

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

George M. McFaddin, Jr., Circuit Judge

Appellate Case No. 2023-001116

Mare Baracco,.....Appellant,

v.

Charleston Area Convention and Visitors Bureau,.....Respondent.

SUPPLEMENTAL RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mare Baracco,

Plaintiff,

vs.

Charleston Area Convention and Visitors
Bureau,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

CASE NO. 2021-CP-10-02999

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Defendant, Charleston Area Convention and Visitors Bureau (“Charleston Area CVB”), submits the following Memorandum in Support of its Motion for Summary Judgment pursuant to Rule 56(c), SCRCF. The Charleston Area CVB responded to the plaintiff’s FOIA request, thus, the allegations of the Complaint are moot and should be dismissed. The Charleston Area CVB respectfully requests this Court grant Charleston Area CVB’s motion and find there is no genuine issue of material fact in this current action.

FACTS AND PROCEDURAL HISTORY

Plaintiff alleges that she submitted a written request via email to Charleston Area CVB for “copies of all receipts and invoices for all transactions of Charleston County Accommodations Tax (ATAX) expenditures by the Agency as they relate to the promotion of tourism related activities for the County of Charleston” on August 6, 2020. Plaintiff made her request pursuant to the Freedom of Information Act (“FOIA”), South Carolina Code Section 30-4-30(C). Plaintiff further alleges that she mailed a second request to the Charleston Area CVB via U.S. Certified Mail on August 10, 2020.

On August 12, 2020, Charleston Area CVB received plaintiff's FOIA request. Charleston Area CVB promptly and timely produced a written response to plaintiff's FOIA request. *See* Exhibit A. The Charleston Area CVB emailed its FOIA response to plaintiff on August 24, 2020. *See* Exhibit B.

Thereafter, on June 30, 2021, plaintiff filed a complaint and subsequently filed an amended complaint on July 7, 2021, alleging Charleston Area CVB failed to provide a timely written response to her FOIA requests. Shortly after filing her amended complaint, counsel for Charleston Area CVB provided plaintiff's counsel with copies of Exhibit A and Exhibit B as evidence that Charleston Area CVB did in fact timely respond to plaintiff's FOIA requests.

STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Clea v. Odom*, 394 S.C. 175, 714 S.E.2d 542 (2011) (citing Rule 56(c), SCRCP). "Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004) (citing *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)). Once the moving party has met its initial burden of showing an absence of genuine issue of fact, the nonmoving party cannot rest on mere allegations or denials contained in the pleadings. *Id.* "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Ellis*, 358 S.C. at 518-19, 595 S.E.2d at 821 (citing *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990)).

The purpose of summary judgment is "to expedite disposition of cases which do not require the services of a factfinder." *S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). "[W]hen plain, palpable, and indisputable facts exist on which reasonable

minds cannot differ, summary judgment should be granted.” *Ellis*, 358 S.C. at 518, 595 S.E.2d at 821 (citing *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct.App.2001)).

ARGUMENT

There is no genuine issue of material fact in this case and Charleston Area CVB must prevail. Charleston Area CVB’s Exhibit A and B provide ample evidence that a FOIA response was provided to plaintiff. Plaintiff is unable to provide specific facts to show there is a genuine issue of material fact in her lawsuit. Further, plaintiff is unable to refute Charleston Area CVB’s evidence that it did respond to plaintiff’s FOIA inquiry.

Attached to this memorandum and the aforementioned motion for summary judgement is an affidavit from David Jennings, Esq., which states that he prepared the Charleston Area CVB FOIA response for delivery to the plaintiff. *See* Exhibit C. Also attached is an affidavit from Margaret Moorman, David Jennings’ legal assistant, which states she emailed the Charleston Area CVB’s FOIA response to plaintiff’s email address that was previously provided on her FOIA request. *See* Exhibit D. In light of this evidence, there are no remaining genuine issues of material fact.

Further, plaintiff’s request for a declaratory judgment and injunction is now moot. Upon receipt of the correspondence from the Charleston Area CVB, plaintiff no longer had a justiciable issue. *See Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) (citing *Mathis v. South Carolina State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)) (“A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.”). There is no remedy this Court can provide to plaintiff.

Charleston Area CVB has already responded to her FOIA request. Although plaintiff may not appreciate Charleston Area CVB's determination made in its response to plaintiff's FOIA inquiry, that does not defeat the fact that Charleston Area CVB did respond to her inquiry.

Finally, after Charleston Area CVB filed its Motion for Summary Judgment, plaintiff filed a Motion to Amend her Complaint. Plaintiff's motion is not a proper vehicle to defeat Charleston Area CVB's Motion for Summary Judgment. Plaintiff's current single cause of action is properly before this court for determination of Charleston CVB's motion for summary judgment. Whether this court subsequently allows plaintiff to amend her complaint, should have no bearing on plaintiff's current claim that is before the court. As a result, this motion for summary judgment should be decided now.

Simply put, Charleston Area CVB responded to plaintiff's FOIA inquiry. As such, there is no genuine issue of material fact to be decided by a factfinder. Additionally, plaintiff's request for declaratory judgment and injunction are moot. For these reasons, the Court should grant Charleston Area CVB's Motion for Summary Judgment.

Respectfully submitted,

By: s/ Robert E. Tyson, Jr.
Robert E. Tyson, Jr.
SC Bar No.: 10820
La'Jessica M. Stringfellow
SC Bar No.: 102376
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By: _____

David Jennings
SC Bar No.: 2986
Rosen Hagood
151 Meeting Street
Suite 400
Charleston, South Carolina 29401
843.577.6726 Telephone
843.724.8036 Fax

*Attorneys for Defendant, Charleston Area Convention and
Visitors Bureau*

Columbia, South Carolina
Thursday, January 13, 2022

EXHIBIT A

David G. Jennings
djennings@rrhlawfirm.com

ROSEN | HAGOOD

August 24, 2020

VIA EMAIL

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

Re: FOIA Request

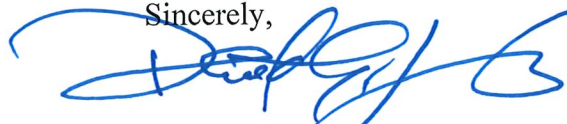
Dear Ms. Baracco:

Your letters to Helen Hill dated August 6 & 10, 2020 have been forwarded to me for response. Without getting into a discussion of whether the contract with Charleston County can change South Carolina law as interpreted by the South Carolina Supreme Court, please be advised that the Charleston Area Convention and Visitors Bureau does not have any records which fall within the parameters of your request. Although we are not required to, we can provide you with the documentation of the receipt of funds from Charleston County, but the CACVB's accounting records do not itemize or allocate expenditures according to individual revenue categories.

If you would like to know when and how much ATAX money the CACVB received from Charleston County for the fiscal year ending June 30, 2020, please let me know. Thank you very much for your interest in the CACVB.

If I may be of further service, please let me know.

Sincerely,



David G. Jennings

DGJ/mm

cc: Helen Hill, Charleston Area Convention and Visitors Bureau (via email)

EXHIBIT B

Margaret Moorman

From: Margaret Moorman
Sent: Monday, August 24, 2020 11:33 AM
To: 'maremail59@yahoo.com'
Cc: David Jennings
Subject: CACVB - FOIA Request
Attachments: 20200824112255749.pdf

Ms. Baracco:

Please see the attached letter regarding the matter referenced above. If you have any questions, please let us know.

Thank You,
Margaret

ROSEN | HAGOOD
MARGARET MOORMAN
| Legal Assistant to David Jennings |
151 Meeting Street, Suite 400
Charleston, SC 29401
| office | 843-577-6726
| fax | 843-724-8036
| direct phone | (843) 266-8146
| direct fax | (843) 266-2245
mmoorman@rosenhagood.com
www.rosenhagood.com

Our website and email have changed.
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CIRCULAR 230 DISCLOSURE

To comply with U.S. Treasury Department regulations, we inform you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any entity, investment, plan, transaction, arrangement, or other tax related matter.

-----Original Message-----

From: ricohcopier@rosenhagood.com <ricohcopier@rosenhagood.com>
Sent: Monday, August 24, 2020 11:23 AM

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mare Baracco,
Plaintiff,

vs.

Charleston Area Convention and Visitors
Bureau,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH CIRCUIT

CASE NO. 2021-CP-10-02999

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I am David Jennings, legal counsel for the Charleston Area Convention and Visitors Bureau (“Charleston Area CVB”).

2. In August, 2020, I was informed by the Charleston Area CVB that it was in receipt of a Freedom of Information Act request from Plaintiff, Mare Baracco.


3. After reviewing Plaintiff’s request and discussing the same with the Charleston Area CVB, I drafted a letter to Plaintiff, attached hereto as **Exhibit A**. My letter served as the Charleston Area CVB’s response to Plaintiff’s Freedom of Information Act request.

4. I requested that my paralegal, Margaret Moorman, send the Charleston Area CVB FOIA response (Exhibit A) to Plaintiff via email using Plaintiff’s previously provided email address. Ms. Moorman’s email is attached hereto as **Exhibit B**.

5. Neither I, nor Ms. Moorman, received an undeliverable email notification after my letter was emailed to Plaintiff.


David Jennings, Esquire

SWORN to and subscribed before me
this 20th day of August 2021.


Notary Public for South Carolina
My Commission Expires: 3/30/28

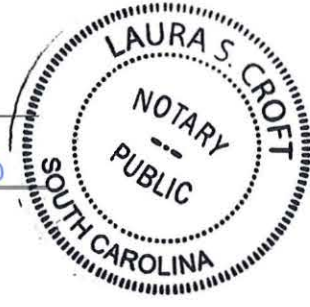


EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Mare Baracco,
Plaintiff,

vs.

Charleston Area Convention and Visitors
Bureau,
Defendant.

IN THE COURT OF COMMON PLEAS
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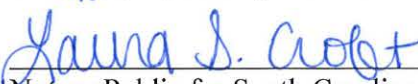
AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I am Margaret Marshall, formerly Margaret Moorman, paralegal to David Jennings at the Rosen Hagood law firm.
2. One of my job responsibilities is sending and receiving correspondence for the firm.
3. Per David Jennings' request, on August 24, 2020, I emailed the attached correspondence, hereto as **Exhibits A and B**, to Plaintiff, Mare Baracco, to her email address as stated on her FOIA request letter.
4. I did not receive a notification that the email was undeliverable to Plaintiff.


Margaret Marshall (formerly Margaret Moorman)

SWORN to and subscribed before me
this 30 day of August 2021.


Notary Public for South Carolina
My Commission Expires: 3/30/22



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APPEAL FROM CHARLESTON COUNTY
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CERTIFICATION OF COUNSEL REGARDING MATTER
INCLUDED IN THE RECORD ON APPEAL

I certify that the Supplemental Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

Respectfully submitted,

/s/ Taylor Smith
Taylor M. Smith IV
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Meriwether Law
923 Calhoun Street
Columbia, South Carolina 29201
(803) 779-2211
Attorney for Appellant

May 15, 2024