

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable Marvin H. Dukes, III

Appellate Case No.: 2014-000636
Beaufort County Case No.: 2013-CP-07-00918

RECEIVED

MAR 17 2015

SC Court of Appeals

MARE BARACCO.....Appellant,

vs.

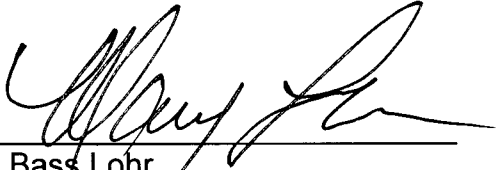
BEAUFORT COUNTY, SOUTH CAROLINA.....Respondent.

REPLY TO APPELLANT'S MOTION TO DISMISS

The Appellant has filed, yet again, a Motion to Dismiss, when she actually seeks a determination on the merits of this appeal. This was previously attempted by the Appellant on October 9, 2014 [see Exhibit A attached hereto], resulting in the dismissal of the appeal on December 16, 2014 [see Exhibit B attached hereto]. Subsequently, the Appellant moved to have the appeal reinstated, which the Court granted with specific instructions via letter dated February 13, 2015 that the Appellant's Initial Brief and Designation of Matter must be filed within thirty (30) days [see Exhibit C attached hereto]. The Appellant has now, on the 30th day, filed yet another Motion to Dismiss. In doing so, she is seeking an end-run to the rules of this Court. Specifically, she is in violation of the instructions of this Court.

Given the Appellant's refusal to comply with the rules and instructions of this Court, the Respondent would respectfully request that the Appeal be dismissed.

HOWELL, GIBSON & HUGHES, P.A.

By: 
Mary Bass Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Respondent

Beaufort, South Carolina

March 13, 2015

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable Marvin H. Dukes, III

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Appellate Case No.: 2014-000636
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MARE BARACCO.....Appellant,

vs.

BEAUFORT COUNTY, SOUTH CAROLINARespondent.

PROOF OF SERVICE OF
REPLY TO APPELLANT'S MOTION TO DISMISS

The undersigned counsel hereby certifies that she has served the foregoing Reply to Appellant's Motion to Dismiss upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 13 day of March, 2015 addressed to the following:

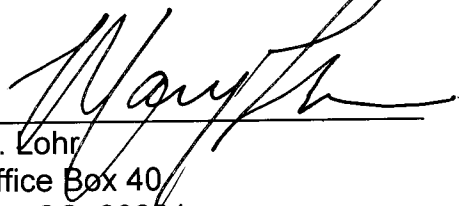
Mare Baracco
1006 Madrid Ave.
Port Royal, SC 29935

AND

Josh Gruber, Esquire
Allison Collins Coppage, Esquire
Beaufort County Staff Attorney
Post Office Box 1228
Beaufort, SC 29901

HOWELL, GIBSON & HUGHES, P.A.

By: _____

A handwritten signature in black ink, appearing to read "Mary B. Lohr", written over a horizontal line.

Mary B. Lohr
Post Office Box 40
Beaufort, SC 29901
(843) 522-2408
Attorney for Respondent
Beaufort County

Beaufort, South Carolina
March 13, 2015

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY,
BEAUFORT COUNTY
TRIAL COURT CASE NO.: 2013CP0700918

APPELLATE CASE NO.: 2014-000636

BEAUFORT COUNTY,

Respondent,

vs.

MARE BARACCO,

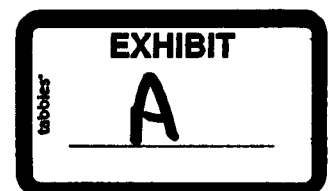
Appellant.

MOTION FOR AN ORDER TO DISMISS APPEAL, WITHOUT PREJUDICE, TO
ALLOW APPELLANT TO FILE WRIT OF MANDAMUS, IF JURISDICTION IS
CONFIRMED, OR IN THE ALTERNATIVE, FOR AN ORDER REVERSING THE
ADMINISTRATIVE AGENCY'S DEPARTMENT'S DETERMINATION



Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062

Date: October 9, 2014



Appellant hereby petitions this court for an Order dismissing her Appeal, without prejudice, to allow her to file a Writ of Mandamus in this matter, based on the following summary, and on the grounds of a “sham legal process”¹; lack of personal, territorial and subject matter jurisdiction of the administrative agency; the failure of an administrative agency to issue a notice of hearing in a contested case, as provided for in Section 1-23-320, SC Code of Laws; the lack by an administrative agency to issue a written administrative agency decision/order, as provided for in Section 1-23-310, et seq., SC Code of Laws; the failure of an administrative agency to create a complete administrative contested hearing record in a contested case, as provided for Section 1-23-320, SC Code of Laws, and to provide said complete administrative contested hearing record to any court/tribunal to review prior to the rendering of any decision/order adverse to the Appellant or remanding said case to the administrative agency for further action based on an incomplete administrative agency contested hearing record. Due to these failures, Appellant lacks, and lacked throughout this unlawful procedure, the pre-requisite important documents, including, but not limited to, the (most important document) the written

¹ (a) “Sham legal process” means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate governmental entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property. (b) “Lawfully issued” means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political division of the State of South Carolina. Section 30-9-30, of the *SC Code of Laws, 1976, as Amended*.

“Finally, persons knowingly presenting documents in connection with a sham legal process may be subject to criminal prosecution, not only under the Federal Mail Statute, but also under the S.C. Sham Legal Documents Statute (Section 16-17-735), and such action may amount to obstruction of justice if they purport to prevent a South Carolina court from exercising its jurisdiction.” Letter of Rosalyn W. Frierson, Director, South Carolina Court Administration, South Carolina Supreme Court, August 25, 2010.

Administrative Decision/Order, a proper Notice of Hearing, and a complete administrative agency contested hearing record from which she would not be further prejudiced in the review of any appellant judicial entity.

In the alternative Appellant petitions this court for an Order reversing the Administrative Agency's illegal, ("Sham Legal Process") unconstitutional actions arising in this case based on the fact that Appellant's substantial rights have been prejudiced because the administrative actions are:

- a) in violation of constitutional and statutory provisions;
- b) in excess of the statutory authority of the agency;
- c) made upon unlawful procedure;
- d) affected by error of law;
- e) clearly erroneous in view of the of the reliable, probative, and substantial evidence on the whole record; and
- f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted of discretion.

One of the main basis' for Appellant seeking these types of relief from this Honorable Court is that in order for the Court of Appeals to have jurisdiction over this matter, there must have been correct, proper measures that led the Appellant to its steps of judicial powers. In an Administrative process by the governmental entity ("Agency") it must be shown that:

1. they² had legal authority and jurisdiction of the person, territory and subject matter;
2. they properly enacted the regulation³ as provided for in Section 1-23-10, et seq.;

² "they" means Beaufort County Council, Beaufort County Administrator or his staff, Beaufort County Sheriff, Beaufort County Sheriff's Department, and/or any other level of government or a subdivision of these entities involved in the process of drafting, creating and/or approving documents that would implement or prescribe law or policy or practice requirements of any agency, including, but not limited to policies, standards, procedures, notices, summons, or similar instruments.

3. they properly reviewed all documents that would implement or prescribe law or policy or practice requirements of any agency, including, but not limited to policies, standards, procedures, notices, summons, or similar instruments, to ensure that they complied with the ordinance and the Laws of the State of South Carolina as written prior to approval of any governmental entity within their organization;
4. they adopted and made available for public inspection a description of its organization and method of operations and the methods whereby the public may obtain information or make submissions or requests;
5. they adopted and made available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;
6. there must have been a legal document that conferred jurisdiction over a party (e.g. statute, ordinance, regulation, warrant, summons, order and/or rule to show cause);
7. there must have been a determination by a Department – Beaufort County Sheriff's Department. A determination is defined in South Carolina Law for administrative purposes that "Department determination means the final determination within the department from which a person may request a contested case hearing (Section 12-60-30, *SC Code of Laws, 1976, as Amended*);
8. there must be a request for hearing in a contested case by the aggrieved party;
9. they must provide proper notice for the hearing in a contested case as provided for Section 1-23-320, *SC Code of Laws, 1976, as Amended*;
10. a party must be afforded the opportunity and rights provided for in Section 1-23-320(C)(D) &(E), *SC Code of Laws, 1976, as Amended*;
11. **there must be an actual Administrative Agency⁴ Hearing in the contested case** [emphasis added];

³ "Regulation means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Section 1-23-10, *SC Code of Laws, 1976, as Amended*.

⁴ "Agency" means eachdepartment, executive department or officer, other than the ...the courts, authorized to make regulations or to determine contested cases. Section 1-23-10(1), *SC Code of Laws, 1976, as Amended*.

12. they must provide a record in contested case and it **must** include documents and things as prescribed in Section 1-23-320(G)(1)(2)(3)(4)(5) & (6);
13. they must be cognizant and provide for the specific rules as they apply to evidentiary matters in a contested case, as provided for in Section 1-23-330, *SC Code of Laws*;
14. there must be a transcript of any available oral proceedings or any part of the oral proceedings of the hearing in the contested case so that it can be made available on request of a party, including, Appellant;
15. in a contested case when a majority of the officials of the agency who are to render the final decision have not heard the case or reviewed the record, the decision, if adverse to the party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one has read the record. The parties by written stipulation may waive compliance with this section. Section 1-23-340, *SC Code of Laws, 1976, as Amended*;
16. **there must be a written final decision or order⁵ adverse to a party in a contested case or stated in the record [emphasis added];**
17. they must (make) available for public inspection all final orders, decisions, opinions, except as otherwise provided by law⁶;
18. a party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision/order in a contested case is entitled to

⁵ Final decision or order in contested case. A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rule, a party submitted a proposed findings of fact, the decisions shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Section 1-23-350, *SC Code of Laws, 1976, as Amended*.

⁶ No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it is made available for public inspection as required by this article and Article 2. Section 1-23-140 of the *SC Code of Laws, 1976, as Amended*.

judicial review pursuant to Article 1 and 3 of the *SC Administrative Procedures Act*, Section 1-23-10, et seq. *SC Code of Laws 1976, as Amended*. Except as otherwise provided by law, **an appeal is to the court of appeals**⁷. Section 1-23-380, *SC Code of Laws, 1976, as Amended*; and

19. in the event that the agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with procedures prescribed in the *South Carolina Administrative Procedures Act*; the agency may file the regulation with the Council⁸, along with a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of the filing. An emergency regulation filed under this section, which has substantial economic impact, may not be refiled unless accompanied by the summary of the final assessment report prepared by the [department] pursuant Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111. If emergency regulations are filed, the emergency regulations remain in effect for ninety (90) days and may not be refiled. Emergency regulations and the agency statement as to the need and reasonableness of immediate promulgation must be published. The summary of the final assessment report required for refiled emergency regulations must also be published.

Upon a proper investigation of the above-noted issues, this Honorable Court would find that there are severe deficiencies as they pertain to numbers 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, and 17. Appellant did not create these severe deficiencies that are the creation and sole

⁷ Appellant contends that appealing this matter to the court of appeals is part of the checks and balances the South Carolina Legislature instituted by way of this provision in the statute. Decision/orders of the State Agencies, other than the Workforce Agency decisions/orders, are appealable to the South Carolina Administrative Law Court. And, Workforce Agency decisions/orders are appealable to the Circuit Court. Appellant is informed and believes that this provides the necessary levels of protection so that parties that receive an adverse decision receive an impartial, unbiased review and ruling of the facts and record prior to making any decisions. Or in other words, preventing the party from being “home cooked” by an administration that may have sway within their own areas.

⁸ Appellant contends that in this event that both Councils (Beaufort County and Town of Port Royal) would have had to act upon this matter and there would had to be a slew of other regulations that would have had to be amended, repealed or acted upon, (conform) before the “emergency regulation” could have been legally enforced against her or any other citizens of either Beaufort County or Town or Port Royal.

actions and/or non-actions of the Respondent. She is but a mere party that has been caught in a “Kafkaesque” nightmare by reason of an incident that involved her and her personal property. There is no, and has never been, a proper required Administrative decision/order based on her contesting the determination of a department from which she could appeal. Nor is there a complete required record of the Administrative Hearing in her contested case that could be, and should have been, reviewed by any Court that participates, or has participated, in this case.

Appellant stands in the door of this Honorable Court with empty hands due to the unclean hands of the individuals she has encountered during the pendency of this action. She cannot produce what has never been provided to her, a legal adverse decision/order resulting from a properly noticed and held hearing in her contested case. Nor can she produce the record of the hearing of the contested case for this Honorable Court’s review, as it does not exist. However, what does exist, are sham documents, from a “Sham Legal Process”, that are adverse to her and her personal property, that have been entered and made part of public records of the Beaufort County Clerk of Court, Beaufort County Sheriff’s Department, and other offices of Beaufort County. These sham documents have been of record for more than two (2) years.

In an effort to provide as much information on how the Appellant and this Honorable Court have been forced upon this playing field without the necessary instruments so that informed decision could be made, (and in Appellant’s case, could have been made in the whole process – “sham” or otherwise) the Appellant provides this Honorable Court with following information:

Appellant is a resident of the Town of Port Royal, a municipality recognized by the State of South Carolina, as one of its subdivisions. Respondent, Beaufort County, is a County recognized by the State of South Carolina, as one of its subdivisions.

South Carolina 46 counties and 269 municipalities exists for general purposes. The 1895 South Carolina Constitution provided for counties, municipalities and school districts. Municipalities, the oldest form of local government in South Carolina, had more autonomy than counties and school districts until the 1970's. Counties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. *Williams v. Wylie*, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. *McKenzie v. City of Florence*, 234 S.C. 428, 108 S.E.2d 825 (1959). In doing so, however, political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws. *Central Realty Corp. v. Allison*, 218 S.C. 435, 63 S.E.2d 153 (1951); *Law v. City of Spartanburg*, 148 S.C. 229, 146 S.E. 12 (1928).

The authority for local governments is summarized in Article VIII, Section 17, of the South Carolina Constitution: "all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."

Elected and autonomous county governments in South Carolina emerged in 1974.

The Home Rule Act in 1975 implemented the specific changes authorized by the revisions of Article VIII. The powers of municipalities and school districts were well-defined either by constitution or in statutory law, and, thus experienced few changes as a result of the Act. However, the powers of counties were significantly expanded. This Act also provided for intergovernmental cooperation between municipal and county government because they had

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J. ANDREW YOHO
STEVEN A. JORDAN, JR.

JAMES S. GIBSON, JR *
Of Counsel

* Certified Mediator

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MAR 13 2015

SC Court of Appeals

March 13, 2015

Ms. V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Mare Baracco vs. Beaufort County, South Carolina
Civil Action No.: 2014-000636
Our File No: 11369 MBL

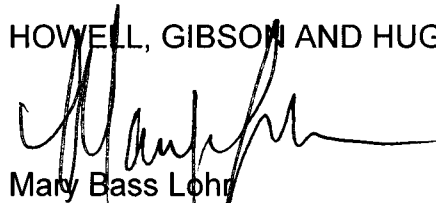
Dear Ms. Allen:

Please find enclosed herewith for filing an original and six (6) copies of the Reply to Appellant's Motion to Dismiss with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.



Mary Bass Lohr

MBL/ad

Enclosure

cc: Ms. Mare Baracco
Joshua A. Gruber
Allison Collins Coppage



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TO:

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