.**

TO: JULIANNE FARNSWORTH, ESQ., AND VICTORIA T. KEPES, ESQ., ATTORNEYS FOR DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF, DEFENDANTS, THOMAS J. BELL, INDIVIDUALLY AND AS EXECUTIVE DIRECTOR OF CHARLESTON COALITION FOR KIDS, CHARLESTON COALITION FOR KIDS, A NONPROFIT ORGANIZATION, ANGELICA M. COLWELL, LEE P. DEAS, GODFREY A. GIBBISON, ERIC P. STRICKLAND, AND LOREN R. ZIFF, DWAYNE M. GREEN, ESQ., ATTORNEY FOR DEFENDANT, COURTNEY S. WATERS, DEFENDANT, COURTNEY S. WATERS, JOSEPH M. MCCULLOCH, JR., ESQ., AND KATHY R. SCHILLACI, ESQ., ATTORNEYS FOR DEFENDANT, LEEZA D. STEWARD, DEFENDANT, LEEZA D. STEWARD, DAVID S. COBB, ESQ., NICKISHA M. WOODWARD, ESQ., ATTORNEYS FOR DEFENDANT, TEACH FOR AMERICA, INC., AND DEFENDANT, TEACH FOR AMERICA, INC.

BACKGROUND

This is an action for defamation, civil conspiracy, and outrage. Plaintiff, Kevin Dion Hollinshead, Senior, (hereinafter referred to as "Hollinshead") initiated this action on January 29,

2021, by filing a summons and complaint with the Charleston County Court of Common Pleas. The complaint was subsequently amended on February 2, 2021, and amended for a second time on August 2, 2021, to include a cause of action for civil conspiracy[1]. In this action Hollinshead seeks to recover actual and punitive damages for defamatory statements published by Defendants, Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids (hereinafter referred to as "Bell"), Charleston Coalition for Kids, a nonprofit Organization (hereinafter referred to as "Coalition"), Angelica M. Colwell (hereinafter referred to as "Colwell"), Lee P. Deas (hereinafter referred to as "Deas"), Godfrey A. Gibbison (hereinafter referred to as "Gibbison"), Eric P. Strickland (hereinafter referred to as "Strickland"), Loren R. Ziff (hereinafter referred to as "Ziff"), Courtney S. Waters (hereinafter referred to as "Waters"), Leeza D. Steward (hereinafter referred to as "Steward"), and Teach for America, Inc. (hereinafter referred to as "TFA"), as well as for their outrageous conduct and civil conspiracy. Defendants have moved to dismiss this action pursuant to Rule 12(b)(6), S.C.R.CIV.P., for failure to state facts sufficient to constitute a cause of action. Additionally, Steward has moved for summary judgment pursuant to Rule 56(b), S.C.R.CIV.P.[2] Defendants' motions are now before this Court for consideration. For the reasons herein stated all of the motions to dismiss must be denied.

STANDARD OF REVIEW

"Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 83, 655 S.E.2d 736, 737 (Ct. App. 2007). "Rule 12(b)(6)

[1] All defined terms in the Second Amended Complaint shall have the same meanings throughout this Memorandum. An Order permitting the filing of the Second Amended Complaint was entered by this Court August 9, 2021.

[2] Defendants made similar motions as to the Amended Complaint filed February 2, 2021. These motions were withdrawn as a result of the filing of the Second Amended Complaint

permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Skydive Myrtle Beach, Inc. v. Horry Cty*., 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). "A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (*cited with approval Skydive Myrtle Beach, Inc. v. Horry Cty*., *supra* at 180, 826 S.E.2d at 587).

"In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint." *Charleston Cty. Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011); *accord Brown v. Leverette* , 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) ("... solely upon the allegations set forth on the face of the complaint").

> If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. In deciding whether . . . [to grant a] motion to dismiss, the . . . court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. . . [A] complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.

Spence v. Spence, 368 S.C. 106, ___, 628 S.E.2d 869, 874 (2006) (citations omitted). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929, 940-41 (2007) (internal quotations omitted) (*cited with approval Skydive Myrtle Beach, Inc. v. Horry Cnty*., *supra* at 180, 826 S.E.2d at 588). "At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the

pleading states a claim. . . [A] plaintiff is—entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim." *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra* at 180, 826 S.E.2d at 588. "[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (*citing Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)).

ANALYSIS

> A party asserting a claim of defamation must prove the following elements: '(1) a false and defamatory statement was made; (2) the unprivileged publication of the statement to a third party; (3) the publisher was at fault; and (4) either the statement was actionable irrespective of harm or the publication of the statement caused special harm.'. . 'The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'

Harris v. Tietex Int'l Ltd., 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016) (citations omitted) (*quoting Williams v. Lancaster Cty. Sch. Dist.*, 369 S.C. 293, 302–03, 631 S.E.2d 286, 292 (Ct. App. 2006) and *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

A communication is defamatory if it tends "'to impeach the honesty or integrity or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.'" *Smith v. "Bradstreet Co,* 41 S.E. 763, 764, 63 S.C. 525, ___ (1902) (*quoting* "18 AM. & ENG. ENC. LAW, at page 861).

> The defamatory character of the words complained of is for the jury if the language is susceptible of two meanings, one defamatory and the other innocent; but if the language is unambiguous the question is for the court. The court determines whether the language is capable of the meaning ascribed to it, and the jury determines whether the language had the meaning ascribed to it.
>
> The South Carolina rule goes further and holds that a demurrer to a complaint (and inferentially a motion for summary judgment) 'will only be

> sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.' Our courts also hold that any words which raise a strong suspicion of the plaintiff's guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. And even stronger, our courts hold that if the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies.

Adams v. Daily Tel. Printing Co., 356 S.E.2d 118, 122, 292 S.C. 273, 279 (Ct. App. 1986), *aff'd as modified*, 367 S.E.2d 702, 295 S.C. 218 (1988) (*quoting* 53 C.J.S. *Libel and Slander* § 223(a) (1983) and *citing Flowers v. Price*, 192 S.C. 373, 6 S.E.2d 750 (1940)).

The allegations of the Amended Complaint material to the motions to dismiss under are as follows:

17. That Hollinshead was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.

18. That Waters was a candidate running in the November 3, 2020, general election for Charleston County School District North Area.

19. That CCFK endorsed Waters as a candidate in the general election for Charleston County School District North Area.

20. That CCFK funded the creation of a political ad entitled 'Kevin Hollinshead Lied About Stealing From an HBCU – We Deserve Leaders We Can Trust, (hereinafter referred to as the 'Ad').

21. That the Ad was uploaded to the CCFK Youtube Channel.

22. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the funding of the Ad and the Ad's publication and dissemination on CCFK's Youtube channel and various television networks in the Greater Charleston County, South Carolina Area.

23. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authored the content of the Ad.

24. That on information and belief, Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, as members of the board of directors for CCFK, authorized the content of the Ad.

25. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were agents of CCFK.

26. That at all times relevant hereto Bell, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, and Steward were acting within the scope of their agency with CCFK.

27. That at all times relevant hereto Waters was employed by TFA.

28. That at all times relevant hereto Waters was acting as an agent of TFA.

29. That at all times relevant hereto Waters was acting within the scope of her agency with TFA.

30. That at all times relevant hereto Steward was employed by TFA.

31. That at all times relevant hereto Steward was acting as agent of TFA.

32. That at all times relevant hereto Steward was acting within the scope of her agency with TFA.

33. That upon information and belief, at all times relevant hereto, Waters was Steward's supervisor at TFA.

34. That Waters directed and/or requested Steward appear in the Ad.

35. That Steward appears in the Ad.

36. That Steward narrates portions of the Ad.

37. That at all times relevant hereto, Steward was acting at the direction of Waters.

38. That an anonymous voiceover in the Ad states 'but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from a local HBCU and lied to cover it up.'

39. That the Ad states 'Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from Benedict College.'

40. That, following the anonymous voiceover in the AD, Steward states 'We can't have someone like that managing the tax dollars for our schools.'

41. That Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the 'Lawsuit') brought against them by Student Assurance Services, Inc., (hereinafter referred to as 'SAS').

42. That Benedict College was not a party to the Lawsuit.

43. That the Lawsuit alleges that Hollinshead stole and unlawfully converted $144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS.

44. That the Lawsuit refers to these insurance premiums as 'SAS's funds.'

45. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

46. That the Lawsuit alleges Hollinshead employed a scheme to defraud SAS of $144,677.75 of insurance premiums.

47. That the Lawsuit alleges Hollinshead made false statements and false representations to SAS.

48. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

49. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict.

50. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

51. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict.

52. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC's breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS.

53. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

54. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC committed deceptive acts which were then repeated on numerous occasions, constituting a violation of the South Carolina Unfair Trade Practices Act.

55. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

56. That the Lawsuit alleges Hollinshead and Hollinshead Group Insurance LLC were unjustly enriched at the expense of SAS by misappropriating $144,677.75 of insurance premiums due to SAS.

57. That Hollinshead and Hollinshead Group Insurance LLC denied these allegations in their Answer.

58. That the Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance LLC stole or misappropriated money from Benedict College.

59. That on May 24, 2007, pursuant to Section 15-35-350 and 360, CODE OF LAWS, SOUTH CAROLINA, Hollinshead and Hollinshead Group Insurance LLC confessed judgment to SAS for a total amount of $144,677.75 (hereinafter referred to as the 'Confession of Judgment'.)

60. That in the Confession of Judgment, Hollinhead and Hollinshead Group Insurance LLC admit to being liable to SAS in the amount of $144,677.75.

61. That in the Confession of Judgment, Hollinhead and Hollinshead Group Insurance LLC confess and authorize the entry of judgment in favor of SAS.

62. That Benedict College is not mentioned or referred to in the Confession of Judgment.

63. That Benedict College is not a party to the Confession of Judgment.

64. That on May 24, 2007, Hollinshead and Hollinshead Group Insurance, LLC executed a promissory note to the order of SAS (hereinafter referred to as the 'Note').

65. That Hollinshead and Hollinshead Group Insurance, LLC acknowledge and agree that is indebted to SAS in the amount of $144,677.75.

66. That the Note is secured by the Confession of Judgment.

67. That Benedict College is not mentioned or referred to in the Note.

68. That Benedict College is not a party to the Note.

69. That one hundred forty-four thousand six hundred and seventy-seven dollars and seventy-five one hundredths ($144,677.75) is not one hundred fifty thousand and zero one hundredth dollars ($150,000.00.).

FOR A FIRST CAUSE OF ACTION
(Defamation)

70. That Hollinshead restates each and every allegation of Paragraph 1 through Paragraph 69 as if fully restated herein verbatim.

71. That as of January 29, 2021, the Ad has been viewed one-hundred and thirty-nine times (135) on CCFK's Youtube Channel.

72. That CCFK aired the Ad on various television networks in the Greater Charleston County, South Carolina Area.

73. That the statements made in the Ad tend to impeach the honesty, integrity, virtue, and reputation of Hollinshead.

74. That the statements degrade Hollinshead as they accuse Hollinshead of stealing money.

75. That the statements degrade Hollinshead as they suggest unfitness as a public servant.

76. That the statements made in the Ad are false and defamatory to Hollinshead.

77. That CCFK is responsible for the acts committed by its agents within the scope of their employment with CCFK.

78. That TFA is responsible for the acts committed by its agents within the scope of their employment with TFA.

79. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are actionable per se.

80. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with constitutional malice.

81. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements are false.

82. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements concern Hollinshead.

83. That as a direct and proximate result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead had suffered damages, including, but not limited to, loss of reputation and mental anguish.

84. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements, Hollinshead is entitled to recover actual and/or special damages.

85. That Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements were made with intentional or reckless disregard of the Hollinshead's rights.

86. That Hollinshead is entitled to recover punitive damages as a result of Bell, CCFK, Colwell, Deas, Gibbison, Strickland, Ziff, Waters, Steward, and TFA's statements.

Accepting the above allegations as true, as this Court must, and construing the allegations in a light most favorable to Hollinshead, as this Court also must, Defendants' actions as alleged above, constitute a textbook liable.

The crux of the libelous statements are that: (1) "Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from a local HBCU and lied to cover it up." (2) "Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from Benedict College." (3) "We can't have someone like that managing the tax dollars for our schools." As alleged in the Amended Complaint, Hollinshead, of course, did no such thing. As explained in the Second Amended Complaint, Hollinshead was involved in a commission dispute with SAS relating to commissions earned as a result of sales of health insurance to students enrolled in Benedict College. Benedict College itself was in no way involved in the commission dispute, was not an insured under any of the policies and was in no way involved in any of the transactions out of which the commission dispute lawsuit arose. None of the students' policies involved in the suit between Hollinshead and SAS were cancelled for nonpayment of premiums. The statements in question are irrefutably a lie

fabricated by the defendants which tends "'to impeach the honesty or integrity or reputation'" of Hollinshead which "'expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.'" That was obviously the Defendants intent. On this, reasonable minds cannot differ.

Further, the claim that Hollinshead is "using our[3] money to help himself" implies that Hollinshead is misappropriating and/or stealing taxpayer money. This is brought further into focus when put into context with the later statement that "We can't have someone like that managing the tax dollars for our schools."

The statement that Hollinshead is "using our money to help himself" implies that Hollinshead is misappropriating and/or stealing taxpayer money. The statement that "We can't have someone like that managing the tax dollars for our schools" when coupled with and put in context with the statement that Hollinshead is "using our money to help himself" is far more than an opinion: it is a statement to the effect that Hollinshead is misappropriating and/or stealing taxpayer money. This is unquestionably defamatory.

> [D]efamation need not be accomplished in a direct manner.
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> To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain.

Tyler v. Macks Stores of S.C., Inc., 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980).

The clear and unequivocable insinuation is that Hollinshead is misappropriating taxpayer money to his own use; in other words stealing Yet, there is no suggestion or evidence of any kind,

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[3] The word "our" means "belonging to or associated with the speaker and one or more other people previously mentioned or easily identified" or alternatively, "used by a writer, editor, or monarch to refer to something belonging to or associated with himself or herself." Online Dictionary. There is literally no way to construe, reasonably or otherwise to construe the term "our" in this context to include SAS or Benedict College. Clearly the term "our" as meaning the taxpayers whose taxes support the Charleston County School District.

in the Lawsuit or otherwise – or even a rumor - that Hollinshead has ever stolen or misappropriated taxpayer dollars or funds designated for or allocated to a school district, any school or any governmental entity or agency. This representation is pure and simply a lie created by the Defendants out of whole cloth.

The Defendants have failed to argue that their representation that Hollinshead has stolen and/or misappropriated taxpayer money to his own use is not defamatory. They have not bothered to take the position that this representation is true and that it is not defamatory for the obvious reason that they have no basis upon which to argue that this representation is not defamatory. Clearly it is. This failure is in and of itself a reason why this Court must deny the Rule 12(b)(6) motions to dismiss.

It is clear that the Defendants acted with actual malice or, as it is sometimes referred to, constitutional malice. Given that the Lawsuit involved a commission dispute between SAS and Hollinshead which in no way involved Benedict Collage or anyone affiliated with Benedict Collage and that the statement that Hollinshead is "using our money to help himself" despite there being no allegation of this in the Lawsuit or any evidence to support this or even a rumor that he was doing so, when construed in a light most favorable to Hollinshead, there is no escaping the conclusion that Defendants knew the statements were false of acted in reckless disregard for their falsity. This is quintessential actual malice. *See, e.g., New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, (1964); *see also Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978)(public officials liable complaint alleging that liable was willful and malicious cured by amendment to add that publication was made "with wanton and reckless disregard for the truth").

The statements were made in a television ad which was widely broadcast on various television networks in the eastern half of South Carolina and were published on the internet. The statements refer to Hollinshead by name. The statements in question state Hollinshead committed a crime - "stealing" money from Benedict College and misappropriating and/or stealing tax dollars and/or school board funds – and is unfit for business, trade profession or office and specifically claims he is unfit for office: "We can't have someone like that managing the tax dollars for our schools." *See Davis v. Niederhof*, 143 S.E.2d 367, 246 S.C. 192 (1965)(claim that plaintiff committed a crime -stealing – slander per se); *Flowers v. Price*, *supra* (charge of larceny when placed in context of circumstances slander per se); *Imerritt v. Great Atl. & Pac. Tea Co*, 179 S.C. 474, 184 S.E. 145 (1936) (charge of larceny slander per se); *Moshtaghi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994) (statements that infer impropriety or inadequacy in performing one's job, statements that conduct had been dishonorable, and statement that conduct was illegal are all actionable per se).

Clearly, when taken in a light most favorable to Hollinshead, the allegations of the Amended Complaint state facts which constitute a cause of action for defamation.

Defendants make several arguments in support of their respective motions to dismiss, all of which are misplaced and ignore the standard by which this Court must consider their respective motions to dismiss under Rule 12(b)(6).

To begin with, all of the Defendants have inappropriately submitted documents in support of their respective positions. Their reliance on these documents is misplaced.

It is well settled that this Court is not permitted to consider matters outside of the four corners of the Amended Complaint when passing on the Defendants' Rule 12(b)(6) motion[4]. *See, e.g., Charleston Cty. Sch. Dist. v. Harrell*, *supra* (reversing the trial court's order granting the defendants motion to dismiss because the trial court considered matters outside of the four corners of the complaint when deciding the motion). Rather, when considering the Defendants' motions, this Court may only consider the allegations contained in the Amended Complaint, which it must accept as true and all inferences drawn from the facts alleged in the Amended Complaint must be viewed in the light most favorable to Hollinshead. *See*, *e.g.*, *Id.*; *Spence v. Spence*, *supra.* If the factual allegations entitle Hollinshead to relief on any theory – which is the case here - Defendants' motions must be denied. *Id.* Because the facts alleged and inferences reasonably deducible

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[4] *Citing Doe v. Bishop of Charleston*, 407 S.C. 128, 134 n.2, 754 S.E.2d 494, 497 n.2 (2014), Defendants content that "[a] trial court may take judicial notice of transcripts, court orders or other filings in related actions without converting a motion to dismiss into one for summary judgment." This argument is, of course, specious.

Doe v. Bishop of Charleston, *supra*, stands for the proposition that consideration of prior unchallenged orders does not convert a Rule 12(b)(6) motion to dismiss to a Rule 56, S.C.R.CIV.P., motion for summary judgment. As the Court explained, "interpretation of a judgment is a question of law for the court." *Id.* Because the order under consideration in *Doe v. Bishop of Charleston*, *supra*, was a judgment, its interpretation was a matter of law, and, therefore, its consideration in the context of a Rule 12(b)(6) motion permissible. Considering and interpreting a final judgment is no different than considering a statute or opinion of the South Carolina Supreme Court when passing on a Rule 12(b)(6) motion. Thus, the trial court in *Doe v. Bishop of Charleston*, *supra*, did not, as the Defendants contend, take judicial notice of anything, but rather interpreted the prior entered judgment as a matter of law to determine whether the facts as alleged in the complaint state a cause of action.

In contrast, consideration of matters outside of the complaint to supply or supplement facts not contained within the complaint when passing on a Rule 12(b)(6) motion to dismiss is impermissible. *Charleston Cty. Sch. Dist. v. Harrell*, *supra* ("In using the federal district court case to supply facts from outside the complaint, the circuit court impermissibly went beyond the proper parameters of a motion to dismiss."). In other words when passing on a Rule 12(b)(6) motion, the trial court is not permitted to take judicial notice of maters outside the complaint. Consequently, using factual allegations contained in the SAS Complaint, as the Defendants seek to do here, is improper.

Read together, *Doe v. Bishop of Charleston*, *supra*, and *Charleston Cty. Sch. Dist. v. Harrell*, *supra*, stand for the well settled proposition that the resolution of questions of law is for the court, whereas the resolution of questions of fact is for the trier of fact.

therefrom as alleged in the Second Amended Complaint entitle Hollinshead to relief, Defendants' motion must be denied. *Id*.

All of the Defendants content that the statements they made – none, by-the-way deny that the statements were made – were true as a matter of law and therefore, not defamatory. Their positions in this regard are premised on the notion that because Hollinshead confessed judgment and entered into a promissory note and he admitted the allegations of the SAS Complaint since he did not dispute the facts in either the Promissory Note or the Agreement and Confession of Judgment. Defendants, however, failed to note that Hollingshead, likewise, failed to admit the allegations of the SAS Complaint in the Promissory Note or the Agreement and Confession of Judgment either. The fact of the matter is that both the confession of judgment and promissory note are silent on the issue of whether Hollinshead admitted or denied the allegations of the SAS Complaint. Thus, Defendants' claim that the allegations ore rue as a matter of law is without merit

Furthermore, even if the factual allegations contained in the SAS Complaint are considered true – which they are not permitted to be – the motions to dismiss must be denied[5]. Because the arguments made by Defendants are virtually identical they will be addressed together.

Though they basically admit that the Lawsuit arose out of a commission dispute between SAS and Hollinshead[6], Defendants - impermissibly relying heavily on matters outside of the Amended Complaint - take the position that because SAS accused Hollinshead of stealing from Benedict College, the claim that Hollinshead "stole" from Benedict College is, therefore, true as a

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5 The "facts" set forth in the factual recitation section of Defendants' respective motions contains numerous factual assertions not contained in either the Second Amended Complaint or any of the attachments submitted there with, including inclusion of hyperlinks to websites. It goes without saying that none of this can be considered in passing on the Defendants' motions to dismiss, even if they are true, which many of them are not.

6 This admission in their respective motions to dismiss constitute a judicial admission and is binding on Defendants. *See*, *e.g*., *Meyer v. Berkshire Life Ins. Co.*, 372 F.3d 261 (4th Cir. 2004).

matter of law. Even if it were permissible to rely on the matters outside the Amended Complaint submitted by Defendants in support of their motions, a reading of the SAS Complaint belies their position in this regard.

Defendants acknowledge that the Ad accuses Hollinshead of stealing $150,000.00 from Benedict College[7]. However, a close reading of the in the SAS suit against Hollinshead clearly demonstrates that nowhere does SAS allege that Hollinshead stole form Benedict Collage. Defendants simply made that up. A reading of the SAS Complaint demonstrates that SAS is alleging that Hollinshead withheld money which belongs to it.

A close reading of the SAS Complaint demonstrates that SAS does no claim that Hollinshead stole from Benedict College. Instead, the Complaint lays out an alleged scheme whereby SAS claims Hollinshead was allegedly diverting funds paid to SAS by Benedict College, and then goes on to allege in material part:

Paragraph 37 - "Hollinshead owes SAS the following amounts. . . $144,677.75."

Paragraph 38 - "Hollinshead owes SAS. . . $144,677.75."

Paragraph 40 - "By stealing ***the premiums paid to him for the benefit of SAS*** by Benedict . . . Hollinshead exercised unauthorized dominion and control over approximately $144,677.75 ***of SAS funds*** which were paid for SAS precuring the . . . policies. . . ."

Paragraph 41 – "Hollinshead converted SAS's funds for his own use. . . ."

Paragraph 42 - "[T]he premiums owed for the . . . policies were to be paid to SAS and Hollinshead was only entitled to receive his stated commissions. . . ."

Paragraph 43 - "As a direct and proximate result of the wrongful conversion, SAS is entitled to recover the sum of $144,677.75. . . ."

[7] This is yet another binding judicial admission. *See* footnote 1, *supra*.

Paragraph 45 - "Defendants employed a scheme ***to defraud SAS*** which were billed to and paid by Benedict for the . . . policies."

Paragraph 51 - "As a direct and proximate result of the fraud, SAS has been damaged in the amount of $144,677.75. . . ."

Paragraph 51 - "As a direct and proximate result of the breach of contract set forth above, SAS is entitled to receive its actual damages in the amount of $144,677.75. . . ."

Paragraph 63 - "As a direct and proximate result of the breach of contract accompanied by a fraudulent acts by Hollinshead, SAS is entitled to recover actual damages in the amount of $144,677.75. . . ."

Paragraph 71 - "As a direct and proximate result, SAS is entitled to recover $144,677.75. . . ."

Paragraph 76 - "SAS permitted Hollinshead to collect the annual premiums for the policies and remit the premiums to SAS for division and distribution."

Paragraph 78 - "As a direct and proximate result, SAS is entitled to recover $144,677.75. . . ."

"When the language alleged to be libelous, or slanderous, is plain and unambiguous, and admits of but one reasonable construction, it becomes a matter of law for the action and determination of the court. If said language be ambiguous, or doubtful of meaning, it should be left to the jury to determine in what sense it was used, and what its meaning is." *Drakeford v. Dixie Home Stores*, 105 S.E.2d 711,714, 233 S.C. 519, 524 (1958). Dismissal of a complaint "'will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.' . . . [A]ny words which raise a strong suspicion of the plaintiff's guilt in the minds of the hearers are sufficient upon which to

base a cause of action for slander or libel. . . . [I]f the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies." *Adams v. Daily Tel. Printing Co*., *supra.*

There is simply no way to construe the SAS Complaint as maintaining that Hollinshead stole $150,000.00 from Benedict College, which Defendants admit they said Hollinshead did in the ad. This is textbook defamation. The language used by Defendants is plain and unambiguous and clearly false. Even if the language used by Defendants can somehow be construed as ambiguous it becomes a question for the jury to decide if it is defamatory. Either way, the motions for summary judgment must be denied. *See Id*.

Defendants take the position that:

> While he [Hollinshead] claims the SAS Lawsuit did not allege he 'stole or misappropriated money from Benedict College,' he admits that the SAS Lawsuit alleged he was 'misappropriating insurance premium checks paid by Benedict' and 'cashing premium checks paid by Benedict.' In other words, the SAS lawsuit alleged that Plaintiff was taking money that Benedict was entrusting to him to give to SAS and converting it to his own unlawful purposes. As such, the statements in the political ad that Plaintiff was sued for stealing $150,000 from Benedict are, at the very least, substantially true. Plaintiff is not alleging that the political ad claimed he was sued by Benedict.

They further maintain that:

> As noted, the SAS Complaint alleged that Plaintiff was appointed as the agent on the insurance policy at issue. In that role, his duties included receiving premium payments from Benedict College and transmitting those payments to SAS. SAS alleged that Plaintiff received those payments from Benedict College but, rather than forward the money to SAS, Plaintiff stole that money and used it for his own purposes. In other words, Plaintiff improperly assumed control over funds belonging to Benedict College and its students, since he had no right to use the money or do anything more than submit it to SAS. Accordingly, the statement in the political ad that the SAS alleged that Plaintiff had stolen the money from Benedict College, an HBCU, is true, and Plaintiff cannot demonstrate otherwise.
>
> In the Second Amended Complaint, Plaintiff seems to suggest that the political ad was false because SAS did not allege that Plaintiff stole the money from Benedict College, but, rather, that he stole the money from SAS. This argument, however, is demonstrably false. The money at issue was Benedict College's money, which Benedict College entrusted to Plaintiff for the purpose of forwarding to SAS.

> Thus, the money at issue belonged to Benedict College. Even though it was SAS—and not Benedict College—that sued Plaintiff, SAS alleged that Plaintiff had stolen the money from Benedict College. Even more, the SAS Complaint alleges that Plaintiff "over-billed Benedict," i.e. took money from Benedict College above and beyond what was owed to SAS. There is no reasonable way to read the SAS Lawsuit such that it did not allege that Plaintiff stole from Benedict College and/or its students. Accordingly, the Second Amended Complaint coupled with the public record establishes that, as a matter of law, the statement in the political ad that the money at issue in the SAS Lawsuit belonged to Benedict College is true.

The cognitive dissonance needed to support this position is bewildering and belies the actual allegations of the SAS Complaint.

The last sentence of the first quoted paragraph is demonstrably false. Paragraph 39 of the Second Amended Complaint specifically alleges "'[t]hat the Ad states 'Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from Benedict College.'"

There is nothing in the SAS Complaint or the law to support the Defendants' position that the funds belonged to Benedict. Throughout the SAS Complaint SAS clearly and unequivocally takes the position that the funds in issue belonged to it. Nowhere is SAS contending that the funds in any way belonged to Benedict College if they ever belong to it in the first place, as the funds initially belonged to its students.

Additionally, there is nothing in the law or public policy to support this unsupported conclusory assertion. The funds were paid by Benedict – or more aptly its students – as premiums for insurance and once paid, they were covered. Thus, once the premiums were paid, the premium dollars belonged to Hollinshead and/or SAS. If Defendants' position is accepted it will lead to the untenable situation whereby every customer who pays for and receives a good or service will be deemed the owner of the funds if a dispute subsequently develops between the owners of the business or an agent and principal. Such a result is preposterous.

Furthermore, this is only one interpretation of the situation involved in the Lawsuit albeit a strained one. It is for the trier of fact to interpret these allegations. *See Id.* Thus, Defendants motions must be denied on this ground too. *See Id.*

That Defendants are now having to engage in such post hoc mental gymnastics to legitimize their statements as not defamatory is proof positive that they acted with knowledge of the falsity of these statements, or, at the very least acted with reckless disregard for their falsity.

Defendants maintain that the statements which they admit making were mere matters of opinion. A reading the statements made by them shows that they were clearly statements of fact, not opinion.

Defendants contend that as a public official and public figure, Plaintiff has the burden of showing falsity of the alleged defamatory statements which he cannot do as a matter of law based on the undisputed facts contained in his own pleading." The burden of proof is an evidentiary standard. *See Jones v. Leagan*, 681 S.E.2d 6, 384 S.C. 1 (Ct. App. 2009). Defendants' position would, therefore, necessarily require this Court to consider the evidence in this case to reach such a conclusion. It is well settled that the Court is to consider only the allegations of the complaint under consideration when passing on a motion to dismiss under Rule 12(b)(6). Factual considerations are not permitted.

Defendants contend that the ad at issue here is protected speech under the fair comment doctrine and is subject to a qualified privilege. This position is without merit.

"In a defamation action, the defendant may assert ***the affirmative defense*** of conditional or qualified privilege." *Swinton Creek Nursery v. EFC*, 334 S.C. 469, 484, 514 S.E.2d 126, ___ (1999) (emphasis added). As a consequence, the burden of establishing the defense of qualified

privilege is on the party asserting it. *Duckworth v. First Nat. Bank*, 176 S.E.2d 297, 254 S.C. 563 (1970)

> One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused. ‘‘The essential elements of a conditionally privileged communication may be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.’’. An abuse of the privilege occurs in one of two situations: (1) a statement made in good faith that goes beyond the scope of what is reasonable under the duties and interests involved or (2) a statement made in reckless disregard of the victim's rights.

Fountain v. First Reliance Bank, 730 S.E.2d 305, 310, 398 S.C. 434, 444 (2012) (*quoting Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 312, 315 (Ct. App. 1987) *quoting Conwell v. Spur Oil Co. of W.S.C.*, 240 S.C. 170, 178, 125 S.E.2d 270, 274–75 (1962)). "Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded." *Swinton Creek Nursery v. EFC*, *supra* at 485, 514 S.E.2d at ___.

As the parties asserting the affirmative defense of conditional privilege, Defendants have the burden of proving it. That, of course, would necessitate the consideration of evidence outside of the Amended Complaint, which is not permitted. Further, in paragraph 80 of the Amended Complaint it is specifically alleged that "[t]hat Bell, CCFK, Colwell, Deas, Gibbison, Strickland, [and] Ziff['s] . . . statements were made with constitutional malice." For purposes of a 12(b)(6) motion, this allegation must be accepted as true. Thus, at the Rule 12(b)(6) stage Hollinshead has established actual malice. *See, e.g., New York Times Co. v. Sullivan, supra*; *see also Scott v. McCain*, *supra.* Accordingly, at this stage, reliance on the affirmative defense of conditional privilege is misplaced.

Defendants request that this Court dismiss the Amended Complaint with prejudice. Though the Second Amended Complaint obviously should not be dismissed at all pursuant to Rule 12(b)(6),

> [a] circuit court does not have 'discretion' to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), ***the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint***, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted."

Skydive Myrtle Beach, Inc. v. Horry Cnty., *supra* at 189, 826 S.E.2d at 592. Accordingly, this court cannot grant the relief requested without first allowing Hollinshead an opportunity to amend the Second Amended Complaint.

Stewart argues that she should be dismissed from this action because she was acting in her individual capacity and not within the course and scope of her employment with TFA as alleged. Stewart's reliance on this position is misplaced.

If Stewart committed the tort of defamation, it matters not whether she was acting in an individual capacity, within the scope and course of her employment with TFA or otherwise. *See Flexi v. Chritophedes*, Opinion No. 97-MO-097 (filed October 9, 1997). Stewart is responsible for her own actions irrespective of what capacity she is acting in. *Id*. The key thing here is that it is alleged that Stewart committed defamation. *Id.* Accordingly, Stewart's claim that she was acting in an individual capacity is not a basis for granting her Rule 12(b)(6) motion to dismiss or her Rule 56(b) motion for summary judgment. Furthermore, if this were a legitimate argument, the remedy is to permit Hollinshead the opportunity to amend the Amended Complaint. *See Skydive Myrtle Beach, Inc. v. Horry Cnty*., *supra*.

Finally Defendants take the position that the causes of action for outrage and civil conspiracy fail because the statements which they admit making in concert are true rather than false. This issue has been adequately addressed. They further seem to miss the point that once one is engaged in a conspiracy, the acts of one are the acts of all if made in furtherance of the conspiracy. Thus, the fact that one or more of the particular defendants did not actually make the statement in the d does not absolve him or her from liability for civil conspiracy. As the statements are clearly false, the Defendants' positions with regard to outrage and civil conspiracy are without merit.

CONCLUSION

For the reasons above given, Defendants motions must be denied. In the alternative, Hollinshead must be given an opportunity to amend the Amended Complaint.

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December 14, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA | COURT OF COMMON PLEAS

COUNTY OF CHARLESTON | 2021-CP-10-00426

Kevin Dion Hollinshead, Sr.,
Plaintiff
-vs-
Thomas J. Bell, et al
Defendants

TRANSCRIPT OF RECORD

December 16, 2021

Charleston, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge

A P P E A R A N C E S:

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Attorneys for the Defendants

Reported By:

Yvestre Torres, OCR
Circuit Court Reporter for the
Ninth Judicial Circuit

MS. KEPES: We have motions from most of the Defendants here today, and I'm here representing -- my name is Victoria Kepes. I represent Thomas Bell, Charleston Coalition for Kids, and Angelica Cowell, Lee Deas, Godfrey Gibbison, Eric Strickland, and Loren Ziff.

THE COURT: Okay.

MS. KEPES: Do you want us all to introduce our motions separately, or just go forward ---

THE COURT: Whatever you do.

MS. KEPES: Okay.

THE COURT: One at a time, I guess.

MS. KEPES: Okay. All right. Well, I will start, Your Honor. Do you mind if I remove my mask to argue?

THE COURT: That would be wonderful if you want me to hear you.

MS. KEPES: It is so hard to hear someone wearing that, so I appreciate that. Thank you. Your Honor, we are here on a motion to dismiss for failure to state a claim, or in the alternative, for summary judgment. The compliant filed in this case is centered entirely around a political ad. And as I'll tell you, Your Honor, and as I think it's in -- it's in the briefs submitted to the Court and the motion that I submitted

to the Court.

The claim -- the complaint does not state a claim simply because the allegation as admitted do not allege false statements. The ad at issue, Your Honor, states that -- and I have a copy of that if Your Honor would like to see it electronically. But it states that, "We need school board members that put our students and teachers first, but Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing nearly $150,000 from a local HBCU and lied to cover it up. We can't have someone like that managing the tax dollars meant for our schools. Charles Monteith and Courtney Waters will put us first."

And, Your Honor, in that ad while that is playing on the screen, the case number -- the civil case number for the underlying lawsuit, which is referenced in the ad, appears on the screen. And in that second amended complaint, which is the complaint at issue right now, Plaintiff admits that he was sued by Student Assurance Services, which is a third party.

The allegations in that lawsuit involved allegations that premiums paid by Benedict College to Mr. Hollinshead that were meant to be paid to this third party, Student Assurance Services, were never

paid to the third party, and the lawsuit alleges that the premiums were over-billed by Mr. Hollinshead. So he over-billed Benedict College more than the premiums that they were due, and then he never remitted them for payment.

The complaint admits that Plaintiff confessed judgment in that lawsuit, and the complaint also admits that in that lawsuit Student Assurance Services alleges that false statements and representations were made to Student Assurance Services regarding these funds and the lack of payment.

Now the lawsuit, the underlying lawsuit, was attached to our memo, and the confession of judgment is part of the public record. As I said, the case number appeared on the screen in the ad, making it available to anyone who saw the ad.

And the crux for our argument really here is two-folds; one, no matter what characterizations are put into it, based on what the allegations of the complaints say in the public record, there's no claim here because the statements in the ad were true. He has not alleged a false statement, Your Honor.

In addition, under the fair comment doctrine, the statements were privileged. As to the extent there are statements that are not factual,

they were opinion and also privileged. And without having allegations of a false statement that is unprivileged, a claim for defamation cannot stand. And the other two causes of action, civil conspiracy and outrage, also fail for the same reason, which I will get to.

But the important thing here is that everything in this case must be viewed through the lens of the First Amendment Rights of citizens to speak out regarding public figures. Plaintiff was, at the time of this ad, a member of the Charleston County School Board and was running for re-election. He was a public figure. He put himself out there for that purpose. And as a result, it is important that the Court consider this as particularly protected speech and not allow this lawsuit to move forward when there is no allegation of falsity.

And the first sort of important thing to think about here is that the allegations -- I'm sorry, the statements in the ad are essentially that Plaintiff was successfully sued for stealing nearly $150,000 from a local HBCU and lied to cover it up. And, Your Honor, that is true. He was successfully sued. He was sued; he confessed judgment. And the allegations in the complaint in that case involved taking money from

a local HBCU and lying to cover it up.

No amount of mischaracterizing that fact changes it, and that's the crux of the ad. That's what the ad does. It tells the public about a prior lawsuit. That's all it does. It doesn't say that the allegations in that lawsuit are true. It says that he was successfully sued for it, and he was.

Moreover, the amount at issue in that lawsuit for which judgment was confessed was $144,677.75. And, Your Honor, I would say that there's really no argument that that is not nearly $150,000. It's a difference of about 3.6 percent. The lawsuit alleges that he took the money from Benedict.

While it's true that Benedict College was not the Plaintiff in that case, the ad does not say that Benedict or an HBCU was the suing entity in that lawsuit. It nearly says -- merely says that in that lawsuit there's allegations that he took money from a local HBCU.

And so for those reasons, the statements in the ad are unequivocally true. Can't get around that, can't mischaracterize them to attempt to make them mean something that they are not.

And, in addition, as discussed -- as mentioned previously, under the doctrine of fair

comment, Your Honor, there is a protection, a privilege, for citizens speaking about a public official's fitness for office. That is a privileged speech. It is the backbone for our society that we can speak out about those running for election. So any -- all of the statements in the entire ad is privileged. It's privileged under the fair comment doctrine, and no claim can lie for a privileged statement. That's the basis of a defamation claim; it must be unprivileged.

Similarly, to the extent of the other statements -- to the extent Plaintiff is saying the other statements in the ad are inflammatory, they're most certainly opinion, Your Honor. There's no way to prove or disprove that the other statements are true. They are merely opinions that sort of surround the factual statements that I have already explained are very much true.

And so for that reason, the entire ad is privileged and no claim can go forward. And the remaining two causes of action for civil conspiracy and outrage or intentional infliction of emotional distress, they -- because without a defamation, without an unlawful, underlying act there's no conspiracy, and the same goes for the outrage.

And, in addition, there's cases from the Supreme Court on both of those causes of action stating that statements about public officials cannot be the basis for those claims, defamatory allegations against public officials cannot be the basis for outrage and civil conspiracy.

And, therefore, there really is no need to go further. There's no need for the Court to let this case linger because on the face of the complaint, coupled with the public record, there's no doubt that there is no cause of action here, Your Honor. And I know we submitted -- some of the documents attached were part of the public record. I will submit that Your Honor can consider without converting this to a motion for summary judgment.

However, if Your Honor disagrees or considers any of the other documents submitted by co-defendants, we would ask that the Court submit this -- convert this to a motion for summary judgment instead of allowing again this lawsuit to move forward where no amount of discovery, or talking about it, is going to change the basic facts that the ad is true and that it was privileged. Thank you, Your Honor.

THE COURT: Okay. Thank you. Anybody else want to tell me anything?

MS. WOODWARD: Your Honor, Nickisha Woodward on behalf of Teach for America. Part of the allegations of the complaint, Teach for America becomes a Defendant -- sorry. I'll take off this mask to make it easier. I apologize. Part of the allegations of the complaint make Teach for America a party of it because Courtney Waters, who was running for the Charleston County School Board against Mr. Hollinshead, the Plaintiff in this action, was an employee of Teach for America at the time.

Her counsel is here, but what she would assert and had asserted in her prior filings, that she in no way actually even knew about the ad, that she was a beneficiary of the advertisement, was never contacted by Charleston Coalition for Kids in order to participate in the ad, and she in no way appeared in the ad, other than Charleston Coalition for Kids advocating for her election.

THE COURT: Okay.

MS. WOODWARD: Additionally, the speaker, or the person that's speaking in the advertisement, is Leeza Steward, who is also a Defendant in the action and is also an employee of Teach for America.

Ms. Steward and Ms. Waters do in no way work together. And, in fact, Ms. Steward's counsel has filed

in his brief an affidavit asserting that in no way did she inform Teach for America, Teach for America did not know, or was not aware of her participation, and only through this lawsuit did they become aware that there was even an advertisement that she had participated in there.

So looking at even the allegations of the complaint, the complaint -- the second amended complaint filed by Plaintiff, there are no allegations contained in there that Teach for America knew, should have known, or participated in any way, shape, form or fashion in the advertisement that would run, or had any knowledge. Therefore, they could not participate in any -- involving any civil conspiracy, which is alleged in the Plaintiff's second amended complaint because they were not even aware of the advertisement, but for this lawsuit.

Secondly, if we go back to the motion to dismiss, looking at the pleading, as it relates to the defamation claim, Your Honor, I probably don't need to tell you this, but in order to assert a rightful claim for defamation, one has to make a false or defamatory statement. And as Ms. Kepes has indicated, there was no false or defamatory statement.

All of that information that was advertised

in the advertisement, in fact, was published in the public record. Any person had access to the information regarding that lawsuit. And, in fact, the advertisement provided the civil action number so that people could do their research as it relates to the allegations of the underlying lawsuit.

Secondly, it has to be an unprivileged publication to a third party. Well, as we already indicated, it was a matter of public record. There is a confession of judgment. Therefore, there is no privilege on something that is public and published that someone else can access -- a third party can access on their phone. And then it says it's on the fault of the publisher.

In this particular instance, we did not publish the advertisement. We did not publish -- we were not aware of it. At Teach for America, we did not know about it; we did not participate in it. And our employees specifically have an agreement that if they do those things, they do them outside of the purview of Teach for America and are not permitted to utilize Teach for America's name in their endorsement. And in no way is there any in that advertisement by Ms. Steward or by Ms. Waters that -- you know, that she's the beneficiary of, that they ever

indicated that they are employees of Teach for America.

And so for those reasons, Your Honor, we believe that the motion to dismiss as to Teach for America should definitely be granted because there's no indication that the allegations in the complaint asserts any causes of action against them.

But again, as Ms. Kepes said, if, in fact, Your Honor finds that there are allegations contained within Plaintiff's second amended complaint against Teach for America, that you would convert this for a motion for summary judgment, as we did provide as well exhibits related to the publication on the civil action. Thank you, Your Honor.

THE COURT: Thank you, ma'am.

MR. MCCULLOCH: Your Honor, good morning.

THE COURT: Good morning.

MR. MCCULLOCH: Your Honor, I'm not going to try to duplicate, but I am here, Joe McCulloch from the Columbia bar, I suppose. I represent Leeza Steward, one of the Defendants in this case, and her participation and role has been accurately described by co-counsel. The -- this lawsuit arises out of a rather hotly-contested local election. And this motion that I have filed on Ms. Steward's behalf is necessitated by her voluntary participation in a single television

ad, Your Honor, as an attachment to our motion, which was filed 12(b)(6), or in the alternative, summary judgment. And I did that in an abundance of caution because I think this case can be decided today under either theory.

It's not -- it's a locked room but not a mystery. You have as an exhibit the exact transcript, which if you watch the video, which has also been made an exhibit, it tracks the transcript, which is Exhibit B, attached to our motion. Ms. Steward is sued based upon the complaint, second amended complaint, because she stated as a volunteer in this ad as a citizen in the ad, "We cannot have him managing the tax dollars meant for our schools." That simple phrase.

There's no allegation of any degree of specificity, nor frankly, if you take 20 depositions. There are no substance and facts that can be put forward to show an illegal or improper civil conspiracy. I think that's important because there are four claims, defamation -- three claims; defamation, outrage, which is one I'm still waiting to see work in our courts ---

MS. WOODWARD: Civil conspiracy.

MR. MCCULLOCH: I'm sorry?

MS. WOODWARD: Civil conspiracy.

MR. MCCULLOCH: And civil conspiracy,

Your Honor. So, Your Honor, you have a confluence here, we believe, of truth, the truth of the assertions made in this ad, only a part of which my client participated in, in the sense of her statement.

So you have truth or substantial truth, which our courts have constantly recognized as a valid defense to defamation. It's not a fact, and the facts are right here. They are corroborated -- self-corroborating; transcript, video, truth and substantial truth. You have this in the context of political speech, which resides with a special degree -- protection, as it should. You have the *New York Times v. Sullivan* standards, which recognize that special concern for the protection of political speech.

And, frankly, Your Honor I'm sure you've read a million cases, as I have, and I teach a couple of them at the law school, that talk about judges having to have thick skins in the public forum of criticism, and it's also the same has been said of political people who inject themselves and render themselves by their activities as political officials and public figures. They are a different breed of cat. They are higher -- much higher standards for the proving of defamation. We don't believe that occurred here or can occur here.

So you've got this substantial truth

of the assertions of the ad. You've got fair comment as an additional defense, very similar. You've got all of this in the context of political opinion, and we have argued in our briefs that Ms. Steward, because she was a volunteer, and we've attached an affidavit to our filings, that she was not employed by Teach for America. She was contacted, and they asked if she would volunteer. She was unpaid, and she rendered her opinion.

As simple as I have read, we cannot have him managing the tax dollars for our schools. Nothing could be a purer opinion, Your Honor. So if for no other reason, we believe that is a defense that should result in the dismissal of the action against her.

Now, Your Honor, we filed on Friday this sheath of documents. These are materials that are newspaper ads and lawsuits Mr. Hollinshead have been involved in, which all involve financial difficulties, financial problems, if not financial misconduct.

Now that's not, I guess, pertinent today, except to the extent that in the answer that we filed we asserted that Mr. Hollinshead is libel-proof. He has, by his own conduct in the public sphere for the last 25 years, been constantly sued, constantly

under investigation for financial misconduct issues.

We think that is something pertinent, and that's one of our defenses in the lawsuit. That may not be -- need to be a consideration for you today, Your Honor. We think it's actually as simple as looking again at the transcript and applying the law. The facts are clear in this Student Assurance Services lawsuit brought by my good friend, Eric Bland [ph.].

There was an action brought by Mr. Bland on behalf of an insurance provider against Mr. Hollinshead in his wholly-owned and solely-owned company, Hollinshead Group Insurance, or something of that nature. And the causes of action are clear and clearly stated in Mr. Bland's lawsuit, and that complaint is an attachment to our -- to one of our exhibits.

And, essentially, I think that the Plaintiff concedes the allegations of that complaint, and they were Benedict gathered money for their students, they forwarded them to Mr. Hollinshead for his deduction of his proper commission for whatever services he's providing, and then the forwarding of that money onto Student Assurance Services.

SAS, the Plaintiff in that action, determined that they weren't getting their money, and the Court can look at that file and take judicial

notice of it, it's right here in this courthouse, that Mr. Bland, based on the evidence that they have, sued him for converting, which is a fancy legal way of saying stealing money, essentially from them, which had been sent to them by Benedict, passing through Mr. Hollinshead. They asserted that he lied about the circumstances; they asserted that he breached his contract with SAS, and that he breached it with fraudulent intent.

All of those things were alleged, Your Honor. And as the court records will reflect, what then transpired -- and this is only relevant I think to, ultimately, where I hope you end up. Thereafter, Mr. Hollinshead and his then lawyer in that lawsuit as the Defendant, on his behalf and that of his company, they filed a 12(b)(6) motion.

It was scheduled -- as the court records will show, it was scheduled for hearing. At the time of the hearing, neither Mr. Hollinshead nor his lawyer appeared in court. The judge had them telephoned and learned -- and this is all set forth in a motion that's filed in the court records. Mr. Hollinshead lawyer's indicated that he intended to withdraw it, which he apparently then tried to do, Your Honor. Tried to withdraw the 12(b)(6) motion, and then he tried

to file an answer.

Mr. Bland immediately filed a motion to strike any answer as untimely and in violation of the rules. And suddenly and immediately thereafter, Mr. Hollinshead had entered into a confession of judgment in the full amount claimed to have been stolen and lied about in breach of the contractual relations with SAS.

So as counsel has said, the assertion in the ad that he was successfully sued for stealing money is accurate. It is substantially true, with the exception that it wasn't Benedict suing him over the money they sent; it was SAS suing over the money that Benedict had indeed sent.

A find and irrelevant consideration in the broader context of substantial truth and what is important enough, the confession of judgment, Your Honor, and notwithstanding the fact that the Plaintiff's counsel has filed a memorandum in opposition two days ago that talks about well, it wasn't $150,000 that the ad -- that he stole, it was $140,000 -- it was $144,000 that got repaid. Well, the ad says nearly $150,000. So that's accurate.

The confession of judgment nowhere on its face says, nor does it include the usual language

that lawyers put in these confessions of judgment, this is a settlement of a dubious claim.

So, I would submit to you, Your Honor, based on the SAS court file, there was never a valid answer in the confession of judgment that can be taken into consideration as an indication. But in all likelihood, all of that answer that was untimely filed would have been struck, Mr. Hollinshead would have been stuck with having admitted that, all of these very allegations that are substantially true in this matter.

Your Honor, the other -- I mean, there are hosts of facts that are born out by court records; they're born out by the exhibits we've provided you. Plaintiff's counsel here has determined not to submit any affidavits or any information. He rests on his pleadings as if this is merely a 12(b)(6) motion. It is not that, Your Honor. We ask you not to consider it.

We ask you to consider all of these exhibits. We think they are properly considered and that they properly demonstrate the appropriate ruling for you today is to dismiss against Leeza Steward. And I believe, Your Honor, join in the dismissal against all Defendants is proper. Thank you.

THE COURT: Thank you, sir. Yes, sir.

MR. GREEN: I was about to say good morning, but good afternoon, Your Honor, and thank you for allowing me to be heard. My name is Dwayne Green, and I represent the Defendant, Courtney Waters. I concur with the statements of co-defendant counsel. I have nothing substantially to add, other than I want to make clear that my Defendant does also join in, in this motion to dismiss. I'm not sure in the written submission of the last motion that she was included in the Coalition of Kids, but she is a co-defendant with very limited involvement, as Ms. Woodward said.

And so I just wanted to stress for the record that she does join in with the arguments of co-defendant counsel in the motion to dismiss. Thank you.

THE COURT: Thank you, sir. Anybody else?

MR. PRITCHARD: Thank you, Your Honor. May is please the Court. I'm Edward Pritchard, and I represent Mr. Hollinshead. Your Honor, you know when I was -- many, many years ago, 35 years ago, when I was Judge Bell's law clerk, we were considering an appeal that involved a 12(b)(6) motion. It was granted, and Judge Bell said something, which I think is pertinent here, and that is if you can't state your 12(b)(6) motion in about two or three pages,

if it's not that obvious, that's a pretty good indicator that it ought to be denied, and that's what's going on here.

There's a whole lot of gymnastics; there's a whole lot going on here and shifting things around. But at the end of the day, and I'm not going to belabor this because you can read and I can read, there is no allegation anywhere in the complaint that was filed that Mr. Hollinshead stole money from Benedict College.

You know, I mean, for instance if I go into Lowe's tomorrow and buy something and pay with cash, and the clerk takes the money. She didn't steal anything from me; I have the merchandise. I got what I was supposed to get. That's between her and Lowe's. I don't agree with their characterization of what took place in the SAS claim. There simply is no -- anywhere alleged that Mr. Hollinshead took anything from Benedict.

Now pretty clearly they were trying to whip stuff up by using Benedict rather than an insurance agent commissioned -- because if they had said it that way, it really wouldn't have gotten a whole lot of people very excited. But any reading of the complaint doesn't get you past that problem. And pretty clearly they were using that to try and insinuate

that Mr. Hollinshead was stealing money from Benedict.

But putting all that aside for a minute, let's assume that they had just said he was sued by an insurance broker for whom he worked involving money that was paid by Benedict, and they just laid it out exactly like the complaint. Let's assume they've done that. We would still be sitting here, and here's why. The ad states, and this is important, and Ms. Kepes actually kind of admitted to the libel right off the rip.

In the first statement she said, "We need school board members who support our children, but Kevin Hollinshead is using our money to help himself." And that's a clear insinuation that he's stealing taxpayer dollars, and there is not one shred of evidence. Nowhere. None of their arguments even address that statement. They've got 40 pages of briefs. We just listened to 30 minutes of argument, and not once has any one of them refuted that statement is not -- that's a clear insinuation, is that Kevin Hollinshead is stealing taxpayer money, and there's nothing to support that, and that is actual malice because it is fabricated out of thin air.

There's no way to get around that statement, and that's why they're not addressing it. That's why

you don't see it in the briefs; that's why you didn't hear it in the arguments because that's what it says. And, I mean, it just -- it's clear, plain and equivocal that that's the implication, our money to help himself. Okay? Not Benedict's, not SAS's. Our. The speaker and the listener, and that's being targeted towards the voters of Charleston County.

So who else can that mean? It has to mean taxpayer -- and I think it's a jury question, obviously. I made an argument, but I think that's a jury question that gets us past summary judgment, not to mention a 12(b)(6). That statement is in there; there's nothing to support it. They haven't introduced anything.

They've gone through -- golly, I read them, but I didn't count how many pages of stuff that was submitted in support by Mr. McCulloch. Mr. McCulloch, I must admit, has probably forgotten more about this area of law than I want to know. But the reality is, you know, he finds himself where he finds himself, and that is, that statement was made. I've never heard libel-proof, but that one seems to me to be more of a damage question than a liability question on a 12(b)(6) motion.

And so I don't think that given that statement, we can twist and turn and do what we have

to do on this whole Benedict thing, which I think is false, and I mean libelous. But I don't know how you get past the Mr. Hollinshead is helping himself to our money, and they haven't addressed it, and there's a reason they haven't addressed it because it is per se libel, it is per se malice. There's nothing to support this, and there's no way they can get around it.

The other thing I want to point out is that some of these Defendants are tempted to convert these motions for summary judgment. Well, of course, I did not have a chance to take someone's deposition. I did serve discovery with the complaint, none of which have been answered yet, of course. And I have read extensions -- past these motions to be fair. So it's not as though they're doing something they shouldn't be doing.

But I think I'm entitled to get behind and find out what they've got and what went on and determine whether or not they knew what they were doing and whether or not it was with reckless disregard for the truth. Certainly, the statement that Kevin Hollinshead is using our money to help himself, I mean, that's libel per se. There's no question about it. There's just no way that they can ever prove that that's a true statement.

So given that, I don't know how we get past any motion. I think this thing has to go to the jury given that, and that's really about all I've got to say.

THE COURT: Thank you.

MS. WOODWARD: Your Honor, if I may?

THE COURT: Okay.

MS. WOODWARD: I just want to point out one thing. In all of this argument, is he also never pointed out anything in his complaint that asserts that some of the Defendants were even aware, knew or participated.

THE COURT: Okay. What about that?

MR. PRITCHARD: Well, Your Honor, getting back to the discovery question, I mean, you know -- I mean, I don't know how they did not know, but I think without getting in there -- I mean, if she can -- I think once we get through discovery and it turns out they didn't know, I won't even enforce her to make a summary judgment motion. I'll dismiss it if I can't establish that they knew or had some participation in this.

But at this point, you know, they're behind a black vail right now. I can't -- I think I've got a right to figure out -- since they're all kind of band together, to figure out who knew what and how. I think

as Judge Norton said, kind of a similar motion about a month ago that I was involved in, you know, a 12(b)(6) is drastic remedy. You may very well get past -- you may very well be entitled to summary judgment, but I have to at least go figure out what they've got.

MS. WOODWARD: They have to assert actual -- substantiate the allegation or fact of information against the Defendant, none of which are asserted in his first complaint, first amended complaint or second amended complaint.

THE COURT: Okay.

MR. PRITCHARD: They were employees of Teach for America so it's hard to know what -- I think their actions stick to Teach for America.

THE COURT: Okay.

MS. KEPES: Your Honor, if I could respond to the claim made by Plaintiff regarding the statement about using our money to help himself. I would respectfully disagree that it was not addressed, Your Honor. Again, this is all within the context of fair comments. Nowhere in there does it say he stole taxpayer money. That's not in here. He's reading into it what's not there. He's trying to mischaracterize what's in the complaint, what's in the public record, to be something different than what it is.

This is all under the guise of the First Amendment, and that's very, very important, a particular right that citizens have to criticize people who are in public office and are running for public office, and to criticize their acts and their fitness to that office, and that statement falls well within there. You know, I mean, he says that we can't prove that it's true. Well, I mean, to that extent, if it's not provable, then it's opinion, and again falls under this privilege.

The -- taking the ad as a whole, it is true, or at the very least it is substantially true, Your Honor. No amount of discovery is going to change that. No deposition; no other documents are going to show -- that's the truth because Your Honor can see the public record shows that that's there. There is nothing that can be done further to establish one way or the other. And so we submit that this is appropriate for summary judgment and that Defendants are entitled to summary judgment on that.

THE COURT: Okay.

MS. KEPES: I'm sorry. Dismiss.

MS. WOODWARD: Just wanted to add one additional thing. He says he's entitled to discovery to figure out who knew what. There was actually

an affidavit filed by Ms. Steward that says in no way -- she was volunteering, she didn't inform her employer. That information is out there, also was articulated by Mr. Green on behalf of Ms. Waters. So as it relates to that, what's been produced alone has indicated that Teach for America had no part in the ad, hadn't made payments for the advertisement, we're not aware of it.

So just asserting alone that they were employees does not get him beyond a complaint as to Defendant Teach for America, and as to the other Defendants as well because of substantial truth. You have to be able to assert an actual cause of action, and there are no facts contained within his first complaint, his amended -- first amended complaint or his second amended complaint, Your Honor.

THE COURT: Thank you.

MR. MCCULLOCH: I'll be the last, Your Honor.

THE COURT: Okay.

MR. MCCULLOCH: Your Honor, you might in your deliberation look at Paragraphs 38, 39 and 40 of the second amended complaint of Plaintiff. It refers -- it makes reference to what you just heard from Mr. Pritchard about -- Paragraph 38 says an anonymous

voiceover in the ad states that Kevin Hollinshead is using our money to help himself, was successfully sued for stealing $150,000.

I would note for the record again that that's not an exact quote. The quote from the transcript from the ad is nearly $150,000 and the confession was for $144,000. So -- but it goes on to say that, and lied to cover it up. All of those are allegations clearly set forth -- I mean, they're explicitly set forth in the SAS complaint.

The next paragraph, 39, Kevin Hollinshead was successfully sued for stealing $150,000. Again, it really says nearly, and those are anonymous voiceovers, according to the Plaintiff, not Ms. Steward. Paragraph 40 accurately states that following the anonymous voiceover in the ad, Steward states, "We can't have someone like that managing tax dollars for our schools."

Now -- so there are no allegations that she did anything in any kind of civil conspiracy; there's no real allegations she committed an act of outrage. And, frankly, I think on the basis of that single statement, that is fair comment and opinion. So, I believe that she's entitled to be dismissed out of this litigation.

But also I think -- I don't want to leave the other Defendants in this case hanging. I think that -- the one thing I haven't forgotten in the law is the beauty and value of semantics.

Mr. Pritchard asserts that nowhere does this SAS complaint allege that money was stolen from Benedict. Well, that's accurate, Your Honor, if you stop there. But if you read that complaint, as I know you will, the semantics is the money that was stolen was Benedict money. Whether it was Benedict complaining or SAS complaining, the substantial truth of the matter is that Mr. Hollinshead was accused and ultimately agreed to repay the very money that came from Benedict and went to SAS. Nothing could be more substantially true and accurate than that fact.

That's why there is no air in this Plaintiff's balloon, and that's why, Your Honor, we believe it should be dismissed and these parties repair to their corners. Mr. Hollinshead can run for election next time, but these Defendants should be released from the burden of this litigation because it's fair comment and substantially true, based on everything before you. Thank you, sir.

THE COURT: Thank you.

MR. PRITCHARD: Your Honor.

THE COURT: Yes.

MR. PRITCHARD: I go back to Paragraph 38. Fair comment means just that, but they're complaining fair comment with a license to lie. It is not a license to lie. That statement clearly indicates that Mr. Hollinshead has taken taxpayer dollars, and there is nothing anywhere to back that up. They're not going to get there if we go to trial.

You know, as the Court said in *Warner v. Rudnick*, which is a Court of Appeals opinion, 313 S.E.2d 359, 1984. It said, "In determining whether words are libelous, they are to be given the ordinary and popular meaning, and if they are susceptible of two meanings, one libelous and the other innocent, the former is not to be adopted, and the latter rejected, as a matter of course, but it must be left to the jury to determine in what sense they were used. If the words are plainly libelous, or wanting in any defamatory signification, it is the province and duty of the Court to say so."

So what they're saying is if that's capable of interpretation -- if that statement is capable of interpretation, implying that Mr. Hollinshead stole money from taxpayer -- using taxpayer dollars to help himself, which is clearly what that implies, that's a jury question. That, I think, is obvious.

And this whole fair comment, I mean, I understand what it is, but, you know, it is not a license to lie. And there's no way that that statement can be construed as an opinion any more than the outcome of a South Carolina Clemson football game can be construed as an opinion. It's a fact; this is a fact. That's what they state; that's how they stated it. And that, they can't get around.

And with regard to the two affidavits regarding what Teach for America knew, I'm going to take it at face value that Ms. Steward and Ms. Waters didn't tell Teach for America. But I don't have an affidavit from Teach for America saying they didn't know that. Somebody else may have told them. I don't know. Mr. Bell may have told them. I don't who told them. I didn't have a chance to find that out.

And I think it's interesting that we have those two affidavits that quote they didn't tell them, but that means somebody else did. And I didn't even get a chance to go figure this out. I think summary judgment is premature based on those affidavits, and that's all I've got to say. Thank you.

MS. WOODWARD: Judge, to address the affidavit from Teach for America. I don't want to be disingenuous. I work with a law partner.

Mr. Pritchard was asked very early on before we actually filed any responsive motion if he needed us to provide him with an affidavit about the knowledge, and he said, no, don't do that, we'll just proceed, so we responded the same.

So it's disingenuous to come here today and say we didn't provide much because we would have more than done so. But it was definitely sufficient that the employees who worked there indicate they know the terms, and said they -- one said they had no knowledge of it, and one said it was voluntary.

THE COURT: Okay. Thank you. Okay.

MR. PRITCHARD: Thank you, Your Honor.

MS. KEPES: Can I say one more thing? I do apologize, Your Honor. I just want to make sure that -- Your Honor, there's been made very, very clear here two things. One, this was not a commissioned dispute, an underlying SAS lawsuit. The allegation that the cause of action were conversion, fraud, breach of contract, breach accompanied by a fraudulent act, unjust enrichment. It's not a commissioned dispute; that's an allegation of stealing funds, Your Honor.

And I will also point out that the ad again does not say that Benedict was the Plaintiff in that case, that Benedict sued them. I believe when

you read it, Your Honor, there will be no issue there. And, again, I would say that fair comment is a privilege to criticize public officials with regards to fitness for office. That is exactly what that statement -- if that statement is not that, then what is? This ad -- all this ad does is question his fitness for office, Your Honor. Thank you.

THE COURT: Thank you. I will look at all this information and review that ad a number of times and give you all an opinion.

MR. PRITCHARD: Thank you very much.

MS. KEPES: Thank you, Your Honor.

MR. PRITCHARD: Merry Christmas to you.

(End of Transcript of Record)

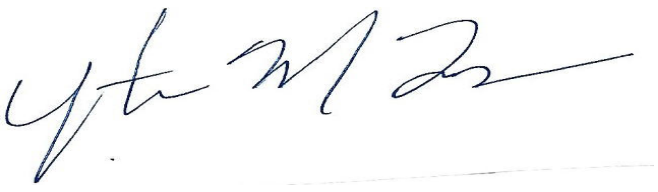
CERTIFICATE OF REPORTER

State of South Carolina)
County of Charleston)

I, the undersigned, Yvestre Torres, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 16th of December, 2021.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 23, 2022



Yvestre Torres
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Docket No. 2021-CP-10-00426

Kevin Dion Hollinshead, Senior,…… Appellant,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc.…….Respondents.

NOTICE OF APPEAL

PLEASE TAKE NOTICE THAT Appellant, Kevin Dion Hollinshead, Senior, hereby appeals the order of The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge, dated and filed April 26, 2022, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference. Appellant received written notice of entry of this order via the SC Courts E-Filing System on April 26, 2022.

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[Signature Appears on Next Page]

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KEVIN DION HOLLINSHEAD, SENIOR,

May 12, 2022
Charleston, South Carolina

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a complete and accurate copy of the foregoing *NOTICE OF APPEAL* was served upon The Honorable Jana E. Shealy, Clerk, Charleston County, South Carolina Court of Common, and counsel of record, as listed below, on May 12, 2022, via the SC Courts E-Filing System as follows:

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Charleston County Judicial Center
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/s/ Edward K. Pritchard, III /s/
Edward K. Pritchard, III, Esq

May 12, 2022
Charleston, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1000426

Kevin Dion Hollinshead, Sr et al
PLAINTIFF(S)

Thomas J Bell et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Amended Form 4:

Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint as to Defendants Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica Colwell, Lee Deas, Godfrey Gibbison, Eric Strickland, Loren R. Ziff, Courtney Waters, Leeza D. Steward, and Teach For America, Inc., is GRANTED.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/26/2022 .

Kevin Dion Hollinshead, Sen

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Charleston Common Pleas

Case Caption:	Kevin Dion Hollinshead Sr , plaintiff, et al VS Thomas J Bell , defendant, et al
Case Number:	2021CP1000426
Type:	Order/Electronic Form 4

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and complies with Rules 210 and 267, SCACR.

Respectfully Submitted,

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My 19, 2023
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Docket No. 2021-CP-10-00426

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Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc.....Respondents.

PROOF OF SERVICE

I certify that I have served the foregoing *Record on Appeal* on Respondents, Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc, by e-mailing the same to their respective attorneys of record on May 19, 2023, as follows:

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