IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Michael S. Holt, Circuit Court Judge

Civil Action No.: 2018-CP-13-00275

Glenn C. Odom…… ……..……..Appellant,

-v-

John Campolong and A.C. Mcleod.…..…….....…..……....Defendants,

Of whom John Campolong is the……..……Respondent.

PROOF OF FILING OF NOTICE OF APPEAL
WITH THE CLERK OF THE CIRCUIT COURT

Appellant Glenn Odom certifies that he filed his Notice of Appeal with the Clerk of Common Pleas of Chesterfield County, South Carolina on June 16, 2023. (Ex. A). Since Appellant served his Notice of Appeal on June 16, 2023, this filing was the timely pursuant to Rule 203(d)(1)(B), SCACR ("The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served.")

[SIGNATURE PAGE FOLLOWS]

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Of whom John Campolong is the……..……Respondent.

NOTICE OF APPEAL

PLEASE take notice that Glenn C. Odom ("Appellant"), pursuant to Rule 203, SCACR, appeals the following Orders in this matter:

- Order filed February 9, 2023, granting Defendant John Campolong Summary Judgment. (Exhibit A).
- Order denying Plaintiffs' motion to reconsider filed June 13, 2023. (Exhibit B).

Appellant received notice of entry of the Order denying Plaintiff's motion to reconsider on June 13, 2023. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

Respectfully submitted,

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June 13, 2023
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STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2018-CP-13-00275

Glen C. Odom,
Plaintiff,

-vs-

John Campolong and A.C. McLeod,
Defendants.

ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS JOHN CAMPOLONG AND A.C. MCLEOD

This matter was before the Court on motions for summary judgment filed by Defendants John Campolong and A.C. McLeod. Present for Plaintiff was attorney John E. Parker and attorney John E. Parker, Jr.; for Defendant Campolong was attorney John McCants; for Defendant McLeod was attorney Monica Towle. Oral arguments were heard at the hearing and all parties were given the opportunity to submit supplemental memorandums to the Court following the hearing. Having considered all the evidence presented at the hearing, the filings in this case, and the arguments of counsel, the Court now grants **partial summary judgment** for McLeod, and grants **summary judgment** for Campolong.

I. PROCEDURAL BACKGROUND

On April 23, 2018, Plaintiff Odom commenced this action alleging that the Defendants entered into a civil conspiracy to harm Odom in 2012, and further that the Defendants publicly defamed Odom on multiple subsequent occasions. After some time had passed, with both sides engaged in discovery and motions practice, the Defendants moved for summary judgment arguing that any statements alleged to have been made were within the scope of the Defendants' roles as town council members and thus were privileged and immune from litigation. The

Defendants additionally posited that the claim of civil conspiracy was time-barred by the three-year statute of limitations.

On August 17, 2022, the Court held a hearing on the summary judgment motions and each party gave oral arguments. During the hearing Odom abandoned his claim for libel and limited his defamation claim to slander alone. At the conclusion of the hearing the parties requested and were granted leave to file supplemental memoranda in support of their positions. After receipt of all supplemental material, the Court has reached its decision as to summary judgment on each claim.

II. RELEVANT FACTS

The relationship between Glen Odom and the Defendants, John Campolong and A.C. "Kemp" McLeod, is a long and turbulent one. With some brevity as to each parties' backgrounds, all parties have resided in or around the Town of McBee for a considerable time, all have held notable positions in the town, and each is well-known in the area.

Odom is the general manager of Alligator Water and Sewer Company, a water and sewer provider in the Chesterfield County area. Beginning in 2000, Odom served as mayor of the Town of McBee for a single, two-year term. Campolong became mayor shortly after and has remained in the position to the present date. During Odom's tenure as mayor, the town was awarded a $850,000 grant which was used to build a water line to Jefferson, SC. The record is unclear but the water line in some capacity was constructed and/or maintained by Alligator Water and Sewer Company. Thereafter ensued a contentious dispute over the grant money. Some in the area purportedly felt that the money was misappropriated and circumvented from the town and given to Alligator Water, a private entity and not subsidiary of the Town of McBee. Apparently, to some, Odom's executive position at Alligator gave the impression of impropriety and as such in

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2012, Campolong, acting as mayor, and the town council sent a letter to the South Carolina Law Enforcement Division ("SLED") requesting an investigation into Odom's actions during his time as mayor. Shortly thereafter the council was informed that no wrongdoing had been found. While the appropriation of said grant money is not directly at issue here, for historical reference it is important to include it here as a foundation of the years-long and ongoing dispute between the parties.

Following his mayorship, Odom served as a magistrate judge in Chesterfield County until 2006. In 2018, Odom earned a seat on town council. Odom has more recently been a candidate in the still undecided and heavily contested mayoral election of 2020 in the Town of McBee.

Defendants McLeod and Campolong are both conspicuous figures in the McBee area and both have served on the McBee Town Council in different capacities, McLeod as councilman and Campolong as mayor.

Odom commenced this action on April 23, 2018, alleging that the Defendants publicly defamed Odom and further that the Defendants, together, entered into a civil conspiracy to harm Odom. Odom alleges first that the Defendants falsely accused him of illegally using $850,000.00 as part of a tobacco settlement fund given to the Town of McBee while Odom was Mayor. Second, Odom alleges that the Defendants falsely accused him of misappropriating approximately $2,000.00 while he was a magistrate judge. Third, Odom alleges that McLeod made defamatory statements to Willie Mae Roary and her sister, that Odom stole approximately $500,000.00 from the Town of McBee during his time as Mayor. Lastly, Odom alleges that the Defendants did, in 2016, falsely accuse him of puncturing a water line in the Town of McBee. Odom alleges that the Defendants falsely and maliciously published these statements to others on "a number of occasions."

Odom's Complaint alleges that Defendants entered a civil conspiracy. The Complaint fails to allege any new, additional facts to show that such conspiracy occurred. The Complaint merely alleges that Defendants engaged in a conspiracy. The Complaint further fails to state a prayer for relief.

McLeod filed a Motion for Summary Judgment on April 6, 2021. Campolong filed his Motion for Summary Judgment on April 22, 2022. The parties appeared before the Court to hear the matter of summary judgment. At the hearing, Odom abandoned any claims for libel and constrained the issue of defamation to slander only. Each defendant has moved for summary judgment arguing that any statements referenced in this action are absolutely privileged under the legislative member exception, and that the plaintiff cannot prove actual malice.

III. STANDARD OF REVIEW

Under the South Carolina Rules of Civil Procedure ("SCRCP") Rule 56, summary judgment is only appropriate when there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP Rev. Stat. § 56(c) (2020). An issue is genuine only if "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment." *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014). "The purpose of summary judgment is to expedite the disposition of cases" not requiring "the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "[I]t is only necessary for the nonmoving party to submit a scintilla of evidence warranting determination by a jury for summary judgment to be denied." *Hill v. York County Sheriff's Department*, 313 S.C.

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303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993) cert den. (1994). However, in cases of defamation of a public figure "[t]he clear and convincing evidence standard must be considered by a trial court when ruling on a summary judgment motion involving the issue of actual malice in a defamation case."). *George v. Fabri*, 345 S.C. 440, 445, 548 S.E.2d 868, 870 (2001). A party opposing a properly supported motion for Summary Judgment may not rest on mere allegations or denials of her pleadings but must set forth or point to specific facts showing that there is a genuine issue of material fact. See *Baughman v. A.T. & T. Co.*, 306, S.C. 101, 117, 410 S. E.2d 537, 547 (1991) (bald allegations deemed insufficient to create a genuine issue of fact).

IV. DISCUSSION

Odom has brought two separate claims, defamation and civil conspiracy, each of which shall be considered in turn.

A. Defamation

The Court carefully reviewed all parties' pleadings, depositions, and exhibits provided to the Court and came to the following conclusions. See *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511, 104 S. Ct. 1949, 1965, 80 L. Ed. 2d 502 (1984) ("Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of "actual malice."); see also *Miller v. City of W. Columbia*, 322 S.C. 224, 228, 471 S.E.2d 683, 685 (1996) ("When reviewing an actual malice determination, this Court is obligated to independently examine the entire record to determine whether the evidence sufficiently supports a finding of actual malice.").

The Defendants have each moved for summary judgment claiming that any statements made are absolutely privileged or in the alternative, that Odom has failed to prove that each acted

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with actual malice. When reviewing the facts for summary judgment the Court must consider whether the plaintiff can prove actual malice by clear and convincing evidence. See *George v. Fabri*, 345 S.C. 440, 445, 548 S.E.2d 868, 870 (2001) ("The clear and convincing evidence standard must be considered by a trial court when ruling on a summary judgment motion involving the issue of actual malice in a defamation case."); *McClain v. Arnold*, 275 S.C. at 284, 270 S.E.2d at 125 (1980) (citations omitted) ("The presence or absence of actual malice is a constitutional issue and where a publication is protected by the New York Times immunity rule, summary judgment, rather than trial on the merits, is a proper vehicle for affording constitutional protection in the proper case.") (internal citations omitted).

Odom argues that each Defendant made malicious and false publications causing emotional distress and reputational harm. At the summary judgment hearing on August 17, 2022, Odom abandoned any claim to libel. Therefore, the Court's analysis shall be confined strictly to acts of slander, that is, spoken acts. *Holtzschelter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 508, 506 S.E.2d 497, 501 (1998) ("Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct.").

To succeed on a defamation claim, the plaintiff must prove "(1) a false and defamatory statement was made; (2) the unprivileged publication of the statement was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement regardless of special harm or the publication of the statement caused special harm." E*rickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006). See also *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Furthermore, where a plaintiff is a public figure, she must "prove by **clear and convincing evidence** that the defendant acted with actual malice in publishing a false and defamatory statement about the plaintiff. Actual malice exists when a

statement is made with knowledge that it was false or with reckless disregard of whether it was false or not." *Erickson*, 368 S.C. 444, 467-468, 629 S.E.2d 653, 665-666 (2006) (internal citations and quotes omitted) (emphasis added.). See also *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) (holding that the actual malice standard is shown by a knowledge of the falsity or a reckless disregard for its truthfulness by the declarant); *Sanders v. Prince*, 304 S.C. 236, 239, 403 S.E.2d 640, 642–43 (1991) ("In cases involving the defamation of a public official, the plaintiff must prove that the defendant acted with constitutional actual malice, that is, with knowledge that the statement was false or with reckless disregard of its falsity.").

The Court reviewed the evidence in this case and the voluminous deposition testimony from the multiple deponents. The Court addresses those statements specifically disputed among the parties. Some statements appear opinionated, others contentious; the Court focuses its analysis instead on those statements specifically raised by Odom in his memorandum.[1]

a. Odom Is A Public Figure For Purposes Of Addressing Defamation

Odom is a public figure for purposes of this action and as such is required to show that the Defendants acted with actual malice. When determining whether a plaintiff is a public figure the court must make this determination as a matter of law, decided on a case-by-case basis after a careful examination of the facts and circumstances. *Erickson*, 368 S.C. 444, 468, 629 S.E.2d 653, 666 (2006). The parties do not dispute that Odom is a public official. Odom has held a variety of notorious and public positions in the Town of McBee throughout the years: Odom was Mayor of

[1] The Court examined the full extent of the evidence and the record when considering the Defendants' motions, using this examination as a means of appreciating the context of the statements specifically alleged, rather than for the purpose of independently identifying any and all instances of potential defamatory speech or publication. In fact, it is the Plaintiff's burden to argue his own case; to have the Court independently identify possible defamation by review of the record, and thus to raise new arguments would result in the Court acting as an advocate on behalf the Plaintiff. The Court therefore examines in full all the evidence provided but constrains its decision only to those statements specifically raised by the parties in their pleadings.

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the Town of McBee between 2000 and 2002; Odom served as a magistrate judge in Chesterfield County between 2002 and 2006; Odom was elected to McBee town council in 2018; Odom ran for Mayor again in 2020. Odom serves in an executive capacity at Alligator Water, a major water and sewer provider located in the McBee area. The Court does find that, based on the Odom's various public positions and reputation in the area that Odom is a public figure for purposes of the defamation claims and as such the actual malice standard applies.

b. The McBee Town Council Is A Legislative Body For Purposes Of Applying The Absolute Privilege

The Defendants argue that their statements are absolutely privileged as made within the scope of their positions as members of a legislative body, that being the Town of McBee town council. The Defendants argue, in the alternative, that Odom cannot meet his burden of showing actual malice by clear and convincing evidence. The first issue is whether the statements were made in the execution of Defendants' legislative duties. Legislative members in this state have long recognized "an absolute immunity…for acts in the performance of their duties. Accordingly, an absolute privilege is recognized as to defamatory statements made by legislators in the course of their functions, if such statements are connected with, or relevant or material to, the matter under inquiry." *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979). See also *Fulton v. Atl. Coast Line R. Co.*, 220 S.C. 287, 296, 67 S.E.2d 425, 429 (1951) ("The publication of defamatory words may be under an absolute, or under a qualified or conditional privilege. Under the former there is no liability, even though the defamatory words are falsely and maliciously published. The class of absolutely privileged communications is narrow, and practically limited to legislative and judicial proceedings and acts of state.")

The Defendants were both members of the town council for the Town of McBee at the time the statements were made. The Town of McBee is a council form of municipal government, and the council acts as the town's legislative body. Thus, the town council is a legislative body and falls within the meaning of a legislature for purposes of applying *Richardson* and finding the absolute privilege.

During the period in question Campolong served as mayor and held a seat on the town council in that capacity. McLeod was a councilman as well. The Defendants were within the meaning of legislators for purposes of *Richardson.* The remaining question is whether the statements made by the Defendants were made during a council meeting, or had some relation to, or were part of their duties as members of the council.

Again, there is voluminous deposition testimony in this case and certain statements are identified by Plaintiff's counsel for purposes of defamation. Those statements identified as taking place during council meetings or executive session are incontrovertibly part of the absolute privilege recognized in *Richardson*. The Court grants summary judgment in favor of the Defendants to each and every statement made explicitly within town council meetings, including those made during executive session. Certain statements identified by Odom which are on the fringe for application of the privilege, or which were made entirely outside of Defendants' legislative capacity, are examined more closely below.

c. Odom Cannot Prove Campolong Acted With Actual Malice

It appears that Odom, by his own testimony, does not entertain a good faith belief that Campolong acted with actual malice regarding the alleged slander. Odom seemingly admits that he cannot prove actual malice by clear and convincing evidence. This is an especially high standard for which the burden lies with Odom. In contemplation of the heightened standard

accompanying defamation, the Court is troubled with the testimony while it contemplates summary judgment.

Q. But what information, evidence, oral or written, do you have Mr. Campolong knew the statements were actually false?

A. **I don't have any information** that -- I would have no way of knowing that he knew. Obviously, he doesn't confide in me, so I mean, **I would have no way of ascertaining that**.

Q. Okay. And what written or oral evidence do you have that John Campolong entertained serious doubts about the truth of the statements that are allegations of defamation in your Complaint?

A. **I don't have any.**

Q. Okay. And what written or oral evidence do you have that John Campolong was highly aware of the probable falsity of the statements of defamation or allegations in your Complaint?

A. **I don't have any.**

***

Q. ...Do you have any knowledge that either one of these Defendants entertained serious doubts about the truth of the statements that you allege that have made?

A. **I would have no way of knowing that.**

(Dep. Odom, 50:2-19; 220:14-17) (emphasis added). The Court must necessarily consider the plaintiff's ability to prove defamation by clear and convincing evidence when considering summary judgment. *George*, 345 S.C. 440, 445, 548 S.E.2d 868. Even in a light most favorable to the nonmovant, the Court fails to see how this admission does not support Campolong's

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motion. **On the action for defamation, the Court does grant summary judgment in favor of Campolong.**

d. McLeod Is Entitled To Partial Summary Judgment

Odom's first allegation is that the Defendants falsely accused him of illegally using $850,000 in grant money given to the Town of McBee. In his Memorandum in Opposition to Defendant Campolong's Motion for Summary Judgment, Odom identifies two persons to whom McLeod allegedly made these defamatory statements, Olin Morrison and Beulah Bolton. McLeod is also alleged to have stated to Beulah Bolton that Odom damaged a waterline, and to Willie Mae Roary that Odom stole $500,000.00 from the town.

As to the second allegation in Odom's Complaint, that Odom accepted approximately $2,000 from an individual when he was a magistrate, there is no evidence on the record other than Odom's own deposition testimony to support this claim. Odom uses the fact that McLeod, in his legislative capacity as a member of the town council, was a signatory in the SLED letter as the factual basis for his defamation claim for the second allegation. Odom went on to admit that he could not support this allegation beyond his own speculation.

Q. Okay. When your Complaint says on a number of occasions Kemp McLeod had said something about that magistrate's check, that's not correct?

A. **I don't know. I have no way of knowing what Kemp told. I mean, I just know that he told them I stole 500,000.**

***

Q. You don't know anybody that's ever said that Kemp McLeod said anything about that -- you and that [magistrate's] check?

A. **No.**

(Dep. Odom, 185:13-18; 185:22-186:1). Again, the Court's examination of the record is confined to those incidents of slander, rather than libel, and the letter itself is not for consideration. The plaintiff carries the high burden of clear and convincing evidence on this summary judgment motion, and the Court finds that on the second allegation of Odom's Complaint, that Odom cannot prove actual malice by clear and convincing evidence. Accordingly, **summary judgment is granted on behalf of McLeod as to the second allegation**. The Court considers the remaining allegations, below.

[Olin Morrison]

The statements at issue were made during a meeting between Morrison and McLeod at a Huddle House. Morrison was not a member of the town council for purposes of applying legislative privilege. The Court reviewed the testimony from the deposition in full; the pertinent section of the conversation concerned the transfer of the $850,000.00 grant money from the Town of McBee. In his deposition, Morrison indicates that both parties already had strong feelings on the matter and that both believed that Odom committed some wrongdoing while serving as mayor. Morrison stated that all of his knowledge on the matter was acquired from Mr. Edwards, another former mayor of the Town of McBee, prior to his conversation with McLeod.

Q. What did you talk to him about Mr. Odom?

A. **Well, about the same subject we've been discussing now, the tobacco money being gone.**

Q. And what did Mr. McLeod tell you about that?

A. **He feels like I do, that it belonged to the Town of McBee.**

Q. Did he tell you that Mr. Odom had taken the Town of McBee's money?

A. **No, he didn't say that he had taken the money.**

Q. What did he say?

A. **He said that they – settlement money that was sent to the Town.**

Q. And he felt that was illegal?

A. **Apparently he did or he wouldn't be telling me, yes.**

***

Q. Mm-hmm. And how much money did Mr. McLeod say that Mr. Odom had taken?

A. **He said there was 800-something thousand dollars.**

Q. And he said that this was supposed to be the Town of McBee's money?

A. **He said it was the Town of McBee's money. He said it was made to the Town of McBee.**

Q. And that Mr. Odom had done something wrong in giving it to Alligator; is that correct?

A. **Yes.**

Q. Is that what he said?

A. **Wrongful transfer of the money.**

Q. And you – as a result of that I assume you thought if that was true Mr. Odom would have wrongfully taken the Town's money; correct?

MR. MCCANTS: Object to the form

Q. Is that what you understood?

A. **Yes.**

Q. And that would be wrong; right?

A. **It's definitely wrong.**

(Dep. Morrison, 16:13-17:4; 17:22-18:20). The Court must consider whether Odom can prove actual malice by *clear and convincing evidence* when contemplating summary judgment. *George*, 345 S.C. 440, 445, 548 S.E.2d 868, 870 (emphasis added). Actual malice is proven by showing a knowledge of the falsity, or a reckless disregard for the truthfulness of the statement. *New York Times Co.*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686.

After review of the record, it is evident that McLeod was aware of the findings of the SLED investigation. The statement, "wrongful transfer of money," under the circumstance does leave open the question of defamatory intent. And while it does appear as though the two individuals' minds were already made up on the matter and were making statements of opinion rather than purposeful defamation, belief in the statement is not a necessary element of defamation under our laws, only that the publication itself was defamatory. **The Court finds that there does exist a genuine issue of material fact as to the statements made to Olin Morrison by McLeod.** Summary judgment is denied to this point.

[Beulah Bolton]

The Court finds that the statements made to Beulah Bolton are absolutely privileged, as laid out in *Richardson*.

In *Richardson*, our Supreme Court looked at whether slanderous statements made outside of legislative proceedings could nonetheless be absolutely privileged. At issue were slanderous statements made during an informal meeting between members of the Williamsburg County Legislative Delegation and a commission under the Delegation, the Williamsburg County Recreation Commission. The meeting was called by and held in the office of a member of the Delegation to discuss issues concerning a director of the Commission; negative statements about the director's performance were made during the meeting. In determining that the statements

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were in fact privileged, the court looked at the surrounding circumstances under which the statements were made. While not within an ordinary legislative session, "(1) the statement was made at a meeting attended only by the legislative delegation and members of the Recreation Commission, (2) the statement was made by a member of the legislative delegation, and (3) it concerned a matter related to legislative duties." *Richardson,* at 147, 255 S.E.2d at 344. The scope and purpose of the conversation were inherently related to the members' performance of their legislative duties and as such was afforded the privilege. *Id.*

In Bolton's case, the statements in question were made outside of council meetings yet concerned issues necessarily relevant to the council. In her deposition Bolton testified that statements regarding the misappropriation of grant money by Odom, made by either Defendant, were made either before or after council meetings, but not during the meetings themselves.

Q. Do you recall where these conversations took place?

A. **Probably – it had to be in [Town Hall] somewhere.**

Q. But they weren't in council meetings. They were after council meetings?

A. **No.**

Q. Before?

A. **Before or after.**

(Dep. Beulah Bolton, 7:11-19) (emphasis added). Like *Richardson*, the statements in Bolton's case were made between councilmen and seemingly in furtherance of a matter relevant to the council. Their proximity in time to the actual meetings themselves suggest the purpose of the conversations were necessarily related to council function. The key difference between *Richardson* and Bolton is that the former took place in a legislative member's office, while the latter took place in Town Hall, where council meetings are regularly held.

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Just as the *Richardson* court found that the ultimate scope and conditions of the Williamsburg County Legislative Delegation's meeting was for a legislative purpose and necessarily qualified for the absolute privilege, **this Court does also find that the statements made to Bolton are absolutely privileged**.

Bolton mentioned one other statement regarding Odom's performance as mayor, this time made in the mayor's office. Present with Bolton was her sister, who was not a council member. The deposition testimony is unclear as to the identity of the speaker, which is an unavoidably substantial factor for consideration bearing in mind the plaintiff's burden of clear and convincing evidence before ruling on a summary judgment motion in a defamation case. *George*, 345 S.C. 440, 445, 548 S.E.2d 868, 870. Notwithstanding, **the Court finds that this statement fails to rise to the level of actual malice**.

Q. Say that again

A. **How Mr. Odom has ruined the town.**

Q. Okay. That's just his opinion, correct?

A. **That's his opinion.**

(Dep. Beulah Bolton, 20:1-4). Bolton indicates that the statement was opinionated. It is further unclear what party is making the statement. Examining the full testimony, the Court finds that this statement is insufficient to support a claim of defamation of a public figure.

[Willie Mae Roary]

The alleged statements were made to Willie Mae Roary and her sister, Era Pate. **The Court finds no legislative privilege applicable here**. Odom argues that McLeod made defamatory statements to both Roary and her sister.

Q. What did you talk with Ms. Roary about?

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A. **I stated that Mr. Odom's actions had been very self-serving in all that he did in McBee.**

Q. All right. And what did you mean by that?

A. **Exactly what I said.**

Q. Well, I mean, did you give her examples of how he had engaged in self-serving activities?

A. **I talked about the $850,000.**

(Dep. McLeod, 5:24-6:6).

Roary's affidavit further goes on to state that McLeod made the claim that Odom stole $500,000.00 from the Town of McBee. (Roary Aff., ¶2). The Court does find, in light of the sworn affidavit and taking into account all of the deposition testimony, that **there exists a genuine issue of material fact as to whether McLeod did make any such defamatory statements**. Summary judgment is denied to this point.

B. Civil Conspiracy

Odom has alleged that the Defendants together entered a civil conspiracy to harm Odom when they submitted a letter to the State Law Enforcement Department in 2012 requesting an investigation into Odom's practices and handing of public funds while serving as mayor and then as a magistrate judge. Odom was aware of the existence of the letter and failed to bring an action for civil conspiracy until the commencement of this present action, filed March 23, 2018, nearly three years after the statute of limitations had run on the initial claim. Odom argues that the civil conspiracy began in 2012, and that the aforementioned slander is a continuation of said conspiracy in as much that the three-year statute of limitations has not yet run, and that the claim of civil conspiracy has been preserved up to now. **The Court respectfully disagrees**.

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South Carolina recognizes a civil conspiracy where there is (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. *Paradis v. Charleston County School District*, 433 S.C.562, 574, 861 S.E.2d 774, 780 (2021). See also *Robertson v. First Union Nat. Bank*, 350 S.C. 339, 348, 565 S.E.2d 309, 314 (Ct. App. 2002) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 600, 358 S.E.2d 150, 152 (Ct. App. 1987)). An unlawful act is not a necessary element of the tort. An action for conspiracy may lie even though no unlawful means are used, and no independently unlawful acts are committed. *Lee v. Chesterfield General Hosp.*, 289 S.C. 6, 11, 344 S.E.2d 379, 382 (Ct. App. 1986).

The continuation of overt acts in furtherance of the initial tort which preserves a claim beyond the applicable statute of limitations is a theory known as continuous accrual (a/k/a "continuing breach theory"). Our courts have not recognized the application of continuous accrual within the meaning of civil conspiracy. Our Supreme Court addressed the application of this theory in a certified question from the U.S. Court of Appeals for the Fourth Circuit, finding that "South Carolina has not adopted the continuing breach theory in *Janssen*, *Marshall*, **or otherwise**." *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, No. 2021-000027, 2022 WL 4231301, at 3 (S.C. Sept. 14, 2022) (emphasis added). See *Id.*, at 3 ("The federal court correctly concluded our holding in *Janssen* is limited to the South Carolina Unfair Trade Practices Act (SCUTPA).").

Indeed, in answering the certified question our Supreme Court so contemplated two cases on which Odom has rested his arguments in support of finding continuous accrual here. *Id.*, at 2 ("It is apparent from the order of certification that our majority decision in *Marshall* [for application of continuous breach] was the impetus for the Fourth Circuit's decision to certify the questions."). The first case, *Marshall*, was a medical malpractice case involving a question of

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whether the respondents could pursue a negligence claim based on acts occurring within the six-year period of repose when older acts occurred outside the repose period. The question, in other words, was whether the failure to bring suit at the initial time of occurrence barred subsequent actions for same or similar occurrences of negligence. *Marshall v. Dodds*, 426 S.C. 453, 571, 827 S.E.2d 570 (2019). The court in *Marshall* conducted a statute-specific review of the application of continuous breach with regard to medical malpractice under S.C. Code Ann. § 15-3-545 and declined to extend this theory to separate acts outside of the intended scope of the statute. *Id*, 426 S.C. at 466, 827 S.E.2d at 576, 577 ("Moreover, our decision honors the purpose behind the **statute** of repose..... To hold otherwise would require us to rewrite our statute of repose and superimpose "first occurrence" into section 15-3-545(A) rather than merely interpret what the provision actually says—'the date of occurrence.'") (emphasis added). The recognition of continuous breach found in *Marshall* is inapplicable in this case.

Neither does *State ex rel. Wilson* affirmatively establish continuous accrual in this state. The Court interprets our State's highest court, in its decision in *State ex rel. Wilson*, to recognize continuous accrual in a limited and narrow application only to the statute, SCUPTA in that case, and not to a claim of civil conspiracy. *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 79, 777 S.E.2d 176, 200 (2015) ("We adopt the view that aligns with ***legislative intent*** as reflected in section 39–5–110, a common sense approach recognizing that the SCUTPA statute of limitations begins to run anew with each violation.") (emphasis added).

Absent broad and general applicability of continuous accrual, Odom's civil conspiracy claim is time barred. Odom argues that the Defendants together entered into a civil conspiracy when they submitted a letter to the State Law Enforcement Department in 2012, requesting an investigation into Odom's practices and handing of the public funds while serving

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as mayor and then as a magistrate judge, starting the clock on his civil conspiracy claim. The applicable statute of limitations for such an action is three years under our laws. S.C. Code Ann. § 15-3-530. See also *Carrington v. Mnuchin*, No. CIV.A. 5:13-03422-JM, 2014 WL 4249876, at 5 (D.S.C. Aug. 27, 2014) (citing *Glenn v. Bank of Am.*, C/A No. 6:10–1974–HMH, 2010 WL 3786171, at 2 (D.S.C. Sept.22, 2010) ("Under South Carolina law, actions for civil conspiracy, fraud, and constructive fraud are subject to a three-year statute of limitations."). Because Odom failed to bring an action for civil conspiracy within three years of the alleged conduct occurring, his action for civil conspiracy is barred under the statute of limitations. Accordingly, **summary judgment is granted on this point and the civil conspiracy claim dismissed**.

V. CONCLUSION

The Court now finds that certain statements are subject to absolute immunity under the principles of legislative privilege. For those remaining statements, the Court finds that McLeod is entitled to partial summary judgment. For Campolong the Court finds that Plaintiff has not met the high burden of showing by clear and convincing evidence that the Campolong acted with such actual malice to entitle Plaintiff to relief under our laws. Finally, the Court finds that the doctrine of continuous accrual (a/k/a continuous breach doctrine) is inapplicable in this case and the claim of civil conspiracy is time barred under the statute of limitations.

NOW THEREFORE, IT IS ORDERED on the claim of Defamation, Summary Judgment for Campolong is hereby granted in full; Partial Summary Judgement is granted for Defendant McLeod. On the claim of Civil Conspiracy, Summary Judgment is granted to both Defendants.

AND IT IS SO ORDERED.

Honorable Michael S. Holt
Fourth Judicial Circuit

Dated, January 26, 2023

Darlington, South Carolina

2023 FEB -9 P 2:08
Christy F. Gaddy
CLERK OF COURT
CHESTERFIELD COUNTY,S.C.

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1300275

Glenn C Odom
PLAINTIFF(S)

John Campolong 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:

This Court heard multiple Motions to Reconsider with regard to the Court's Order dated January 26, 2023. Defendant McLeod, and Plaintiff Odom filed separate motions for reconsideration on the January 26 Order. A hearing was held on April 19, 2023. All parties were present and heard. The Court has considered the various positions of each party, and the Court has reviewed the extensive amount of material and discovery in this case. However, the Court respectfully denies each of the Motions to Reconsider. So Ordered.

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 06/13/2023 .

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.

Chesterfield Common Pleas

Case Caption: Glenn C Odom VS John Campolong , defendant, et al

Case Number: 2018CP1300275

Type: Order/Electronic Form 4

So Ordered

s/ Michael S. Holt, 2772

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Michael S. Holt, Circuit Court Judge

Civil Action No.: 2018-CP-13-00275

Glenn C. Odom…… ……..……..Appellant,

-v-

John Campolong and A.C. Mcleod.…..……..……..……...Defendants,

Of whom John Campolong is the……..……Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by emailing a copy of the same, this 13 day of June 2023.

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Michael S. Holt, Circuit Court Judge

Civil Action No.: 2018-CP-13-00275

Glenn C. Odom…… ……..……..Appellant,

-v-

John Campolong and A.C. Mcleod.…..…….....…..……....Defendants,

Of whom John Campolong is the……..……Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Proof of Filing of Notice of Appeal with the Clerk of the Circuit Court has been served upon the following counsel of record by emailing a copy of the same, this 21 day of June 2023.

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