

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
The Honorable Roger L. Couch, Circuit Judge

Case No. 2009-CP-04-4528
Appellant Case No. 2014-002614

Richard Freemantle, individually and on behalf of himself and all others similarly
situated, ... Appellant,

vs.

Joey Preston, in his official capacities and individually; while administrator of
Anderson; Anderson County, a political subdivision of the State of South Carolina,
Anderson County Council, the Legislative and Executive Body of Anderson County;
RON WILSON, in his official capacities and individually; BILL MCABEE, in his
official capacities and individually; LARRY GREER, in his official capacities and
individually; MICHAEL THOMPSON, in his official capacities and individually;
GRACIE FLOYD, in her official capacities and individually, ... Respondents.

**JOINT INITIAL BRIEF OF RESPONDENTS ANDERSON COUNTY
COUNCIL AND ANDERSON COUNTY**

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TABLE OF CONTENTS

I. Statement Of The Issue On Appeal.....1

II. Statement Of The Case..... 2

III. Statement Of Facts..... 5

IV. Legal Arguments And Authorities..... 6

A. Arguments & Authorities..... 6

I. APPELLANT HAS ABANDONED ALL FOIA CLAIMS RELATED TO THE NOVEMBER 18, 2008 REGULAR MEETING OF ANDERSON COUNTY COUNCIL AS WELL AS FOIA CLAIMS RELATED TO THE SEPTEMBER 25, 2008 AND NOVEMBER 4, 2008 PERSONNEL COMMITTEE MEETINGS..... 6

II. APPELLANT’S NEW FOIA CLAIM RELATED TO ALLEGED DISCUSSIONS AT SOME UNKNOWN TIME ON SOME UNKNOWN DATE BETWEEN TWO MEMBERS OF ANDERSON COUNTY’S PERSONNEL COMMITTEE REGARDING PRESTON’S POTENTIAL SEVERANCE AGREEMENT SHOULD BE DISREGARDED SINCE IT IS NOT CONTAINED IN EITHER APPELLANT’S ORIGINAL COMPLAINT OR AMENDED COMPLAINT.....7

III. APPELLANT’S NEW FOIA CLAIM RELATED TO ALLEGED DISCUSSIONS BETWEEN TWO MEMBERS OF ANDERSON COUNTY’S PERSONNEL COMMITTEE ARE STATUTORILY BARRED BY S.C. CODE ANN. § 30-4-100(a) 7

IV. CONCLUSION..... 8

TABLE OF AUTHORITIES

Statutes and Regulations

| | |
|---|---------|
| South Carolina Freedom of Information Act, S.C. Ann. § 30-4-10 <i>et seq</i> | 2, 5 |
| Federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 <i>et seq</i> | 2 |
| South Carolina Rule of Civil Procedure 15..... | 3 |
| South Carolina FOIA Statute of Limitations, S.C. Code Ann. § 30-4-100(a)..... | 3, 6, 8 |
| South Carolina Appellate Rule 220(c)..... | 6 |

Cases

| | |
|--|---------|
| <i>Freemantle v. Preston</i> , 398 S.C. 186, 728 S.E.2d 40 (S.C. 2012)..... | 3 |
| <i>Lambries v. Saluda County Council</i> , 409 S.C. 1, 760 S.E.2d 785 (S.C. 2014)..... | 3, 6, 7 |

I. STATEMENT OF THE ISSUE ON APPEAL

I. Did the Trial Court err in granting Summary Judgment to the Respondents?

II. STATEMENT OF THE CASE

On November 16, 2009, the Appellant (*hereinafter* “Freemantle” or “Appellant”) filed a Complaint “on behalf of himself and all others similarly situated” against Respondents, Joey Preston, Ron Wilson, Bill McAbee, Larry Greer, Michael Thompson, and Gracie Floyd, in their official and individual capacities, along with Anderson County Council and Anderson County (*hereinafter* Respondents), seeking money damages and a declaratory judgment regarding a Severance Agreement between Anderson County and former Anderson County Administrator, Respondent Joey Preston. The Appellant asserted various causes of action, including, but not limited to, covin and collusion, breach of fiduciary duty, illegal gift of county funds, misfeasance, malfeasance, civil conspiracy, violations of South Carolina Freedom of Information Act (*hereinafter* FOIA), S.C. Code Ann § 30-4-10, *et seq.*, violations of public policy, and purporting to set forth “class action allegations.” (Complaint and Amended Complaint). Respondents all filed Motions to Dismiss Appellant’s Complaint in its entirety. The Court was set to hear arguments on Respondents’ motions on March 17, 2010. On March 16, 2010, Appellant filed an Amended Complaint with the court, adding a cause of action alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act (*hereinafter* RICO), 18 U.S.C. § 1961 *et seq.* (Amended Compl.). After a hearing on March 17, 2010, Respondents’ Motions to Dismiss were granted and Appellant’s Complaint was dismissed. Appellant’s filing of the Amended Complaint the day prior prompted Respondents to file additional Motions to Dismiss that addressed the RICO cause of action, which the Court consolidated and heard on September 7, 2010. At the September 7th hearing the Court dismissed Appellant’s RICO claims upon the same grounds as well

as upon a finding the Appellant failed to comply with the requirements for amending the pleadings as set forth in Rule 15 SCRC. On September 28, 2010, the Court signed an Order dismissing Appellant's claims contained in the original Complaint. An Amended Order was entered on November 22, 2010, again dismissing the Appellant's original claims along with those contained in the Amended Complaint. On December 9, 2010, Appellant filed a Notice of Intent to Appeal the Amended Order dismissing his Complaints.

The South Carolina Supreme Court affirmed the dismissal of all the Appellant's causes of action except for the FOIA claims seeking declaratory and injunctive relief. *See Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (S.C. 2012). Upon remand Appellant's remaining FOIA claims were assigned to the Honorable Roger L. Couch. On July 25, 2012, Appellant filed a Motion for Summary Judgment as to only the FOIA claims of notice and amendment of the agenda associated with the November 18, 2008 regular Anderson County Council meeting. (Appellant's M. for Summary Judgment). On May 19, 2014 and June 3, 2014, Respondents Joey Preston, Ron Wilson, Bill McAbee, Larry Greer, Michael Thompson and Gracie Floyd filed Motions for Summary Judgment as to all of Appellant's remaining claims based on the Supreme Court's recent decision in *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (S.C. 2014) and the Statute of Limitations contained in S.C. Code Ann. § 30-4-100(a). They also argued that they were no longer proper parties to this litigation. (Preston, Wilson, McAbee, Greer, Thompson and Floyd M. for Summary Judgment). On August 19, 2014, these Respondents filed a Memorandum in Support of their Motions for Summary Judgment. (Respondents' Memo in Support). On August 19, 2014, Appellant filed a Memorandum

in Support of his Summary Judgment Motion as well as a supporting Affidavit. (Appellant's Memo in Support). On November 6, 2014, the Lower Court issued an Order Granting Respondents' Motions for Summary Judgment (Nov. 6, 2014 Order). Thereafter, Appellant initiated this Appeal.

III. STATEMENT OF THE FACTS

This action arose as a challenge to the Anderson County Council's vote in favor of a Severance Agreement between Anderson County and Respondent Joey Preston, former Administrator for Anderson County. This vote occurred at the Anderson County Council's regular monthly meeting on November 18, 2008. Appellant alleges that the notice and agenda requirements of the South Carolina Freedom of Information Act (*hereinafter* FOIA), S.C. Code Ann. §30-4-10, *et seq.*, were violated during the aforementioned November 18, 2008 Council meeting. Appellant argues that due to these FOIA violations, the Severance Agreement should be voided. Further, Appellant argues that the FOIA's notice and agenda requirements were violated by the Anderson County Personnel Committee which was a three person sub-committee of Anderson County Council. Appellant's original Complaint and his Amended Complaint only allege that these FOIA violations occurred during the September 25, 2008 and November 4, 2008 Personnel Committee meetings. Finally and for the first time, Appellant is now attempting to allege that the FOIA notice and agenda requirements were violated as a result of some communication regarding Mr. Preston's potential severance agreement between two members of the Personnel Committee at some unknown time on some unknown date prior to the November 18, 2008 regular Anderson County Council meeting.

IV. LEGAL ARGUMENTS AND AUTHORITIES

A. Arguments & Authorities

I. APPELLANT HAS ABANDONED ALL FOIA CLAIMS RELATED TO THE NOVEMBER 18, 2008 REGULAR MEETING OF ANDERSON COUNTY COUNCIL AS WELL AS FOIA CLAIMS RELATED TO THE SEPTEMBER 25, 2008 AND NOVEMBER 4, 2008 PERSONNEL COMMITTEE MEETINGS

Appellant's Complaints ¹ only allege FOIA violations associated with the County's regular November 18, 2008 Council meeting (C. ¶ 102-110, 115-122) as well as Personnel Committee meetings on September 25, 2008 and November 4, 2008 (C. ¶ 25-30, 111-114). The Lower Court granted Respondents' Motions for Summary Judgment as to all of Appellant's FOIA claims concerning notice and amendment of the agenda related to the November 18, 2008 Anderson County Council Meeting based on the Supreme Court's recent decision in *Lambries v. Saluda County Council*, 409 S.C. 1, 760 S.E.2d 785 (S.C. 2014). Appellant's FOIA claims concerning notice and amendment of the agenda related to the September 25th and November 4th, 2008 Personnel Committee meetings are statutorily barred under S.C. Code Ann. § 30-4-100(a) because they occurred more than one year prior to the filing of this action on November 16, 2009.²

In Appellant's Initial Brief, no arguments are advanced for overruling the Lower Court's Order granting Respondent's Summary Judgment on all FOIA claims related to

¹ The filing of Appellant's original and Amended Complaints is outlined in Respondent's Statement of the Case. The allegations related to Appellant's FOIA claims in each of his Complaints including the paragraph numbers are identical and references thereto will be made herein simply as "Appellant's Complaints."

² Although the Lower Court's Order did not specifically address Respondents' statute of limitations arguments as to Appellant's FOIA claims related to the September 25, 2008 and November 4, 2008 Personnel Committee Meetings (Respondents' Memo Supporting Summary Judgment p. 3-4), such claims on their face occurred more than one year prior to Appellant's Complaint being filed on November 16, 2009. Pursuant to S.C. Appellate Rule 220(c) this Court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. Respondents thus urge this Court to affirm the Lower Court's dismissal of Appellant's FOIA claims related to the Personnel Committee meetings on these grounds.

either the November 18, 2008 regular Council meeting or the two Personnel Committee meetings that occurred in September and November, 2008. Since Appellant has not articulated any arguments or authorities in opposition to the Lower Court's decision based on the *Lambries* case for the November 18 Anderson County Council meeting or the statute of limitations for the September and November, 2008 Personnel Committee meetings, Appellant has effectively abandoned such appeals. Accordingly, Respondents urge this Court to uphold the Lower Court's Order granting Summary Judgment to Respondents on all FOIA claims contained in Appellant's Complaints.

II. APPELLANT'S NEW FOIA CLAIM RELATED TO ALLEGED DISCUSSIONS AT SOME UNKNOWN TIME ON SOME UNKNOWN DATE BETWEEN TWO MEMBERS OF ANDERSON COUNTY'S PERSONNEL COMMITTEE REGARDING PRESTON'S POTENTIAL SEVERANCE AGREEMENT SHOULD BE DISREGARDED SINCE IT IS NOT CONTAINED IN EITHER APPELLANT'S ORIGINAL COMPLAINT OR AMENDED COMPLAINT

Appellant's Complaints allege only FOIA violations as to notice and agenda issues related to the November 18, 2008 regular meeting of Anderson County Council and as to Anderson County Personnel Committee meetings on September 25, 2008 and November 4, 2008. (Complaints ¶25-30, 102-122). There is no reference in either Complaint to any alleged FOIA violations related to some discussions at some unknown time and on some unknown date prior to November 18, 2008 between two members of the Personnel Committee about a potential severance agreement with Mr. Preston. Moreover, it is impossible for two members of a sub-committee of Anderson County Council to take any binding or official action related to any potential severance agreement during such alleged discussions. Appellant's Complaints make no such allegations and no evidence produced by Appellant to this Court supports such an

assertion. The vote as to Mr. Preston's Severance Agreement which is the basis for Appellant's lawsuit took place at the November 18, 2008 regular Council meeting (Complaint ¶¶ 102-110, 115-122). Appellant should not be allowed to add new claims to his Complaints for the first time at this late date in this litigation. For this reason, Respondents urge this Court to disregard Appellant's untimely attempt to add new claims to this litigation.

III. APPELLANT'S NEW FOIA CLAIM RELATED TO ALLEGED DISCUSSIONS BETWEEN TWO MEMBERS OF ANDERSON COUNTY'S PERSONNEL COMMITTEE ARE STATUTORILY BARRED BY S.C. CODE ANN. § 30-4-100(a)

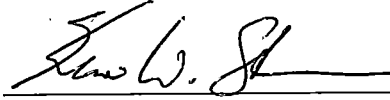
Appellant has admitted that he first became aware of the newly alleged FOIA violation related to discussions between two members of Anderson County Council's Personnel Committee that occurred sometime prior to November 18, 2008, when he attended the regular County Council meeting on November 18, 2008. (Appellant Affidavit p. 2-3). Appellant has had notice of this potential claim for over six (6) years and has only now attempted to raise it. Appellant has thus had knowledge of this alleged FOIA claim for well beyond the one year statute of limitations contained in S.C. Code Ann. § 30-4-100(a). Accordingly, such claims are statutorily barred.

IV. CONCLUSION

Based upon the aforementioned arguments and authorities, Respondents urge this Court to uphold the Lower Court's grant of Summary Judgment on all of Appellant's FOIA claims.

Dated this the 7th day of April 2015.

Respectfully Submitted,



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APPEAL FROM ANDERSON COUNTY
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The Honorable Roger L. Couch, Circuit Judge

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individually; MICHAEL THOMPSON, in his official capacities and individually;
GRACIE FLOYD, in her official capacities and individually, ... Respondents.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **JOINT INITIAL BRIEF OF
RESPONDENTS ANDERSON COUNTY COUNCIL AND ANDERSON COUNTY**
was served upon all counsel of record in the above-referenced action this 7th day of
April, 2015, by depositing same in the United States Mail, sufficient postage affixed
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April 7, 2015

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SC Court of Appeals

VIA EXPRESS MAIL

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Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Richard Freemantle, individually and on behalf of himself and all others similarly situated v. Joey Preston, et al.
C. A. No. 2009-CP-04-4528
Appellant Case No. 2014-002614

Dear Ms. Kitchings:

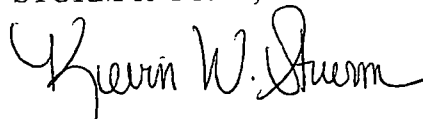
Enclosed please find an original and one copy of the *Joint Initial Brief of Respondents Anderson County Council and Anderson County* in the above-referenced matter. Please return a stamped copy to our office in the enclosed self-addressed envelope. By copy of this letter, I am serving a copy of this Brief on all counsel of record.

Thank you for your assistance in this matter.

With highest regards, I remain,

Very truly yours,

STURM & CONT, P.A.



Kevin W. Sturm

KWS/srb

Enclosures

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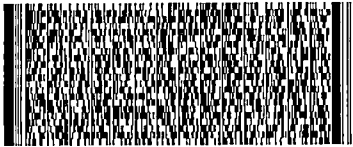
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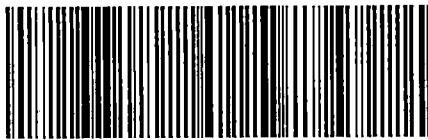
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