

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

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Case No. 2012-CP-40-7392  
Appellate Case No.: 2014-001728

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**RECEIVED**

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**SC Court of Appeals**

Frank "Doc" Haynie, ..... Appellant,

v.

The City of Forest Acres, Mark W. Williams,  
Shaun Greenwood, and Clark Frady,  
in their individual capacities, ..... Respondents.

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INITIAL BRIEF OF RESPONDENTS MARK W. WILLIAMS,  
SHAUN GREENWOOD AND CLARK FRADY

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## STATEMENT OF THE CASE

Appellant Frank “Doc” Haynie (“Haynie”) initiated this action on November 2, 2012 against Respondent City of Forest Acres (“City”) and individual Respondents Mark M. Williams (“Williams”), Shaun Greenwood (“Greenwood”), and Clark Frady (“Frady”). Williams is City’s Administrator and has served in this capacity since January 2005. *See* Williams Depo. at 11:7-10. Greenwood was City’s Code Enforcement Officer/Assistant City Administrator from May 2005 to April 2011. *Id.* at 23:15-20; Greenwood Depo. at 11:10-17. Frady was City’s Director of Code Enforcement/Building Official from March 2010 to December 2012. *See* Frady Aff. at ¶ 5. Respondents were at all times relevant to this action employed by City to enforce City ordinances. *See* Complaint at ¶¶ 3-5; *see* Answer of Individual Respondents at ¶ 3.

Haynie is a City resident and owns certain real property located within its boundaries. *See* Haynie Depo. at 6:18-22. He also works as a contractor, doing business as “Doc Wild Construction” since 1979, and has been involved with numerous construction projects within City over many years. *Id.* at 9:22-24; 214:21-216:24.

Haynie asserted claims against City for negligence and gross negligence and against the individual Respondents, in their individual capacities, for civil conspiracy. *See generally* Complaint. His causes of action pertain to interactions he had with City and with the individual Respondents over a multi-year period relating to his professional and personal activities within City’s jurisdiction. The alleged wrongful actions taken by the individual Respondents in pursuit of the alleged civil conspiracy include:

- “demand[ing] that [Haynie] stop work and present drawings and specifications” before continuing construction on a storage shed located on [Haynie]’s residential property on Brentwood Drive (*id.* at ¶ 10);

- “inform[ing] [Haynie] that his drawing[s] [for the storage shed on his Brentwood Drive residential property] failed to meet code . . . and that he should not go forward with construction” (*id.* at ¶ 11);
- “revok[ing] [Haynie’s] permit and plac[ing] a ‘stop work’ order on his entire property” as a result of [Haynie’s] failure to create job specifications that met the applicable International Residential Code (2006) (*id.* at ¶ 13);
- “ma[king] [Haynie] stop work on all of his projects and charg[ing] that his work done on the Covenant Road project was not acceptable” (*id.* at ¶ 15);
- “cit[ing] [Haynie] for numerous other violations of the building codes” (*id.* at ¶ 17); and
- “embarrass[ing] [Haynie] publicly in the presence of other people and even on occasions call[ing] in law enforcement to give the false impression that [Haynie] was a dangerous person who might do . . . harm” (*id.* at ¶ 18).

Haynie alleged that the individual Respondents were “annoyed and even angry with [him] for personal reasons.” *Id.* at ¶ 8. Haynie did not allege that the individual Respondents received any personal benefit for enforcing City’s ordinances against him.

The parties conducted extensive discovery, which included taking depositions of Haynie, Williams, Greenwood, Frady, Paul Cowles, Barry Epps and David Cook. Paul Cowles is an electrician that subcontracted for Haynie on several projects, including one involved in this case. *See* Cowles Depo. at 13:8-24. Barry Epps was City’s building official from July 2007 to October 2009, immediately prior to Frady’s tenure in that position. *See* Epps Depo. at 18:22- 19:14. David Cook is a plumber who has worked with Haynie on several construction jobs. *See* Cook Depo. at 10:1-9; 15:21-16:4.

City filed a motion for summary judgment on or about December 23, 2013 and

the individual Respondents filed a summary judgment motion on December 27, 2013.<sup>1</sup> The individual Respondents asserted that Haynie's civil conspiracy claim failed because there was no evidence that they acted outside the course and scope of their employment when taking the actions that gave rise to Haynie's Complaint. City's motion was based on other grounds.

Haynie responded to both motions and filed affidavits of Margo Pierce<sup>2</sup> and Barry Epps in addition to relying upon the deposition testimony of Haynie, Frady, Epps, Cowles, Greenwood and Cook, as well as the previously filed affidavit of Carl L. Holloway, City's attorney, and a report from an expert engineer hired by Haynie in 2011 to review his plans for a shed he sought to construct on his property. *See* Haynie's Consolidated Memorandum in Opposition to the Defendants' Motions for Summary Judgment.

After hearing oral argument on both pending motions on February 21, 2014, The Honorable G. Thomas Cooper, Jr. filed two orders on April 15, 2014 granting summary judgment to all Defendants in the case.

Haynie filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCF, on April 28, 2014, which was denied by Judge Cooper on June 30, 2014. Haynie filed a timely notice of appeal on August 7, 2014.

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<sup>1</sup> The individual Respondents' motion was based upon the Affidavit of Frady and the depositions of Haynie, Williams, Paul Cowles and Barry Epps. The motion also incorporated by reference affidavits of Williams and of Carl L. Holloway, Jr., Esquire, City's attorney, which were attached to City's summary judgment motion.

<sup>2</sup> Ms. Pierce served as a clerk for City from October 2004 until July 2011, when she was terminated. Pierce Aff. ¶ 3; Williams Depo. at 17:5-21.

## FACTS

Haynie obtained his South Carolina General Contractor's License in 1973 and has been in the construction industry for approximately forty years. *See* Haynie Depo. at 7:7-11; 13:15-21. Throughout his career he has conducted business within City's jurisdictional limits as well as other municipalities. *Id.* at 9:22-24; 214:21-216:24. During the time period relevant to this action, Haynie owned two parcels of real property within City, including his home on Florawood Drive and another home that he once rented to his daughter located on Brentwood Drive.<sup>3</sup> *Id.* at 6:19-22; 21:24-22:2; 235:25-237:17.

Although Haynie alleged in his complaint that his interactions between City and its employees that gave rise to this lawsuit began as early as 2007, he conceded in his response to Respondents' motions that to the extent that his claim against the individual Respondents is based upon activities occurring before November 2, 2009, it is time-barred.<sup>4</sup> In light of this concession, Haynie's claim against the individual Respondents only concerns events that took place in the spring and summer of 2011, as there were no such events in 2009 or 2010. *See* Haynie Depo. at 40:12- 41:16.<sup>5</sup>

On or about March 21, 2011, Respondent Frady, who was at that time City's Director of Code Enforcement, conducted a routine inspection of a storage shed Haynie

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<sup>3</sup> This property is actually titled in the names of Haynie's wife and daughter. *See* Holloway Aff. at ¶ 5; Haynie Depo. at 71:9- 72:2.

<sup>4</sup> *See* Haynie's Consolidated Memorandum in Opposition to Respondents' Motions for Summary Judgment at p. 2, n. 2; *see also* Hearing Trans. (Feb. 21, 2014) at 9:25-10:25; 22:19-23:1. The parties agree that a three-year limitations period applies to Haynie's claims against the individual Respondents and a two-year limitations period applies to his claims against City. *See* Hearing Trans. at 22:19- 23:1 (Feb. 21, 2014).

<sup>5</sup> Both in their written motion and in the oral argument, counsel for the individual Respondents erroneously referred to these activities as taking place in 2010, but there is no dispute among the parties that they actually occurred in 2011.

was constructing on his Brentwood Drive property. *See* Haynie Depo. at 79:1-6; *see also* Frady Aff. at ¶¶ 9-10. During his inspection, Frady concluded that the manner in which Haynie was attempting to construct the footings and foundation of the storage shed did not comply with the requirements of the 2006 edition of the International Residential Code (“IRC”), which was in force throughout South Carolina pursuant to S.C. Code Ann. § 6-9-50. *See* Frady Aff. at ¶¶ 10-13; *see also* Haynie Depo. at 81:5-9; *see also* Williams Depo. at 43:2-5; *see also* Holloway Aff. at ¶ 6.

Frady asked Haynie to provide a set of plans particularly describing how he proposed to construct the shed’s foundation. *See* Frady Aff. at ¶¶ 10-12; *see also* Haynie Depo. at 81:16-23. Haynie submitted the requested drawings a few days later. Frady Aff. at ¶¶ 10-12; *see also* Haynie Depo. at 83:2-21. After reviewing the plans, Frady discussed the matter with Haynie over the ensuing weeks, but they were not able to reach a resolution. *See* Frady Aff. at ¶¶ 12-14 and Exhibit 3. Frady emailed a “Stop Work Order” to Haynie on May 2, 2011. *Id.* at ¶ 15; *see also* Haynie Depo. at 81:10-24, 84:18 – 85:3. The Stop Work Order was posted on Haynie’s Brentwood Drive property on or about May 5, 2011. *See* Frady Aff. at ¶ 15.

Respondent Williams, City’s Manager, recommended to Haynie that he appeal the Stop Work Order to the Forest Acres Code Board of Appeals (“Board”) as a way of resolving the dispute between Haynie and Frady. *See* Williams Depo. at 25:15-17; *see also* Williams Aff. at ¶ 22-23. The Board is an appellate body created by the City pursuant to the dictates of Section R112 of the IRC (2006)<sup>6</sup> for contractors to challenge

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<sup>6</sup> This building code was adopted by the South Carolina Building Codes Council in consonance with S.C. Code Ann. § 6-9-40 (Supp. 2014) to be enforced by all municipalities in the state pursuant to S.C. Code Ann. § 6-9-10 (Supp. 2014).

code interpretations by City building officials. *See Williams Depo.* at 19:19-24. During the relevant time period, the Board was comprised of three members, including a building inspector employed by Richland County, an engineer, and a commercial real estate broker. *See Williams Aff.* at ¶ 23. Haynie appealed the stop work order to the Board on or about May 5, 2011. *See Frady Aff.* at ¶ 16; *see also Haynie Depo.* at 102:9-11.

After a hearing on or about May 11, 2011, the Board affirmed Frady's decision. *See Haynie Depo.* at 103:13-24. In response, Haynie informed Respondents Frady and Williams by email dated May 12, 2011 that he was going to scale back the size of the storage shed to less than 120 square feet, so that he would not need a permit under the IRC. *Id.*; *see also Frady Aff.* at ¶ 17. Williams acknowledged Haynie's request on the same day and confirmed that Haynie's building permit fee would be refunded. *See Haynie Depo.* at 100:2-9, 103:13-24; *Frady Aff.* at ¶ 17. Haynie did not pursue any other means of redress following the Board's determination. *See Williams Aff.* at ¶ 23.

On or about June 20, 2011, after being summoned to Haynie's Brentwood Drive address to handle a dispute involving Haynie, one of his neighbors, and an official with Richland School District One, Frady issued several citations to Haynie. *See Haynie Depo.* at 104:6 – 111:16. The citations arose from Haynie's activities at the Brentwood Drive address, including his construction of the storage shed which had been the subject of his appeal to the Board. *See Frady Aff.* at ¶ 22; *see Haynie Depo.* at 111:1 – 112:2. Upon Frady's arrival at the Brentwood Drive property, he realized that Haynie had poured a 200 square foot foundation for the shed, notwithstanding his earlier agreement to reduce the size of the shed to less than 120 square feet. *See Frady Depo.* at 68:3- 69:1. As a result, Frady issued a "No Building Permit" citation to Haynie. *Id.* at 68:11-69:10;

*see also* Holloway Aff. at ¶ 5.

Attempting to resolve the issue, City's attorney offered a plea deal to Haynie, conditioned upon Haynie having a duly licensed structural engineer review the site plans and sign off on the structural integrity of the building, under his seal. Holloway Aff. at ¶¶ 5-7. Under such circumstances, City agreed to *nolle prosequi* the No Building Permit violation. *Id.* The offer also required Haynie to plead guilty to any of the remaining charges, at his election, and pay a fine to be set by the court. *Id.* at ¶ 7. With the advice of counsel, Haynie eventually agreed to City's offer and hired an engineer, Louis Mariaca, who endorsed the structural integrity of the building. *Id.* at ¶ 6. Haynie also pled guilty to a "rubbish and garbage-rodents" violation and paid a \$750 fine. *Id.* at ¶ 7; *see also* Haynie Depo. at 112:9-15. City subsequently approved Haynie's plans and issued a building permit. Holloway Aff. at ¶ 7.

In addition to the actions described above, Haynie also based his complaint upon Respondents' actions with respect to a commercial construction project for which Haynie was the general contractor. See Complaint ¶¶ 15, 16. The project was owned by Nassar Alquza ("Alquza") and was located on Covenant Road, within City's limits. See Frady Aff. at ¶¶ 18-21; *see also* Haynie Depo. at 115:7-10, 21-25. The job had started in 2009, but work had proceeded only intermittently, as Alquza suffered funding problems. Haynie Depo. at 121:4-14; 183:3-14; *see also* Frady Aff. at ¶ 20. In April of 2011, Alquza attempted to renew the building permit for the project, as it had expired during a lengthy pause in the construction. See Haynie Depo. at 119:22-121:7. Frady instructed Alquza to submit construction drawings for the job so that a permit could be reissued.<sup>7</sup>

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<sup>7</sup> City had lost the drawings during the interim between work activity on the project. See Greenwood Depo. at 32:14-33:4; Frady Depo. at 119:18-120:1.

*See* Haynie Depo at 121:4-122:4; *see also* Frady Aff. at ¶ 19. At Alquza’s request, Haynie gave his copy of the drawings to City. *See* Haynie Depo. at 121:8-122:122:4.

Frady reviewed the drawings and determined that the bathroom in the building did not comply with the requirements of the Americans with Disabilities Act (“ADA”). *See* Frady Aff. at ¶ 19-21; Haynie Depo. at 123:19-124:11. As a result, Frady asked that revised, ADA-compliant drawings be submitted. *See* Frady Aff. at ¶¶ 19-21; *see also* Haynie Depo. at 123:19-25; 125:22-23. Sometime after the ADA compliance issues arose, Alquza fired Haynie as general contractor on the Covenant Road project. *See* Cowles Depo. at 57:2-19. Alquza gave no reason to Haynie for his decision.

Haynie alleged that the individual Respondents influenced Alquza to fire Haynie, *see* Haynie Depo. at 98:15-99:12, but he has introduced no evidence to substantiate his allegations. Haynie claims that his subcontractors, including Paul Cowles, an electrical subcontractor on the Covenant Road Project, told him that one or more of the individual Respondents told Alquza that Haynie was “a very bad contractor” or that “Alquza needed to get rid of Haynie.” *See* Haynie Depo. at 130:3-6. However, in his deposition, Cowles stated that at the time he was called upon to finish the project in 2011, around the same time Mr. Alquza fired Haynie as general contractor, he did not “know if [Haynie] would have had anything to do” with the remaining construction, and that “overall there really wasn’t a whole lot left besides trimming out what [he] had to do and putting ceiling tile in and doing the . . . cosmetics.” *See* Cowles Depo. at 69: 3-25; 70: 2-11. He further testified that he did not believe he ever heard a City employee tell Alquza that Haynie was “a very bad contractor” or “that Alquza needed to get rid of [Haynie] and get a new contractor.” *Id.* at 71:7-19.

Haynie testified that he knew permits had a limited duration and that he often continued working after their expiration without prosecution. *See* Haynie Depo. at 43:10-21. He further testified that around the time that he alleges Respondents started “harassing” and “conspiring against him,” after 2008, City and its employees “began to be more stringent about making [Haynie] renew permits after they expired.” *Id.* at 45:24-46:5. Williams testified that he “never directed any Forest Acres employee to treat [Haynie] any differently than any other contractor or Forest Acres resident.” *See* Williams Aff. at ¶ 25. Holloway stated that he was “unaware of any instance in which [Haynie] was selectively or unfairly prosecuted by the City.” *See* Holloway Aff. at ¶ 9.

There is no dispute that the individual Respondents were authorized by and through their employment with the City to investigate and prosecute violations of City ordinances. Haynie’s civil conspiracy claim against Respondents has no other basis beyond the interactions described above.

#### **STANDARD OF REVIEW**

In reviewing an order granting summary judgment, the appellate court applies the same standard as the lower court under Rule 56(c) of the *South Carolina Rules of Civil Procedure*. *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014). Summary judgment should be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), *SCRPC*; *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008); *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). On appeal from an order granting summary judgment, the appellate court must review all

ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976).

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct. App. 2004) (citations omitted). However, “[o]nce the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleading. . . . Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.*

## ARGUMENT

### **I. THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT AS TO HAYNIE’S CIVIL CONSPIRACY CLAIM BECAUSE IT IS BARRED BY THE SOUTH CAROLINA TORT CLAIMS ACT.**

The lower court granted the individual Respondents’ motion for summary judgment because employees of governmental entities who commit torts while acting within the scope of their employment are immune from suit. *See* S.C. Tort Claims Act, S.C. Code Ann. § 15-78-70(a) (Rev. ed. 2005) (“TCA” or “Act”). The court concluded that Haynie had failed to present any evidence that the individual Respondents’ actions fell outside the course and scope of their employment. The court further noted that Haynie presented no evidence that the individual Respondents had anything to gain by “selectively enforcing” City ordinances against him and found no evidence to support Haynie’s argument that they were “motivated by personal reasons” to harm him. *See*

Order Granting Summary Judgment at p. 6. In so ruling, the lower court did not overlook any issues of fact, was not guided by any error of law, and should therefore be affirmed.

The TCA governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental body or its employees. S.C. Code Ann. §§ 15-78-70(a)-(b); 15-78-200 (Rev. ed. 2005). *See also* *Murphy v. Richland Mem'l Hosp.*, 317 S.C. 560, 455 S.E.2d 688 (1995); *Wells v. City of Lynchburg*, 331 S.C. 296, 501 S.E.2d 746 (Ct. App. 1998). Section 15-78-70(a) of the Act provides: “[a]n employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” Section 15-78-70(b) states: “Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee’s conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.” *Id.*

The Act is intended to cover those actions committed by an employee within the scope of the employee’s official duty. Section 15-78-30(i) (Rev. ed. 2005) defines “scope of official duty” as “(1) acting in and about the official business of a governmental entity and (2) performing official duties.” The Supreme Court has stated that “[a]n act is within the scope of a servant’s employment where [it is] *reasonably necessary* to accomplish the purpose of his employment and [is] in furtherance of the master’s business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006) (emphasis added).

In *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003), this Court

held that the TCA barred a plaintiff's claims against employees of the South Carolina Commission for the Blind for their alleged wrongful acts. In *Flateau*, employees of the South Carolina Commission for the Blind ("Commission") asserted a claim for civil conspiracy, among other causes of action, against the Commission's governing board ("Board"). *Id.* at 200, 584 S.E.2d at 414. The plaintiff-employees alleged that the Board "commanded" them to attend a hearing in the Commission's board room, required them to remain in the board room for purposes of awaiting interviews while the Board was in executive session, and would not allow them to leave the board room without a security escort or to access their respective offices. *Id.* at 200, 584 S.E.2d at 414-15. The lower court granted the Board's motion to dismiss the action pursuant to Rule 12(b)(6), SCRCPP, finding that none of the plaintiffs' allegations described a scenario in which the Board's members acted outside of the scope of their official duties. *Id.* at 201, 584 S.E.2d at 415.

This Court affirmed the lower court's dismissal pursuant to the TCA, holding that all of the alleged wrongful actions were within the scope of the defendants' employment. *Id.* at 204-205, 584 S.E.2d at 417. The alleged wrongful actions included that defendants *discussed* certain matters in executive session and *voted* in their capacity as Commissioners to take the purportedly wrongful actions. *Id.* This Court held that although the defendants' alleged acts may have exceeded the scope of their authority, they did not fall outside the scope of their official duties and were reasonably necessary to accomplish the purpose of their employment. *Id.* (citing *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 341 S.E.2d 385 (Ct. App. 1986) (distinguishing scope of servant's employment from scope of servant's authority and holding acts outside

servant's authority are still within his scope of duty if done in furtherance of master's business)).

However, in *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct. App. 2010), this Court held that the TCA did not bar the plaintiff's civil conspiracy claim against certain employees of the Department of Corrections. In *Pridgen*, the plaintiff alleged that the defendant-employees had met, schemed, planned, conspired and put together an agenda to purposely harm him and cause him to be terminated from his employment. *Id.* at 241, 705 S.E.2d at 60. This Court held that there was at least circumstantial evidence in the record to support a finding that the employees acted outside the scope of their employment and with the intent to harm the plaintiff—their fellow employee. *Id.* at 245, 705 S.E.2d at 62. The facts in *Pridgen* are distinguishable from this case.

In *Pridgen*, this Court found there was evidence that the defendants *deviated from custom* in their interactions with the plaintiff and that such deviations were not reasonably necessary to accomplish the purpose of the defendants' employment. *Id.* at 245, 705 S.E.2d at 62. Such conduct evidenced the defendants' intention to harm him the plaintiff. *See id.* For example, this Court found that a jury could infer that the defendants were "personally, not professionally, motivated" to harm the plaintiff due to the plaintiff's refusal to comply with the defendants' request that the plaintiff provide false information in a report. *Id.* Such an inference could further be made on evidence that the defendants had private meetings about the plaintiff and failed to give him customary notice of a prison shakedown. *Id.* This Court concluded that based on evidence in the record, "the jury could find that the [defendants] intended to harm [the plaintiff], and thus, their conduct served an independent purpose, wholly disconnected from [their

employer's] business . . . ." *Id.*

The present case is factually distinguishable from *Pridgen* and was therefore properly dismissed pursuant to *Flateau*. *Pridgen* concerned an internal dispute among fellow employees of the Department of Corrections. Implicitly, the defendants in *Pridgen* had something to gain by setting up the plaintiff to be fired, as *Pridgen* was unwilling to provide false testimony about another employee in the wake of a hostage situation at Lee Correctional Institution that exposed its wardens to potential disciplinary action. *Id.* at 60-61. Here, Haynie contends that the individual Respondents allegedly conspired against him to enforce City ordinances in a "hyper-vigilant" manner. Unlike in *Pridgen*, actions such as *investigating* violations of the law and *prosecuting* actual violations are appropriate and necessary to accomplish the purpose of Respondents' employment. There is no evidence that the individual Respondents deviated from custom in their enforcement of City ordinances.<sup>8</sup>

Additionally, Haynie has failed to come forward with any evidence, even circumstantial, that Respondents had personal reasons to harm him. Rather, the evidence shows that Respondents conducted routine inspections of construction activities and responded to complaints against Haynie by timely investigating the allegations, issuing written notifications of violations, and enforcing ordinances. Respondents' conduct was proper, especially considering Haynie's admission that ordinances were in fact violated. *See* Haynie Depo. at 43:10-21; 47:17 – 48:22; 66:8-25; 112:9-15; 179:13-18; 199:8-18; 200:10-22; 201:17-24; 202:2-11; *see also* Holloway Aff. at ¶ 7.

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<sup>8</sup> Respondents question whether the exercise of discretion as to whether to strictly enforce the mandates of municipal ordinances or not could ever form the predicate for a viable civil conspiracy claim against governmental employees. *See* S.C. Code Ann. § 15-78-60(4), (5), (12), (13), (23) (Rev. ed. 2005).

It can be said that each time a building official, code enforcement officer or law enforcement agent issues a citation, he does so intentionally, with the specific intent that the recipient be punished for a violation of the law. This “intent to harm” is not the intent contemplated by Section 15-78-70(b), which is why this Court noted in *Pridgen* that such “intent” must be accompanied by the prospect of personal gain if a plaintiff is to circumvent the immunity afforded by the TCA. *See Pridgen*, 391 S.C. at 245, 705 S.E.2d at 62.

Courts in other jurisdictions have described the requisite intent as “without justification.” *See, e.g., Rutherford v. Presbyterian-University Hosp.*, 612 A.2d 500 (Pa. 1992) (citation omitted); *Maleki v. Fine-Lando Clinic Chartered, S.C.*, 469 N.W.2d 629, 634 (Wisc. 1991) (“conduct intended to cause harm for harm’s sake”). In *Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 735 S.E.2d 518 (Ct. App. 2012), this Court recognized that “many conspiracies will be at least partly motivated by the tortfeasor’s desire to protect or benefit the tortfeasor’s own lot.” *Id.* at 545, 735 S.E.2d at 522. Even if the Respondents disliked Haynie, their investigation and prosecution of known ordinance violations cannot form the basis of a civil conspiracy action without some additional evidence that the Respondents stood to reap some material benefit by doing so.

*Smith v. City of Greenwood*, 8:09-2061-HFF-BHH, 2010 WL 2430952 (D.S.C. May 13, 2010), cited by Appellant, does not change the analysis. In *Smith*, the U.S. District Court for the District of South Carolina considered a motion to dismiss pursuant to Rule 12(b)(6), FRCP, of the plaintiff’s cause of action for civil conspiracy. The defendant contended that the plaintiff’s action should have been dismissed because it was

filed after the expiration of the applicable two-year statute of limitations under the TCA. *Id.* at \*1. The plaintiff argued that his cause of action for civil conspiracy against the defendant governmental employees did not fall within the TCA and therefore was not subject to the two-year statute of limitations, because he alleged in his complaint that the defendants acted *outside* the course and scope of their employment. *Id.* The issue before the court was whether *Flateau* mandated application of the limitations period of the Act or the limitations period under S.C. Code Ann. § 15-3-530. *Id.*

The federal court distinguished *Flateau* based on allegations in the pleadings. *See Myland Labs, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993) (“In considering a motion to dismiss, the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff.”) (citation omitted). The court recognized that in *Flateau*, the plaintiff’s complaint included allegations of wrongdoing that were admitted to be “official conduct” of the defendants. *Id.* at \*2. The court noted that in the case before it, however, there were additional allegations that the wrongdoing occurred *outside* the scope of the defendants’ employment. *Id.* at \*3 (“Turning to the Complaint at issue here, the plaintiff has, differently than in *Flateau*, plead her claim so as to limit her allegations to conduct which purports to either be beyond the scope of the defendants’ employment or otherwise intended to cause harm.”). Based on such allegations, the federal court distinguished *Flateau*, finding that a dismissal pursuant to Rule 12(b)(6), FRCP, was warranted in a case where the allegations concerned only conduct within the scope of the defendants’ official duties (i.e., *Flateau*) but was not where the plaintiff alleged that some of the wrongful conduct was outside of such scope (*Smith*).

*Smith* is inapposite for both procedural and substantive reasons. This Court is not considering whether to affirm the lower court's grant or denial of a motion to dismiss, which, like *Smith*, would have been based solely upon the allegations in Haynie's Complaint. Rather, this Court must consider all of the evidence in the record to determine whether there is a genuine issue of material fact as to whether Respondents' alleged wrongful actions fell *outside* the course and scope of their employment. The individual Respondents admit that the allegations in Haynie's complaint are analogous to those made by the plaintiff in *Smith*, so he could have survived a motion to dismiss. However, Haynie could not survive summary judgment pursuant to Rule 56, SCRC, because he failed to adduce evidence to substantiate his allegations. Haynie has offered no evidence that the individual Respondents' conduct in their dealings with him went beyond the course and scope of their employment.

As a part of its review of the defendants' motions for summary judgment, the lower court sufficiently considered all evidence presented to it and correctly concluded that there was no question of fact. The lower court indicated that the individual Respondents "conducted . . . required inspection[s] of [Haynie's] storage shed that was under construction," "referred . . . and resolved [issues]" to "the Forest Acres Code Board of Appeals ("Board") in accordance with the dictates of the building code," and issued citations for perceived violations of City's ordinances. *See* Order Granting Individual Respondents' Motion for Summary Judgment at p. 3. Based on such evidence, the lower court found that "[t]he alleged actions forming the basis of [Haynie's] civil conspiracy action were necessary to accomplish the purpose of [Respondents'] employment with City." *Id.* at p. 6. Such "actions were in furtherance of the City's business and taken

within the course and scope of [their] official duties.” *Id.*

Haynie appears to argue<sup>9</sup> that the testimony of Barry Epps, Margo Pierce, Paul Cowles and David Cook creates a question of fact for the jury as to whether the individual Respondents acted outside the course and scope of their employment by acting with intent to harm him. Some of this testimony was properly disregarded by the lower court, as it pertained to events that occurred prior to November 2, 2009 which was outside of the applicable limitations period. *See* Order Granting Individual Respondents’ Motion for Summary Judgment at p. 2, n. 2. The lower court properly disregarded all of Barry Epps’ testimony, as Epps only had personal knowledge of events that occurred when he was a City employee from July 2007 to October 2009. *See id.*

Haynie cites testimony from Margo Pierce, City’s Clerk from October 2004 until July 2011, as support for his position that the individual Respondents were personally motivated to harm him. *See* Initial Brief of Appellant at p. 4-5, 13. In an affidavit submitted by Appellant, Ms. Pierce testified that, prior to Haynie’s Code Board of Appeals hearing, she witnessed Frady “calling the members of the panel to tell them how to vote.” *See* Pierce Aff. at ¶ 6.

Haynie characterizes Ms. Pierce’s description of Frady’s alleged contact with the members of panel as improper. However, the IRC (2006) provides that Frady, as City’s building official, was an *ex officio* member of the Code Board of Appeals, even though he was not permitted to vote on any matter before the board. *See* IRC (2006) § R112.1

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<sup>9</sup> Appellant references testimony of Barry Epps, Margo Pierce, David Cook, and Paul Cowles in his initial brief but does not indicate how such testimony supports his argument that the individual Respondents were motivated by personal reasons to harm him.

(Membership of Board).<sup>10</sup> Frady's membership on the Board supports the lower court's conclusion that Haynie's code issue was "referred to and resolved by the Forest Acres Code Board of Appeals ("Board") in accordance with the dictates of the building code," and did not evidence any civil conspiracy. *See* Order Granting Individual Respondents' Motion for Summary Judgment at p. 3; *see also* Order Granting City of Forest Acres' Motion for Summary Judgment at p. 3. Haynie has produced no evidence that the alleged contact was impermissible under the IRC or that it had any bearing on the decision made by the three voting members of the Board.

The remaining evidence and testimony adduced from Ms. Pierce does not substantiate Haynie's allegations of civil conspiracy. Ms. Pierce's testimony merely reflects Haynie's contention that the individual Respondents simply did not like him, which the lower court ruled was insufficient to establish a civil conspiracy. *See* Order Granting Individual Respondents' Motion for Summary Judgment at p. 7. *See also Mathis v. DCR Mortg. III Sub, I, LLC*, 952 F.Supp.2d 828 (W.D. Tex. 2013) (finding plaintiff did not sufficiently state a plausible action for civil conspiracy where no facts alleged demonstrating that any individual defendant had acted for any personal benefit); *Angus v. Burroughs & Chapin Co.*, 368 S.C. 167, 628 S.E.2d 261 (2006) (finding county council members could not be sued for civil conspiracy because they acted within their authority by firing plaintiff, an at-will employee, an action they had the right to take). Ms. Pierce's characterization of the individual Respondents' actions as "hyper-vigilant" or a "witch-hunt" (*see* Pierce Aff. at ¶¶ 7, 9) is likewise insufficient to evidence an

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<sup>10</sup> The IRC has the force of law throughout South Carolina pursuant to S.C. Code Ann. § 6-9-10 and administrative actions of the South Carolina Building Codes Council. *See* S.C. Code Ann. § 6-9-5 *et seq.*

“intent to harm,” as the actions she describes—monitoring construction activity and checking building permit expirations—were all within the course and scope of Respondents’ employment as City officials.

Haynie also relies on the deposition testimony of Paul Cowles, Haynie’s electrical subcontractor. Haynie insinuates that the individual Respondents’ motive to harm him could be inferred from a meeting between Alquza and Frady during which Cowles allegedly “witnessed . . . Frady joking with Alquza at [Haynie’s] expense.” Initial Brief of Appellant at p. 5. Mr. Cowles testified, in relevant part:

[B]oth the main inspector, Mr. Frady, and this other fellow, whom I don’t know, were just talking amongst each other while I was sitting there trying to get a permit with [Alquza]. It was just negative comments they were making about Doc, I mean, but again I can’t say what they were. I just can’t remember. I wish I could, but I just can’t remember. . . . I can’t say who initiated it because they were all involved in it. So, you know, I can’t -- I can’t point a finger at any certain person. Again, like I told you, I can’t give specifics on what words were used.”

*See* Cowles Depo. at 42:2-18.

“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” *See State v. Frazier*, 357 S.C. 161, 167, 592 S.E.2d 621, 624 (2004) (*citing* Rule 602, *SCRE*; *State v. Williams*, 321 S.C. 455, 469 S.E.2d 49 (1996)). Mr. Cowles’ testimony does not demonstrate that he has any personal knowledge of the substance of the conversation between Frady and Alquza. His testimony is speculative and is insufficient to overcome a motion for summary judgment. “Although all reasonable inferences must be drawn in favor of the nonmoving party, such inferences must ‘fall within the range of reasonable probability and not be so tenuous as to amount to speculation or conjecture.’” *Johnson v. Toys ‘R’ Us-Delaware, Inc.*, 95 Fed. Appx. 1, 5 (4th Cir. 2004) (citation omitted).

The deposition testimony of David Cook, Haynie's plumbing subcontractor, likewise provides no support for Haynie's civil conspiracy claim. Haynie alleges that Cook's testimony shows the individual Respondents' intent to harm when Frady purportedly "admonished" Cook about Haynie. *See* Initial Brief of Appellant at pp. 5-6. Mr. Cook testified as follows:

Q: Okay. All right. Did -- have you ever heard Clark Frady say anything derogatory or not nice about Doc?

A: In terms of "not nice," I guess it all depends on what you ask [sic] about "not nice." Was there the -- the issue -- I think -- I can't remember how that went about. It might have been in general a conversation with him like something of the fact of, "You better be careful if you're still doing work with Doc," in terms of getting stuck with payment or something of that nature."

*Id.* at 64:17-65:7. The import of Frady's alleged remark is akin to his posting of stop work orders on Haynie's property to give public notice of ordinance violations. It is a warning to the public and to the contractors working with Haynie of a problem that inhibits construction from continuing. The making of this alleged remark therefore falls within the scope of Frady's duties as a building official.

Although South Carolina courts have recognized that due to the nature of the claim, civil conspiracies are typically proven by circumstantial evidence,<sup>11</sup> Haynie has failed to come forward with a scintilla of even circumstantial evidence to create a genuine issue of material fact. Moreover, courts have recognized that circumstances are insufficient to establish a conspiracy if they are equally consistent with a lawful purpose

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<sup>11</sup> *See Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (Ct. App. 2010) (allowing direct or circumstantial evidence to support a civil conspiracy cause of action) (*citing Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005)); *see also Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007) (holding "[c]onspiracy may be inferred" because "by its very nature[,] [it] [is] covert and clandestine") (*quoting Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)).

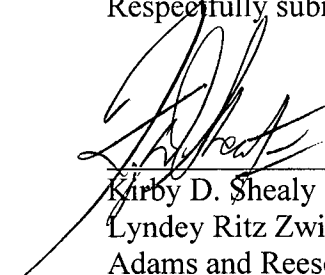
as with an unlawful one. 15A C.J.S. *Conspiracy* § 39 (citations omitted). The circumstances in this case show only that the individual Respondents conducted routine inspections, received complaints about Haynie's activities, investigated the complaints, determined that City's ordinances had been violated, and prosecuted Haynie for such violations. Any personal dislike the individual Respondents may or may not have had for Haynie does not take their actions outside the scope of their employment.

The lower court properly applied the summary judgment standard pursuant to Rule 56(c), SCRPC. Based on the evidence in the record, or lack thereof, no genuine issue of material fact substantiates Haynie's allegations that the individual Respondents acted outside of the course and scope of their employment.

### **CONCLUSION**

For the foregoing reasons, the lower court's order granting summary judgment on Appellant's cause of action for civil conspiracy against Respondents Mark M. Williams, Shaun Greenwood, and Clark Frady should be affirmed.

Respectfully submitted,



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