

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SEP 29 2014

SC Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2013-CP-26-08446

(Court of Appeals Case No. 2014-000756)

Marilyn Hatley, individually and as Mayor of the City of North Myrtle Beach, Michael G. Mahaney, Christopher Noury, and the City of North Myrtle Beach.....Respondents,

v.

William H. Bailey, Jr.....Appellant.

RESPONDENTS' REQUEST FOR JUDICIAL NOTICE

Respondents Marilyn Hatley, individually and as Mayor of the City of North Myrtle Beach, Michael G. Mahaney, Christopher Noury, and the City of North Myrtle Beach respectfully request that the Court take judicial notice of the complaint and trial court order in the circuit court case of *Mitchell Bellamy v. Marilyn Hatley, et. al.* C/A No.: 2013-CP-26-07765. A copy of those documents is attached hereto as Exhibit A.

An appellate court can take judicial notice of something that was not before the trial court if it is indisputable. *Wise v. Wise*, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct.

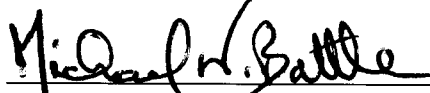
App. 2011). A state appellate court may take judicial notice of the records of any court of its state, but the party desiring that judicial notice be taken must show its relevance. 201129 *Am. Jur. 2d Evidence § 150*. The complaint and trial court order in *Mitchell Bellamy v. Marilyn Hatley, et. al.* C/A No.: 2013-CP-26-07765 are relevant because they demonstrate the burdens that can be placed on individual government employees if they are named in their individual capacities in freedom of information act lawsuits. Although the City of North Myrtle Beach has agreed to defend the individual respondents in the present case, local governments have no legal duty to defend or pay judgments for employees named in their individual capacities.

Judicial notice of the complaint and trial court order is authorized by Rule 201, SCRE. South Carolina's rule for judicial notice is similar to the federal rule. *Compare Rule 201, SCRE with Fed. R. Evid. 201*. Federal courts applying the rule for taking judicial notice routinely take judicial notice of documents filed in other courts to establish the fact of such litigation and related filings. *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991). The existence and content of opinions and pleadings are matters capable of accurate and ready determination by resort to official court files that cannot reasonably be questioned. *Hensley v. United States District Court Eastern District of California*, 2008 U.S. Dist. LEXIS 11965 (E.D. Cal. Feb. 15, 2008) (appropriate to take judicial notice of the court records submitted by the parties).

CONCLUSION

For the forgoing reasons, Respondents Marilyn Hatley, individually and as Mayor of the City of North Myrtle Beach, Michael G. Mahaney, Christopher Noury, and the City of North Myrtle Beach respectfully request that the Court take judicial notice of the

complaint and trial court order in the circuit court case of *Mitchell Bellamy v. Marilyn Hatley, et. al.* C/A No.: 2013-CP-26-07765.

A handwritten signature in black ink that reads "Michael W. Battle". The signature is written in a cursive style with a horizontal line underneath it.

Michael W. Battle, SC Bar # 00584

Battle Law Firm LLC

PO Box 530

Conway, SC 29528

(843) 248-4321

Attorneys for Respondents

September 26, 2014

Exhibit "A"

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Mitchell BELLAMY,

Plaintiff,

-vs.-

Marilyn HATLEY, individually and as Mayor of THE CITY OF NORTH MYRTLE BEACH, Michael G. MAHANEY, and Christopher NOURY, and Steven E. THOMAS, and THE CITY OF NORTH MYRTLE BEACH,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

CASE NO. 2013-CP-26-

7765

FILED Horry County 2013 NOV 21 AM 9:33 MELANIE HUGGINS-WARD CLERK OF COURT

(Please Print)

Submitted By: Kenneth R. Moss, Esquire Wright, Worley, Pope, Ekster & Moss, PLLC Address: 628A Sea Mountain Highway North Myrtle Beach, SC 29582

SC Bar #: 15520 Telephone #: 843/281-9901 Fax #: 843/281/9903 Other: E-mail: KennethMoss@wwpemlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules. This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Other (299)
Torts - Personal Injury: Assault/Slander/Label (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Sexual Predator (510), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture (840), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Administrative Law Judge (980), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Pharmaceuticals (630), Unfair Trade Practices (640), Other (699)

Submitting Party Signature: [Signature]

Date: November 20, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-26- 7765

Mitchell BELLAMY)
)
Plaintiff,)
)
-vs.-)
)
Marilyn HATLEY, individually and as Mayor)
of THE CITY OF NORTH MYRTLE BEACH,)
Michael G. MAHANEY, and)
Christopher NOURY, and)
Steven E. THOMAS, and)
THE CITY OF NORTH MYRTLE BEACH,)
)
Defendants.)
)
_____)

SUMMONS

(Violation of FOIA, Declaratory
Judgment, Injunction &
Further Relief, Violation
of Wages Act)

JURY TRIAL DEMANDED


FILED
HORRY COUNTY
2013 NOV 21 AM 9:33
LANIE HUGGIN
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Plaintiff's Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your responses to said Complaint on the subscriber at his office at 628A Sea Mountain Highway, North Myrtle Beach, SC 29582, within thirty (30) days after service hereof, exclusive of the day of service hereof. AND IF YOU FAIL to answer the Plaintiff's Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted.

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for Mitchell Bellamy


Kenneth R. Moss, S.C. Bar No. 15520
628A Sea Mountain Highway
North Myrtle Beach, South Carolina 29566
Tel: (843) 281-9901 / Fax: (843) 281-9903
KennethMoss@wwpemlaw.com

November 20, 2013
North Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-26- 7765

Mitchell BELLAMY)
)
Plaintiff,)
)
-vs.-)
)
Marilyn HATLEY, individually and as Mayor)
of THE CITY OF NORTH MYRTLE BEACH,)
Michael G. MAHANEY, and)
Christopher NOURY, and)
Steven E. THOMAS, and)
THE CITY OF NORTH MYRTLE BEACH,)
)
Defendants.)

COMPLAINT

(Violation of FOIA, Declaratory
Judgment, Injunction &
Further Relief, Violation
of Wages Act)

JURY TRIAL DEMANDED

FILED
HORRY COUNTY
2013 NOV 21 AM 9:33
DEANIE HUGGINS-
CLERK OF COURT

Now comes the Plaintiff, by and through his attorneys, and complaining of the Defendants would show this Honorable Court as follows:

JURISDICTION, VENUE & STANDING

1. Plaintiff Mitchell Bellamy (hereinafter "Bellamy" or "Plaintiff Bellamy") is a citizen and resident of Horry County, South Carolina.
2. The City of North Myrtle Beach (hereinafter "City") is a municipal corporation in Horry County, South Carolina and is a Public body as defined by South Carolina Code § 30-4-20(a) (Supp. 2009).
3. Upon information and belief, Defendant Marilyn Hatley (hereinafter "Hatley") is presently Mayor of the City, and presided over each of the Meetings of City Council of which Complaint is made below, and is a citizen and resident of Horry County, South Carolina.
4. Upon information and belief, Defendant Michael G. Mahaney (hereinafter "Mahaney") is currently employed by the City as its City Manager, and as such is an agent of a Public body and is the person who prepares agendas for the regular and special Meetings of City's Council, and is a citizen and resident of Horry County, South Carolina,
5. Upon information and belief, Defendant Christopher Noury (hereinafter "Noury") is employed by the City as its City Attorney and parliamentarian to the City Council, and as

such is an agent of a Public body, and is a citizen and resident of Horry County, South Carolina.

6. Upon information and belief, Defendant Steven E. Thomas (hereinafter “Thomas”) is the Assistant City Manager of the City and is responsible for the administration of personnel policies of the City, and is a citizen and resident of Horry County, South Carolina.
7. The acts of the Defendants complained of in this action are not barred by statute or other limitation of time since their occurrence.
8. Upon information and belief, none of the natural defendants is or are entitled to the protections of the Soldiers’ and Sailors’ Civil Relief Act of 1940, 50 U.S.C.A. §§ 501-591 (as amended) in connection with the matters alleged in this present action.
9. Pursuant to S.C. Code Ann. § 30-4-100 (Supp. 2010, as amended), Bellamy has standing to bring this action in his name in connection with the allegations herein in connection with S.C. Code Ann. § 30-4-10 *et seq.*, the South Carolina Freedom of Information Act (“FOIA”).
10. Pursuant to S.C. Code Ann. § 41-10-10 *et seq.* (Supp. 2010, as amended), Bellamy has standing to bring this action in his own name in connection with the allegations herein in connection with the withholding of wages lawfully due to him by the City as his former employer.
11. All the matters complained of in this action occurred in the City, which is located in Horry County.
12. A justiciable controversy exists between the parties, and this Honorable Court has subject matter jurisdiction over the matters in dispute between the parties, personal jurisdiction over the parties, and venue for this action is proper in Horry County.

GENERAL ALLEGATIONS

13. All prior allegations, denials and admissions (qualified or not as set forth above) are repeated as if set forth here verbatim.
14. The City is managed under the council-manager form of government as described in S.C. Code Ann. § 5-13-10 *et seq.* (Supp. 2009).
15. The City is a Public body that is required to comply with S.C. Code Ann. § 30-4-10 *et seq.*, the South Carolina Freedom of Information Act.

16. Upon information and belief, the City does not provide regular, periodic or updated training on the FOIA to elected members of the City Council or employees of the City.
17. The City has adopted a Code of Ordinances that are a public document or documents (the “Ordinances”), and which all members of the City Council and employees of the City are obliged to respect and obey.
18. The City has contracted with the Municipal Code Corporation (the “Municode”) to publish the City’s Ordinances on Municode’s Internet website.
19. Upon information and belief, Plaintiff Bellamy is entitled to rely upon the version of the City Ordinances appearing on the Municode website as complete and accurate when published in that manner.
20. The City publishes Agendas for and Minutes of regular and special Meetings of the City Council on the Internet website maintained at public expense by the City.
21. Upon information and belief, Plaintiff Bellamy is entitled to rely upon the version of the City Agendas and Minutes appearing on the City’s website as complete and accurate when published in that manner.
22. Included among the published City Ordinances are the following provisions:
 - [A] Sec. 2-21. Mayor; ceremonial head; presiding at council meetings.**

The mayor shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of military law. The mayor shall preside over the meetings of the city council, but shall have no regular administrative duties.
 - [B] Sec. 2-31.5. Executive sessions.**
 - (a) The city council may hold executive sessions. These sessions shall be as permitted by the South Carolina Freedom of Information Act and the City Code, at such times and in such places as may be deemed necessary.
 - (b) No formal votes shall be taken upon any matters under discussion at any executive session.
 - (c) A public vote of the council shall be necessary to call an executive session meeting.
 - (d) It shall be unlawful for a member of council or person in attendance to disclose to another person or to make public the substance of a matter

discussed in executive session unless such disclosure is necessarily required for the administration of city business.

[C] Sec. 2-32. Quorum and rules of procedure.

The city council shall, by resolution, adopt its own rules and procedures for the conduct of meetings. The city attorney shall act as parliamentarian. A majority of councilmembers serving shall constitute a quorum for the conduct of business at any meeting. The mayor shall preside or, in his absence, the mayor pro tempore shall preside. In the absence of both, the vice-mayor pro tempore shall preside. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by rules and procedures adopted by resolution.

[D] Sec. 2-33. Minutes of meetings.

The city clerk shall keep the minutes of all public meetings of the council; such record shall be a matter of permanent public record. At each council meeting, the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by the council.

[E] Sec. 2-34.2. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented by the council and give opinions upon questions of procedure, form and law to any member of the council and the city manager.

[F] Sec. 2-35. Agenda.

Matters to be considered by council at a regular meeting shall be placed on a written agenda prepared by the city manager and publicly posted by the city clerk by noon of the day preceding the meeting. Matters not on the agenda may be considered with the approval of a majority of councilmembers.

[G] Sec. 2-71. Duties.

In addition to any other duties assigned to the city attorney by the city council, the city attorney shall:

- (1) Upon request, give all necessary advice to the mayor, members of the city council and all other officers and agents of the city.

- (2) Institute and defend such proceedings and render such other legal services on behalf of the city as may be requested by the proper officers or agents of the city.
- (3) Be responsible for the drafting of all ordinances, resolutions and other instruments of writing relating to the business of the city.
- (4) Approve all official documents of the city, except resolutions, as to form.
- (5) Generally enforce the provisions of this Code, city ordinances, state statutes and other laws of the jurisdiction only with the specific authorization in each case from the city council.
- (6) Initiate and prepare legislative proposals, including legislation, for introduction in the general assembly.
- (7) Attend regular and special meetings of the city council, render legal advice upon request, and review the legal propriety of documents under consideration by the council or administrative officials.

ALLEGATIONS OF VIOLATIONS OF THE FOIA

23. All allegations of fact made previously are repeated as if set forth here verbatim.
24. S.C. Code Ann. § 30-4-100 provides that if the individual named personal Defendants in this action willfully violate the provisions of the FOIA, those individual Defendants are personally liable for the violations.
25. Defendant Mahaney drafted and caused to be published Agendas for City Council Meetings held on December 17, 2012, January 07, 2013, February 04, 2013, March 18, 2013, July 01, 2013, and August 05, 2013. Copies of those Agenda are attached hereto as Exhibits A, B, C, D, E, and F.
26. Defendant Hatley presided over City Council Meetings held on December 17, 2012 January 07, 2013, February 04, 2013, March 18, 2013, July 01, 2013, and August 05, 2013.
27. Defendant Noury attended City Council Meetings on December 17, 2012, January 07, 2013, February 04, 2013, March 18, 2013, July 01, 2013, and August 05, 2013 as the City Council's parliamentarian and City Attorney, and upon information and belief drafted all items related to Executive Sessions of City Council appearing on the Agendas for those Meetings of City Council.

items related to Executive Sessions of City Council appearing on the Agendas for those Meetings of City Council.

28. Pursuant to City Ordinance § 2-33, all Minutes published by the City that have been approved by a subsequent Motion of City Council, at a subsequent or later City Council Meeting, are the official record of the transactions and happenings of the City's Council.
29. Copies of the approved Minutes of the City Council Meetings held on December 17, 2012, January 07, 2013, February 04, 2013, March 18, 2013, and August 05, 2013 are attached as Exhibits G, H, I, J, and K. Upon information and belief, there are no drafted or published Minutes of a City Council Meeting held on July 01, 2013 available on the City's Internet website.

DECEMBER 17, 2012

30. All allegations of fact made previously are repeated as if set forth here verbatim.
31. Upon information and belief, the Agenda for the City Council Meeting held on December 17, 2012 contained a provision for an Executive Session of City Council.
32. Upon information and belief, the published Minutes of the City Council Meeting held on December 17, 2012 record that the City Council did not first meet in open session of City Council and vote to go into Executive Session, in violation of City Ordinance § 2-31.5(c) and S.C. Code Ann. § 30-4-70(b).
33. Upon information and belief, Defendant Hatley presided over the City Council Meeting held on December 17, 2012, but as presiding officer did not announce the purpose of the Executive Session in an open session of City Council before entering into Executive Session.
34. Upon information and belief, Defendant Noury did not act to enforce the City's Ordinances and State law contained in the FOIA at the City Council Meeting held on December 17, 2012, in violation of his duties as the City Council parliamentarian pursuant to Ordinance §§ 2-32 and 2-34.2, and as City Attorney pursuant to Ordinance § 2-71.

JANUARY 07, 2013

35. All allegations of fact made previously are repeated as if set forth here verbatim.
36. Upon information and belief, the Agenda for the City Council Meeting held on January 07, 2013 contained a provision for an Executive Session of City Council.

37. Upon information and belief, the published Minutes of the City Council Meeting held on January 07, 2013 record that the City Council met first in Executive Session, but did not first meet in open session of City Council and vote to go into Executive Session, in violation of City Ordinance § 2-31.5(c) and S.C. Code Ann. § 30-4-70(b).
38. Upon information and belief, Defendant Hatley presided over the City Council Meeting held on January 07, 2013, but as presiding officer did not announce the purpose of the Executive Session in an open session of City Council before entering into Executive Session.
39. Upon information and belief, Defendant Noury did not act to enforce the City's Ordinances and State law contained in the FOIA at the City Council Meeting held on January 07, 2013, in violation of his duties as City Council parliamentarian pursuant to Ordinance §§ 2-32 and 2-34.2, and as City Attorney pursuant to Ordinance § 2-71.

FEBRUARY 04, 2013

40. All allegations of fact made previously are repeated as if set forth here verbatim.
41. Upon information and belief, the Agenda for the City Council Meeting held on February 04, 2013 contained a provision for an Executive Session of City Council.
42. Upon information and belief, the Agenda for the City Council Meeting to be held on February 04, 2013 violated S.C. Code Ann. § 30-4-70(a) because a vague description of "pending legal matters" does not fall within the permitted purposes described in S.C. Code Ann. § 3-4-70(a).
43. Upon information and belief, the published Minutes of the City Council Meeting held on February 04, 2013 record that the City Council did not first meet in open session of City Council and vote to go into Executive Session, in violation of City Ordinance § 2-31.5(c) and S.C. Code Ann. § 30-4-70(b).
44. Upon information and belief, the published Agenda and Minutes for the City Council Meeting held on February 04, 2013 do not describe the subject matter of all items to be discussed in Executive Session of City's Council, in violation of S.C. Code Ann. § 30-4-70(b).
45. Upon information and belief, Defendant Hatley as presiding officer of the City Council meeting held on February 04, 2013 did not announce the specific purpose of the proposed Executive Session, in violation of S.C. Code Ann. § 30-4-70(b).

46. Upon information and belief, Defendant Noury did not act to enforce the City's Ordinances and State law contained in the FOIA at the City Council Meeting held on February 04, 2013, in violation of his duties as City Council parliamentarian pursuant to Ordinance §§ 2-32 and 2-34.2, and as City Attorney pursuant to Ordinance § 2-71.

MARCH 18, 2013

47. All allegations of fact made previously are repeated as if set forth here verbatim.
48. Upon information and belief, the Agenda for the City Council Meeting held on March 18, 2013 contained a provision for an Executive Session of City Council.
49. Upon information and belief, the Agenda for the City Council Meeting to be held on March 18, 2013 violated S.C. Code Ann. § 30-4-70(a) because a vague description of "pending legal matters" does not fall within the permitted purposes described in S.C. Code Ann. § 3-4-70(a).
50. Upon information and belief, the published Minutes of the City Council Meeting held on March 18, 2013 record that the City Council did not first meet in open session of City Council and vote to go into Executive Session, in violation of City Ordinance § 2-31.5(c) and S.C. Code Ann. § 30-4-70(b).
51. Upon information and belief, the published Agenda and Minutes for the City Council Meeting held on March 18, 2013 do not describe the subject matter of all items to be discussed in Executive Session of City's Council, in violation of S.C. Code Ann. § 30-4-70(b).
52. Upon information and belief, Defendant Hatley as presiding officer of the City Council meeting held on March 18, 2013 did not announce the specific purpose of the proposed Executive Session, in violation of S.C. Code Ann. § 30-4-70(b).
53. Upon information and belief, Defendant Noury did not act to enforce the City's Ordinances and State law contained in the FOIA at the City Council Meeting held on March 18, 2013, in violation of his duties as City Council parliamentarian pursuant to Ordinance §§ 2-32 and 2-34.2, and as City Attorney pursuant to Ordinance § 2-71.

JULY 01, 2013

54. All allegations of fact made previously are repeated as if set forth here verbatim.
55. Upon information and belief, the Agenda for the City Council Meeting held on July 01, 2013 contained a provision for an Executive Session of City Council.

56. Upon information and belief, the Agenda for the City Council Meeting to be held on July 01, 2013 violated S.C. Code Ann. § 30-4-70(a) because a vague description of a “contractual matter” to be discussed in Executive Session does not fall within the permitted purposes described in S.C. Code Ann. § 3-4-70(a).
57. Upon information and belief, there are no published Minutes of the City Council Meeting held on July 01, 2013, and no record exists that the City Council did not first meet in open session of City Council and vote to go into Executive Session, in violation of City Ordinance § 2-31.5(c) and S.C. Code Ann. § 30-4-70(b).
58. Upon information and belief, the published Agenda for the City Council Executive Session held on July 01, 2013 did not describe the subject matter of all items to be discussed in Executive Session of City’s Council, in violation of S.C. Code Ann. § 30-4-70(b).
59. Upon information and belief, Defendant Hatley as presiding officer of the City Council meeting on July 01, 2013 did not announce in open session of City Council the specific purpose of the proposed Executive Session, in violation of S.C. Code Ann. § 30-4-70(b).
60. Upon information and belief, Defendant Noury did not act to enforce the City’s Ordinances and State law contained in the FOIA at the City Council Meeting held on July 01, 2013, in violation of his duties as City Council parliamentarian pursuant to Ordinance §§ 2-32 and 2-34.2 and City Attorney pursuant to Ordinance § 2-71.

AUGUST 05, 2013

61. All allegations of fact made previously are repeated as if set forth here verbatim.
62. Upon information and belief, the Agenda for the City Council Meeting held on August 05, 2013 contained a provision for an Executive Session of City Council.
63. Upon information and belief, the Agenda for the City Council Meeting to be held on August 05, 2013 violated S.C. Code Ann. § 30-4-70(a) because a vague description of “pending legal matters” to be discussed in Executive Session does not fall within the permitted purposes described in S.C. Code Ann. § 3-4-70(a).
64. Upon information and belief, the published Minutes of the City Council Meeting held on August 05, 2013 record that the City Council did not first meet in open session of City Council and vote to go into Executive Session, in violation of City Ordinance § 2-31.5(c) and S.C. Code Ann. § 30-4-70(b).

65. Upon information and belief, Defendant Hatley as presiding officer of the City Council meeting held on August 05, 2013 did not announce the specific purpose of the proposed Executive Session, in violation of S.C. Code Ann. § 30-4-70(b).
66. Upon information and belief, Defendant Noury did not act to enforce the City's Ordinances and State law contained in the FOIA at the City Council Meeting held on August 05, 2013, in violation of his duties as City Council parliamentarian pursuant to Ordinance §§ 2-32 and 2-34.2, and City Attorney pursuant to Ordinance § 2-71.

VIOLATION OF THE FOIA BY DEFENDANT HATLEY

67. All allegations of fact made previously are repeated as if set forth here verbatim.
68. Defendant Hatley is required by State law and City Ordinance to preside over City Council meetings and ensure compliance with the FOIA.
69. The failure of Defendant Hatley to comply with her duties under City Ordinances and the FOIA is an irreparable injury for which no adequate remedy at law exists.

VIOLATION OF THE FOIA BY DEFENDANT MAHANEY.

70. All allegations of fact made previously are repeated as if set forth here verbatim.
71. The act of Defendant Mahaney in composing and publishing Agendas that violate the FOIA is an irreparable injury for which no adequate remedy at law exists.

VIOLATION OF THE FOIA BY DEFENDANT NOURY

72. All allegations of fact made previously are repeated as if set forth here verbatim.
73. Defendant Noury is required by City Ordinance to advise City Council as City Council parliamentarian, and ensure compliance by City Council with the FOIA pursuant to the City Code of Ordinances and the FOIA.
74. The failure of Defendant Noury to comply with his duties under City Ordinances and the FOIA is an irreparable injury for which no adequate remedy at law exists.

WILLFUL VIOLATIONS

75. All allegations of fact made previously are repeated as if set forth here verbatim.
76. Defendant City is a defendant in another civil action, 2010-CP-26-5145, *Bailey vs. City of North Myrtle Beach et al.* that was filed on June 11, 2010 (the "Bailey Lawsuit").
77. That lawsuit alleged violations of the FOIA as a continuing practice by Defendant City and Defendant Hatley, and was filed and continued while Defendant Mahaney and

Defendant Noury were employed by Defendant City with the duties and obligations that continue and remain as of the date of the present lawsuit.

78. Upon information and belief, the City also violated the FOIA after the filing of the Bailey Lawsuit on the following dates in like manner to the specific dates detailed above:
- a. June 21, 2010;
 - b. July 19, 2010;
 - c. June 20, 2011;
 - d. February 20, 2012;
 - e. March 15, 2012;
 - f. March 19, 2012;
 - g. June 18, 2012;
 - h. August 6, 2012; and
 - i. August 20, 2012.
79. Actual knowledge of the requirements of the FOIA by all the Defendants makes their conduct willful, scandalous, and arrogant violations of the requirements of City's own Ordinances and State law, for which no adequate remedy at law exists.
80. Plaintiff Bellamy is informed and believes that this Court should issue an Order enjoining the Defendants from conducting the business of the City in violation of the FOIA.
81. Plaintiff Bellamy is informed and believes that, upon a finding that the Defendants have violated the FOIA, this Court should award to Plaintiff his costs and attorney fees as provided in S.C. Code Ann. § 30-4-100 (Supp. 2009), and take such other action that is necessary to deter future violations of the FOIA by the Defendants.

VIOLATIONS OF THE SOUTH CAROLINA WAGES ACT

82. All allegations of fact made previously are repeated as if set forth here verbatim.
83. Plaintiff Bellamy was employed by the City from August 19, 2002 until September 20, 2012.
84. Bellamy worked for the City at all times under an at-will employment contract.
85. Bellamy's employment was terminated for cause on September 20, 2012 after he met with Defendant Thomas and Bellamy's immediate supervisor Richard Vernon.
86. Bellamy's termination was recommended by Defendant Thomas and approved by Defendant Mahaney on September 28, 2012.

87. Upon information and belief, at the date of his termination Bellamy had accrued approximately 300 hours of accrued and unused vacation time.
88. On September 26, 2012 Bellamy met again with Defendant Thomas and Bellamy's former immediate supervisor Richard Vernon.
89. Defendant Thomas offered to pay Bellamy his accrued and unused vacation time provided Bellamy signed a release of liability and claim against the City, and also sign a letter stating that Bellamy voluntarily resigned from employment.
90. The City's Personnel Manual was adopted by Ordinance of the City Council.
91. The City's Personnel Manual contains provisions that unused annual leave in excess of 240 hours for regular employees and 336 hours for firefighters may not be carried forward from one calendar year to the next calendar year.
92. The City's Personnel Manual contains a provision that payment for accrued annual leave shall be limited to thirty (30) days upon voluntary resignation if a two-week notice is given and worked by the resigning employee, or upon involuntary resignation unless such resignation is for disciplinary reasons.
93. Bellamy was not paid for his accrued and unused vacation time upon the termination of his employment by the City.
94. Bellamy is informed and believes that his accrued and unused vacation time constituted wages within the meaning of S.C. Code Ann. § 41-10-10(2).
95. Bellamy is informed and believes that the refusal of the City to pay his accrued and unused vacation time as of the date of his termination violates the provisions of the South Carolina Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* (Supp. 2010, as amended), in particular S.C. Code Ann. § 41-10-50.
96. Bellamy is informed and believes that he is entitled to commence this lawsuit against the City as his employer and also Defendants Mahaney and Thomas as his employers pursuant to Title 41 of S.C. Code Ann., including but not limited to § 41-10-10(1) and § 41-10-80(C), for his unpaid wages and prejudgment interest, plus three times the full amount of those unpaid wages, plus reasonable attorney's fees and costs.
97. Bellamy is informed and believes that pursuant to Title 41 of S.C. Code Ann., including but not limited to § 41-10-100, the City may not enforce any provision of its policies or

the contract he had with the City to deny him full payment of his accrued and unused vacation time as of the date of the termination of his employment by the City.

98. Bellamy is informed and believes that the City has no administrative procedure by which he may appeal or grieve his termination from employment or the denial of his unpaid accrued and unused vacation time as wages.

VIOLATION OF SOUTH CAROLINA CONSTITUTION

99. All allegations of fact made previously are repeated as if set forth here verbatim.
100. Bellamy is informed and believes that the denial of the City to pay him his accrued and unused vacation time as wages violates the South Carolina Constitution provisions against deprivation of property without the use of a mode of procedure prescribed by the General Assembly of the State, including but not limited to Article I, § 22 thereof.
101. Bellamy is informed and believes that the denial of the City to pay him his accrued and unused vacation time as wages constitutes an unlawful taking of his earned wages by the Defendants City, Mahaney, and Thomas in violation of the South Carolina Constitution, for which Bellamy is entitled to judgment in such amounts as will justly compensate him for his wages, and also an award of his costs and attorney's fees incurred in this action.

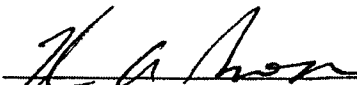
WHEREFORE, having shown just cause why judgment should be entered against the Defendants, the Plaintiff prays for the following relief:

- A. An Order or Orders declaring that the failure and refusals of Defendants City, Hatley, Mahaney, and Noury to comply with the FOIA is a wrong for which no adequate remedies of law exists; and
- B. An Order or Orders enjoining and restraining the Defendants City, Hatley, Mahaney, and Noury from continuing to violate the FOIA, together with such other relief as may be deemed appropriate by the Court; and
- C. An Order or Orders awarding Plaintiff Bellamy his costs and attorney fees for the violations by the Defendants City, Hatley, Mahaney, and Noury of the FOIA as provided in S.C. Code Ann. § 30-4-100 (Supp. 2009); and
- D. An Order or Orders finding that the Defendant City has not acted with substantial justification in failing to comply with the FOIA, and accordingly that Plaintiff Bellamy is entitled pursuant to S.C. Code Ann. § 15-77-300 (Supp. 2010, as amended) to an award of his reasonable attorney's fees and costs; and

- E. An Order or Orders finding that the Defendants City, Mahaney, and Thomas are jointly and severally liable to Plaintiff Bellamy for the non-payment to him of his unpaid wages together with prejudgment interest, plus three times the full amount of those unpaid wages, plus reasonable attorney's fees and costs; and
- F. An Order or Orders finding that the Defendants City, Mahaney, and Thomas are jointly and severally liable to Plaintiff Bellamy for violating Plaintiff Bellamy's South Carolina Constitutional rights and are therefore liable to Plaintiff Bellamy for the non-payment to him of his unpaid wages together with prejudgment interest, plus three times the full amount of those unpaid wages, plus reasonable attorney's fees and costs; and
- G. An Order or Orders finding that the Defendant City has not acted with substantial justification in denying Plaintiff Bellamy his unpaid wages, and accordingly that Bellamy is entitled pursuant to S.C. Code Ann. § 15-77-300 (Supp. 2010, as amended) to an award of his reasonable attorney's fees and costs; and
- H. Such further and ancillary relief as this Honorable Court may find proper in the circumstances.

Respectfully submitted,

Wright, Worley, Pope, Ekster & Moss, PLLC
Attorneys for Mitchell Bellamy



Kenneth R. Moss, S.C. Bar No. 15520
628A Sea Mountain Highway
North Myrtle Beach, South Carolina 29566
Tel: (843) 281-9901 / Fax: (843) 281-9903
KennethMoss@wwpemlaw.com

November 20, 2013
North Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Mitchell Bellamy,

Plaintiff,

vs.

Marilyn Hatley, individually and as Mayor of
the City of North Myrtle Beach, Michael G.
Mahaney, and Christopher Noury, and Steven
E. Thomas, and the City of North Myrtle
Beach,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-26-07765

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS
INDIVIDUAL DEFENDANTS'**

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CLERK OF COURT

Presiding Judge:
Plaintiff's Attorney:
Defendant's Attorney:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Kenneth Moss, Esq.
Michael W. Battle, Esq.
March 14, 2014
Margaret Sullivan

This matter was before the Court upon Defendants' Motion to Dismiss the Individual Defendants from Plaintiff's Freedom of Information Act (FOIA) and South Carolina Wages Act lawsuit, filed December 11, 2013. A hearing was held on Defendants' Motion on March 14, 2014. Present at the hearing were Plaintiff's attorney Kenneth Moss, Esquire and Defendants' attorney Michael W. Battle, Esquire.

Plaintiff's lawsuit seeks a declaratory judgment and injunctive relief under South Carolina's FOIA, S.C. CODE ANN. § 30-4-10 (2013) *et seq.* against the City of North Myrtle Beach and certain individuals: Marilyn Hatley, Mayor of the City of North Myrtle Beach, Michael G. Mahaney, City Manager for the City of North Myrtle Beach, Christopher Noury, City Attorney for the City of North Myrtle Beach, and Steven E. Thomas, Assistant City Manager for the City of North Myrtle Beach. Plaintiff's lawsuit complains of the manner in which the City of

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BATTLE LAW FIRM, LLC

North Myrtle Beach (The City) held executive session meetings immediately prior to The City's regularly scheduled meetings. Plaintiff also seeks wages he alleges were withheld and other remedies under the South Carolina Wage Payment Act, S.C. CODE ANN. § 41-10-10 (2013) *et seq.* in a separately alleged cause of action.

Defendants have filed the present Motion to Dismiss requesting a dismissal of the individual Defendants from the lawsuit on the grounds that the individual Defendants are not proper party defendants under South Carolina's FOIA or the South Carolina Wage Payment Act. During the course of oral arguments, Defendant and Plaintiff agreed to stipulations and placed them on the record. As a result of the stipulations, Plaintiff agreed to dismiss Plaintiff's claims against individual Defendants Mike G. Mahaney and Steven E. Thomas under the South Carolina Wage Payment Act claim. Defendants stipulated on the record that at all times alleged by Plaintiff in his Complaint, those individual defendants were acting within the scope of their authority as employees of The City, and at no time acted outside the scope of their authority as employees of The City, in connection with Plaintiff's wages claim. This Court noted the dismissal of the individual Defendants from Plaintiff's wages claim on a Form 4 Order, filed March 14, 2014.

The only remaining matter before this Court is Defendants' Motion to Dismiss the individually named Defendants from Plaintiffs' FOIA claim. Based upon the pleadings filed herein, as well as the evidence and arguments presented by the parties at the hearing, this Court finds and concludes as follows.

South Carolina's FOIA provides:

Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public

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vote in public session, whichever comes later.

S.C. CODE ANN. § 30-4-100 (2013). Further, FOIA provides, “[t]court may order equitable relief as it considers appropriate, and a violation of the act must be considered to be an irreparable injury for which no adequate remedy at law exists.” Id.

In the present case, Plaintiff has named Marilyn Hatley, Michael G. Mahaney, Christopher Noury, and Steven E. Thomas in their individual capacities together with The City of North Myrtle Beach for relief from alleged violations of the public meetings provisions of FOIA. As indicated above, the specific activity Plaintiff seeks to enjoin is The City Council’s alleged act of conducting an executive session prior to convening its regularly scheduled meeting. Plaintiff seeks to enjoin those named private individuals for the alleged public acts of The City Council of North Myrtle Beach. This Court finds that while Plaintiff may seek relief in the form of an injunction against The City, Plaintiff may not seek injunctive relief against individuals under FOIA for the individual acts of individual people.

FOIA was created to allow citizens to be “advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy.” S.C. CODE ANN. § 30-4-15 (2013). FOIA’s equitable relief provisions are directed at those improper actions taken by the public body.

“Public body” means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government . . . any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions.

S.C. CODE ANN. § 30-4-20 (2013). FOIA defines “person” as “any individual, corporation,

partnership, firm, organization or association.” Id. Only the public body can perform such acts that are subject to FOIA’s equitable provisions. The provisions of FOIA are not intended to encompass individuals acting in their individual capacities. See Lambries v. Saluda Cnty. Council, 398 S.C. 501, 502, 728 S.E.2d 488, 489 (Ct. App. 2012), *reh’g denied* (July 25, 2012) (plaintiff sued the Saluda County Council and its public officers in their official capacities); Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 327–28, 701 S.E.2d 39, 47–48 (Ct. App. 2010) (citing Rule 12(b)(6), SCRCPP) (plaintiff failed to state FOIA cause of action by suing public officials in their individual capacities).

“A ‘Meeting’ means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.” S.C. CODE ANN. § 30–4–20 (2013). Under FOIA, individuals do not meet with themselves. Even a gathering of individuals constituting less than a quorum is not a meeting as defined by FOIA. Id. If Plaintiff is entitled to any equitable remedies under FOIA, Plaintiff’s equitable remedies would be against the public body holding and those public officers responsible for conducting public meetings in violation of FOIA. The equitable remedy would not be against individuals performing individual acts. Id. While FOIA provides criminal penalties for the acts of individuals who willfully violate FOIA, Plaintiff does not seek to enforce criminal penalties against the named individuals in this lawsuit. See S.C. CODE ANN. § 30–4–110 (2013).

“Under Rule 12(b)(6), SCRCPP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action.” Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004). “In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and

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inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper.” Id. (citing Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999)). “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. Further, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Id. (citing Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999)). For the forgoing reasons, this Court finds and concludes the facts as stated in Plaintiff’s complaint in the above captioned lawsuit fail to state a FOIA cause of action against the individual Defendants. See Rule 12 (b)(6), SCRPC.

NOW THEREFORE, IT IS HEREBY ORDERED, Defendants’ Motion to Dismiss the Individual Defendants, Marilyn Hatley, Michael G. Mahaney, Christopher Noury, and Steven E. Thomas from the above captioned lawsuit is hereby granted. Plaintiff’s claims against those individuals are hereby dismissed with prejudice.



The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

April 9, 2014
Charleston, South Carolina
at chambers

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Larry B. Hyman, Circuit Court Judge

Case No. 2013-CP-26-08446

(Court of Appeals Case No. 2014-000756)

Marilyn Hatley, individually and as Mayor of the City of North Myrtle Beach, Michael G. Mahaney, Christopher Noury, and the City of North Myrtle Beach.....Respondents,

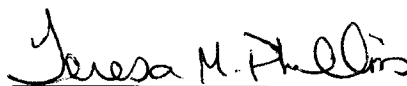
v.

William H. Bailey, Jr.....Appellant.

PROOF OF SERVICE

Teresa M. Phillips certifies that she is a Paralegal with Battle Law Firm, LLC, attorneys for Respondent and that she has mailed Respondents' Request for Judicial Notice to the address shown this 26th day of September, 2014, with proper postage attached thereto.

Kenneth R. Moss
628A Sea Mountain Highway
North Myrtle Beach, SC 29566



Teresa M. Phillips, Paralegal
Battle Law Firm, LLC
PO Box 530
Conway, SC 29528

BATTLE LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
FACSIMILE (843) 248-4512
www.battlelawfirm.com

MICHAEL W. BATTLE
E-Mail Address: mbattle@battlelawsc.com
JAMES R. BATTLE, II
E-Mail Address: jbattle@battlelawsc.com

M. KIRK BATTLE
E-Mail Address: kbattle@battlelawsc.com

September 26, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 116929
Columbia, SC 29211

RE: William H. Bailey, Jr. v. Marilyn Hatley, et al
C/A No.: 2013-CP-26-08466
Appellate C/A No: 2014-000756

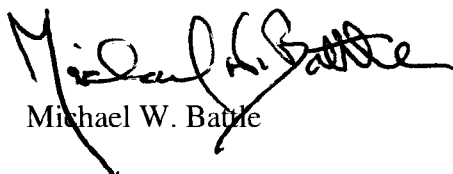
Dear Ms. Kitchings:

Enclosed is an original and six copies of Respondents' Amended Designation of Matter to be Included in the Record on Appeal, Respondents' Response to Appellant's Motion to Strike Matters from Respondents' Designation of Matter and from Appellant's Initial Brief and Respondent's Request for Judicial Notice in the above-referenced case. I am enclosing the required filing fee in the amount of \$25.00 to cover the cost for the Request for Judicial Notice. The grounds for the motion are stated in the body of the motion.

By copy of this letter I am serving the attorney for the Appellant with copies of the documents listed above. Please return a "clocked" copy of the Proofs of Service. I have enclosed extra copies of the Proofs of Service, as well as a self-addressed, stamped envelope for your convenience

Thank you for your attention to this matter.

Very truly yours,


Michael W. Battle

Enclosure: Stated

C: Kenneth R. Moss, Chris Noury

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SC Court of Appeals

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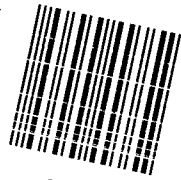
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