

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

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

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

v.

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

REPLY BRIEF OF APPELLANT TO
THE BRIEF OF RESPONDENTS MARK W. WILLIAMS,
SHAUN GREENWOOD, AND CLARK FRADY
IN THEIR INDIVIDUAL CAPACITIES

J. Lewis Cromer & Associates, L.L.C.
J. Lewis Cromer, Esquire (#1470)
J. Paul Porter, Esquire (#100723)
1418 Laurel Street, Suite A
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Appellant

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SC Court of Appeals

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ARGUMENT

Appellant, Frank "Doc" Haynie ("Appellant"), asserts one claim, civil conspiracy, against Respondents Mark W. Williams, Shaun Greenwood, and Clark Frady (Collectively "Individual Respondents"); that claim is asserted against them in their individual capacities. (Complaint ¶¶ 23-27). With respect to that claim, the Lower Court held that the Individual Respondents were entitled to summary judgment in accord with S.C. Code Ann. § 15-78-70(a) on the basis that their actions fell inside the course and scope of their employment by the Respondent City of Forest Acres ("Respondent City"). (Order, Individual Respondents; pp. 1, 7). The dispositive inquiry here is whether or not there is sufficient evidence to raise, at least, an inference that the Individual Respondents' conduct fell outside of the course and scope of their employment with the Respondent City. *Pridgen v. Ward*, 391 SC. 238, 245 705 S.E.2d 58, 63 (Ct. App. 2010).

For the reasons previously stated by the Appellant on brief and for the reasons stated here, Appellant has presented sufficient evidence upon which a jury could infer that the Individual Respondents were "personally, not professionally, motivated . . ." to harm Appellant in a manner that was "wholly disconnected from the business of their employer." *Id.* 705 S.E.2d at 62-63. Appellant respectfully asserts that the Individual Respondents, on brief: (1) overlooked evidence on this issue and drew impermissible inferences in their favor from the evidence submitted, and (2) misapplied this Court's prior holdings on the tort of civil conspiracy. Appellant respectfully requests, for the reasons stated above and elaborated upon below, that this Court reverse the Lower Court's decision and remand Appellant's civil conspiracy claim to trial.

I. THERE IS SUFFICIENT RECORD EVIDENCE THAT THE INDIVIDUAL DEFENDANTS ACTED OUTSIDE OF THE COURSE AND SCOPE OF THEIR EMPLOYMENT.

“If [an employee] acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment”. *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986). It is necessary to note, “the field of admissibility of evidence is broadened in proof of conspiracy.” *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987); *citing Hall v. Walters*, 226 S.C. 430, 85 S.E.2d 729 (1955). Appellant presented evidence to the lower Court (elaborated upon in Appellant’s Initial Brief at pp. 2-6) which described the conduct of the Individual Respondents including: excessive monitoring of the Appellant’s work and property by the Individual Respondents in comparison to other builders and residents in the community (Aft. Pierce ¶¶ 7, 9, 10); arbitrary stop work orders and citations (Dep. Haynie, pp. 10:4-7, 81:5-8, 85:16-86:19, 100:2-101:20, 111:2-112:4); Respondent Frady tampering with the objectivity of Appellant’s building code appeal hearing¹ (Memorandum of Interview: Clark Frady), (Aft. Pierce ¶ 6), (Memorandum of Interview: Margo Pierce); interference with Appellant’s business dealings (Dep. Haynie pp. 32:9-33:24, 98:15-99:12); and disparaging remarks about Appellant to Appellant’s customers and subcontractors. (Dep. Cowles

¹ To the extent that the Individual Respondents assert that Respondent Frady had the authority to tamper with the code board of appeals hearing as an *ex officio* member without voting power (Brief of Individual Respondents, pp. 18-19); such a question is for the jury on these facts. *See*, Anderson, Ralph King, Jr., South Carolina Requests to Charge – Civil -, § 12-3 (2d Ed. 2009) (“It is not necessary for the plaintiff in a civil conspiracy to allege an unlawful act . . . A conspiracy to injure may give rise to liability even though the end was brought about by conduct and acts which by themselves and apart from the element of combination or concerted action could not be regarded as a legal wrong”; *citing*, *Gynecology Clinic, Inc. v Cloer*, 334 S.C. 555, 514 S.E.2d 592 (1999); *LaMotte v. PunchLine of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988); *Swinton Creek Nursery v. Edisto Farm Credit*, 326 S.C. 426, 483 S.E.2d 789 (Ct. App. 1997), *rev'd in part on other grounds*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986); 15A C.J.S. *Conspiracy* § 7 (1967).

p. 42:2-18); (Dep. Cook pp. 64:22-65:7). A reasonable jury could find, based on evidence summarized above, that some of, if not all of, the occurrences underlying Appellant's civil conspiracy claim are the result of actions by the Individual Defendants outside the course and scope of their employment.

"An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business." *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006). An inference must be drawn in favor of the Individual Respondents to conclude that each of the acts described above were in furtherance of the Respondent City's business, such an inference within the stature of this case is impermissible. *Bayle v. SCDOT*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001) ("All ambiguities, conclusions, inferences arising from the evidence must be construed most strongly against the movant.") In accord with this Court's decision in *Pridgen*, "the evidence in the record creates more than one reasonable inference as to whether the [individual respondents] acted outside the scope of their employment." Thus, S.C. Code Ann. § 15-78-70(a) does not limit the liability of the Individual Respondents as a matter of law, and Appellant's civil conspiracy claim should be remanded for trial. *See also*, S.C. Code Ann. § 15-78-70(b) ("Nothing in this chapter may be construed to give an employee . . . immunity . . . if it is proved that the employee's conduct was not within the scope of his official duties.").

II. TO OVERCOME INTRACORPORATE IMMUNITY, A PLAINTIFF NEED NOT SHOW WHY AN INDIVIDUAL DEFENDANT WAS PERSONALLY MOTIVATED; BUT RATHER A PLAINTIFF NEED ONLY SHOW THAT HE INDIVIDUAL DEFENDANT WAS PERSONALLY MOTIVATED OR OTHERWISE ACTING OUTSIDE THE COURSE AND SCOPE OF HIS EMPLOYMENT.

Throughout the Individual Respondent's Brief it is asserted that Appellant must not only show that the Individual Respondents intended to harm him, but also must show why they

intended to harm him. (Brief of Individual Respondents, pp. 10, 13-15). The Individual Respondents even assert that *Pridgen* required that conspirators' intent to harm "be accompanied by the prospect of personal gain." (*Id.* at 15). *Pridgen* sets forth no such requirement. Ironically, two years after *Pridgen* this Court dealt with the question of whether the existence, not the non-existence, of personal motive was fatal to a plaintiff's civil conspiracy claim. *Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 545, 735 S.E.2d 518, 522 (Ct. App. 2012) (determining that the existence of such a motive was not fatal). The Individual Respondents seek to read out of *Pridgen* a new civil conspiracy element, that a plaintiff show why a conspirator was personally motivated to harm him, which was not required by this Court in *Pridgen*.

Pridgen singularly required a suggestion of a personal motive to harm, not a description of that motive. *Pridgen*, 391 SC. at 244. ("Appellants' decision to ignore custom and not give notice of the shakedown at Lee is suggestive of personal, rather than professional, motives.") As in *Pridgen*, Appellant has presented evidence that the Individual Respondents were personally motivated to harm him. *e.g.* (Dep. Epps p. 105:13-22) (Former building code inspector Reverenced Barry Epps testified to hearing Respondent Williams remark "I have no use for [Appellant]); (Aft. Pierce ¶ 9)(Former Town Clerk Margo Pierce stated in her affidavit that she overheard either Respondent Williams or Greenwood state "We'll get him now"); (Dep. Cook pp. 64:22-65:7); (Dep. of Paul Cowles p. 42:2-18) (testified that he witnessed Respondent Frady joking about Appellant to a former customer—just after that customer had terminated Appellant); (Respondent Frady remarked to one of Appellants sub-contractors "You better be careful if you're still doing work with Appellant"). The testimony regarding the Individual Respondents' personal distaste for Appellant in conjunction with the nature of their concerted conduct gives rise to a reasonable jury inference of conduct outside of the scope of those

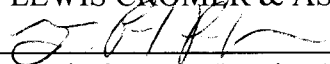
Respondents' employment. *See, Pridgen*, 391 SC. at 244. Appellant has presented sufficient evidence of an actionable civil conspiracy, and the Lower Court's order should be reversed.

CONCLUSION

For the foregoing reasons Appellant respectfully asks, in spite of the arguments raised by the Individual Respondents, that this Honorable Court to Reverse the holding of the Circuit Court and Remand this case for the trial.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC



J. Lewis Cromer, Esquire (#1470)

J. Paul Porter, Esquire (#100723)

1418 Laurel Street, Suite A

Post Office Box 11675

Columbia, South Carolina 29211

Phone 803-799-9530

Fax 803-799-9533

Attorneys for Appellant

Columbia, South Carolina
January 19, 2015

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PROOF OF SERVICE

I J. Paul Porter certify that I served the Reply Brief of Appellant on Respondents Mark M. Williams, Shaun Greenwood, Clark Frady, and the City of Forest Acres by depositing a copy of it in the United States Mail, postage prepaid, on January 20, 2015, addressed to the individual respondents attorney of record, Kirby D. Shealy, III, with the law firm Adams & Reese, LLP, 1501 Main Street, 5th Floor, Columbia, SC 29202, and to the Respondent City addressed to its attorney of record, A. Johnston Cox with the law firm Gallivan, White, & Boyd, P.A., 1201 Main Street, Suite 1200, Columbia, SC 29202.

J. Lewis Cromer & Associates, L.L.C.

BY:



J. Lewis Cromer, Esquire

J. Paul Porter, Esquire

1418 Laurel Street, Suite A

Post Office Box 11675

Columbia, South Carolina 29211

Phone 803-799-9530

Fax 803-799-9533

Attorneys for Appellant

Columbia, South Carolina
January 20, 2015