THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS
Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC, Appellants

vs.

South Carolina Coastal Conservation League and Edward Dana Beach, Defendants

Of whom South Carolina Coastal Conservation League is the Respondent.

FINAL BRIEF OF APPELLANTS, NORTH PLEASANT, LLC AND VANGUARD DEVELOPMENT GROUP, LLC

Stan Barnett
Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mount Pleasant, SC 29465-1542
(843)881-1623
Attorneys for Appellants, North Pleasant, LLC and Vanguard Development Group, LLC

TABLE OF CONTENTS

Page(s)

Table of Authorities.. ii

Summary of Reply.. 1

I. There was ample evidence of what Hamilton Davis of the League told Dan Burns (Pittinger's Assistant)........................ 1

II. There was Evidence Presented to the Jury from Which it Could Have Concluded that the League's Actions Caused Pittinger to Back Out of the Contract to Buy the North Pleasant Property.. 2

III. Whether the League Violated the S.C. Unfair Trade Practices Act is a Question for the Jury... 8

IV. Respondent's Argument on Injurious Falsehood Does not Address the Real Issues.. 10

V. The Trial Judge Did Not Rule on Whether Vanguard Development Group, LLC had a Proper Claim.......................... 11

Conclusion.. 13

TABLE OF AUTHORITIES

Page

CASES:

Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910, 914 (Ct. App. 2001)................ 2

Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644, 649 (2013)........................ 2

Forcused Systems, Inc. v. Aerotek, Inc., C.A. No. 6:10-2899, 2011 WL 2162729 (D.S.C. 2011).. 3

J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97, 101 (S.C. 2006).. 3

Knights of the Ku Klux Klan, Inc. v. Strayer, 26 F.2d 727 (W.D. Pa. 1928); aff'd 34 F.2d 432 (3rd Cir. 1929)... 8

O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (Ct. App. 1987). 4

R.A.V. v. City of St. Paul, Minnesota, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992).. 10

Roddey v. Wal-Mart Stores East, LP, 400 S.C. 59, 732 S.E. 2d 635, 647 (2012).. 3

Santoro v. Schulthess, 384 S.C. 250 (Ct. App., 2009).................................. 4

Todd v. South Carolina Farm Bureau Mutual Insurance, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984).. 4

STATUTES:

S.C. Code § 39-5-10, et seq………………………………………………………… 1

S.C. Code § 39-5-140(a)…………………………………………………………….. 13

ISSUES ON APPEAL

I. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT DISMISSING APPELLANTS' TORTIOUS INTERFERENCE CLAIMS ON THE BASIS THAT THERE WAS NO EVIDENCE TO SUPPORT A FINDING THAT THE ACTIONS OF THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE CAUSED INJURY TO THE APPELLANTS.

II. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT DISMISSING APPELLANTS' INJURIOUS FALSEHOOD CLAIM ON THE BASIS THAT THERE WAS NO EVIDENCE TO SUPPORT A FINDING THAT THE ACTIONS OF THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE CAUSED INJURY TO THE APPELLANTS.

III. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE SOUTH CARLOLINA COASTAL CONSERVATION LEAGUE AS TO THE CAUSE OF ACTION UNDER THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT, S.C. CODE §39-5-10, ET SEQ. BY HOLDING THAT THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE IS NOT ENGAGED IN TRADE OR COMMERCE BECAUSE IT IS A PUBLIC ADVOCACY GROUP.

STATEMENT OF THE CASE

This case involves interference by the S.C. Coastal Conservation League ("the League") and Dana Beach, its Director, with a contract for the sale of a tract of land in Berkeley County called the Keystone Tract. At the time of the contract, the land was owned by North Pleasant, LLC ("North Pleasant") who contracted to sell it to Vanguard Properties of the Carolinas, LLC, a Charlotte based land investment company owned by Robert Pittinger ("Pittinger"). The purchase price was to be $23,920,000.00. The listing real estate agency for the sale was Charleston based Vanguard Development Group, LLC whose principal is David Grubbs ("Grubbs"). [1] Three days before the end of the due diligence period, on May 18, 2007, the office of the buyer received a telephone call from a staff employee of the League in which he announced the League was opposed to any development in that part of Berkeley County, threatened the buyer with opposition to any development and falsely claimed that the League had fought and stopped a development by D. R. Horton on land near the Keystone Tract.

After receiving this threat, Robert Pittinger, directed his staff to cancel the contract and demand return of the earnest money previously deposited. This action was commenced by North Pleasant and Vanguard Development with a complaint filed on May 20, 2010 alleging that both the League and Dana Beach were liable to them for their losses and for punitive damages for intentional interference with a contract, for intentional interference with prospective contractual relations, breach of the S.C. Unfair

[1] Vanguard Development Group is in no way affiliated with the buyer, Vanguard Properties of the Carolinas.

Trade Practices Act, S.C. Code § 39-5-10, and publication of injurious falsehoods. Defendants answered on July 19, 2010.

Defendants moved for partial summary judgment on May 26, 2011 as to the Unfair Trade Practices Act claim arguing that because it was a "public advocacy group," the League was not engaged in trade or commerce as defined by the Act. Both parties submitted affidavits and other evidence. On July 20, 2011, the trial judge, the Honorable Roger Young, issued an order denying Defendant's motion, incorrectly characterizing it as a motion to dismiss, and holding, "I have carefully considered the arguments presented by counsel, as well as supporting memoranda. ***Viewing the evidence as a whole and in the light most favorable to the plaintiff***, I find that the plaintiff has stated facts sufficient to constitute a cause of action in the pleadings filed with this court." (Emphasis supplied). (R.p. 1).

Defendants filed a motion for summary judgment as to all claims on July 30, 2012. On December 18, 2012, the trial judge, the Honorable Roger Young, granted Defendants' motion as to Dana Beach for all claims and as to the Unfair Trade Practices Act claim as to both defendants. He denied the motion as to the tortious interference with contract and prospective contractual relationships claims, as well as the injurious falsehood claims. As to the Unfair Trade Practices claim, Judge Young held, contrary to his Order in 2011, that as the League was a public advocacy group, it was not engaged in trade or commerce as a matter of law and, thus, not subject to the Unfair Trade Practices Act. (R.p. 5).

The case was tried before a jury in Berkeley County December 9 – 11, 2013. At the conclusion of Appellants' case, Defendants moved for directed verdict as to the

interference with contract and injurious falsehood claims. The trial judge, the Honorable

Roger Young, granted the motion as to all claims. His decision is reflected only in his statements from the bench, the Order itself being a form order. (R.p. 1001-1015, 761). The basis for his grant of directed verdict was his finding that no evidence was presented to the jury that the League's actions caused the buyer to abandon the contract to purchase the Keystone Tract. [2] Appellants filed a Motion to Alter or Amend on December 19, 2013 which was denied by the trial judge on January 17, 2014. (R.p. 752, 9). Appellants filed a Notice of Appeal on January 7, 2014. (Notice of Appeal).

At trial, portions of four depositions were presented to the jury, these witnesses being non-residents of South Carolina – Daniel Burns, Mitchell Flannery, Megan Desrosiers and Robert Pittinger. The court reporter did not transcribe the deposition testimony as it was read into the record. However, the portions of the testimony read to the jury were identified pursuant to Rule 32 in designations filed by the parties with the trial court. Those portions are included in the Record on Appeal along with the designations filed by the parties.

STATEMENT OF THE FACTS

Property and the Pittinger Contract

This case centers around a contract to sell a large tract of land in Berkeley County on Highway 41 near Huger, a portion of the "Keystone Tract." The Keystone Tract contains a total of 4,478.28 acres. North Pleasant signed a contract on March 15, 2007 to sell 2,600 acres of the Keystone Tract to Vanguard Properties of the Carolinas, LLC, a

[2] While the only legal basis for a directed verdict is the *total lack of evidence* of causation, that is not what the trial judge found. His statements, in which he clearly weighed the evidence for and against causation, constitute his finding that the evidence did not sufficiently *prove causation*.

company owned entirely by Robert Pittinger, a Charlotte, North Carolina real estate investor ("Pittinger"). (R.p. 770-780, 1166). The sales price was $9,200 per acre for a total of $23,920,000. The contract provided for extensive due diligence by the buyer. Paragraph 5 required North Pleasant to provide the buyer with all information in a list of categories and allowed the buyer to refuse to close on the purchase if it was not satisfied with any of the matters inspected or reviewed by it. (R.p. 1169).

The realtor contracted by North Pleasant to handle this sale was Vanguard Development Group, Inc. based in Charleston, of which David Grubbs is the principal ("Grubbs"). (There is no corporate relationship between Vanguard Development and Vanguard Properties, prospective buyer of the land). His agreement with North Pleasant was for payment of a 5% commission on the sale of the property, for a total of $1,196,000. The principal realtor who worked with Pittinger's representatives in Charlotte on the sale was Josh Hulen. (R.p. 829-839).

League's Overall Efforts to Prevent Development of the Keystone Tract

Preventing development of the Keystone Tract had been a key goal of the League and its allies since at least September 2004, when then Governor Mark Sanford wrote Mercer Reynolds, a principal of North Pleasant warning him that many individuals were organized in an effort to prevent development of the tract. (R.p. 810-811, 948-949). The Keystone Tract was being "targeted" by the League for preservation at the time the North Pleasant/Pittinger contract was executed. (R.p. 893). When North Pleasant bought the property, the League's allies approached Josh Hulen in the person of Noel Thorn and tried to sell the idea of purchase of the property by the State. When no State purchase of the property was agreed upon, North Pleasant moved forward with efforts to

market the property pursuant to its zoning would allow a typical residential development. (R.p. 839-844).

At this time, the League commenced an effort to turn residents near the Keystone Tract against any development of the property. Hamilton Davis, a staff employee of the League, organized and ran a series of meetings in April of 2007. Fliers advertised barbeque and refreshments at these meetings at which Davis made a number of statements. (R.p. 902-912, 1162). He said, without checking with the county, that if the property were developed for residential use, the property taxes of nearby residents would go up. (R.p. 906-911). This was not true, according to the testimony of the County Administrator, Daniel Davis. (R.p. 942). He also said, again without checking with the county, that residents would have to pay to run water and sewer to the property if it were developed. (R.p. 906-911). This was also not true, again according to Daniel Davis. (R.p. 941). The correct information was readily available to Hamilton Davis had he asked the staff at Berkeley County. (R.p. 944-945). These false statements created a significant and vocal opposition to development of the Keystone property. (R.p. 1125, 1132).

League's Direct Interference in the Contract Between Pittinger and North Pleasant

Between execution of the contract of sale and May 2007, Pittinger's staff conducted extensive due diligence review and investigation of all aspects of the property. At no time during the due diligence period did anyone from Pittinger's office raise any problems with the property as to its character or environmental aspects. (R.p. 850-851). The due diligence "inspection period" was to end on May 21, 2007. (R.p. 778, 1169). Closing was to take place 60 days after that. On May 11, Dan Burns of Pittinger's staff

sent out letters to persons believed to be interested in purchasing part of the property and said, "We are presently acquiring" the 2,600 acres for which they were under contract with North Pleasant." (R.p. 1160). A copy of this letter found its way to the League, and specifically to Hamilton Davis, who had spoken to Bennett and who was then engaged in extensive efforts to generate public opposition to development of the Keystone Tract and, if possible, to encourage its acquisition by a government body. (R.p. 919-921, 1160). Immediately prior to May 20, 2007, Pittinger deposited the remaining $450,000 earnest money required by the contract. (R.p. 776, 855-856, 1167).

Upon learning that Pittinger's company was under contract to purchase the property from North Pleasant, Hamilton Davis called Daniel Burns in Pittinger's office and left him a voice mail message announcing that he wanted to discuss Pittinger's prospective purchase of the 2,600 acre portion of the Keystone Tract. He left his name and phone number and said he wanted to discuss some of the things going on in the area. (R.p. 1161). Burns called Davis back about 4 p.m. that same day. This was three days before the due diligence period was to expire on May 21. Burns recorded the substance of his conversation with Hamilton Davis and put his notes into an email to his co-worker, Daniel Fogarty, and to Pittinger. (R.p. 1038-1039, 1108-1109, 1186). The flow of information was one-way, from Hamilton Davis to Burns, and included statements that:

1. The League "is trying to stop development in the Highway 41 corridor;"
2. The League was attempting to have the property rezoned "so it can't be develop[ed];"
3. The League was "targeting the Keystone property;"
4. The League "fought" and "halted" a D.R. Horton project.

Burns' reaction to these statements was clear from his email to Fogarty and Pittinger. He said that the "scariest" thing was that the League claimed to have halted D.R. Horton from a major development and were close, with an alliance of plantation owners, to having the entire property rezoned to "conservation easement" so that it could not be developed. (R.p. 1186). In addition to being threatening, this statement was false. (R.p. 1052-1053). As a result of the call, Pittinger issued an ultimatum to North Pleasant on Sunday, May 20: Either grant an extension or we will terminate the Contract today. Faced with this choice, North Pleasant granted a two week extension. (R.p. 795, 1189). After conducting additional investigations prompted by the Davis call, Pittinger terminated the Contract on May 25, only one week after the Davis call. (R.p. 1199). The League did not present any evidence that the contract would have been terminated if Davis had not called Pittinger's representative.

Pittinger immediately directed his staff to learn what they could about the League. (R.p. 1110-1111, 1115-1116). Ultimately, he met with Dan Davis, the Berkeley County administrator to discuss the situation. Pittinger believed that to make the property marketable for development, which was his intention, it had to be possible to absorb the costs to run sewer to the property through sale of a sufficient number of lots. (R.p. 1119-1126, 1130-1131). There was already water available. (R.p. 837-838). The County Administrator confirmed to Pittinger there was significant opposition to development of the property and that the county would not run sewer to the property with its own resources. Pittinger understood from Hamilton Davis' comments to Burns and from his conversation with Dan Davis that he "had a tiger by the tail" and would be in for a long fight, "a war," primarily with the League, if he purchased the property and tried to market

it for development. (R.p. 1115-1116, 1124-1125, 1131, 1143-1144). On May 25, he directed his staff to cancel the contract and to notify North Pleasant. (R.p. 1125-1127, 1199).

North Pleasant, through Grubbs, began to market the 2,600 acres. (R.p. 821-824). As a result of the cancellation of the contract by Pittinger, North Pleasant and Grubbs lost the benefit of the contract, a $16,506,035 loss for North Pleasant and a $431,443 loss for Grubbs. (R.p. 821-824, 878-879, 956).

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT DISMISSING APPELLANTS' TORTIOUS INTERFERENCE CLAIMS ON THE BASIS THAT THERE WAS NO EVIDENCE TO SUPPORT A FINDING THAT THE ACTIONS OF THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE CAUSED INJURY TO THE APPELLANTS.

A. Standard for Directed Verdict.

On appeal of an order granting directed verdict, the appellate court applies the same standard as that required of the trial court. The evidence and all reasonable inferences from the evidence must be considered in the light most favorable to the party opposing the motion. Fairchild v. S.C. Department of Transportation, 398 S.C. 90, 727 S.E.2d 407 (2012), citing Weir v. Citicorp Nat'l Servs, Inc., 312 S.C. 511, 435 S.E.2d 864 (1993). A case should be submitted to the jury when the evidence is susceptible to more than one reasonable inference. Fairchild, 727 S.E.2d at 411.

Neither the trial judge nor the appellate court has authority to weigh the testimony and other evidence in ruling on a motion for a directed verdict. Fairchild, 727 S.E.2d at 411. Nor should the trial or appellate courts decide credibility issues or resolve conflicts in testimony or evidence in ruling on a directed verdict motion. Harvey v. Strickland,

350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); and Winters v. Fiddle, 394 S.C. 629, 716 S.E.2d 316 (Ct. App. 2011). In ruling on a motion for directed verdict, the trial court is only authorized to determine the existence or non-existence of evidence. Roddey v. Wal-Mart Stores East, LP, 400 S.C. 59, 732 S.E. 2d 635, 647 (2012) (citing S.C. Fed. Credit Union v. Higgins, 394 S.C. 189, 714 S.E.2d 550 (2011)); Winters, and Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881, 888 (Ct. App. 2002).

B. The Sole Issue for review is whether the Trial Court erred when it decided that no reasonable jury could find that Davis' call was the proximate cause of Plaintiffs damages.

The sole basis for the trial court's decision to grant the League's motion for a directed verdict was its determination that Appellants had not shown any evidence that the League's actions, and specifically the Davis call, proximately caused their harm. Appellants argued that the contract was effectively terminated on Sunday, May 20, when Pittinger gave the ultimatum to either grant an extension or have the contract terminated that day. In addressing this argument, the trial court made the factual distinction that while termination on Sunday the 20th would have been the proximate cause of Appellants harm, the termination on the 25th could not, as a matter of law, amount to proximate cause. Specifically and clearly, Judge Young said:

> If they had pulled the plug on the deal that day, then you got but for, and I say you go to the jury, but the problem is they asked for an extension, and they didn't pull the plug on the deal for another week or so after they got information about significant opposition from Dan Davis. Judge Young, Hearing (R.p. 1009, lines 5-10).
>
> The conversation itself that took place a couple of days earlier with Hamilton Davis simply alerted them that they needed to look into some factors and they did, but they didn't cancel the contract on that day, so that's not a jury issue as to causation, or proximate cause. It was not a but for Hamilton Davis's conversation they cancelled the deal. (R.p. 1009, lines 17-23).

If termination on the 20th would amount to enough evidence of proximate cause to get to a jury, which Judge Young concedes, it is also for the jury to decide whether termination five days later would also be proximate cause. Since Judge Young agrees that if proximate cause had been satisfied the case would have gone to the jury, that is the sole issue to consider with respect to the Tortious Interference claims.

C. Only in rare or exceptional cases may the issue of proximate cause be decided as a matter of law.

The elements of a claim of tortious interference with contractual relations are: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. Eldeco, Inc. v. Charleston County Sch. Dist., 642 S.E.2d 726, 731 (S.C. 2007). The elements of a claim of intentional interference with prospective contractual relations are: (1) intentional interference with prospective contractual relations; (2) for an improper purpose or by improper methods; and (3) resulting in injury. Id., p. 731. The only elements at issue in this appeal are the proximate cause elements, "resulting damages," the fifth and third elements, respectively. Since the proximate cause language for both torts is identical, they will be addressed together, and will be referred to collectively as the "Tortious Interference" claims.

In order to establish proximate cause, a plaintiff is only required to establish that the action was either a "substantial factor" in the harm or a "but for" cause of it. "In other words, if the actor's conduct is a substantial factor in the harm to another, the fact that he neither foresaw nor should have foreseen the extent of harm or the manner in which it occurred does not negative his liability." J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97, 101 (S.C. 2006). See, also, Bocook Outdoor Media, Inc. v.

Summey Outdoor Adver., Inc., 294 S.C. 169, 178, 363 S.E.2d 390 (Ct. App. 1987), overruled on other grounds by, O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (Ct. App. 1987), citing Todd v. South Carolina Farm Bureau Mutual Insurance, 283 S.C. 155, 164; 321 S.E.2d 602, 607 (Ct. App. 1984). (In the context of a tortious interference claim, the plaintiff only needs to establish "but for" causation.) See Santoro v. Schulthess, 384 S.C. 250, 681 S.E.2d 897 (App., 2009) (Plaintiff only needed to allege "but for" causation to avoid dismissal of a tortious interference claim.) In order to survive the League's motion for a directed verdict, Appellants only needed to produce "some evidence" that the Davis call was a "but for" factor in Pittinger's termination of the agreement. Not only did Appellants succeed in producing such evidence, there was no contrary evidence.

The issue of whether the actions of the defendant proximately caused the injury complained of by a plaintiff in an action in tort is a question of fact for determination by the jury. Gause v. Smithers, 403 S.C. 140, 742 S.E.2d 644, 649 (2013)(citing Player v. Thompson, 259 S.C. 600, 193 S.E.2d531, 533 (1972)). The question of proximate cause, "may be resolved either by direct or circumstantial evidence." Roddey, 732 S.E.2d at 647 (quoting Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123, 638, S.E.2d 650, 662 (2006). The touchstone of proximate cause is foreseeabilty which is determined by looking to the natural and probable consequences of the defendant's conduct. Gause,, 742 S.E.2d at 649 (citing J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 635 S.E.2d 97, 101 (2006)).

The question of proximate causation is completely factual. All aspects of the inquiry into causation are factual questions for the jury. "Only in rare or exceptional

cases may the issue of proximate cause be decided as a matter of law." Gause,, 742 S.E.2d at 649 (citing Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910, 914 (Ct. App. 2001). This is not one of those cases.

D. There was evidence, both direct and circumstantial, from which it can be inferred that the actions of the South Carolina Coastal Conservation League caused the injury complained of by Appellants.

Josh Hulen, the realtor representing North Pleasant in the contract with Pittenger, testified that there was no hint of any problem from Pittenger prior to the Davis call. Despite the fact that extensive due diligence had been undertaken by Pittenger, no problems had been identified by Pittenger's staff. (R.p. 850-851). On the Wednesday (May 16) before the due diligence period was to end on Monday, May 21, he was assured by Pittinger's office that they were "on track for Monday" when the final $450,000 of earnest money was to be deposited. (R.p. 854, 1179). The $450,000 was deposited by Pittinger. (R.p. 776, 855-856). Hulen also testified that the Hamilton Davis call was the reason for Pittenger's refusal to go forward with the purchase of the property. (R.p. 878-879).

The testimony by Robert Pittenger leaves no doubt that the reason he chose not to consummate his contract to purchase the property was the Hamilton Davis call to Daniel Burns on May 18. In fact, prior to the call, his office had not only confirmed to Josh Hulen, North Pleasant's agent, that the sale was "on track," he was actively marketing the property to investors. (R.p. 1160). After Hamilton Davis' call to, Burns, Pittinger commenced an investigation into the League. He concluded that he had a "tiger by the tail" and would be in for "a war" with "some opposing group out there that was going to get real engaged" (meaning the League), a war he did not want to fight. (R.p. 1110-1114,

1115-1116, 1118, 1124-1127, 1130-1131, 1140, 1143-1144). Pittinger did not find any environmental or physical properties at the property during the due diligence period that prompted him to abandon the purchase. (R.p. 850-851). There was substantial evidence presented in the Appellants' case in chief from which the jury could conclude that it was the threat by the League coupled with the lies Hamilton Davis told Burns which caused Pittinger to cancel the contract. Pittinger's characterization of the impact of the Hamilton Davis call is summarized in this exchange:

Q: Let me ask you this. If there had not been opposition that was communicated to you by Mr. Davis from the county and Mr. Davis from the Coastal Conservation League, and everything else were the same, would this have been a desirable project for you at the time, if you know?

A: Well the information we had, yes. It was fortunate we kept digging. (R.p. 1146-1147).

The only thing Pittinger learned as the result of the call from Hamilton Davis is that he was being threatened by the League to involve him in an expensive fight he did not wish to suffer through.

There is also ample circumstantial evidence from which the jury could conclude that Pittinger's cancellation of the contract was the direct result of the threats made to him by the League's Hamilton Davis. There was no hesitation by Pittinger's staff about purchasing the property until Davis called Daniel Burns as is evidenced by the email to Appellants that Pittinger was "on track for Monday" when the final $450,000 of earnest money was to be deposited. (R.p. 854, 1179). Pittinger was marketing the property and the final $450,000 of earnest money was deposited by Monday, May 21. The proximity

of the Davis call to the termination (two days before the "ultimatum" and seven days before termination) is, in and of itself, ample evidence of causation. [3]

Even if the jury were to believe that other considerations also clouded Pittinger's mind concerning buying the property, on a directed verdict motion, it is not necessary that there be evidence that the defendant's acts were the sole cause of harm to the plaintiff. It is sufficient to deny a directed verdict if there is any evidence that the defendant's actions were one cause of that harm. Gause, 742 S.E.2d at 649; and J. T. Baggerty, 635 S.E.2d at 101.

E. The trial judge erred by weighing and evaluating the credibility of the evidence in deciding to grant the motion for directed verdict.

On every facet of the motion for directed verdict, the trial judge did not simply determine whether there was evidence of that element of proof; he weighed the evidence and disregarded evidence tending to support the Appellants' causes of action, explaining that he found the Defendants' evidence more persuasive. In doing this, he committed fundamental error and assumed the role of the jury. Roddey, 732 S.E.2d at 647; and Pond Place Partners, 727 S.E.2d at 411.

1. The telephone conversation between Hamilton Davis and Daniel Burns:

The trial judge repeatedly disregarded the contemporaneously prepared email summary of the conversation by Burns – which was admitted into evidence – commenting that when deposed years later, Burns did not recall the details of the

[3] The trial judge did not touch on foreseeability in his ruling. The evidence presented to the jury was not only sufficient to raise the inference that Pittinger cancelled the contract. It was also more than sufficient to raise the inference that it was entirely foreseeable to the League that making statements such as those by Hamilton Davis to Daniel Burns could cause a buyer to cancel a contract.

conversation. The trial judge referred to the testimony of Davis as if his characterization of the conversation were the only evidence of what he said to Burns. For instance with respect to the portion of the email recounting that Davis had told Burns the League "working with the county to get rezoning for the Keystone tract to a conservation easement so it can't be development (sic)", what Burns called the "scariest thing mentioned", the trial judge said:

> Mr. Hamilton Davis said, We can't do that. The government can't do that. Everybody knows that. So they got -- it's not like they told him the government was going to put a conservation easement on that. That seems to be Mr. Burns's mishearing, or misunderstanding of what he was hearing. (R.p. 976-977).

The email is clearly evidence from which the jury could conclude that its account of the call is accurate and not that of Davis. (R.p. 1186).

2. Whether the League fought D.R. Horton and stopped their nearby development:

The trial judge disregarded the clear statements by Daniel Burns in his email summary of his conversation with Hamilton Davis to the effect that Davis had claimed the League "fought" and "stopped" D.R. Horton from going forward with a development near the Keystone Tract. Burns was so impressed with this statement that he said that, "If they've in fact halted D. R. Horton, they've accomplished something." (R.p. 1186). The trial judge simply adopted the testimony of Hamilton Davis who claimed the League did not fight D.R. Horton, but worked with them. In doing so, he ignored the testimony of Mitchell Flannery, the D. R. Horton employee who dealt directly with Hamilton Davis and who testified Davis' statements to Burns were completely false. [4] The trial judge

---

[4] Q: From your recollection, was it a true statement to say that eh Coastal Conservation League fought D.R. Horton? A: No. (R.p. 1052, lines 15-18).

classified the difference between Davis' and Burns' version of what Davis said to Burns as "semantics." (R.p. 994). It was clearly not a matter of semantics to Burns and Pittinger. It was not a matter of semantics to Hamilton Davis, either, who described the Burns email as "inaccurate" with respect to the D.R. Horton comments. (R.p. 892-895). It was entirely improper for the trial judge to evaluate and weigh the testimony in this way, to reject the evidence submitted by Appellants and embrace the evidence submitted by Respondents.

3. The reason Pittinger cancelled the contract:

The trial judge completely disregarded evidence indicating that Pittinger cancelled the contract with North Pleasant because of the threats and lies from the League. He singled out only the conversation between Pittinger and Daniel Davis, the Berkeley County Administrator, in which Davis informed him there was opposition to development of the Keystone Tract as the "real but for" cause of the contract being cancelled. (R.p. 1007-1012). In doing so, he ignored the many other statements by Pittinger as to his reasons for cancelling the contract. Pittinger testified that the call from Hamilton Davis "absolutely" caused him concern. (R.p. 1110). Prior to receiving this call, Pittinger was sending out letters to potential investors declaring that he was "in the process of acquiring" the property. (R.p. 1160). The call from the League triggered Pittinger's investigation into the League. (R.p. 1110-1111). His investigation led him to conclude that he had a "tiger by the tail" and would be involved in "a war" with the League. (R.p. 1116, 1124, 1130-1131). In addition, Josh Hulen testified that the Hamilton Davis call caused the contract to be terminated. (R.p. 878-879). At a

---

Q: Was it true to say the D.R. Horton halted the D.R. Horton project? A: No. (R.p. 1053, lines 16-18).

minimum, the totality of the evidence creates a circumstantial case that the League's interference in the contract between North Pleasant and Pittinger was the cause of Pittinger's cancellation of the contract.

This competent, credible evidence was presented to the jury. They should have been allowed to weigh it, and it was improper for the trial court to do so. Certainly, a reasonable jury could have found that the Davis call was a "but for" cause of Pittinger's termination. Since Appellants produced evidence that the Davis call proximately caused their damages, the trial court erred in granting the League's motion for directed verdict with respect to the Tortious Interference claims.

II. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT DISMISSING APPELLANTS' INJURIOUS FALSEHOOD CLAIM ON THE BASIS THAT THERE WAS NO EVIDENCE TO SUPPORT A FINDING THAT THE ACTIONS OF THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE CAUSED INJURY TO THE APPELLANTS.

A. As with the tortious interference with contract and prospective contractual relationship claims, the trial judge erred in finding there was no evidence that the publication of falsehoods by the League caused harm to the Appellants.

The same evidence as to causation detailed above applies to the Appellants' claims for injurious falsehood. The evidence is that the League published falsehoods both Pittinger directly as detailed in the Burns email and to people living near the Keystone Tract, the latter being that development of that property would cause their property taxes to go up and cause them to incur the expense of running utilities to the property. It is reasonable to infer that these falsehoods led Pittinger to cancel the contract with North Pleasant, thereby damaging both North Pleasant and Grubbs.

The trial judge characterized as "scant" the evidence that the League's employee, Hamilton Davis, falsely claimed to residents near the Keystone Tract that if it was developed, their property taxes would go up and they would have to pay to run water and sewer to the property. (R.p. 1012). Davis himself admitted telling residents these complete falsehoods. (R.p. 902-911). It was not proper for the trial judge to so completely invade the province of the jury.

B. The trial judge erred by imposing a reliance element of proof for the Injurious Falsehood claim of Appellants.

One who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if:

(a) he intends for publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that he is likely to do so, and

(b) he knows that the statement is false or acts in reckless disregard to its truth or falsity.

In addition, one may be liable to another for the failure to exercise due care so as to accurately report facts concerning the property interests of another where he knew, or should have known, that the person to whom he reported incorrect facts would rely on such facts in business dealings with the owner of said property interests. The owner of property interests injured by the publication of false statements concerning those property interests may recover from one who publishes such false statements all damages naturally and proximately flowing from publication of the false statements. Restatement (Second) of Torts, § 623A and 624 (1977), cited in Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002); and S.C. State Ports Authority v. Booz- Allen & Hamilton, Inc., 289 S.C. 373, 346 S.E.2d 324 (1986).

The trial judge incorrectly read into the elements of proof for this cause of action a requirement for proof of reliance on the false statements made by the wrongdoer. The only proof required is that the wrongful acts – the false statements – caused injury to the plaintiff. In this case, there was evidence from which the jury could conclude that the false statements made by Hamilton Davis to residents near the Keystone Tract resulted in their strident opposition to any development of that property. His inflammatory and false statements that development of Keystone would cause their property taxes to go up and that they could be required to pay the costs of running utilities to the property were certainly the type of statements likely to inflame people into opposition of any proposal that might cause them the harm he said they would suffer. It would be reasonable for the jury to infer from these statements and the testimony that after Davis' statements, there was strident opposition to development that Davis' false statements created the strident opposition. (R.p. 906-911, 941-945).

In addition, the jury could infer that Hamilton Davis' false statements made directly to Pittinger's assistant, Burns, that the League was opposing all development of Keystone, that they had fought a D.R. Horton development proposal on nearby land and had stopped that development injured Appellants. (R.p. 1186). The injury they could infer resulted from these false statements was cancellation of the contract by Pittinger. [5]

C. The trial judge erred by incorporating an erroneous interpretation of the First Amendment to the U.S. Constitution into his decision to grant the motion for directed verdict.

---

[5] To the extent that the trial judge is deemed to have been correct that injurious falsehood requires proof of reliance, the jury could infer such reliance in the form of the residents' decision to virulently oppose development of Keystone and of Pittinger's cancellation of the contract.

The trial judge specifically found that all of the statements by the League complained of by Appellants were protected by the First Amendment to the U. S. Constitution ("First Amendment"). (R.p. 1010-1014). The basis for this holding, he said, is that the League is a public advocacy organization engaged in attempting to convince government agencies to adopt policies such as zoning changes consistent with the beliefs of its members. This holding is completely contrary to the law applicable to the First Amendment and has no basis whatsoever in the law of South Carolina. It also ignores the fact that nothing the League is accused of doing involved communications to any government policy making body. All of their statements at issue in this case were directed solely at private individuals.

It has consistently been held that the First Amendment prevents government from proscribing speech "*because of disapproval of the ideas expressed*," but does not prohibit restrictions on certain classes of speech for which any societal benefit is greatly outweighed by society's interests in order and morality. R.A.V. v. City of St. Paul, Minnesota, 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992), noting that obscenity, "fighting words", and libel may be prohibited by government so long as the prohibition does not favor any public policy related message over another. For instance, libel may not be prohibited only for speech critical of the government and permitted in other instances. Consistent with this view of the First Amendment, courts have routinely held that threats, extortion and blackmail – called "extortionate speech" – may be proscribed by government, including the courts, despite some "expressive" content related to public policy. Gresham v. Peterson, 25 F.3d 899 (7th Cir. 2000); U.S. v. Hutson, 843 F.2d 1232, 1235 (9th Cir. 1988); and U.S. v. Boyd, 231 FedAppx. 314, 315 (5th Cir. 2007).

Under the *Noerr-Pennington* doctrine, bona fide efforts to obtain or influence legislative, executive, judicial or administrative actions are immune from civil liability. See Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 81 S.Ct. 523, 5 L.Edf.2d 464 (1961); and UMW v. Pennington, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965). If the activity is one consisting of threats, intimidation and other coercive measures, they do not qualify for the *Noerr-Pennington* immunity. If the purported effort to influence or obtain government action is in reality only an attempt to interfere with the business relationships of the opposing party, the activity does not qualify for the immunity. Noerr, 365 U.S. at 144, 81 S.Ct. at 533. Moreover, the immunity only applies to the direct petitioning of government policy makers and not, as is true of the activities in this case, to actions directed *solely at private individuals*.

Our Supreme Court has declined to adopt the *Noerr-Pennington* doctrine. The court explained that the doctrine is based on the First Amendment right to petition the government for redress of grievances, which includes the right to access the courts. However, the court noted that even if South Carolina were to adopt the doctrine, it would not serve to protect a party from a tort claim for abuse of process. Pallares v. Seinar, 407 S.C. 359, 756 S.E.2d. 128 (2014).

The trial judge misapplied the law in holding that the actions of the League complained of by Appellants are protected by the First Amendment. Appellants introduced considerable competent evidence showing that the League directly interfered with the contract between North Pleasant and Pittinger by threatening Pittinger and lying to Pittinger, claiming that the League "fought" D.R. Horton and "stopped" that company from proceeding with a development near the Keystone Tract. Similarly, proof was

introduced that the League told community groups two things that are demonstrably false – that if the Keystone Tract were developed, residents of the community would be required to pay higher property taxes and that they would be required to help pay to run water and sewer to the tract. The testimony of the Berkeley County Administrator was that these statements were not true. The League employee who made these statements admitted that he made no effort to inquire from the County if these things were true before he said them.

Nothing in the First Amendment protects a party who seeks to harm another by communicating threats to one in contract with that party or who spreads lies concerning the effect of development of that party's land. Just as the First Amendment does not shield a party from suit for abuse of process, it does not shield a party from suit for tortious interference with contractual relations or from suit for injurious falsehood. The League is not being sued by Appellants for statements it made to Berkeley County or any other government policy making body. They are being sued for communicating threats and lies to directly interfere with the Appellants' contractual relations and to impair the value of land owned by North Pleasant. The trial judge erred by applying the First Amendment to these acts.

The trial judge did what the First Amendment forbids. By cloaking the statements of the League to private individuals with a protection denied to others, his ruling favors one message over another. Speech otherwise actionable as interference with contract, under his ruling, would be protected simply because the speaker claims to be advocating for a particular limitation on land use. There is nothing in the First Amendment which

protects threats, intimidation and lies directed to private individuals and which interfere with private contracts. [6]

III. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO THE SOUTH CARLOLINA COASTAL CONSERVATION LEAGUE AS TO THE CAUSE OF ACTION UNDER THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT, S.C. CODE §39-5-10, ET SEQ. BY HOLDING THAT THE SOUTH CAROLINA COASTAL CONSERVATION LEAGUE IS NOT ENGAGED IN TRADE OR COMMERCE BECAUSE IT IS A PUBLIC ADVOCACY GROUP.

A. Standard for Summary Judgment.

"Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 376-77, 597 S.E.2d 181, 184 (Ct. App. 2004)(quoting Murray v. Holnam, Inc., 344 S.C. 129, 138, 542 S.E.2d 743, 747 (Ct. App. 2001). Furthermore, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). If there is a "scintilla of evidence" in the record which gives rise to a genuine issue of material fact, summary judgment should not be granted. Howle v. Woods, 231 S.C. 75, 97 S.E.2d 205 (1957).

A trial court may grant a motion for summary judgment only when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; *See*

---

[6] To the extent that the trial judge's ruling on the First Amendment can be construed to apply to the tortious interference with contract and with prospective contractual relationships, the above analysis applies equally to the League's statements in the context of those claims.

also, Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied."

B. There was evidence in the record at the time the trial judge granted the Respondents' motion for summary judgment as to the Unfair Trade Practices Act that the South Carolina Coastal Conservation League was engaged in trade or commerce as defined by the Act.

If the S.C. Coastal Conservation League is engaged in providing a service and it performs that service through the use of unfair or deceptive practices, it is liable under the Act regardless of its non-profit status or its self-proclaimed status as a "public interest" organization. The UTPA has been held to extend to the provision of services and not just to the sale of merchandise. Taylor v. Medenica, 324 S.C. 200, 429 S.E. 2d 35 (1996). There is no exception in the statute for non-profit status of a defendant otherwise in violation of its prohibitions. S.C. Code §39-5-40. Our Supreme Court has held that, "by its very definition, 'trade or commerce' involves '[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.' *Black's Law Dictionary* (9th ed.2009); *see* Bretton v. State Lottery Comm'n, 41 Mass.App.Ct. 736, 673 N.E.2d 76, 78–79 (1996) (recognizing that 'the proscription in § 2 of 'unfair or deceptive acts or practices in the conduct of any trade or commerce' must be read to apply to those acts or practices which are perpetrated in a business context' (citations omitted))." Health Promotion Specialists, LLC v. S.C. Board of Dentistry, 403 S.C. 623, 743 S.E.2d 808, 816 (2013).

In short if the League provides services in *exchange* for money, it is engaging in "trade or commerce" within the meaning of the Act. The Respondents argued in their first motion for summary judgment that they were not. Appellants alleged that, like an

environmental consulting firm, they are providing a service in the form of either support or opposition to development projects in return for financial contributions from its supporters, whom it treats like clients. The trial judge held that that this allegation and the record submitted in opposition to the motion was sufficient to make out a proper allegation of a violation of the Act and to avoid summary judgment. The record before the trial judge at the time of the second motion for summary judgment was significantly stronger.

With respect to the Keystone property, the evidence indicates that the League was doing the bidding of large contributors by seeking to prevent, by any means, development of the Keystone property. Hamilton Davis and Dana Beach testified in their depositions that development of that property was opposed for various reasons by the owners of plantations along the East Branch of the Cooper River. These owners included several large contributors to the League, Mr. and Mrs. Richard Coen and Michael Bennett. Both Beach and Davis admitted discussing opposition of development of Keystone with these individuals. (R.p. 231-236, 295, 318-326, 395-404) In addition, Charles Lane, another large contributor to the League, along with Edwin Cooper and the brokerage firm where he held a position, Holcomb and Fair, were actively engaged for years in trying to arrange either acquisition by a public agency of the property or of a conservation easement on the property. (R.p. 259-261, 409-410, 421, 426-427, 513). The League's contributor lists show that Lane, Fair, Cooper and the Donnelly Foundation, with whom Lane works very closely, are routine large contributors. (R.p. 395-404, 408-410).

In addition, there is evidence that with respect to other projects, the League specifically responds to the desires of its large contributors. With respect to the Angel

Oak project discussed in more detail below, the evidence is that the League completely reversed its position in support of that project, after extracting substantial concessions from the developer in return for its support, when the Maybanks, routine large contributors, voiced their disapproval. (R.p. 395-404, 434-468). The materials before the trial judge at the time he denied the first motion for summary judgment included evidence that the League supported projects being pursued by its major contributors which were identical to the type of projects it was routinely opposing. (R.p. 64-116, 122-123).

The record also revealed that the League has on two occasions threatened the State with potentially fatal opposition to major job producing industries considering locating here unless the State paid it a large sum of money. These instances also constitute proof that the League acts for the direct benefit, sometimes financial, of its client/contributors. In the case of a proposed automobile plant in Berkeley County, when Governor Hodges refused to approve payment of the money demanded, the League appealed the environmental permits required for the plant's construction and the company, Daimler Chrysler, abandoned its plans. (R.p. 488-509). When a Boeing airplane assembly plant was proposed to be located in North Charleston (originally known Vaught Alena), the League's demand was acceded to by the State and $5 million was paid using development bond funds into an account for the Ashley Cooper River Environmental Trust ("ACRET") controlled by the League's director, Dana Beach, and a major contributor, Charles Lane. (R.p. 480-485). This bond money was authorized only for use to mitigate for wetland impacts. (R.p. 308-315, 332-361, 411)

Only some $750,000 was actually required to meet government mitigation requirements. (R.p. 312-314, 316-317, 352-355, 415-416, 421-425, 516-517, 522-526, 593-600, 605-666, 685-692). Two million of the remaining funds was paid out for easements, none of which qualify as conservation easements under IRS guidelines. Much, if not most of that money, was paid either directly to supporters and contributors of the League, or for purposes they favored. (R.p. 284-288, 395-404, 411-425, 561-571, 573-591). Two million dollars was used to pay off a loan for Ducks Unlimited unrelated to the Boeing plant. (R.p. 391-393, 519). No money was spent to improve the environment in North Charleston. Had this money not been made available to the League, the evidence strongly suggests that it was the intention of the League to appeal the permits for the Boeing plant, just as it had done with Daimler Chrysler, knowing full well that this would likely have meant the company would not have located in South Carolina. (R.p. 328-330, 471-474, 479-485, 488-509). Certainly, the League succeeded in convincing the Governor and the Department of Commerce that failure to pay the League would cost the State the Boeing project and the thousands of jobs it would bring.

When defendants, acting through Beach and Davis, set out, first, to coerce North Pleasant to either part with title completely in favor of a public agency, or to agree to give up the right to make profitable development use of the property, and, second, to cause Pittenger not to purchase the property, they did so by spreading falsehoods among the Highway 41 community and among local government and landowning interests and lying to Pittenger. Specifically, 1) they inflamed the residents by telling them what they knew or should have known to be false that their taxes would go up and they would be required to pay for infrastructure improvements if the Keystone property was developed; 2) they

falsely claimed to landowners and local government leaders that North Pleasant only planned to develop 35 home sites; and 3) they deliberately lied to Pittenger claiming falsely that they had stopped D.R. Horton from developing a nearby site. (R.p. 237-242, 245-246, 251-252). These actions are precisely the kind of deceptive and unfair practices recognized to fall under the Act's prohibition. Gentry v. Younce, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999), "an act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." The evidence, including the admissions of the League's own representatives, is conclusive that bullying, threatening and spreading falsehoods are "unfair acts" as defined by our courts. (R.p. 297-299).

To constitute an unfair trade practice, an act must affect the public interest, which has been interpreted as an act capable of repetition. Our courts have recognized that actual repetition establishes the capacity of repetition sufficient to prove an effect on public policy. Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996). The record that was before the trial judge contained substantial evidence that the League has repeatedly employed the same unfair and deceptive practices as those employed against the Appellants with respect to the Keystone property. In Awendaw, the League repeatedly made the same false claims to residents that development would increase their property taxes as was made by Hamilton Davis with respect to the Keystone Property. (R.p. 428-432). In addition, the record of three other projects confirms that the League routinely employs unfair and deceptive practices to advance the goals of its client contributors. (R.p. 60-63, 434-468, 694-742). [7]

---

[7] The sole basis for the trial judge's grant of summary judgment on the UPTA claim was his erroneous ruling that the League was not engaged in trade or commerce, as a matter of law despite all the evidence in the record that they sell their services.

C. The trial judge erred in concluding that the S.C. Coastal Conservation League is not subject to the provisions of the Unfair Trade Practices Act because it identifies itself as a public advocacy group.

The evidence concerning the false statements made by the League to the Pittenger organization gives rise to the reasonable inference that the League was directly threatening the buyer with financial harm. These statements were untrue and were damaging to North Pleasant by further threatening their ability to make use of the property without a prolonged controversy, one spawned in large part by the falsehoods spread by the League. Just as the law forbids destroying a competitors' service vehicle, as in Daisey Outdoor Advertising Co. v. Abbott, it also forbids wrongful procurement of the breach of a contract (or of a decision not to enter into a contract) by threats and intimidation. Both are unfair and immoral acts which, when undertaken with respect to commerce, constitute a violation of the UTPA. Nothing in the Act or in the law guaranteeing the constitutional right to engage in advocacy of public policy issues insulates those engaging in such acts simply because the wrongdoer claims to be advancing a public policy objective. The question of whether the League was engaged in trade or commerce is a question of fact and, as the record gave rise to a genuine issue of material fact, the trial judge erred by granting summary judgment to Respondents. [8]

---

[8] While our courts have not addressed the question, the state and federal courts in Massachusetts have held that status as a charitable or public advocacy organization is not dispositive of the question of whether it is engaged in "trade or commerce" for purposes of that state's unfair trade practices statute. They have also held that this determination is a question of fact to be made on a case by case basis. Planned Parenthood Federation of America, Inc. v. Problem Pregnancy of Worcester, Inc., 398 Mass. 480, 498 N.E.2d 1044 (1986); and McDermott v. Marcus, Errico, Emmer and Brooks, 969 F.Supp.2d 64 (D. Mass. 2013).

CONCLUSION

The evidence introduced at trial was sufficient to give rise to reasonable inferences as to all of the elements of the Appellants' causes of action for tortious interference with contract, or in the alternative with prospective contractual relations, and of injurious falsehood. The trial judge erred by disregarding this evidence and by ruling that the S. C. Coastal Conservation League was protected by the First Amendment to the U.S. Constitution in communicating threats and lies to private individuals that caused the cancellation of the contract between North Pleasant, LLC and Robert Pittinger's company, Vanguard of the Carolinas, LLC. The grant of a directed verdict to Respondents was, therefore, in error and should be reversed and both causes of action remanded for a new trial. In addition, the trial judge's grant of summary judgment to the Respondents prior to trial as to Appellants' cause of action under the Unfair Trade Practices Act was in error in that there was a genuine issue of material fact to as to whether the S.C. Coastal Conservation League was engaged in trade or commerce and, therefore, subject to the Act. The trial judge's conclusion that the League is not subject to the Act as a matter of law because it identifies itself as a public advocacy group was in error and the grant of summary judgment on this cause of action should be reversed and the case remanded for trial.

Respectfully submitted,

Smith, Bundy, Bybee, & Barnett, PC
Stan Barnett, Esquire
Ellison D. Smith, IV
Post Office Box 1542
Mount Pleasant, SC 29465-1542
843-881-1623
Email: stanleyb@s3blaw.com
edsiv@s3blaw.com
ATTORNEYS FOR APPELLANTS

October 6, 2014
Mt. Pleasant, South Carolina

ON BRIEF:

Charles E. Reynolds (0019935)
SANTEN & HUGHES
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202
(513) 721-4450
cer@santen-hughes.com

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS
Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

Appellate Case No. 2014-000183

North Pleasant, LLC and Vanguard Development Group, LLC, Appellants

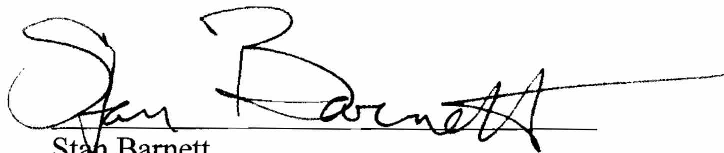
vs.

South Carolina Coastal Conservation League and Edward Dana Beach, defendants,

Of whom South Carolina Coastal Conservation League is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Appellant complies with Rule 211 (b), SCACR.



Stan Barnett
Ellison D. Smith, IV
SMITH, BUNDY, BYBEE & BARNETT, PC
Post Office Box 1542
Mount Pleasant, SC 29465-1542
(843)881-1623
Attorneys for Appellants, North Pleasant, LLC and
Vanguard Development Group, LLC