THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Michael S. Holt, Circuit Court Judge
Case No. 2018-CP-13-00275

Appellate Case No. 2023-001000

Glenn C. Odom ……Appellant,

-v-

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

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

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases

Other State Cases

Federal Cases

Statutes and Court Rules

Ordinances

Secondary Sources

STATEMENT OF ISSUES PRESENTED

I. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT JOHN CAMPOLONG FOR THE DEFAMATION CAUSE OF ACTION?

II. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT JOHN CAMPOLONG FOR THE CIVIL CONSPIRACY CAUSE OF ACTION?

STATEMENT OF THE CASE

This is an appeal from the Circuit Court's Order Granting Summary Judgment for Defendants John Campolong and A.C. McLeod dated January 26, 2023, and filed on February 9, 2023 ("Order Granting Summary Judgment"), and the Circuit Court's Form 4 Order Denying Motion to Reconsider dated June 13, 2023, and filed on June 13, 2023 ("Order Denying Motion to Reconsider").

Appellant Glenn C. Odom ("Odom") filed his Summons and Complaint to commence Civil Action No. 2018-CP-13-00275 on April 23, 2018. (Complaint). Odom served Campolong with his Summons and Complaint on May 4, 2018. (Affidavit of Service). Campolong served his Answer to the Complaint on June 29, 2018, asserting the various defenses that would thereafter be a part of his Motion for Summary Judgment. (Answer to Complaint). In his Complaint Odom alleged causes of action for defamation and civil conspiracy against Respondent John Campolong ("Campolong") and Defendant A.C. McLeod ("McLeod") (Complaint). After conducting discovery, Campolong filed his Notice of Motion and Motion for Summary Judgment on April 22, 2021, as to both the defamation and civil conspiracy cause of action. (Campolong's Motion for Summary Judgment). Campolong asked for Summary Judgment based on the following six arguments: 1) that Odom does not meet his burden of proof as a public official or public figure to prove that Campolong acted with constitutional actual malice; 2) that the truth is a defense and/or statements are not false or defamatory; 3) that alleged defamatory statements are protected speech; 4) that alleged defamatory statements are privileged; 5) that alleged defamatory statements were not actionable because statements were barred by the statute of limitations; and 6) the civil conspiracy cause of action was barred by the statute of limitations. (Campolong's Motion for Summary Judgment).

Campolong filed his Memorandum in Support of Motion for Judgment on July 26, 2022. (Campolong's Memorandum in Support of Motion for Summary Judgment). Odom filed his Memorandum in Opposition to Respondent's Motion for Summary Judgment on August 16, 2022. (Odom's Memorandum in Opposition). The Motion for Summary Judgment came before the Circuit Court for a

hearing on August 17, 2022. (Order, p. 2). After hearing arguments, the Circuit Court permitted the parties to file supplementary memoranda. (Order, p.1). The parties filed supplemental memoranda for the Circuit Court to consider. (Supplemental Memoranda by Campolong filed on August 25, 2022 and by Odom on August 25, 2022). Subsequently, the Circuit Court granted full summary judgment to Campolong on both the defamation and civil conspiracy cause of action. (Order, pp. 11, 20 and 21).

The Circuit Court granted partial summary judgment to McLeod. (Order, p. 11, 21). The Circuit Court granted summary judgment to McLeod on the absolute privilege defense and civil conspiracy cause of action like the Court did for Campolong. (Order, p. 9, 14, 20, 21). The Circuit Court did not grant summary judgment to McLeod for some alleged slanders said to two McBee residents, Olin Morrison and Wille Mae Roary. (Order, p. 11-12, p. 16-17). Roary allegedly heard McLeod say the statement made in paragraph 4 of Odom's Complaint. (Order, p. 17). Odom did not appeal the partial grant of summary judgment in favor of McLeod.

With respect to the defamation cause of action, the Circuit Court made four rulings in favor of Campolong. First, the Circuit Court ruled that alleged statements made by Campolong during McBee Town Council meetings, including those made during executive sessions, were absolutely privileged. (Order, p. 9). Second, the Circuit Court ruled that alleged statements made to McBee Town Council member Bolton before or after a Town Council meeting were absolutely privileged. (Order, pp. 14, 16). Third, the Circuit Court ruled that Odom did not present sufficient clear and convincing evidence to prove that Campolong acted with constitutional actual malice. (Order, p. 11). Fourth, the Circuit Court ruled that alleged statement made to Bolton and her sister did not rise to the level of actual malice or that the statement was insufficient to support a claim of defamation of a public figure. (Order, p. 16). With respect to the civil conspiracy cause of action, the Circuit Court ruled that the cause of action was barred by the three-year statute of limitations. (Order, pp. 20-21). Campolong will argue in support of the five rulings using the Circuit Court's sequence.

Odom filed his Motion to Reconsider on February 14, 2023. (Motion to Reconsider). Campolong filed his Memorandum in Opposition to the Motion to Reconsider on April 6, 2023. (Campolong's Memorandum in Opposition to Motion to Reconsider). Odom's Motion to Reconsider came before the Circuit Court for a hearing on April 19, 2023. (Form 4). By Order dated June 13, 2023, and filed on June 13, 2023, the Circuit Court denied the Motion to Reconsider. (Form 4). Odom served his Notice of Appeal on June 16, 2023, on Campolong, to appeal the Circuit Court's Order Granting Summary Judgment and Order Denying Motion to Reconsider. (Notice of Appeal).

STATEMENT OF FACTS

Campolong has resided in the Town of McBee, SC ("McBee") since 1960. (Dep. Campolong, p. 4, L 6-8, p. 5, L 13-21). In addition to running a local clothing manufacturer, Campolong has been McBee's Mayor for a period. (Dep. Campolong, p., 5, L 2-3; p. 5, L 18-25). Campolong was first elected Mayor in 2008 and served three consecutive four-year terms (2008 to 2020) after which he retired from public office. (Dep. Campolong, p. 6, L 1-2). (Brief, p. 10). Although he did not run for reelection in 2020, Campolong continued as Mayor until 2023 pending a contest to the 2020 election and an appeal between the two candidates who ran for Mayor, Charles Short and Odom.[1] *See Odom v. Town of McBee Election Commission*, 440 S.C. 367, 891 S.E.2d 663 (2023). The appeal ended in favor of Odom, and he was sworn in as Mayor in February 2023. (Brief, p. 10); *see Odom,* 440 S.C. at 367, 891 S.E.2d at 373.

McLeod is a lifelong resident of McBee. (Dep. McLeod, p. 3, L 16-19). In addition to running McLeod Farms, McLeod served on McBee Town Council for approximately twelve years while Campolong was Mayor. (Dep. McLeod, p. 3, L 16-25, p. 4, L 10-12).

Odom has resided in McBee since 1963 and has served in various elected and appointed public offices over the years since 2000. (Order, pp. 7-8) (Dep. Odom, p. 13, L 3-5). Odom was the Mayor of McBee from September 2000 to May 2002. (Order, p. 7-8) (Dep. Odom, p. 23, L 6-7; p. 24, L 6-7). He resigned his position as Mayor in April 2002 to become a Chesterfield County Magistrate - serving in that position from April 30, 2002, to April 30, 2006. (See Order, p. 8) (Dep. Odom, p. 107, L 1-6). In 2016, Odom ran for Mayor against Campolong and lost to him after a contest to the election was decided against Odom by the McBee Muncipal Election Commission ("MEC") (Dep. Odom, p. 149, L 1-5) (MEC Order 2016). In 2018, Odom ran for a seat on McBee's Town Council and initially lost that election. (Dep. Odom, p. 149, L 7-19); *Odom v. Town of McBee Election Commission*, 427 S.C. 305, 831 S.E.2d 429

[1] Pursuant to McBee Local Ordinance, Article III (Muncipal Elections) § 2.311 (Contested Elections). https://www.townofmcbeesc.com/government/code_compliance/ordinances.php

(2019). Odom contested the results to the 2018 election with the MEC and ultimately became a member of Town Council following an appeal to the South Carolina Supreme Court. *Odom v. Town of McBee Election Commission*, 427 S.C. 305, 831 S.E.2d 429.

In addition to serving in public office, Odom has been the president and general manager of the utility company, Alligator Rural Water & Sewer Co., Inc., ("Alligator"), during the last two decades. (Dep. Odom, p. 27, L 20-22) (p. 31, L 6-8). Alligator is a private not-for-profit water and sewer company located in McBee. (Articles of Incorporation). The company supplies water to many parts of Chesterfield County. (Order, p. 2, 8). (Dep. Odom, p. 178, L 19-25; p. 179, L 1-3). Alligator sells water to businesses, residences and municipalities, including water on a wholesale basis to McBee. (Articles of Incorporation). Odom was an organizer and the first President of Alligator, which was organized and incorporated in South Carolina on July 9, 1987 (Articles of Incorporation) (Dep. Odom, p. 25, L 20-25; p. 26, L 1-14). Odom has been the one and only general manager of Alligator. (Dep. Odom, p. 31, L 17-19). Odom manages Alligator through Odom and Associates, Inc., for which he is the sole shareholder. (Dep. Odom, p. 31, L 22-25; p. 32 L 1-25; p. 33 L 1-7; p. 172, 21-24).[2]

McBee operates its own public water system, in accordance with Local Ordinance 17.201.1, that supplies water directly to businesses and residences in the town limits and to some contiguous parts. (Amended Complaint ¶ 10 - *Town of McBee v. Alligator Rural Water & Sewer,* C/A 2015-CP-13-319). The relation between McBee and Alligator has been a strained one for years. As to the people involved, the Circuit Court wrote, "[t]he relationship between Glenn Odom and the Defendants, John Campolong and A.C. "Kemp" McLeod, [has been] a long and turbulent one." (Order, p. 2). McBee and Alligator Rural Water have clashed over territory, water quality and control, and rates since the early 2000s. *See A.O.*

[2] Besides Odom, Odom and Associates has two employees, who are Odom's sister and brother-in-law. (Dep. Odom, p. 172, L 2-8).

Smith Corporation v. South Carolina Department of Health and Environmental Control and Town of McBee, 428 S.C. 189, 833 S.E.2d 451 (Ct. App. 2019) (including some history about McBee and Alligator and their water systems). On June 17, 2015, McBee filed a lawsuit against Alligator seeking to enjoin the company from supplying water directly to McBee's largest commercial water customer, A.O. Smith Corporation ("A.O. Smith"). *Town of McBee v. Alligator Rural Water & Sewer,* (Case No. 2015-CP-13-0379) ("*Town of McBee v. Alligator Rural Water*"). A.O. Smith accounted for 60% of McBee's water revenue. (Amended Complaint ¶ 16 - *Town of McBee v. Alligator Rural Water & Sewer*).).[3] On or about May 4, 2016, McBee filed an Amended Complaint in its lawsuit bringing additional causes of action against Alligator Rural Water and Odom concerning their business practices with McBee:

- "*Prior to 1999, before Odom became mayor, McBee operated its own water system, providing water to the residents of the Town and A.O. Smith."* (Amended Complaint ¶ 25).

- "*In the fall of 1999, at Alligator's instigation, McBee Town Council instructed Town representatives to enter into negotiations with Alligator for an agreement to turn day-to-day operations of McBee's water system over to Alligator and for McBee to begin buying bulk water service from Alligator."* (Amended Complaint ¶ 26).

- *"At a special meeting, at which half of the McBee Town Council members present and voting were Alligator employees, McBee voted to enter the agreement with Alligator and turn over day-to-day operations of its water system over to Alligator."* (Amended Complaint ¶ 27).

- *"Alligator justified this action by the assertion that McBee could not supply its need for water because its sources of water were contaminated."* (Amended Complaint ¶ 28).

- *"Upon information and belief, this assertion was untrue and was made in a deliberate attempt to deceive McBee into allowing Alligator to take control of its water system."* (Amended Complaint ¶ 29).

- "*This assertion was among the first in a series of unfair and deceptive acts by Alligator acting through Odom and other Alligator employees in an effort to monopolize water and sewer in the McBee area."* (Amended Complaint ¶ 30).

[3] Twenty-five percent of McBee's water revenues service a $4 million obligation to the United States Department of Agriculture. (Amended Complaint ¶ 13, 14 and 15).

- "*Even after the take-over of McBee's water system operations, Alligator continued to provide water to McBee through the Town's own sources of supply in contradiction of the previous allegations that those sources were unsuitable for use."* (Amended Complaint ¶ 31).

- *"…Alligator's long-term goal in 1999 was to eliminate McBee as competitor for water supply services in Chesterfield County; that remains Alligator's long-term goal today."* (Amended Complaint ¶ 41).

- *"Consistent with commitments made during that campaign, in 2008, McBee began the process of taking back its water distribution system operations from Alligator."* (Amended Complaint ¶ 47).

(Amended Complaint - *Town of McBee v. Alligator Rural Water & Sewer*).

Odom's Defamation Complaint

Odom's Complaint in the present civil action alleges three (3) grounds for his defamation suit against Campolong:

- *The Defendants on a number of occasions have, with malice, falsely accused the Plaintiff of illegally using $850,000.00 that was received from tobacco settlement funds and used by the Chesterfield Rural Water Company. The Defendants made these statements to others on a number of occasions*. (Complaint ¶ **2**).

- *The Defendants on a number of occasions, also with malice, falsely accused the Plaintiff of illegally taking approximately two-thousand dollars from an individual when he was a magistrate and using this money for his own benefit. This false accusation falsely accused Plaintiff of the crime of embezzlement. The Defendants published these false statements to a number of individuals.* (Complaint ¶ **3).**

- *In June 2016, the Defendants falsely accused the Plaintiff of puncturing a Town of McBee water line. This false accusation made with malice accused the Plaintiff of the crime of malicious injury to real property. The Defendants published this statement to others in June 2016.* (Complaint ¶ **6**).

(Complaint).

The first allegations, in paragraph 2 of the Complaint, relate to Odom's handling of a state public grant awarded to McBee in 2002 while Odom was Mayor. (Order, p. 3). The second allegations, in paragraph 3 of the Complaint, relate to Odom's handling of a traffic fine when he was a Chesterfield County magistrate in 2004. (Order, p. 3). The third allegations, in paragraph 6 of the Complaint, relate to the Amended Complaint filed in the *Town of McBee v. Alligator Rural Water* lawsuit. (Order, p. 3). In his

Complaint, Odom contends that these allegations are the grounds for his libel and slander lawsuit against Campolong. As noted in the Statement of Case, there is a fourth allegation, in Paragraph 4 of the Complaint, that was alleged against McLeod only. (Complaint ¶ 4).

Odom wrote the following sentence twice in his Brief, worded slightly different the second time: "[o]f primary importance to this Appeal is the one allegation of the Complaint that Campolong, with malice, on numerous occasions has falsely accused Odom of illegally using $850,000 in tobacco settlement funds for his own purposes that were designated for use by the Town of McBee." (Brief, pp. 1, 16). In the preceding sentence, Odom is referring to the allegations in Paragraph 2 of his Complaint. Of note, Odom does not make an argument in his Brief for the allegations in Paragraphs 3 and 6 of his Complaint.

Libel Allegations.

Odom testified in his deposition held on January 22, 2020, that the following three (3) documents were specifically identified as the grounds for his libel claims against Campolong: (1) a July 9, 2012 letter from McBee Town Council to the South Carolina Attorney General's Office, (the "2012 letter") (Exhibit D); (2) the Affidavit of John Campolong and the Amended Complaint filed in *Town of McBee v. Alligator Rural Water*, (Exhibit E); and (3) a campaign flyer from the 2016 mayor's race between Campolong and Odom. (2016 Campaign Flyer) (Dep. Odom, p. 40, L 1-25; p. 41, L 1-11).

- The 2012 letter is the subject of Paragraphs 2 and 3 of Odom's Complaint.
- The Amended Complaint and Affidavit are the subject of Paragraph 2 and 6 of the Complaint.
- The 2016 campaign flyer is the subject of Paragraph 2 of the Complaint.

At the hearing on the motion for summary judgment, held on August 17, 2022, Odom informed the Circuit Court and Defendants that he was not pursuing his libel claims. (Order, p. 4, 6).

Slander Allegations

Odom testified in his deposition that Campolong slandered him in front of two persons and did so on several occasions. (Dep. Odom, p. 43, L 9-25; p. 44 L 1-2). Odom testified that Campolong slandered him in front of Beulah Bolton ("Bolton") and Marion Stephens, III ("Stephens").[4] (Dep. Odom, p. 43, L 13-25; p. 44, L 1-4). Both Bolton and Stephens were members of McBee's Town Council when Campolong allegedly slandered Odom. (Brief, p. 15). Odom testified in his deposition that Bolton and Stephen heard Campolong say the following:

> *Q. And what exactly did Bolton or Stephens tell you?*
>
> *A. Both pretty well, paraphrasing, that, you know, I'm the topic of conversation between Mr. McLeod and Mr. Campolong, that I had misappropriated $850,000, and that there was 400 and something thousand in the bank when I became mayor, and when I left there was minus $100,000 in the bank and that type thing.*[5]

(Dep. Odom, p. 45, L 13-20).

Bolton and Stephens testified in their depositions that Campolong said the following to them:

Stephens

> *Q. Any other things that you've heard either of these gentlemen say negative about Mr. Odom that you can recall?*
>
> *A. Just like I said, that they said he was a crook and stole money from the town when he was in office and they had said they had, you know, proof of these things. But whenever I spoke with them and asked them to show me the proof or whatever the case may be, nobody could produce anything. It's been stated more*
> *than one -- on one occasion or more than one meeting. When we go in executive session, anytime the water comes up, something is going to come back to his name reflected in it and not always in a positive manner.*

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4 Stephens is Bolton's nephew. (Dep. Stephens, p. 16, L 25-25; p. 17, L 1).

5 Statements concerning both the $850,000 grant and balances in the bank account were contained in the 2016 Campaign Flyer: *"What did Glenn Odom do when he was elected Mayor of McBee in 2000 -- Began office with over $400,000 in McBee's bank accounts, but four years later the town's bank accounts were nearly depleted **....** Used an $850,000 grant to the Town of McBee to build Alligator's water line to Jefferson, without any benefit to our town.*" (Exhibit – Campaign Flyer). Again, Odom abandoned his libel claims based on this flyer.

(Dep. Stephens - p. 8, L 7-20).

Q. All right. So as far as the general statements that you've said have come up in conversation in executive session about crook and stole money from the town, did the people use those exact words?

A. Yeah. They used those exact words in executive session.

(Dep. Stephens - p. 27, L 2-8).

Bolton

Q: What I want to ask you about is have you heard any statements of Mr. Odom engaging in any wrongdoing from either Mr. Campolong or Mr. McLeod?

A. Yes.

Q. And what have you heard?

A. Well, I can't really state verbatim.

Q: No, but in substance?

A. Kind of embezzled some money.

(Dep. Bolton, p. 6, L – 13-20).

A. He said Glenn stole money from the town.

….

Q. … When did he say that to you?

A. He said it more than once.

Q. Okay. And where did he say it?

A. I know one time it was back there. It may have been other times.

Q. What is 'back there'? Are you talking about –

A. In the –

Q. Let me finish, Are you talking about in this building?

A. Yeah, he said it in this building.

(Dep. Bolton, p. 17, L – 1-2, L 14-25).

Bolton's and Stephen's depositions took place at McBee Town Hall, 38 W. Juniper Avenue, McBee, SC.

(Dep. Transcript cover page). The Court will see in the testimony below that Bolton's use of the word "here" refers to the Town Hall building and "back there" refers to Town Council's executive sessions. **(**Dep. Bolton, p. 17, L 18-25; p. 21, L 3-10).

The alleged defamatory statement concerning the magistrate's fine, in paragraph 3 of Odom's Complaint, was made only in the 2012 letter. (Exhibit 2012 letter). Again, Odom abandoned the 2012 letter as grounds for libel. (Order, p. 2, 4). Regarding slander, Bolton and Stephens testified that they did not hear Campolong say anything about the magistrate's fine. (Dep. Stephens, p. 6, L 17-21); (Dep. of Bolton, p. 9, L 13-17). The alleged defamatory statements concerning the punctured water line, in paragraph 6 of Odom's Complaint, are made in the Amended Complaint and Affidavit of John Campolong, which were abandoned as grounds for libel. (Amended Complaint and Affidavit) (Order, p. 2, 4). Bolton and Stephens testified that discussions about the punctured water line occurred during Town Council's executive sessions (Dep. Bolton, p. 21, 3-10, L 17-25); (Dep. Stephens, p. 7, L 14-25; p. 8, L 1-6).

ARGUMENT

Standard of Review

An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP. *George v. Fabri,* 345 S.C. 440, 451, n. 5, 548 S.E.2d 868, 873, n. 5 (2001) (citing *Brockbank v. Best Capital Corp.,* 341 S.C. 372, 534 S.E.2d 688 (2000). The trial judge has the duty to determine the applicability of an absolute privilege defense. *Murray v. Holnam, Inc.,* 344 S.C. 129, 140, 542 S.E.2d 743, 749 (Ct. App. 2001).

I. THE CIRCUIT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO RESPONDENT JOHN CAMPOLONG FOR THE DEFAMATION CAUSE OF ACTION.

A. The Circuit Court correctly applied the legislative absolute privilege to those occasions when Campolong allegedly slandered Odom in front of two McBee Town Council members.

1) Based on *Richardson v. McGill*, the absolute privilege applies to those occasions when Campolong allegedly slandered Odom in front of two Town Council members.

The Circuit Court ruled that alleged defamatory statements made explicitly within Town Council meetings, including those made during executive sessions, were absolutely privileged. (Order, p. 9). Second, the Circuit Court ruled that alleged defamatory statements made to Bolton before or after a Town Council meeting were absolutely privileged too. (Order, p. 16). Odom argues that the Circuit Court erred in these rulings. (Brief, p.32). Odom argues that the absolute privilege does not apply because what Campolong allegedly said to Bolton and Stephens was not made "in furtherance of a legitimate, ongoing legislative function" and not made in a legislative proceeding. (Brief, p. 32-34).

The seminal South Carolina Supreme Court decision on the legislative absolute privilege defense is *Richardson v. McGill*, 273 S.C. 142, 255 S.E.2d 341 (1979). "A sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties." *Richardson v. McGill*, 273 S.C. at 146, 255 S.E.2d at 343. "When the communication is absolutely privileged, no action will lie for its publication, no matter what the circumstances under which it is published." *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342.

Richardson v. McGill involved a meeting that took place between members of the Williamsburg County Recreation Commission and the Williamsburg County Legislative Delegation. *Richardson*, 273 S.C. at 144, 255 S.E.2d at 342. The meeting "was held in the office of Senator Floyd on the night of September 23, 1975, at which only appellant, members of the Legislative Delegation, and the Recreation Commission were present." *Id*. Appellant George Richardson was the Director of the Williamsburg County Recreation Department, and Respondent Representative Frank McGill was a member of the Williamsburg County Legislative Delegation. *Id*. During the private meeting, McGill openly criticized Richardson's conduct, and stated, "[t]hat [Richardson] was going with the women in the Department and no woman would be hired unless [ ] Richardson could go to bed with them and as a result he would hire no married women." *Id*. Richardson thereafter brought a defamation lawsuit against McGill for saying this about him at the meeting.

Id. The trial court granted summary judgment in favor of McGill, ruling the absolute privilege applied to what McGill said at the meeting. *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342. The Supreme Court affirmed the judgment. *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342.

In reaching its decision, the Supreme Court wrote the following on the application of the absolute privilege defense: "While… 'the class of absolutely privileged communications is narrow, and practically limited to legislative and judicial proceedings and acts of State,' [the Court's] decisions show that application of the absolute privilege has not been so narrowly restricted." *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342 (citing *Fulton v. Atlantic Coast Line Railroad Co.*, 220 S.C. 287, 67 S.E.2d 425 (1951). In addition, the Court wrote, "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*, 273 S.C. at 146, 255 S.E.2d at 343. The Court then wrote that the question to ask as to whether the privilege is applicable is the following: "Thus the question to be resolved [was] whether respondent's statements had *some relation to,* or were part of his duties as a member of the Legislature from Williamsburg County. If they were, the lower court properly held that they were absolutely privileged." *Richardson*, 273 S.C. at 146, 255 S.E.2d at 343. (emphasis added).

Campolong submits there are two considerations for whether the privilege applies. The first consideration is whether one of the three classes recognized by South Carolina law is applicable. (Brief, p. 4, n. 2). The Circuit Court found that McBee Town Council is a legislative body for the purposes of applying the absolute privilege. (Order, p. 9). Odom concedes that McBee Town Council is a legislative body for the purposes of the absolute privilege. (Brief, p. 4, n. 2). Campolong, as Mayor, is a voting member of the McBee legislative body. (Order, p. 9). Accordingly, the first consideration should be undisputed.

The second consideration is the application of the privilege to the occasion when a defamatory was allegedly made. This is where Odom departs again from *Richardson v. McGill* and, to do so, relies on

various out-of-state decisions to support his position. (Brief, p. 34-35). Odom argues that the occasion must be a legislative proceeding, e.g., the Senate or House chamber. (Brief, p. 34). However, the occasion, at which a statement is made, is not narrowly restricted to a legislative proceeding only. McGill was not in the House's chamber, debating or discussing a bill, but in Senator Floyd's office discussing a personnel matter. *Richardson*, 273 S.C. at 144, 255 S.E.2d at 342. In South Carolina, "[i]t is [ ] clear that unqualified privilege does not depend on the rigid requirement of a strictly legislative or judicial proceeding; its limits are fixed rather by considerations of public policy." *Richardson*, 273 S.C. at 146, 255 S.E.2d at 343. Campolong submits that the Supreme Court rejected the position that legislators' statements are absolutely privileged only if uttered in a legislative proceeding.[6]

Second, Odom argues for what is a narrow application of the privilege: "that statements [must be] specifically made in furtherance of a legitimate, ongoing legislative function". (Brief, p. 37, 38). This is not the application or test given to us in *Richardson v. McGill*. Whether a slander "has *some relation to* or were part of [the speaker's] duties" is the application or test. *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342.[7] (emphasis added). And this application is not a "narrowly restricted" one. *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342. Campolong submits that like the absolute privilege for judicial proceedings, the phrase "has some relation to" is to be liberally construed: " '[l]ibelous or defamatory statements in pleadings, when pertinent or material or relevant to real issues involved, are privileged, that the pertinency or materiality or relevancy of such statements is for the determination of the court and not a jury, and that in determining this

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[6] "No uniform rule on absolute privilege may be derived from a study of the many decisions. The great underlying principle upon which the doctrine of privileged communications rests is public policy. This is more especially the case with absolute privilege, where the interests and the necessities of society require that the time and occasion of the publication or utterance, even though it be both false and malicious, shall protect the defamer from all liability to prosecution for the sake of the public good. It rests upon the same necessity that requires the individual to surrender his personal rights, and to suffer loss for the benefit of the common welfare." *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342-343 (quoting *Johnson v. Independent Life & Acc. Ins. Co. of Jacksonville, Fla*. 94 F. Supp. 959, 962-963 (D.S.C. 1951).

[7] The Circuit Court noted the correct standard to be, "had some relation to, or were part of their duties as members of council." (Order, p. 9).

issue pleadings must be liberally interpreted and all doubt resolved in favor of relevancy.'" *Pond Place Partner, Inc. v. Poole*, 351 S.C. 1, 24, 567 S.E.2d 881, 893 (Ct. App. 2002) (citing *Id.* at 275, 33 S.E.2d at 587).[8] The limits of the absolute privilege's application are based on considerations of public policy. *Richardson*, 273 S.C. at 145, 255 S.E.2d at 342-343.

The privilege is not "narrowly restricted" to slanders bearing on pending legislation. McGill was commenting on George Richardson's conduct in the performance of his job. *Richardson*, 273 S.C. at 144, 255 S.E.2d at 342. The Supreme Court determined that what McGill said related to his duties as a member of the Williamsburg County Legislative Delegation. *Richardson*, 273 S.C. at 147-148, 255 S.E.2d at 343-344. As a member, McGill had a duty to review reports produced by the Recreation Commission and appropriate funds for Williamsburg County offices. *Id*. The Supreme Court believed that Richardson's conduct, and what McGill said about it, related to some of the legislative delegation's duties. *Richardson*, 273 S.C. at 146, 255 S.E.2d at 343. ("We think that, as a member of the legislative delegation from Williamsburg County, respondent had an official interest in the proper operation of the county government and its agencies, including that of the Williamsburg County Recreation Commission."). The Supreme Court also stated that what McGill said was related to a public concern. *Richardson*, 273 S.C. at 147, 255 S.E.2d at 343. Consequently, what McGill said was absolutely privileged because it was "uttered (1) at a meeting attended only by the legislative delegation, the members of the Recreation Commission, and [Richardson]; (2) by [McGill], a member of the legislative delegation; and (3) concerning a matter related to legislative duties and, in which, all present had an official interest." *Richardson*, 273 S.C. at 147, 148, 255 S.E.2d at 343, 344.

[8] Similarly, as the judicial privilege, "the pertinency or materiality or relevancy of [such] statements is for the determination of the Court and not a jury…" *See McKesson & Robbins v. Newsome,* 206 S.C. 269, 275, 33 S.E.2d 585, 587 (1945).

2) What Campolong allegedly said to two Town Council members was related to Town Council's legislative purposes or duties.

What Campolong allegedly said to Bolton and Stephens at meetings, executive sessions, or on one other occasion with Stephens, related to McBee's public grant, water, rates, budgets and finances. What was said has some relation to McBee Town Council's legislative purposes or duties. While Odom portrays his handling of the $850,000 grant and his management of Alligator overall as an old and closed issue, other members of Town Council, including Campolong, thought Odom's conduct or issue was relevant in 2016 to McBee's governance and whether Odom should be the Mayor again. (Brief, p. 36).

In 2016, there were at least two pending civil actions, involving an ongoing, acrimonious public debate, that was related to McBee's legislative governance – the management, operation and control of its water system and finances. For one, McBee was defending a civil administrative action brought by A.O. Smith to challenge DHEC's Final Approvals. *A.O. Smith Corporation v. Town of McBee,* 428 S.C. 189, 833 S.E.2d 451 (Ct. App. 2019). The Final Approvals allowed McBee to reopen its two wells so that it could supply water to its customers. *A.O. Smith,* 428 S.C. at 196, 833 S.E.2d at 455. By drawing water from its own wells, McBee would not be dependent on Alligator to supply water. A.O. Smith was unsuccessful in opposing the Final Approvals before DHEC and the Administrative Law Court and on appeal to the Court of Appeals. *A.O. Smith,* 428 S.C. at 208, 833 S.E.2d at 461. The Court mentions McBee's strained relation with Alligator Rural Water: "Campolong also indicated the Town became aware of information that led it to believe Alligator's financial situation was precarious and decided it no longer wished Alligator Water to be its sole source of water." *A.O. Smith,* 428 S.C. at 195, 833 S.E.2d at 455. Further, "[t]he Town informed Alligator Water it would not pay the increased wholesale rate to Alligator Water until Alligator Water supplied it with certain financial data." *A.O. Smith,* 428 S.C. at 196, 833 S.E.2d at 455.

Second, *The Town of McBee v. Alligator Rural Water & Sewer Company, Inc*., C/A 2015-CP-13-319, was also pending before the Court of Common Pleas in Chesterfield County. Allegations concerning

the $850,000 grant (Odom's Complaint ¶ 2), the puncture of a water line in McBee's system (Odom's Complaint ¶ 6), and town finances were being made in McBee's 2016 Amended Complaint at the time Campolong is alleged to have slandered Odom in front of Bolton and Stephens.[9] [10] Odom concedes that the lawsuit was "incidentally related to Town Council's legislative process…." (Brief, p. 5).

Budget and Finances

- *"Odom was succeeded as mayor by Mr. Edwards, another Alligator official."* (Amended Complaint ¶ 32).

- *"During Odom's and Edward's tenures as mayor, the Town's financial reserves were depleted from over $400,000 to a negative balance of over $100,000, during years when the Town received well in excess of $500,000 income each year, more than enough to cover reasonable expenses."* (Amended Complaint ¶ 38).

Grant

- *"During Odom's tenure as mayor, while serving as Alligator's executive director, he diverted an $850,000.00 granted awarded to McBee to Alligator for projects that did not directly benefit the Town."* (Amended Complaint ¶ 32).

- *"After diverting this $850,000.00 grant to Alligator, Odom caused the Town to borrow $4.5 million from USDA/RD to refurbish its water system, a loan that could have been substantially reduced by the grant*." (Amended Complaint ¶ 33).

Punctured Water Line

- *"On information and belief, Alligator, through Odom and Odom and Associates, or those working on their behalf, caused the leak by puncturing a McBee water line with a ground probe or similar instrument."* (Amended Complaint ¶ 60).

- *"Puncturing McBee's water lines would constitute a deliberate sabotaging of McBee's water system, disabling assets that were necessary to protect the health and welfare of McBee's citizens and customers.* (Amended Complaint ¶ 61).

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[9] Of note, the Amended Complaint was another ground for libel that Odom alleged during this lawsuit, and that he abandoned as libelous at the hearing on August 17, 2022.

[10] As to the McBee finances, see the testimony of Odom about the depletion of the bank accounts on page 30 of this Brief and the references to his deposition. (Dep. Odom, p. 45, L 13-20). *See also* Amended Complaint ¶ 38).

What Campolong said to Bolton and Stephens was *related to* issues being litigated in the *A.O.* Smith, 428 S.C. 189, 833 S.E.2d 451 administrative action/appeal and *The Town of McBee v. Alligator* lawsuit. (Dep. Stephens, p. 7, L 1-5) ("That type stuff always come up when we go in executive session if we talk anything about anything having to do with the water…."); (Dep. Stephens, p. 14, L 12-19) ("But, again, whenever we have anything involving water that comes up in the council meeting, it starts going back to whenever Alligator Water took over the water for the town and it's just a big, you know, fight or struggle or whatever to regain -- to regain ownership of who pumps the town water. And it goes from that to, you know, he's a crook and, you know, he did this or did that and it just goes on."). Given that McBee was trying to stop A.O. Smith from blocking McBee from opening its wells in one action and challenging Alligator, and Odom's business practices in another, every Town Council member had an interest in issues therein and had "some general duty" to discuss them. *See Richardson*, 273 S.C. at 147, 255 S.E.2d at 343.

Campolong was repeating what McBee, through its attorneys, pled in the Amended Complaint, a public record and speech that is absolutely protected. *See Pond,* 351 S.C. at 24, 567 S.E.2d at 893. ("South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged."). The alleged slanders *were related* to those allegations in the Amended Complaint - or both civil actions. Further, there appears to have been enough evidence to satisfy Rule 11, indicating Campolong was stating something which has "good ground to support it". Rule 11, SCRCP ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it...").

Finally, what Campolong said to Bolton and Stephens was related to Town Council's legislative functions. McBee operates its public water system pursuant to the *McBee Town Code: Chapter 17, Article II, Water and Sewer Systems* – present legislation. Budgeting and financing are also legislated. *McBee Town*

Code, Chapter 8, Finance, Budget and Taxation. Article I: Budget and Finance. Revenues and expenditures for utilities (water) relate to operations, budgeting, rates and finances.[11]

- *McBee estimates that if A.O. Smith leaves its system, McBee will be required to increase rates by approximately 3.5 times their current rates*." (Amended Complaint ¶ 96).

- McBee has provided water service to A.O. Smith since A.O. Smith's opening more than 30 years ago. (Amended Complaint ¶ 11).

- *"According to Campolong, in the summer of 2013, the Town received a letter from Alligator Water that it was increasing the water wholesale rate by 56%." A.O. Smith v. Town of McBee,* 428 S.C. 189, 196, 833 S.E.2d 451, 455.

Odom acknowledges that "[McBee] Town Council's legislative function is to set policies, approve budgets, determine tax rates, and determine water rates." (Brief, p. 36). Odom acknowledges that "charges for services" (e.g., water) is a legislative function of McBee Town Council. (Brief, p. 35). What Campolong allegedly said to Bolton and Stephens was related to at least these legislative functions. The absolute privilege does apply to what was said to Bolton, during, right before or after a Town Council meeting or in an executive session, and to Stephens during a Town Council meeting, an executive session and away from Town Hall on one occasion.

For the one and only occasion where Campolong and Stephens met each other away from the Town Hall building, they were at Campolong's business office nearby in McBee. (Dep. Stephens, p. 11, L 22-25). Stephens testified that he and Campolong are not social or personal friends, and discussions between them are about Town Council matters. (Dep. Stephens, p. 11, L 25, p. 12, L 1-11). Campolong's discussion with Stephens concerned town council business. (Dep. Stephens, p. 12, L 3-4). What was said concerned Odom's handling of the $850,000 grant, McBee's finances and water, which "had some relation to or were part of their duties" as members of Town Council. *See Richardson,* 273 S.C. at 146, 255 S.E.2d at 343. The single meeting between them involved a privileged discussion, related to issues in the *A.O. Smith v. Town of McBee* and *Town of McBee v. Alligator* civil actions, water -- a public concern -- Odom as a public official

[11] https://www.townofmcbeesc.com/government/code_compliance/ordinances.php

or figure, specifically how Odom conducted himself previously as Mayor. The absolute privilege does apply to what Campolong allegedly said to Stephens during that one occasion at the office.[12]

B. The Circuit Court correctly ruled that Odom did not produce sufficient clear and convincing evidence to prove constitutional actual malice.

Standard of Review for Summary Judgment for Defamation Involving a Public Official or Public Figure

"When ruling on a motion for summary judgment or directed verdict in a defamation action, the court must review the evidence using the same substantive evidentiary standard of proof the jury is required to use in a particular case." *Erickson v. Jones St. Publishers, LLC,* 368 S.C. 444, 464, 629 S.E.2d 653, 663 (2006) (citing *George v. Fabri,* 345 S.C. 440, 451-54, 548 S.E.2d 868, 874-75 (2001)). Odom concedes he is a public official for the purposes of his defamation lawsuit. (Brief, p. 4, fn. 2). As a result, Odom must prove with clear and convincing evidence that Campolong defamed him with constitutional actual malice. *Elder v. Gaffney Ledger,* 341 S.C. 108, 113, 533 S.E.2d 899, 902-903 (2000) (citing *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974). He must prove with clear and convincing evidence that Campolong acted with constitutional actual malice, that is, with knowledge that the statement was false or with reckless disregard of its falsity. *Sanders v. Prince,* 304 S.C. 236, 239-40, 403 S.E.2d 640, 642-3 (1991) (citing *New York Times v. Sullivan,* 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686, 706 (1964). *See Peeler v. Spartan Radiocasting, Inc.,* 324 S.C. 261, 478 S.E.2d 282 (1996); *Garrrison v. State of La.,* 379 U.S. 64, 74, 85 S.Ct. 209, 216, 13 L.Ed. 125 (1964) ("only those false statements made with the high degree of awareness of their probable falsity demanded by *New York Times* may be the subject of either civil or criminal sanctions.").

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[12] The Circuit Court did not specifically address the one occasion where Stephens and Campolong met at Campolong's business office. Campolong submits this omission is not reversable error. Campolong request that the Court of Appeals affirm here pursuant to 208, SCACR and 220(c), SCACR because oral testimony and documentary evidence are in the record.

Clear and Convincing Evidence

The clear and convincing evidence standard is applied when analyzing a summary judgment motion based upon a constitutional privilege or defense. *See George,* 345 S.C. 440, 451, 548 S.E.2d 868, 873; *Fleming v. Rose,* 350 S.C. 488, 567 S.E.2d 857, 860 n.6 (2002). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *Peeler v. Spartan Radiocasting, Inc.,* 324 S.C. at 478 S.E.2d at 283 n. 4 (1996) (citations omitted). The following is a part of a published jury charge in South Carolina on "clear and convincing" evidence:

> *Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit; and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.*
>
> *When the law places upon a party a burden of proof by clear and convincing evidence, the law means that the evidence is not ambiguous, doubtful, equivocal, or contradictory, but the evidence is pointed to the issue and satisfactory in the sense that the source from which it comes is one in which you as jurors can place credence.*

Anderson, *S.C. Requests to Charge - Civil*, 1-3 (2016 Rev and Updated 2nd Ed).

Whether the evidence is sufficiently clear and convincing to support a finding of actual constitutional malice is a question of law. *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 685, 109 S. Ct. 2678, 105 L.Ed.2d 562 (1989); *Elder,* 341 S.C. 108, 113, 533 S.E.2d 899, 902-03.

Of note, several times in his Brief, Odom cites the summary judgment principle that a court must view the evidence in the light most favorable to the non-movant. (Brief, p. 6, 14, 16, 18, 19, 20); *Pallares v. Seinar*, 407 S.C. 359, 756 S.E.2d 128 (2014). Campolong submits that such principle is applicable for a usual summary judgment motion; however, this principle yields to the unique requirement for summary judgment in constitutional actual malice cases - that the public official or figure must produce clear and

convincing evidence. Accordingly, instead of viewing conflicting or ambiguous evidence, e.g., witnesses or documents, in the light most favorable to Odom, as he argues the Circuit Court should have done, a court should view such evidence against Odom because "conflicting or ambiguous" is not clear and convincing.

Reviewing the Entire Record for Convincing Clarity and Guarding Against Forbidden Intrusion of the First Amendment

In cases governed by the *New York Times Co*. standard, appellate judges must exercise independent judgment and determine whether the record establishes actual malice with convincing clarity. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 514, 104 S. Ct. 1949, 1967, 80 L. Ed. 2d 502 (1984). Where the constitutional prerequisites of falsity and actual malice are at issue 'an appellate court has an obligation to "make an independent examination of the whole record" in order to make sure that "the judgment does not constitute a forbidden intrusion on the field of free expression." *Old Dominion Branch No. 496 v. Austin,* 418 U.S. 264, 282, 94 S.Ct. 2770, 2780, 41 L.d 2d. 745 (1974). "The question whether the evidence in the record in a defamation case is of the convincing clarity required to strip the utterance of First Amendment protection is not merely a question for the trier of fact. 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'." *Bose Corp. v. Consumers Union of US.,* 466 U.S. 485, 511, 104 S. Ct. 1949, 1965, 80 L. Ed.2d 502 (1984); *Miller v. City of W. Columbia,* 322 S.C. 224, 228, 471 S.E.2d 683, 685 (1996).

Summary Judgment is Most Appropriate for Libel and Slander Cases

"Summary judgment occupies a position of great importance in libel actions as compared with other civil actions, due to the possible chilling effect on constitutionally protected speech which would result from the defense of defamation claims. (Citation Omitted). Courts have expressed a preference for

the dismissal by summary judgment of libel cases in order to prevent all but the strongest cases from proceeding to trial." *MRR Southern, LLC v. Citizens for Marlboro County,* 2012 WL 1016180, at *2 (D.S.C. Mar. 26, 2012) (emphasis added) (citing *Peeler v. Spartanburg Herald- Journal,* 681 F. Supp. 1144, 1146 (D.S.C. 1988); *Sunshine Sportswear & Elec. Inc. v. WSOC Television, Inc.,* 738 F. Supp. 1499, 1505 (D.S.C. 1989)). "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.' *Bon Air Hotel Inc. v. Time, Inc.,* 426 F.2d 858, 864-865 (5th Cir. 1970). Unless the Circuit Court finds, based on pretrial affidavits, depositions or other documentary evidence, that the plaintiff can prove actual malice, it should grant summary judgment for the defendant. *McClain v. Arnold,* 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980) (citing *Wasserman v. Time, Inc.,* 424 F.2d 920, 922 (D.C. Cir. 1970) (Wright, J., concurring).

Introduction to Argument

The Circuit Court ruled that Odom did not produce sufficient evidence to meet the clear and convincing standard for constitutional actual malice. (Order, p. 11). Odom argues the Circuit Court erred in this ruling for three reasons. First, Odom argues that the Circuit Court failed to review the entire record in violation of South Carolina law. (Brief, p. 18). Second, Odom argues that the Circuit Court improperly focused on his deposition testimony to the exclusion of the rest of the record. (Brief, p. 18-19). Third, Odom selects the parts of the record he contends are sufficiently clear and convincing evidence to prove constitutional actual malice. (Brief, p. 19).

1) The Circuit Court examined the entire record to reach its decision.

Odom argues, "[t]he Court's Order does not consider the entire record as mandated by South Carolina law in making its determination." (Brief, p. 18). Even more, Odom writes that the Circuit Court *ignored* parts of the record. (Brief, p.19). In this regard, Odom cites *Miller,* 322 S.C. 224, 471 S.E.2d 683 for the principle that the Circuit Court was obligated to independently examine the entire record. (Brief, p.

18). The Circuit Court cited *Miller* too and for the same point. (Order, p. 5). Odom misconstrues the Circuit Court's actual review of the record. Odom disregards what the Circuit Court wrote about its review. The Court stated at least five times that it reviewed and considered the entire record:

> *"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.* " (Order, pg. 1).
>
> *"The Court carefully reviewed all parties' pleadings, depositions, and exhibits provided to the Court and came to the following conclusions."* (Order, pg. 5).
>
> *"The Court reviewed the evidence in this case and the voluminous deposition testimony from the multiple deponents. " (Order, pg. 7).*
>
> *"The court examined the full extent of the evidence and the record when considering 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 .... The Court therefore examines in full all the evidence provided but constrains this decision only to those statements specifically raised by the parties in their pleadings." (Order, pg. 7, n. 1).*

The Circuit Court reiterated the same in the Order Denying Motion to Reconsider stating, "[t]he Court has considered the various positions of each party, and the Court has reviewed the extensive amount of material and discovery in this case." (Form 4 Order). After reviewing the entire record, the Circuit Court independently found that Odom did not produce sufficient evidence to meet the clear and convincing standard to prove constitutional actual malice.

2) The Circuit Court did not rely on Odom's deposition testimony only and did not ignore the rest of the record to reach a decision.

Odom argues, "the Circuit Court's Order ignores this evidence and any reasonable inferences that could arise from it, and instead places undue on Odom's subjective beliefs." (Brief, p. 19). Again, the Circuit Court did not ignore other evidence and did review the entire record. *Supra*. Second, the Circuit Court did not "place undue" (i.e., unwarranted or inappropriate) importance on Odom's testimony or even state that the Circuit Court relied on it only. As part of its review, the Circuit Court found it troubling that Odom did not have any oral or written evidence that Campolong knew the statements he allegedly made

were false; that Campolong entertained serious doubts about the truth of the statements; or that Campolong was highly aware of the probable falsity of the statements. (Order, p. 10). Odom admitted in his deposition that he does not have evidence himself that Campolong possessed a high degree of awareness of the probable falsity of statements or that Campolong entertained serious doubts as to the truth of these statements. (Dep. Odom, p. 50, L 2-19).

> *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.*
>
> (Dep. Odom, p. 50, L 10-19).

If Odom himself had no written or oral evidence, for the heightened burden he must meet, the Circuit Court could undoubtedly and appropriately take that into account in deciding whether Odom met the clear and convincing standard. Campolong's counsel did not ask Odom what he subjectively believed about these critical parts of his burden of proof. Counsel asked him 1) what oral evidence (witnesses) and 2) what written evidence (documents) do you have to prove your case. The questions are obvious and relevant ones to ask a public official or public figure who has brought a defamation lawsuit. Odom's contention that he should not be "punished" for not "articulating" his grounds is an incredible plea for forgiveness in a legal proceeding. (Brief, p. 30). Odom testified, in his own words, that he did not have the evidence. During the deposition, Odom's counsel did not ask any questions that suggested otherwise.

3) <u>Odom's references to the record are not clear and convincing evidence of constitutional actual malice.</u>

More than four years after filing his lawsuit, and after much discovery was conducted, Odom

informed the Circuit Court, Campolong and McLeod, at the hearing on the motion for summary judgment (August 17, 2022), that he was "abandoning" his libel claims. (Order, p. 4, 6). Odom writes in his Memorandum for his Motion to Reconsider that, "[p]laintiff has conceded the 2012 letter would likely be protected by a qualified privilege, and *thus not be unlawful."* (Odom's Rule 59(e), p. 15). Yet, Odom will continue to rely heavily on testimony about the preparation of the 2012 letter to prop up his case for constitutional actual malice. Odom's continued reliance on the letter, abandoned as libelous, admittedly privileged, and barred by the statute of limitations, only reinforces Campolong's position that Odom lacks clear and convincing evidence. The Circuit Court concurred in stating, "[a]gain, 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." (Order, p. 12).

Odom's concession for his libel claims means that he must prove that Campolong committed constitutional actual malice within two years before the filing of his Complaint.[13] In doing so, Odom must prove sufficient evidence that clearly and convincingly shows that Campolong said a non-privileged, false and defamatory statement about Odom to a third person, and Campolong knew the statement was false, or he said it with reckless disregard for the truth, meaning that Campolong entertained serious doubts about what he said about Odom.

The Complaint was filed on April 23, 2018, so an actionable slander would have to have occurred between April 23, 2016, and April 23, 2018. In his deposition, Odom was able to identify only two persons, Bolton and Stephens, who heard Campolong say something allegedly slanderous about Odom in those two years. (Dep. Odom, p. 43, L 13-25; 44, L 1-4). Even so, Bolton and Stephens fail to provide clear and convincing evidence of what was said by Campolong – thereby placing Odom's defamation case

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[13] Defamation claims are subject to a two-year statute of limitations; and "the limitations period begins when the alleged defamatory statement is made, not when the plaintiff learns of the statement." *Harris v. Tietex Int'l Ltd.,* 417 S.C. 533, 542, 790 S.E.2d 411, 416 (Ct. App. 2016) (citing S.C. Code Ann. § 15-3-550).

on shaky grounds from the start. Bolton and Stephens do not "distinctly remember" facts; they are not "precise and explicit"; they "lacked confusion as to the facts"; and they do not have a "firm belief or conviction, without hesitancy". *See* Anderson, S.C. Requests to Charge - Civil, 1-3. The evidence Odom presents is ambiguous, doubtful, equivocal and contradictory. *See* Anderson, S.C. Requests to Charge - Civil, 1-3.

Stephens

Q: We have alleged that they falsely accused Mr. Odom of using $850,000. That was received from the tobacco settlement funds and was used by the Chesterfield Rural Water Company, that they said that. He had illegally used the money, $850,000. Have you heard either one of them say that?

A. If I'm not mistaken, I think Mr. Campolong mentioned something to that effect, but I'm not exactly sure.

(Dep. Stephens, p. 5, L 22-25, pg. 6, L 1-16).

Bolton

Q. Did they tell you that Mr. Odom had illegally used $850,000 that was received from the tobacco settlement funds and used by the Chesterfield Rural Company?

A. Yes.

Q. And which one of them told you that?

A. I think both of them may have told me that, if I recall.

Q. Before and after council meetings?

A. (Witness nods head.)

Q. Is that a yes?

A. I'm trying to think. I'm trying to think. I know we were talking about funds and where the funds have gone. I can't remember if it was before or after. I just know we had a conversation. It may have been during a meeting. I don't know, about where the money went, you know.

(Dep. Bolton p. 9, L 25, p. 10, L 1-16).

Of note, except for two occasions, it is evident from both Bolton's and Stephen's depositions that

what Campolong said to them was said at McBee's Town Hall.

Bolton

Q. Do you recall where these conversations took place?

A. Probably – it had to be in here somewhere.

Stephens

Q. Was this outside of council meetings or when was it?

A. It was during council meeting.

Q. During the Council meeting?

A. Uh-huh

Q. In executive session or not?

A. Yes, sir, executive session. (emphasis added)

Q. And was that a topic of the executive session?

A. The water itself was and that's when all the other stuff came up.

(Dep. Stephens, p. 5, L 22-25, p. 6, L 1-16).

Q. Any other things that you've heard either of these gentlemen say negative about Mr. Odom that you can recall?

A. Just like I said, that they said he was a crook and stole money from the town when he was in office and they had said they had, you know, proof of these things. But whenever I spoke with them and asked them to show me the proof or whatever the case may be, nobody could produce anything. It's been stated more than one -- on one occasion or more than one meeting. When we go in executive session, anytime the water comes up, something is going to come back to his name reflected in it and not always in a positive manner.

(Dep. Stephens, p. 8, L 7-20).

Odom's references to the record are insufficient to meet the clear and convincing standard for constitutional actual malice. As a starting point, Odom testified that Bolton and Stephens told him, "I'm the topic of conversation between Mr. McLeod and Mr. Campolong, that I had misappropriated $850,000, and that there was 400 and something thousand in the bank when I became mayor, and when I left there was

minus $100,000 in the bank and that type thing." (Dep. Odom, p. 45, L 13-20). Regarding the bank balance, Odom testified that he had the documents to prove that what Campolong said was false:

> *Q. What other specific information do you have?*
>
> *A. I have the audits of the Town of McBee. I believe they are 2000, 2001, 2002, 2003 and maybe 2004. I have those along with a copy of some bank statements from the Town that proves that all of that that was said was incorrect.*
>
> *Q. Okay. And do you personally possess this information?*
>
> *A. I do.*
>
> *Q. All right. If you would produce it to your attorney, Mr. Parker --*
>
> *A. Be glad to.*

(Dep. Odom, p. 46, L-19-25, p. 47, L 1-6).

Odom did not produce or use the bank statements to prove his point, or meet his burden, and the documents are not in the record. This is another example where Odom does not prove clearly and convincingly what he contends is constitutional actual malice.

As to his selections from the record, Odom first argues that Campolong failed to investigate what he said before saying it, and the failure to do so is clear and convincing evidence. (Brief, p. 19). To make his point, Odom focuses almost entirely on deposition testimony about the preparation and contents of the 2012 letter. Odom argues that Campolong's daughter, Patricia Wise, was involved in drafting the 2012 letter. (Brief, p. 23). In her doing so, she did not substantially investigate the allegations written about Odom. (Brief, p. 23). In the excerpt cited by Odom from Wise's deposition, Odom examined Wise about the letter and whether she investigated the allegations in the letter before Town Council sent it to the Attorney General. (Brief, p. 23). Odom also examined Campolong about the 2012 letter – asking him similar questions about what investigation he conducted. (Dep. Campolong, p. 21, L 16-25).

The relevance for whether a party does an investigation before making an alleged libelous or slanderous statement has been addressed by the United States Supreme Court and the South Carolina

Supreme Court. *See, e.g., St. Amant v. Thompson,* 390 U.S. 727, 733, 88 S. Ct. 1323, 1326, 20 L.Ed.2d 262 (1968) ("Failure to investigate does not itself establish bad faith"); *Elder,* 341 S.C. 108, 114-15, 533 S.E.2d 899, 902. Odom cites *St. Amant* to say that the failure to investigate facts can constitute actual malice when there is obvious reason to doubt the veracity of the [informant]. (Brief, p. 17). Like he does with other constitutional actual malice principles, Odom depends on the very limited or narrow exceptions to the principles – disregarding the primary point. To illustrate, the more complete *St. Amant* citation includes the following: "reckless conduct is not measured by whether a reasonably prudent man would have published or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant,* 390 U.S. at 731, 88 S. Ct. 1323, 1325; *Elder,* 341 S.C. at 114**,** 533 S.E.2d at 902.

Whether and to what extent Wise, Campolong, or really, Town Council, investigated allegations before sending the *privileged* letter to the Attorney General in 2012 is not clear and convincing evidence of actual malice - particularly not for alleged slanders, involving privileged matters, and matters of public concern, made to two other council members several years later during an election. The very fact that all members of Town Council signed the letter is clear and convincing evidence that Campolong did not speak alone and did not make a false statement with the high degree of awareness of its probable falsity. The decision to grant summary judgment in Campolong's favor is consistent with the principles addressed in *St. Amant and Elder.*

Odom argues that Campolong admitted that he had no personal knowledge of any illegal conduct by Odom. *(Id.* at 21:24-22:13, 30:13-16). (Brief, pp. 23, 25). Odom misconstrues Campolong's deposition testimony on this point. Here again, Odom asked Campolong questions about the 2012 letter. Odom asked him about allegations of illegality in the letter. Campolong testified that Town council was seeking an investigation for whether there was illegal conduct. (Dep. Campolong, p. 30, L 1-16). Like the legislators in *Richardson v. McGill,* McBee Town Council, along with its legislative members, was permitted to

request an investigation without having to justify their actions in a lawsuit. *See Richardson v. McGill,* 273 S.C. at 144, 255 S.E.2d at 342. ("Under the present facts, public policy mandated that legislators be permitted to pursue reports of incompetent or illegal behavior involving appointed county personnel without the necessity of having to justify their actions in a suit for defamation.").

Odom argues that Campolong's alleged statements arose from his ill-will or bad motives resulting from previous litigation between them. (Brief, p. 26). Odom is referring to a 2011 condemnation action involving Alligator. The company sought to condemn land owned by J.B.C. Limited Partnership (J.B.C.) to install a sewer line. The public records reflect that Alligator determined that just compensation for the land was $4,600.00. The suit was tried before a jury, and the jury awarded J.B.C. over $53,000.00. *Alligator Rural Water v. J.B.C. Limited Partnership*, C/A 2011-CP-13-00384.

Odom cites *Elder v. Gaffney Ledger* to say, "[e]vidence of motive is relevant to the actual malice inquiry." (Brief, p. 26). The more complete citation is the following: "[a]lthough evidence concerning motive or care may bear some relation to the actual malice inquiry; however, 'courts must be careful not to place too much reliance on such factors'." *Elder,* 341 S.C. at 115, 533 S.E.2d at 902 (citing *Harte-Hanks,* 491 U.S. at 668, 109 S.Ct. 2678). For a case involving the constitutional actual malice standard, "[i]nstructions [on common law malice], which permit the jury to impose liability on the basis of the defendant's hatred, spite, ill will, or desire to injure are clearly impermissible." *Old Dominion Branch No. 496 v. Austin,* 418 U.S. 264, 281, 94 S. Ct. 2770, 2780, 41 L.Ed.2d 745, 760 (1974). "Ill will toward the plaintiff, or bad motives, are not elements of the *New York Times* standard." *Id.*" *Sanders v. Prince*, 304 S.C. 236, 240, 403 S.E.2d 640, 643 (1991).

Odom argues that a fellow Town Council member [Stephens] testified that Campolong did not have any proof to substantiate any of his claims." (Brief, p. 24). Proof, however, is in affidavits filed on behalf of McBee in the *Town of McBee v. Alligator* lawsuit. Stephens was on Town Council during the pendency of the lawsuit. (Dep. Stephens, p. 10, L 3-5). That said, these facts are not sufficient clear and convincing

evidence.

Odom relies on a letter dated May 9, 2001, written by SC Secretary of Commerce Charles S. Way, Jr. ("Way"), to Odom, announcing the grant to McBee. (Brief, p. 28). Odom argues that Campolong acknowledged in his deposition that he saw Way's letter, and his seeing it is clear and convincing evidence. (Brief, p. 9). Odom adds that both Campolong and McLeod testified that they did not know how the grant was obtained. (Brief, p. 23). The letter does not prove that Campolong entertained serious doubts about the truth of what he allegedly said. There is no dispute that the Department of Commerce can and did administer the grant. The dispute is over Odom's handling of the grant, and that conduct forms a basis for Campolong's and some McBee's residents' subjective beliefs of Odom as a public official or figure. A mayor must know that his constituents will hold him accountable as a public servant for the use of public funds. Odom believes it is appropriate for a public official to direct public money to a private company in which the official is the president or general manager. Some McBee residents do not think so. Campolong does not think so. A public official can be subjected to civil or criminal penalties under South Carolina law for doing so. *See Ex parte Harrell v. Attorney General of State*, 409 S.C. 60, 69, 760, S.E.2d 808, 812 (2014) (*abrogated on other grounds* by *Pascoe v. Parks*, 415 S.C. 643, 785 S.E.2d 360 (2016) (addressing members of the House of Representative and Senate); *See* S.C. Code Ann. §8-13-700(A)-(B) (Supp. 2001 and 2002); S.C. Code Ann. §8-13-100 (27) (Supp. 2001 and 2002) (definition of public official); S.C. Code Ann.§8-13-100 (11) (Supp. 2001 and 2002) (definition of economic interest).[14]

[14] While Odom contends that Town Council approved the use of the grant in 2001, Odom does not mention that the May 2001 Town Council's minutes do not reflect Odom recusing himself from votes or Will Edwards recusing himself. (Exhibit- Minutes). Will Edwards, who followed Odom as McBee's Mayor, was employed by Alligator at the time – albeit Odom initially denied this fact. (Exhibit - Minutes) (Dep. Odom, p. 59, L 22-25, p. 60, L 1-25, p. 61, L 1-23; p. 62, L 3-7) (Amended Complaint ¶ 24). Present and voting Town Council member Sherry Knight would later serve on Alligator's board of directors. (Dep. Odom, p. 62, L 20-25). The minutes demonstrate that Alligator benefited directly from the grant. Odom's recent contentions, that the minutes are erroneous, is too late and unconvincing. (Brief, p. 10, n. 6). Odom tries to pass off that Alligator received the grant, as recorded in the minutes, is a "typo" that went uncorrected at subsequent meetings when Town Council would have approved the minutes. (Brief, p. 10, n. 6) (Dep. Odom, p. 64, L 20-25; p. 65, L 1-10).

In addition to Way's letter, Odom relies on a letter dated January 23, 2013, from Solicitor William B. Rogers, Jr. (Fourth Judicial Circuit) addressed to Senior Special Agent Michael Anderson of SLED. In that letter, Solicitor Rogers wrote that, "in his opinion there is no evidence of any violations of criminal laws and the above case does not warrant prosecution." (Exhibit – Solicitor Rogers letter). Odom argues that Wise testified that Campolong did at some point receive Solicitor Rogers' letter although she does not specify when this occurred. (Brief, p. 13). Odom misconstrues Wise's testimony. Campolong received the SLED report, which included Solicitor Rogers' letter, in the document production served by Odom on September 14, 2018, in this lawsuit. (Memorandum in Opposition to Motion to Reconsider, p. 37 - Appendix).[15] Wise's deposition took place on September 23, 2019. Wise stated, "I might pull them off the computer for [my father] ...." (Wise Dep. 110, L 6-12). Wise did so for her father because the discovery was produced electronically to the parties in this lawsuit. Wise assisted her father in retrieving the document production from a computer. Wise stated she looked at the SLED report "months ago" [during the lawsuit], "within the last six months", when she "saw it came in", - not years ago before the lawsuit was commenced. (Dep. Wise, p. 110, L 6-12).

The following is Campolong's testimony concerning Solicitor Rogers' letter and whether Campolong received it before the filing of the lawsuit.

Q: Do you know who Mr. William B. Rogers, Jr. was?

A: No, sir.

Q: And you haven't seen a letter from him that stated, "It's my opinion there is no evidence of any violation of criminal laws and the above case does not warrant prosecution" applying to Mr. Odom?

A: No, sir.

Q: That was written on January 23, 2013 and no one ever told you that?

A: No sir.

Q: You did not learn that from any source?

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[15] Odom received the SLED Report through a FOIA or subpoena. (Memorandum in Opposition to Motion to Reconsider, p. 37 - Appendix).

A: I do not – I would have – none of that was ever given to me.

Q: Did you ever inquire of the solicitor about the case?

A: No, sir.

(Dep. Campolong, p. 30, L 20-25; p. 31, L 1-11).

Odom contends that Campolong's testimony is self-serving. (Brief, p. 20). However, "[t]he plaintiff cannot rely upon the hope that witness cross-examination will raise a credibility issue..." *Fazekas v. Crain Consumer Group Div.,* 583 F. Supp. 110, 114 (S.D. Ind. 1984) (libel action).

As with other issues, Odom could have conducted more discovery to produce clear and convincing evidence – if such exists. He could have deposed Solicitor Rogers, or a SLED employee, McBee's Town Clerk, or McBee's Office Administrator, to discover more about the dissemination of the letter *if* actual knowledge of the letter is clear and convincing evidence. Odom could have discovered Town Council's minutes that would have presumably discussed receipt of the letter *if* Solicitor Rogers or SLED sent the letter to Campolong. Odom otherwise relies on speculation, surmise, and conjecture, from open-ended questions and uncertain answers, because he does not have clear and convincing evidence.

Finally, the letter itself is not a smoking gun. South Carolina law places the unfettered discretion to prosecute solely in the prosecutor's hands. *Ex parte Harrell,* 409 S.C. 60, 69, 760, S.E.2d 808, 812. Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. *Id*. Solicitors may decline to bring cases for several reasons, e.g., whether the office has the current resources to do so and the complexity of the case. Solicitor Rogers' decision not to bring criminal charges does not mean that Campolong and some McBee residents spoke with a regardless for the truth about Odom's conduct.

4) Campolong's alleged statements related to a candidate for public office and matters of public concern that are protected by the First Amendment.

Elections for Town Council and Mayor (and subsequent contest) were taking place during most of 2016, 2017 and 2018. Again, Odom ran for Mayor and Town Council in these years. Undoubtedly what

was said about him related to the elections in addition to legislative duties. As said by Stephens, "[t]hat type stuff always come up when we go in executive session, if we talk anything about anything having to do with the water, *especially during the time [Odom] was running for mayor and, you know, or running for council or something to that effect.* When we go into executive session, if anything come up about the water, all this other stuff would come up too." (Dep. Stephen, p. 7, L 3-10] (emphasis added). Statements about candidates are some of the most protected forms of First Amendment free speech in this country. Indeed, "[t]here is little doubt that 'public discussion of the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the *New York Times* rule.' *"George v. Fabri,* 345 S.C. at 454, 548 S.E.2d at 875 (citing *Harte-Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 686, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989) (quoting *Ocala Star-Banner Co. v. Damron,* 401 U.S. 295, 300, 91 S.Ct. 628, 28 L.Ed.2d 57 (1971)). "The actual malice standard is premised on our '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'… Indeed, '[a] statement made in the heat of an election contest supplies the paradigm for that commitment to free debate.'" *George v. Fabri,* 345 S.C. at 456–57, 548 S.E.2d at 876 (internal quotations and citations omitted). "Public figures and public officials are entitled to less protection from defamation than private figures because they enjoy greater media access and are less vulnerable to injury from defamatory statements due to their ability to publicly rebut such statements. Furthermore, both public figures and public officials are less deserving of protection because they have voluntarily exposed themselves to the increased risk of defamation." *Erickson v. Jones Street Publishers, LLC,* 368 S.C. at 473, 629 S.E.2d at 668.

Campolong's alleged statements are also constitutionally protected forms of speech because they relate to public concerns – McBee's water system and finances. At the heart of the First Amendment's protection is speech on matters of public concern. *Snyder v. Phelps*, 562 U.S. 443, 452, 131 S. Ct. 1207,

1215 (2011). Thus, "speech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." *Snyder*, 562 U.S. at 452 (citing *Connick v. Myers*, 461 U.S. 138, 145 (1983) (quoting *N.A.A.C.P. v. Claiborne Hardware Co*., 458 U.S. 886, 913 (1982)). "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder,* 562 U.S. at 453. "The inquiry into the protected status of speech is one of law, not fact." *Connick v. Myers*, 461 U.S. 138, 148 n.7, 103 S. Ct. 1684, 1690, 75 L. Ed.2d 708 (1983). With the *Town of McBee v. Alligator* and *AO Smith v. Town of McBee* lawsuits pending and elections consuming 2016, 2017 and 2018, First Amendment protected speech for matters of public concern, First Amendment protected speech for elections, and the *New York Times* standard for public officials or figures overlay what Campolong said to Bolton and Stephens.[16]

5) Odom's conduct in some matters of public concern and McBee residents' opinions about that conduct supports Campolong's subjective beliefs about Odom.

The 2016 Mayor's race and first election between Odom and Campolong was contested with the MEC. After conducting a hearing, the MEC ordered a new election that Campolong won. (Exhibit H). The following is an extract of the MEC's findings of fact and conclusions of law in its Order about Odom's conduct during the 2016 race.

> *Having considered all the evidence and reliability of witnesses, the Commission is convinced that Respondent Odom manipulated and abused the political process in McBee in ways specifically intended and designed to illegally dilute the voting strength of Campolong supporters. The record reflects that Respondent Odom engaged in improper conduct and committed blatant violations of state election laws for the purpose of diluting the votes of his opponent's supporters.*

(MEC Order).

[16] Campolong's Motion for Summary Judgment; Campolong's Memorandum in Support of Motion for Summary Judgment, p. 15; Memorandum in Opposition to Motion to Reconsider, pp. 16, 30.

Odom appealed the Order of the MEC to the Circuit Court. The Circuit Court affirmed the MEC and dismissed Odom's appeal on September 27, 2017. (Exhibit I filed on July 26, 2022). No further appeal was taken. The extracted part of the Order speaks for itself about Odom's conduct and consequently what some McBee residents believe about him.

Campolong is not alone. Some McBee residents believe that Odom did something wrong as Mayor in 2001, and many expressed themselves at the polls in 2008 when Campolong first ran for Mayor.

> *"The preeminent issue in the 2008 campaign was the dissatisfaction of the citizens of McBee with Alligator, its abuse of power, breach of fiduciary duties by its officers and employees while serving as elected official of the Town, and it unaccountable and financial irresponsible dealings."*

(Amended Complaint ¶ 46, *The Town of McBee v. Alligator Rural Water*)

Still today, some McBee residents believe that Odom did something illegal or wrong as Mayor in 2001 and expressed these beliefs in their own words in depositions taken in this case:

***

A. Well, most of the people are mad because he took out $850,000.

Q. Say that again, now.

A. Most of the people around talks about the money he took and it wasn't his money they said. I don't know who.

Q. Which money?

A. $850,000 that the tobacco settlement give the towns.

Q. And Mr. Odom took it?

A. He said it belonged to Alligator, but it was made out to the Town of McBee.

Q. So he took that money?

A. Somebody got it. The Town didn't get it.

(Dep. Bobby Edwards, p. 23 L 1-15)

***

A. If the money was deposited in the bank to the Town of McBee and then he takes it out and puts it to Alligator Water and then moves it to Chesterfield, now, tell me, something ain't right about that. It would not have been - come to the Town of McBee if it didn't belong to the Town of McBee. You can't make me believe that.

Q. Have you seen the paperwork whereby the money was under a grant and it was supposed to go to-for the water-for Chesterfield Water Company?

A. Was supposed to go where?

Q. It was only the Town of McBee because they had to make it to someone, they made it to the Town of McBee. You're not aware of that and it was all the time designated as-

A. No, no. Why did the other town around get it and then their money not transfer to there?

Q. Well, I can't answer that –

A. Okay then, Then it's not.

(Dep. Olin Morrison, p. 19 L 11-25, pg. 20, L 1-7)

***

Q. In other words, you don't think that if the - if the water district got a grant to be passed through McBee, that the fact that McBee passes it through to where it was intended you'd think something was wrong with that?

A. No. I am saying was Alligator's name or ·anything on that check that was sent to McBee - that was deposited in the bank for the Town of McBee, was it? If not, the check belongs to the Town of McBee.

(Dep. Olin Morrison, p. 30 L 11-25, pg. 20, L 7-16)

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Q: And then you brought what, a Town Council meeting of May 9, 2001; is that right.

A. See, why I brought that was this. When they had the Town Meeting about the $850,000, Glenn [Odom] said that Alligator Rural Water had received a grant for $850,000 and he wanted to run it through the Town with no charges to the Town. That's not right. If the check was made out to the Town of McBee - and I was at the Town meeting that night. And I asked Glenn, I said, if it's your money why was the check made out to the Town of McBee? He said, well, it had to go through a municipality. That's why I brought that right there.

(Dep. Hattie Gardner Edwards, p. 7, L 5-17)

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Q. *What did you hear from Glenn?*

A. I guess he was trying to feel me out when he found out about the tobacco money coming. I had no idea what it was or anything, but he came to me probably after a Lions Club meeting and said, "You know Cheraw is getting $3,500,000, but they've got a project and they can get that money. And Chesterfield is getting two-and-a-half million dollars. They've got a project, and they'll get that money." And he went on to Pageland. They was getting a million and a half And then he got down to McBee. "McBee can get $868,000." That's verbatim, and you know it.

Q. That McBee can get that for what?

A. But they didn't have a project. McBee did not have a project. And him mayor. You knew you tell me now.

Q. What do you mean they did not have a project?

A. He was insinuating that McBee didn't have a project but Alligator Water did, and he was going to have it -- he was going to write a request to get the money for Alligator Water. And if he can produce that request which he wrote to the government to get that money, I'll believe anything he says, but until then, what I know about him, I know what I know ....

(Dep. Billy Rex Lovelace, p. 10, L 10-25; p. 11 L 1-9).

I said that the only way that Alligator or the rural water could get the money would be go through the town and that they used the town 's *name to get the money and everybody used it and two and a ·half years later we go and borrow $1.5 million to redo our system when we could have used $850,000 to revamp our own water instead of going out of the county. So McBee applied for the grant, but didn't ·get to use the money and that was during the campaigning of the Mayor Odom for mayor.*

(Dep. A.C. McLeod, p. 6, L 9-18)

Some McBee residents believe that Odom misled them about his position with Alligator while he was Mayor in 2001. The Department of Commerce awarded the $850,000 grant to McBee in May 2001 while Odom was Mayor. (Order, p. 2). In his deposition, Odom testified that he was not Alligator's general manager while he was Mayor because he was working for Sonoco in Hartsville, SC. (Dep. Odom, p. 29, L 5-18; p. 34, L 14-20; p. 68, L 9-11). Odom testified that he left Sonoco in 2003 and *then* became Alligator's general manager. (Dep. Odom, p. 29, L 5-18; p. 34, L 14-20).[17] In so testifying, Odom hoped

[17] In his Memorandum in Opposition to Defendant Campolong's Motion for Summary Judgment. Odom states that he was the general manager from 2003 to 2020 (Memorandum in Opposition, p. 3, n. 2).

to satisfy his doubters, and in effect swear to them, that he was not Alligator's general manager *and* Mayor when the grant was issued in 2001.

Discovery in the present lawsuit revealed that Odom's deposition testimony was false, and it substantiated what some McBee residents believed about Odom back in 2001. The Department of Commerce produced a letter, dated April 16, 2001, that Odom wrote to the Department. (Exhibit N – April 16, 2001 Letter to SC Dept. of Comm.). Odom wrote the letter on Alligator's letterhead and signed it *as* the general manager of Alligator. The letter reveals two things about Odom that Campolong and McBee residents have believed about him for years. First, the letter confirmed that *Mayor* Odom was Alligator's general manager at the time he solicited the grant in 2001. Second, the letter confirmed that Odom was in fact acting on behalf of Alligator and not McBee.

Odom did something else in 2001 that would make some McBee residents angry still in 2008, the year Campolong was first elected Mayor, and still in 2016, when Odom ran for Mayor again and lost. Odom told residents that McBee did not have a project for the $850,000 grant, and therefore it was okay to use the proceeds for the Town of Jefferson. (Dep. Lovelace, p. 10, L 10-25; p. 11, L 1-9). Of note, Odom was unable to explain in his deposition why Jefferson itself did not apply for the grant instead of McBee. (Dep. Odom, p. 78, 11-25; p. 1-3). As a municipality, Jefferson was authorized to do so, and McBee could then do the same for a project in McBee. As to McBee, Odom stated, "McBee had no project to ask for." (Dep. Odom, p. 79, L 1-3). However, this was not true. Odom admitted in his deposition that there were projects in McBee in 2001/2002 that the grant would benefit, including to repair the filters for the Town wells in order to open the wells and supply water. (Dep. Odom, p. 81, L 13-25). Odom, of course, had other ideas for the money, which was for Alligator Rural Water to have it. What did Odom and Alligator stand to gain from the grant? Since the water line came into operation in 2002, Alligator has sold and

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Odom testified in his deposition that he had no role with Alligator when he and Town Council approved the grant in May 2001. (Dep. Odom, p. 68, L 9-11). His letter to the Department of Commerce proves these statements are false.

continues to sell the water running through it, approximately 30 million gallons a month, to businesses and residents in Jefferson. (Dep. Odom, p. 77, L 10-24); (Dep. of Odom, p. 79, L 14-25). McBee has not received any of the profits for ***its*** grant. (Dep. Campolong, p. 19, L 1-6)(*"McBee has never been included in the alliance or any fees or anything").*

C. Odom abandoned the grounds in paragraph 6 of his Complaint concerning the alleged defamation for the punctured pipe by not making an argument; the allegations are not otherwise actionable.

Odom mentions the allegations in paragraph 6 of his Complaint. (Brief, p. 15). Odom does not otherwise make an argument about this alleged defamation, so he should be deemed to have abandoned this ground for defamation. *First Savings Bank v. McLean,* 314 S.C. 361, 444 S.E.2d 513 (1994) (issues not argued in the brief are deemed abandoned and will not be considered on appeal). Out of an abundance of caution, Campolong will address the allegations concerning the punctured pipe.

First, Odom states, "Bolton also stated that either Campolong or McLeod told her either before or after council sessions that Odom had damaged water pipes in the town". (Brief, p. 15). In that regard, in response to questions from Odom's counsel, Bolton testified that she did not remember whether Campolong or McLeod said something about the pipe: *"**Q**. But you can't recall which? **A**. One which one, no I cannot."* (Dep. Bolton, p.8, L 18 -25). Further, in response to questions from Campolong's counsel, Bolton testified that she heard something about the pipe during executive sessions only. (Dep. of Bolton, p. 21, L 17-25). Stephens testified that he heard about damage to the pipe during executive sessions only. (Dep. Stephens, p. 7, p. 12-25; p. 8, 1-6). As Campolong has argued, the legislative absolute privilege applies to what was said in executive sessions – particularly a matter of public concern. *Supra*. Second, McBee's Town Council members and Mayor have an interest in discussing the integrity of its water system and acts related to the system's disruption, particularly as this disruption was under scrutiny in the *Town of McBee v. Alligator Rural Water* lawsuit and being defended in *A.O. Smith v. Town of McBee*. Statements concerning matters of public concern are protected by the First Amendment. *Snyder v. Phelps*, 562 U.S. 443, 451-52, 131 S. Ct.

1207, 1215. Third, McBee's Amended Complaint in the *Town of McBee v. Alligator Rural Water* included the punctured water pipe allegation. (Amended Complaint, ¶ ¶ 32, 33 and ¶ 60). Pleadings, affidavits and other materials generated in judicial proceedings are absolutely privileged. *Pond Place Partners Inc. v. Poole,* 351 S.C. at 24, 567 S.E.2d at 893. Finally, Odom abandoned his libel claims.

D. South Carolina Supreme Court decisions demonstrate in practice that there is a high burden of proof for constitutional actual malice.

South Carolina Supreme Court decisions demonstrate in practice that the clear and convincing evidence burden of proof is high in constitutional actual malice lawsuits. In addressing his burden, Odom cites to *Erickson v. Jones Street Publishers,* LLC, 368 S.C. 444, 629 S.E.2d 653 for an example in which the Supreme Court found sufficient clear and convincing evidence to prove actual malice. (Brief, p. 21-22). Campolong submits that *Erickson* is distinguishable. It is distinguishable because *Erickson* involved a private figure and not a public official or figure. *Erickson*, 368 S.C. at 471, 475, 629 S.E.2d at 668-669. The Supreme Court in *Erickson* did not have to apply the *New York Times* standard or weigh First Amendment issues for an individual public official or figure. *Erickson*, 368 S.C. at 476, 629 S.E.2d at 668 - 670 (applying preponderance of the evidence and negligence charge by consent of the parties). The clear and convincing standard in *Erickson* was relevant because of the punitive damages claim against a media defendant. *Erickson*, 368 S.C. at 476, 629 S.E.2d at 668-670. The Supreme Court affirmed the jury's finding of actual malice and remanded the case for the jury to consider the issue of punitive damages. *Erickson*, 368 S.C. at 444, 478, 629 S.E.2d 653, 671.

The decisions in *Elder v. Gaffney Ledger,* 341 S.C. 108, 533 S.E.2d 899, *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Peeler v. Spartan Radiocasting, Inc*., 324 S.C. 261, 478 S.E.2d 282 (1996) and *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 are more closely on point for this appeal. *Elder*, *Fleming*, *Peeler* and *George* did involve public officials or public figures, and the Supreme Court did address the clear and convincing burden for constitutional actual malice suits in each appeal. In each appeal, the Supreme Court found there was not clear and convincing evidence of constitutional actual

malice. *Peeler v. Spartan Radiocasting, Inc*., 324 S.C. at 267, 478 S.E.2d at 285 (reversing a jury verdict that found constitutional actual malice); *Elder v. Gaffney Ledger,* 341 S.C. at 112, 533 S.E.2d at 901 (reversing a jury verdict that found constitutional actual malice); *Fleming v. Rose*, 350 S.C. at 497, 567 S.E.2d at 862 ("We hold the Court of Appeals erred in finding there was 'clear and convincing' evidence in the record to support Fleming's claim that Rose acted with actual malice…. and reinstate the trial court's grant of summary judgment."); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (affirming summary judgment in favor of one candidate against another - finding in part a lack of clear and convincing evidence of constitutional actual malice).

E. The Circuit Court correctly ruled that the alleged statement made to Bolton and her sister fails to rise to the level of actual malice or is insufficient to support a claim of defamation of a public figure.

The Circuit Court ruled that an alleged statement made to Bolton and her sister, that Odom "messed up" or "ruined" McBee, was not actionable. (Order, p. 16).[18] The Circuit Court stated, "this statement fails to rise to the level of actual malice", and "[e]xamining the full testimony, the Court finds that this statement is insufficient to support a claim of defamation of a public figure." (Order, p. 16).[19] Odom argues that the Circuit Court erred in this ruling. (Brief, pp. 30-31). As an initial conclusion, the Circuit Court found the deposition testimony to be unclear as to the identity of the speaker, and this was a substantial factor to consider in assessing whether Odom met his burden of proof. (Order, p.16). In that regard, Odom could have deposed Bolton's sister to seek clarification, more about the conversation, or something clearer and more convincing – if the discovery exists. He did not.

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[18] Bolton testified in her deposition as follows about what Campolong allegedly said in front of Bolton and her sister: "***Q.*** *What did he say?* ***A.*** *Well, Mr. Odom, how he messed this town up. He's ruined it.* ***Q.*** *Say that again.* ***A.*** *How Mr. Odom has ruined the town." (Dep. Bolton, p. 19, L 23-25; p. 20, L 1-3).*

[19] The Circuit Court looked beyond the nature of the speech or whether the words were false or defamatory. As evident in its ruling, the Circuit Court analyzed the statement for whether it constituted clear and convincing evidence of constitutional actual malice.

Whether a communication is reasonably capable of conveying a defamatory meaning, or the nature of the speech, is a question of law for the trial court to determine. *Snyder v. Phelps*, 580 F.3d 206, 220 (4th Cir. 2009), *aff'd*, 562 U.S. 443, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011). The United States Supreme Court has "declined to adopt an artificial dichotomy between 'opinion' and 'fact,' and it specifically eschewed the multifactor tests that several lower courts (including [the Fourth Circuit]) had utilized to categorize speech." *Snyder*, 580 F.3d at 219. As the Supreme Court explained in *Mikovich*, the "dispositive question" is whether a factfinder might conclude that statements could be proven true or false. *Id.* (citing *Milkovich v. Lorain J. Co*., 497 U.S. 1, 21, 110 S. Ct. 2695, 2707, 111 L. Ed. 2d 1 (1990)). Courts are therefore obligated "to assess how an objective, reasonable reader would understand a challenged statement by focusing on the plain language of the statement and the context and general tenor of its message." *Id*.

There are two subcategories of constitutionally protected speech. The first one involves "statements on matters of public concern that fail to contain a 'provably false factual connotation.'" *Snyder*, 580 F.3d at 219. (citing *Mikovich*). The second one involves "rhetorical statements employing 'loose, figurative, or hyperbolic language'[,] [which] are entitled to First Amendment protection to ensure that 'public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation.'" *Snyder*, 580 F.3d at 220 (citing *Mikovich*). Calling a worker who crossed a picket line a "traitor" or describing a negotiating position as "blackmail" are not actionable statements and, in the latter case, cannot be said to convey commission of an actual crime. *Snyder*, 580 F.3d at 220 (citing *Letter Carriers v. Austin,* 418 U.S. 264, 284–86, 94, S.Ct. 2770, 41 L.Ed.2d 745 (1974); *Greenbelt Coop. Publ'g Ass'n v. Bresler,* 398 U.S. 6, 13–14, 90 S.Ct. 1537, 26 L.Ed.2d 6 (1970). Campolong's alleged statement, that Odom "messed up" or "ruined" McBee, is no more than "loose, figurative, or hyperbolic language" concerning a public official or public figure and a matter of public interest that is not actionable. Also, the language is not clear and convincing evidence that Campolong spoke with constitutional actual malice.

II. THE CIRCUIT COURT CORRECTLY RULED THAT THE CIVIL CONSPIRACY CAUSE OF ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS.

The Circuit Court ruled that Odom's civil conspiracy cause of action was barred by the three-year statute of limitations. (Order, p. 20). Odom argues that the circuit court erred in this ruling. (Brief, p. 38). Odom's argument centers around the Court of Appeals adopting a continuing breach theory. The Circuit Court did not do so, and the Court of Appeals should not do so. As stated by the Supreme Court, "South Carolina has not adopted the continuing breach theory in *Janssen*, *Marshall*, or otherwise." *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. 343, 349, 878 S.E.2d 896, 899 (2022). Odom tries to claim that *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.* supports the application of the "continuing breach" theory to his claim for civil conspiracy. (Brief, p. 40-41). But the Court's "holding in *Janssen* is limited to the South Carolina Unfair Trade Practices Act (SCUTPA)." *Id*. In fact, "[n]othing in *Janssen* suggests the Court adopted…a generalized legal concept for courts to apply outside the statutory context of SCUTPA." *Id*. Odom relies on *State ex rel. Wilson* more so than *Marshall v. Dodds*; but that latter case would not be helpful, either. *Marshall* involved the interpretation of the statute of repose for medical malpractice claims. *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. at 350, 878 S.E.2d at 899. Like *Janssen*, the basis of the Court's ruling was the language of a statute. *Id*., 437 S.C. at 350, 878 S.E.2d at 899. A statute of repose is distinct from a statute of limitations, moreover. "To apply *Marshall*'s rationale to [other] claims where the limitations period does not involve a statute of repose would extend *Marshall* far beyond its reach." *Id*., 437 S.C. at 350, 878 S.E.2d at 900. The Court emphasized this by pointing out that a statute of repose does not involve the discovery rule. "In jurisdictions that have a discovery rule like South Carolina, the clear majority rule rejects the continuing breach theory." *Id*., 437 S.C. at 351, 878 S.E.2d at 900. Civil conspiracy is subject to a three-year statute of limitations and the discovery rule. *See Murphy v. Jefferson Pilot Commc'ns Co.*, 657 F. Supp. 2d 683 (D.S.C. 2008) (concerning in part the claim of civil conspiracy, the

statute of limitations, and the discovery rule). Contrary to Odom's claims, "*Janssen* and *Marshall* concern the application of statutory language to effectuate the intent of the South Carolina legislature[.]" *Id*. They "are properly viewed as statutory construction decisions[.]" *Id*., 437 S.C. at 353 n. 6, 878 S.E.2d at 901 n. 6. Consequently, the "continuous breach", "continuous accrual", or "continuing wrong" theory should not be applied to Odom's civil conspiracy cause of action.

Odom also tries to argue that, for the claim of civil conspiracy, the "continuous accrual theory" has been adopted in other jurisdictions as the "last overt act" rule. (Brief, pp. 41-42). Without expressly saying so, Odom seems to suggest that South Carolina Courts should recognize the "last overt act" rule but call it the "continuous accrual theory". This will strike the Court as odd, until the Court learns that Odom has never argued about the "last overt act" rule before his appellate brief. (Odom's Memorandum in Opposition to Motion for Summary Judgment filed August 16, 2022; Odom's Sur-reply Memorandum filed August 25, 2022; Odom's Motion for Reconsideration filed on February 14, 2023). The cases he references have never been cited or discussed previously, either. *Id*. Odom should not be able to argue for the adoption of the "last overt act" rule now. *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) ("[Although] a party is not required to use the exact name of a legal doctrine in order to preserve the issue…the issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge."). What is more, Odom cannot have it both ways. If the "last over act" rule is just the "continuous accrual theory" applied in the context of civil conspiracy (though it is not), then Odom cannot avoid this language and rejection from the South Carolina Supreme Court: "In jurisdictions that have a discovery rule like South Carolina, the clear majority rule rejects the continuing breach theory." *Poly-Med, Inc. v. Novus Sci. Pte. Ltd.*, 437 S.C. at 351, 878 S.E.2d at 900.

As an alternative, Odom argues that the discovery rule saves his civil conspiracy cause of action. (Brief, p. 39). He argues, "[t]here is no evidence in the record demonstrating that Campolong and McLeod made any defamatory statements prior to the 2016 election in furtherance of the conspiracy. The statements

made in the 2012 letter and the allegations made in the 2015 lawsuit were not defamatory because they were subject to the qualified and absolute privilege, respectively." (Brief, p. 40). Odom continues by claiming that "[w]hile [he] has pointed to the 2012 letter as evidence of an agreement between Defendants, his claims of civil conspiracy could not have accrued at that time, and he could not have suffered any legally recognizable damage until the defamatory statements concerning him began to be published in an unlawful manner." (Odom's Rule 59(e), pg. 15). Yet, Odom referred to the 2012 letter as libelous in his Memorandum in Opposition to Campolong's Motion for Summary Judgment filed on August 16, 2020. (Odom's Memorandum in Opposition, p. 1).

To adopt the foregoing positions, Odom changed his narrative about libel, in response to Campolong's Motion for Summary Judgment, to save himself from the consequences of the statute of limitations. The allegations in paragraph 3 of Odom's Complaint, concerning the magistrate' fine, were a basis for libel only - appearing only in the 2012 letter. *Supra*. Allegations in paragraphs 2 and 3 of Odom's Complaint were also rooted in libel allegations. *Supra*. Without question, Odom commenced his lawsuit seeking to hold Campolong responsible for alleged libelous statements in the 2012 letter and in other documents. (Dep. Odom, p. 40, L 1-25; p. 41, L 1-3). South Carolina does not permit Odom to change his position. "Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions." *Johnson v. Alexander*, 413 S.C. 196, 202, 775 S.E.2d 697, 700 (2015); *Elrod v. All*, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964) (noting the general rule is "the parties to an action are judicially concluded and bound by [the pleadings] unless withdrawn, altered[,] or stricken by amendment or otherwise. The allegations, statements[,] or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts [that] are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible."). Odom changed is narrative on libel to save himself from the consequences of the statute of

limitations and only did so in response to Campolong's Motion for Summary Judgment. South Carolina law does not permit him to do so.

Odom misreads the record and misunderstands the effect of the discovery rule. There are four elements of a civil conspiracy cause of action: "a plaintiff asserting a civil conspiracy claim must establish (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 Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021), *reh'g denied* (Aug. 18, 2021). (Civil conspiracy is an intentional tort, and an intent to harm remains part of the analysis. *Id*., 433 S.C. at 574 n. 9, 861 S.E.2d at 780 n. 9). Although Odom tries to claim that the 2012 letter is merely "evidence of an agreement"—writing, signing, and sending the 2012 letter to the Attorney General are *overt actions*. These actions *are in furtherance of the alleged preexisting or simultaneous agreement*.

Per Section 15-3-530, a party must bring within three years "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545[.]" S.C. Code Ann. § 15-3-530(5). Under the discovery rule, "all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. The Supreme Court has interpreted "reasonable diligence" to mean this:

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party *might* exist. *The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed*.

Snell v. Columbia Gun Exch., Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981) (emphasis added).

Odom testified that he knew who had filed a complaint against him by 2012. ***Q****: What did SLED tell you the purpose of the interview was when he approached you?* ***A.*** *"[H]e said the mayor and the Town [of McBee] had filed a complaint asking for an investigation on numerous things."* (Dep. of Odom, p. 93, L 8-16).

Odom contends that everything alleged against him was false. He presumably would have contended this in 2012 as well or before he changed his position. Odom knew that he *might* have a cause of action against the signees of the letter, even if he did not seek advice of counsel in 2012 or "develop a full-blown theory of recovery". The discovery rule applies despite the fact that he now "concede[s] [ ] the 2012 letter would likely be protected by a qualified privilege, and thus would not be unlawful." (Odom's Rule 59(e), pg. 15). An element of civil conspiracy is "to commit an unlawful act or a lawful act *by unlawful means*". *Supra*. (emphasis added). Although making a report to law enforcement may be privileged, making a false report is unlawful. *See, e.g.,* S.C. Code Ann. §16-17-722 (filing of false police reports). Odom clearly did not think the letter was no more than "evidence of an agreement" then. The discovery rule bars the civil conspiracy cause of action.

Conclusion

The Court of Appeals should affirm the Circuit Court's full grant of summary judgment in favor of Respondent John Campolong.

Respectfully Submitted,

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