

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-1771

NORTH PLEASANT, LLC, AND)
VANGUARD DEVELOPMENT)
GROUP, LLC.,)
Plaintiffs)

vs.)

SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE and)
EDWARD D. BEACH,)
Defendants.)

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ORDER DENYING IN PART AND
GRANTING IN PART THE
DEFENDANTS MOTION FOR
SUMMARY JUDGMENT

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The Defendants filed summary judgment motions on the causes of action of intentional interference with a contractual relationship, intentional interference with prospective contractual relations, and violation of the South Carolina Unfair Trade Practices Act (UTPA).

To establish intentional interference with a contractual relationship the plaintiff must prove: (1) a contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) the damage resulting therefrom. Kinard v. Crosby, 315S.C.237, 433 S.E. 2d 835 (1993).

To establish a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: (1) that the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) that the interference caused injury to the plaintiff. Id. While it is not necessary that the interfering party intend harm, it is necessary that he

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intend to interfere with a prospective contract. Eldeco, Inc. v. Charleston County Sch. District, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007).

I have reviewed the filings submitted in support and opposition to these motions, and find the Plaintiffs have provided the Court with the mere scintilla of evidence sufficient to withstand a motion for summary judgment on the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations against the Defendant South Carolina Coastal Conservation League. However, viewed in the light most favorable to the Plaintiffs, the record is devoid of any evidence that the Defendant Beach's actions give rise to him having personal liability for either of these causes of action. Under proper evidence, agents of principals can incur liability for their own tortious conduct for which their principal may incur vicarious liability. As the Court understands it, the Plaintiffs' theory of liability against the Defendant SCCCL rests on the premise that one of the Defendant's employees, Hamilton Davis, was the person who communicated false statements to a company with which the Plaintiffs had contractual relations, either actual or prospective. The evidence which the Plaintiff argues gives rise to Beach's liability consists of him being the head of the SCCCL and a deposition excerpt that shows Beach directed Davis to contact the contracting party. A close reading of that deposition excerpt shows that Beach did not recall conversing with Davis prior to Davis's contact with the contracting party, but he admits that he likely did talk to Davis prior to Davis's conversation with a representative of the contracting party. However, there is no evidence that shows Beach directed Davis to do anything other than contact another party to discuss their potential opposition to a project in their usual course of business, nor,

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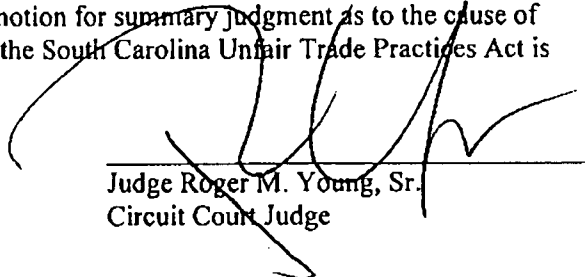
more importantly, is there any evidence that shows he directed Davis to make the alleged false statements which caused the contracting party to back out of the deal. Therefore, I find the Defendant Beach is entitled to summary judgment on the causes of intentional interference with a contractual relationship and intentional interference with prospective contractual relations.

As to the Plaintiffs' cause of action for a violation of the South Carolina Unfair Trade Practice Act, I find the Defendant SCCCL is a public advocacy group that is not engaged in trade or commerce as defined by S.C. Code Ann. § 39-5-10 (b). That section provides "*Trade*" and "*commerce*" shall include the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." Nothing in the now completed discovery shows that the activities of the SCCCL as shown in the record make its activities as a public advocacy group fall within this definition in subsection (b). The activities of the SCCCL do not provide its immunity from suit for tortious conduct; however, even the most nefarious acts of the League complained of in this lawsuit, which is essentially that the League extorts money from businesses and developers on behalf of its members and contributors, does not cause a public advocacy group to fall within the definition above. Whether or not they give rise to punitive damages for the remaining causes of actions is not before this Court at this time.

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Therefore, IT IS ORDERED

1. That the Defendant South Carolina Coastal Conservation League's motion for summary judgment as to the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations is DENIED; and
2. That the Defendant Edward D. Beach's motion for summary judgment as to the causes of action for intentional interference with a contractual relationship and intentional interference with prospective contractual relations is GRANTED; and
3. That both Defendants' motion for summary judgment as to the cause of action for a violation of the South Carolina Unfair Trade Practices Act is GRANTED.



Handwritten signature of Judge Roger M. Young, Sr. in black ink, written over a horizontal line.

Judge Roger M. Young, Sr.
Circuit Court Judge

12/18, 2012
North Carolina, SC