

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas  
Frank R. Addy Jr., Circuit Court Judge

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Case No.: 2024-001273

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**RECEIVED**

APR 29 2025

SC Court of Appeals

Carey Holtzclaw and Holtzclaw Lawn Service, LLC,

Appellants,

v.

Piedmont Technical College, William Craig Mayo,  
Brian McKenna, and State Fiscal Accountability  
Authority

Respondents.

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INITIAL BRIEF OF APPELLANTS

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## STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT ERRED IN DISMISSING HOLTZCLAW'S COMPLAINT PURSUANT TO THE PROCUREMENT CODE WHERE STATE PROCUREMENT SERVICES AND PIEDMONT TECH DID NOT AVAIL ITSELF OF THE REQUIREMENTS OF THE PROCUREMENT CODE.
- II. WHETHER THE TRIAL COURT ERRED IN DISMISSING HOLTZCLAW'S CAUSES OF ACTION FOR DEFAMATION AND CIVIL CONSPIRACY PURSUANT TO THE PROCUREMENT CODE.

## STATEMENT OF CASE

Appellants Carey Holtzclaw and Holtzclaw Lawn Service, LLC ("Holtzclaw") filed a summons and complaint against Respondents Piedmont Technical College ("Piedmont Tech"), William Craig Mayo, Brian McKenna, and State Fiscal Accountability Authority ("State Procurement Services") on March 1, 2024. (Summons and Complaint.) Holtzclaw brought causes of action for breach of contract against Piedmont Tech and State Procurement Services, defamation against Piedmont Tech and Mayo, and civil conspiracy against all Respondents. (Complaint, pp. 6-8.)

All Respondents except for McKenna filed motions to dismiss. (Notice of Motion and Motion to Dismiss or in the Alternative for Judgment on the Pleadings; and Notice of Motion and Motion to Dismiss or in the Alternative for Judgment on the Pleadings by Defendants Piedmont Technical College and William Craig Mayo.)

The circuit court conducted a hearing on the motions to dismiss on June 4, 2024, via WebEx.<sup>1</sup> At the end of the hearing, the circuit court took the matter under advisement. On July 3,

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<sup>1</sup> While McKenna did not file a motion to dismiss, he joined with the other Respondents' requested relief at the hearing and requested that the circuit court dismiss the complaint against him.

2024, the circuit court issued a Form 4 order granting all Respondents' motions to dismiss and ending the case. (Form 4.)

Holtzclaw timely filed and served a notice of appeal on all Respondents on August 1, 2024. (Notice of Appeal.)

## FACTS

State Procurement Services and Piedmont Tech initially contracted with Holtzclaw in 2015 for Holtzclaw to provide maintenance for the grounds at all eight of Piedmont Tech's campuses. (Complaint, p. 3, ¶ 7.) In 2020, the Piedmont Tech grounds maintenance contract was up for bid again, and Holtzclaw bid for it again. (Complaint p. 3, ¶ 9.) After State Procurement Services awarded the contract to another party, Holtzclaw protested that award on January 22, 2021. (Complaint p. 3, ¶ 10; Letter from R. Jamison Tinsley Jr. to Stephen Taylor dated January 22, 2021.) On February 18, 2021, State Procurement Services granted Holtzclaw's protest and reopened the bidding for the Piedmont Tech contract. (Complaint p. 3, ¶ 11; Protest Decision dated February 18, 2021.) Holtzclaw eventually received the five-year contract for \$598,155.00. (Complaint p. 3, ¶ 12.)

On March 14, 2022, Holtzclaw met with Mayo, who had become the interim facilities director for Piedmont Tech earlier in the year; McKenna, who was the Procurement Manager at Piedmont Tech; and others. (Complaint p. 4, ¶¶ 15-16.) At this meeting, Mayo informed Holtzclaw that Holtzclaw could no longer purchase materials directly because he believed Holtzclaw was charging Piedmont Tech for materials he used on other jobs. (Complaint p. 4, ¶ 18.) Mayo also accused Holtzclaw of charging Piedmont Tech for work that he did not actually perform. (Complaint p. 4, ¶ 19.) Holtzclaw angrily denied the accusations and told Mayo not to question his

character. (Complaint p. 4, ¶ 20.) McKenna responded by saying, “Well, you appealed us, so we are going to be watching you.” (Complaint p. 4, ¶ 22.)

On September 16, 2022, Holtzclaw met with Mayo again, and Mayo once again said Holtzclaw was violating the contract. (Complaint p. 4, ¶ 23.) At the meeting, Mayo gave Holtzclaw a letter that state Holtzclaw must be in compliance by December 2, 2022, or “further actions would be implemented.” (Complaint p. 5, ¶ 24; Letter from William C. Mayo to Kerry Holtzclaw dated September 16, 2022.)

Then, State Procurement Services sent Holtzclaw a “cure letter” dated December 8, 2022, that listed seventeen deficiencies with Holtzclaw’s performance. (Complaint p. 5, ¶ 26; Letter from Nakendra Perry to Holtzclaw Lawn Service, LLC dated December 8, 2022.) Holtzclaw issued a response on December 13, 2022, that admitted two of the deficiencies but denied the other fifteen. (Complaint p. 5, ¶ 28; Letter from Carey Holtzclaw to Nakendra Perry dated December 13, 2022.) State Procurement Services then sent Holtzclaw a “show cause” letter dated December 21, 2022, that stated Holtzclaw had fifteen days to respond with facts that showed he was not at fault for being in default of the contract or State Procurement Services would terminate the contract. (Complaint p. 5, ¶ 29; Letter from Nakendra Perry to Carey Holtzclaw dated December 21, 2022.) Holtzclaw responded that he was in compliance with the contract and not in default. (Complaint page 5, ¶ 30; Letter from Carey Holtzclaw to Nakendra Perry erroneously dated December 13, 2022.) State Procurement Services finally sent a letter dated January 4, 2023, to Holtzclaw notifying Holtzclaw that it was terminating the contract effective January 13, 2023. (Complaint p. 6, ¶ 31; Letter from Nakendra Perry to Holtzclaw Lawn Service, LLC dated January 4, 2022.)

Holtzclaw responded by filing the lawsuit that is on appeal in this case. Holtzclaw’s breach of contract action is based on Holtzclaw complying with the contract. Piedmont Tech, on the other

hand, breached the contract by preemptively canceling it without cause and by not providing Holtzclaw with the materials required for Holtzclaw to do the work. (Complaint p. 6, ¶¶ 35-38.) Holtzclaw's defamation cause of action is based on comments made by Mayo as described above and other similar comments that amount to calling Holtzclaw a thief, a crook, and a liar. (Complaint p. 7, ¶¶ 39-45.) Holtzclaw's civil conspiracy cause of action is based on Respondents conspiring to sabotage Holtzclaw's business and harm it. Complaint p. 7, ¶ 46-p. 8, ¶ 49.)

#### STANDARD OF REVIEW

When deciding a motion to dismiss for failure to state a claim pursuant to SCRCP 12(b)(6), “the question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Plyer v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007). “A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the complaint, and [the court] must presume all well-pled facts to be true.” Gressette v. South Elec. and Gas Co., 370 S.C. 377, 635 S.E.2d 538, rehearing denied (2006) (internal citations omitted). “A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 596 S.E.2d 42, rehearing denied (2004). “On appeal, the appellate court applies the same standard of review [as the trial court].” Benedict College v. National Credit Systems, Inc., 400 S.C. 538, 544, 735 S.E.2d 518, 521 (Ct. App. 2012). “In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most

favorable to the plaintiff, states any valid claim for relief.” Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006).

## ARGUMENT

### I. THE TRIAL COURT ERRED IN DISMISSING HOLTZCLAW’S COMPLAINT BASED ON THE PROCUREMENT CODE WHERE THE STATE DID NOT AVAIL ITSELF OF THE BENEFITS OF THE PROCUREMENT CODE.

In dismissing the complaint, the circuit court relied upon the statutory language that the Procurement Code is the exclusive means of resolving controversies between the State and a contractor that “arise under or by virtue of a contract.” S.C. Code Ann. § 11-35-4230(1) (2020). The circuit court also found that the Procurement Code is the exclusive dispute remedy to any claim arising under the contract between the State and contractor. The circuit court cited to the seminal case dealing with the exclusivity of the Procurement Code. Unisys Corp. v. South Carolina Budget and Control Bd. Div. of Information Technology Management Office, 346 S.C. 158, 551 S.E.2d 263 (2001).

In Unisys, the State requested resolution of a contract dispute with a contractor pursuant to the Procurement Code. Id. at 164. The contractor responded by denying that the chief procurement officer had jurisdiction and filing a lawsuit against the State in circuit court seeking damages for breach of contract along with injunctive relief to prevent the State from proceeding under the Procurement Code. Id. The State responded in the circuit court by filing a motion to dismiss the complaint along with counterclaims for breach of contract, breach of warranty, fraud in the inducement, and a violation of the Unfair Trade Practices Act. Id. The supreme court affirmed the trial court’s dismissal of Unisys’s lawsuit against the State because the Procurement Code required

Unisys to proceed with the proceeding before the chief procurement officer that the State initiated. Id. at 176-77.

This case has a much different procedural posture than Unisys. In Unisys, the State used the Procurement Code as a sword. In that case, the State used the portion of the Procurement Code that allows either side to have the chief procurement officer resolve a contractual dispute between the State and a contractor. “Either the contracting state agency or the contractor ... may initiate resolution proceedings before the appropriate chief procurement officer by submitting a request for resolution to the appropriate chief procurement officer in writing...” S.C. Code Ann. § 11-35-4230(2) (2020). In the current case, the State instead uses the Procurement Code as a shield rather than a sword. Here, State Procurement Services just terminated the contract with Holtzclaw rather than availing itself of the option of letting the chief procurement officer resolve the dispute. In its termination letter, State Procurement Services did not mention any options Holtzclaw had to challenge the termination through the Procurement Code—it merely terminated the contract. The Court would set a bad precedent by preventing Holtzclaw from pursuing any remedy where the State failed to avail itself of the Procurement Code and did not even notify Holtzclaw of his rights pursuant to the Procurement Code, which the State now argues was Holtzclaw exclusive remedy.

**II. THE TRIAL COURT ERRED IN DISMISSING HOLTZCLAW’S CAUSES OF ACTION FOR DEFAMATION AND CIVIL CONSPIRACY BECAUSE THE PROCUREMENT CODE DOES NOT GOVERN THESE CAUSES OF ACTION.**

The Court also erred in finding that the Procurement Code controlled Holtzclaw’s actions for civil conspiracy and defamation. These actions lie in tort rather than contract. The circuit court found that the Procurement Code controlled the defamation cause of action because “Defendants’ alleged defamatory statements caused Defendants to terminate the contract with Plaintiff.” (Form 4, pp. 1-2.) As to civil conspiracy claim, the Court held that “Plaintiff’s claim that Defendants

conspired to terminate the contract at issue also falls within the Procurement Code.” (Form 4, p. 2.)

The Procurement Code applies to disputes between a governmental body and a contractor “which arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.” S.C. Code Ann. § 11-35-4230(1) (2020). In Unisys, the supreme court held that the State’s fraud in the inducement claim was controlled by the Procurement Code because that claim was based upon misrepresentation. Unisys, 346 S.C. at 175-76. The supreme court, however, found that the State’s Unfair Trade Practices Act claim was not viable under the Procurement Code as such an action was overridden by the specific requirements of the Procurement Code. Id.

The Procurement Code does not control Holtzclaw’s defamation cause of action against Mayo and Piedmont Tech. This cause of action is based upon comments that Mayo made that portrayed Holtzclaw as a thief, a crook, and a liar. It is irrelevant that part of the damages Mayo’s comments caused was Holtzclaw losing the contract. The damages Holtzclaw suffered go beyond losing the Piedmont Tech contract as these comments damaged his reputation in the community. These comments constitute slander per se because they accuse Holtzclaw of criminal behavior and being unfit for their trade and profession. See Davis v. Niederhof, 246 S.C. 192, 143 S.E.2d 367 (1965); Moshtagi v. The Citadel, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994.) As a result, the law assumes general damages. See Constant v. Spartanburg Steel Prods., Inc., 316 S.C. 86, 447 S.E.2d 194 (1994). General damages are damages presumed to have occurred to one’s reputation such as embarrassment, humiliation, and mental suffering. Holtzscheiter v. Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998). These damages have nothing to do with the Piedmont

Tech contract so the defamation cause of action is not controlled by the Procurement Code as it is a much broader claim than just what deals with the Piedmont Tech contract.

Likewise, the Procurement Code does not control Holtzclaw's civil conspiracy claim. Civil conspiracy is an intentional tort that consists of the following elements: (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 Cty. Sch. Dist., 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021).

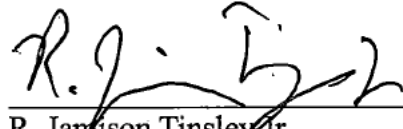
Holtzclaw's complaint alleges sufficient facts to withstand dismissal of his civil conspiracy claim. The facts alleged are that Respondents, through the actions of Mayo, McKenna, and possibly others, designed to injure Holtzclaw because he had previously won an appeal against Piedmont Tech. This intent to ruin or damage Holtzclaw's business is the type of behavior that a civil conspiracy claim is designed to give a plaintiff redress against. Gynecology Clinic, Inc. v. Cloer, 334 S.C. 555, 514 S.E.2d 592 (1999) (civil conspiracy was involved because the object of picketing the abortion clinic was to ruin or damage the plaintiff's business). Here, Respondents' actions were designed to harm Holtzclaw's business over and beyond just breaching the Piedmont Tech contract so the circuit court erred in dismissing the civil conspiracy claim as barred by the Procurement Code.

## CONCLUSION

For the reasons argued above, the Court should reverse the circuit court's dismissal of Holtzclaw's complaint against Respondents.

Alternatively, if the Court agrees with the circuit court that the Procurement Code precludes Holtzclaw's lawsuit on any causes of action then it should allow Holtzclaw to proceed against Respondents through the Procurement Code process on any such causes of action.

Respectfully submitted,



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April 23, 2025

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY  
Court of Common Pleas  
Frank R. Addy Jr., Circuit Court Judge

Case No.: 2024-001273

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Carey Holtzclaw and Holtzclaw Lawn Service, LLC,

Appellants,

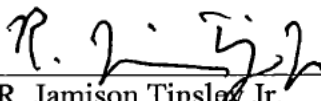
v.

Piedmont Technical College, William Craig Mayo,  
Brian McKenna, and State Fiscal Accountability Authority,

Respondents.

Proof of Service

I certify that I have filed and served the Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal on the below date by mailing a copy with proper postage affixed to S.C. Court of Appeals at PO Box 11629, Columbia, SC 29211; James W. Logan Jr. at Post Office Box 259, Anderson, SC 29622; Michael H. Montgomery at Post Office Box 11886, Columbia, SC 29211; and Ralph J. Smiley at P.O. Box 351, Lexington, SC 29071.

  
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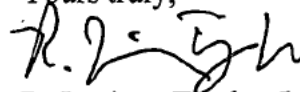
Carey Holtzclaw v. Piedmont Technical College, et al.  
Case No. 2024-001273

Dear Ms. Kitchings:

Please find attached a copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal in the above-referenced matter along with a proof of service. I am serving counsel for respondents simultaneously via U.S. mail.

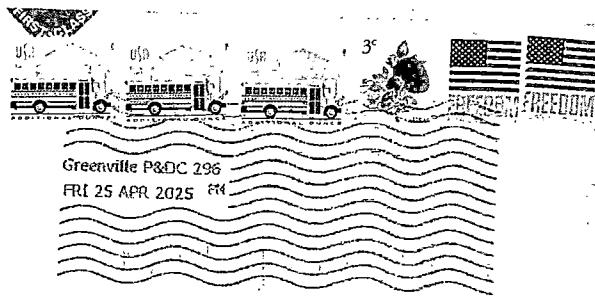
Thank you for your assistance in this matter.

Yours truly,



R. Jamison Tinsley Jr.

cc: James W. Logan Jr., Esquire  
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