

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

J.C. Nicholson, Jr., Active/Retired Circuit Court Judge

Case No. 2012-CP-10-8135

Karen Oliver,

Appellant,

v.

Amanda Lawrence and Trident United Way,

Respondents.

REPLY BRIEF OF APPELLANT

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Pro se

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Palmetto Homes, 593 S.E.2d at 485

Perry v. Green, 313 S.C. 250, 254, 437 S.E. 2d 150, 152, (Ct. App. 1993).

Prescott v. Furmers Tel, Coop., Inc. 335 S.C. 516 S.E. 2d 923 (1999).

Sechrest v. Forest Furniture Co., 141 S.E. 2d 292 (N.C.1965).

Wilhoit v. WCSC, Inc., 293 S.C. 34, 358, S.E. 2d 397 (Ct. App. 1987).

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The Appellant would like to first address the justices to apologize for the tone the course of this case has taken. The Respondents obviously has sold your consciences' ability to see truth as being a limited entity in short form. For that I apologize. The Respondents in their Reply Initial Brief indicates that "the judge for the sake of time rearranged things" and it, too, is not noted in the transcript as having taking place (Tr. P. 1-2). The court reporter in any of her responses never even alludes to this being the case when Challenges to the intentionally omitted statements by the judge and Respondents' then atty. Christy Fagnoli being left out of the transcript. The transcript should depict what took place in the courtroom not a legal counsel who was **not** even in attendance. Surely, not. Nevertheless, the ratcheted reasoning provided still does not take away the then, Plaintiff now, Appellant's rights under the Constitution in "Liberty" and a Right to Due Process. Undoubtedly, equitable use of the courtroom's well with a basic accessory as a table for use is the Plaintiff/Appellant's inalienable right. Having to use her pink breast cancer awareness "catchall as a, do all" is environmental psychological intimidation. The appellant was treated unfairly. {The Appellant previously challenged the court reporter leaving significant, consequential events from the opening para 3 page1 of the transcript-Tr. P.1 para3} That is why it is important for the Justices to see the court reporter's responses to the challenges to gain a better understanding of the events that took place on Oct 9, 2013. The Justices are due an equitable transcript including **all** parties involved. The Justices should be able to ascertain the scenario that took place by a review of the challenges and the court reporter's responses along with the current transcript. She **never** denied any of the challenged events of intentional omissions as having taken place, she just refused to incorporate them in the transcript. Which is not in accordance with the S.C. Court Reporter's Manual. It could even be criminal.

Even in your past individual courtrooms, Justices, you provided an equitable use of the courtroom's well to child molesters, rapist, murderers and they will for Dylan Roof. Yet, I can receive subpar in the S.C. Court Administration whom I contacted about the breach in the guidelines governing the production of the transcript. Given the presiding judge's intimidating, bias and partial actions to which I contacted the Commission on Judicial Conduct via Certified Mail 70092820000410736728.

The Respondents maintain that Rule 12(b) (1) the Plaintiff's claims is subject to binding arbitration and the claims the actions were already arbitrated and ruled upon, court lacks jurisdiction on subject matter, violation of the statute of limitations, The order includes that the Court finds that the Plaintiff raises the same claims that were previously adjudicated or should have been at the arbitration Order 5-31-13. The "operative words here are adjudicated or should have been" in this Order. I will prove in black and white as I told the judge who then refused to accept and allow delivery of my Filed Supplemental Exhibits that I submitted in the same manner as then atty. Christy Fagnoli when she presented Exhibit E. Please review the Certificates of Services for Exhibit E, then attempted Certificate of Service made in court on 10-9-13 but it was refused by the judge then the letter to the Clerk of Court with the updated/revised Certificate of Service via Certified Mail 70092820000410736803. The judge refused to allow acceptance or delivery of the Filed Supplemental Exhibits. The judge's interrogation of the Appellant then Plaintiff was a biased, intimidating and partial. The judge previously signed Order 9/12/13 shows there was no need for him to interrogate the Appellant then Plaintiff. He had to have sufficient means to make the determination to vacate. The judge's interrogative line of questioning was not necessary. Nor was his acceptance of a wrongful interpretation of Rule 59(g) by the opposing counsel without correction. Judge

Nicholson continued his interrogation tactics. He continued to show bias, prejudice and inequity in the application of court procedures. He intentionally provided an inaccurate interpretation of Rule 59g to the Appellant (Plaintiff) by stating that the motion had to be mailed, Transcript Page 4 lines 3-6.

The Plaintiff first got the arbitrators so-called results was at court on 5-31-13. Now having made the decision to go ahead with the meeting the arbitrator and the Respondents were still held by law to comply with the guidelines. The Respondents made other contractual agreements to the adherence to these guidelines. The breaches of those contractual agreements took place some at the binding arbitration and the results are the evidence thereof. The court can not consciously expect the Plaintiff to have superpowers to know beforehand that the breaches would occur and to then arbitrate them before they took place. The breaches of contracts “were not included nor could or should have been included” because it would have been impossible. The arbitrator never provided the Plaintiff/Appellant with any documentation provided by the Respondents **prior** to his so-called arbitration meeting. So the breaches came after the meeting. The arbitrator clearly provides the breaches in 10/7/11 the publication or utterance (06/23/11) and distribution of the breaches all within the statutes of limitations. Thus, as stated by the Plaintiff/Appellant the letter of November 30, 2010 was just the “Gateway” for the defamation of character via slander and libel to take place. Exhibit C as provided by then Respondents’ atty. Ashley Kutz shows the arbitrator requesting documentation from the Respondents. Exhibit E shows their verbal testimony in the so-called results. Paragraph 3 page 3 of Exhibit E shows the Respondents providing false information about the Plaintiff “the complete failure to abide **by any** of the program rules for the month of November.” To the contrary, Janice McKinney of November 5,

2010 the Appellant (Plaintiff) was commended by her direct supervisor Janet McKinney for doing a phenomenal job. She did this both verbally and via email **Exhibit W page 2**.

Trident United Way guaranteed the Appellant (Plaintiff) prior to requesting a grievance by **Certified Mail 70101870000369177997 Dated January 6, 2011 Exhibit M page 2 paragraph 2** states: that the Program Director (Amanda Lawrence) will take the necessary steps to follow the Corporation for National and Community Service and State Commission protocol. By scheduling and having the arbitration beyond the contractually agreed upon time without agreement by the Appellant (Plaintiff) is a breach of the contract. Also, Amanda Lawrence and Trident United Way violated another provision of the contractual agreement by providing the name and decision of Cathy Liska to the arbitrator. Again, Ashley Kutz's **Exhibit A Member Guidelines for Grievance Procedures page 25 Section C paragraph 3 line 3** states: *In the event, a grievance is filed after the participation in any of the informal dispute resolution processes, the neutral party may not participate in the formal grievance procedure. In addition, no communication or proceeding of the informal dispute resolution process may be referred to or introduced as evidence at the grievance or arbitration proceeding.* Amanda Lawrence and Trident United Way provided prohibited information to the arbitrator **again** breaching the contractual agreement. The arbitrator in turn violated by accepting and enclosing it in his so-called decision. **Exhibit E page 4 para 4** from the arbitrator states: *Following termination, Petitioner pursued "appeal" of the Respondents' termination decision through the "Grievance Procedure" outlined in the Handbook. The Grievance Procedure conducted on February 9, 2011 by Neutral Cathy Liska. In sum, the termination decision was upheld by the Neutral. Thereafter, Petitioner pursued the subject arbitration. All parties breached the contractual agreement in providing and using prohibited information about the Neutral.*

Further, In the **Agreement for a Neutral-Facilitated Grievance Hearing Exhibit R page 1 Item #5** States: *Communications during the grievance hearing and proceeding of the process shall be strictly confidential.* This agreement signed by Amanda Lawrence, Janet McKinney and Cathy Liska was also breached by Amanda Lawrence and Trident United Way. The Appellant was also provided this guarantee prior to going forth with the neutral facilitated process as with **Exhibit M page 2.** Yet, both items were breached.

In the **Disciplinary Action/Probation Policy of the Member Guidelines Exhibit Y page 3 paragraph 1 line 3** states: *If disciplinary action is warranted, it will be taken by program staff after consultation with the AmeriCorps member. While some incidents may be so severe as to warrant immediate termination from the Corps, most disciplinary action will ordinarily be governed by the following procedure:*

1. A corps member will be issued a verbal warning by the Program Director; this verbal warning will be documented in the Corps member's file.
2. If no improvement is demonstrated, the Corps member will receive a written warning documenting the problem and requesting a change in his /her performance.
3. Should the problem persist; a three-way meeting will be scheduled between the corps member, Program Director, and Senior Vice-President of Community Building to discuss the issue. A written plan to remedy the situation will be devised and implemented immediately. The Corps member will be placed on probation per conditions specified in the action plan.
4. A follow-up review by the Program Director will occur at a mutually agreeable time to assess whether or not any progress has been made. If the problem continues at the time of, or after this meeting, the Corps member may be suspended without living

allowance or terminated. Should there be a termination; the program will not provide a pro-rated education award.

Amanda Lawrence and Trident United Way violated and breached the terms of this contractual agreement. **No verbal or written warning** was given to the Appellant (Plaintiff). A partial part of Step 3 of the procedures was initiated from the outset. At the December 3, 2011 meeting, Amanda Lawrence provided when the Appellant (Plaintiff) asked about her verbal and written warning she could not provide any documentation or date or implementation. However, when the Appellant (Plaintiff) requested a copy of the meeting notes that were provided at the meeting with the neutral on February 9, 2011. As provided by Janet McKinney **Exhibit H page 3** it states she tried through email and telephone messages to schedule a meeting in regards to a verbal warning. She only sent emails regarding the childcare breach of contract that was taking place on a national level. Where was the written warning requesting a change in the Appellant's (Plaintiff's) performance? Could a verbal warning have been done by coming out the Appellant's (Plaintiff's) work site? The Appellant was placed on suspension with pay **without** a verbal or written warning. All in violation and breach of the contractual agreement signed August 30, 2010. On November 30, 2011 the Appellant (Plaintiff) was placed on probation, but had until the end of the month to submit her time in the computer. They did not even give her the last day to submit her time. The members were given weekly, bi-weekly or by the end of the month all time for that month had to be in for entering their time in the system by Janet McKinney the major emphasis was put on indirect and direct before the change. **Exhibit Y page 1-2** shows this and **Exhibit W page 2**.

Breach of Contracts, Breach of Contracts with Fraudulent Intent and Defamation of Character Libel and Slander

Consequently, as of November 5, 2010 the Appellant (Plaintiff) was commended by her direct supervisor Janet McKinney for doing a phenomenal job. She did this both verbally and via email **Exhibit W page 2**. It was not until then did the Appellant (Plaintiff) begin to receive emails from Amanda Lawrence and Janice McKinney NOT ABOUT DISCIPLINARY ISSUES BUT CONCERNING THE BREACH IN THE CHILDCARE AGREEMENT **Exhibits I pages 3, 4, 5**. Amanda Lawrence and Trident United Way was Retaliating against the Appellant (Plaintiff) for requesting that they pay the funds and reimburse all hours missed due to the lack of agreed upon payments having been made. This led to Amanda Lawrence sending the letter dated November 30, 2010 and was the “gateway” for future defamation of character acts which was authorized by Trident United Way when they could have stopped it when it was pointed to them by the Appellant (Plaintiff) as noted by Ashley Kutz in **Exhibit D and Exhibit M**. The Appellant (Plaintiff) requested an investigation in the defamation of character and libel by Amanda Lawrence. Yet, it continued with the arbitrator and neutral. Retaliation is against the law. The defamation of character continued when Amanda Lawrence and Trident United Way asserted according to **Exhibit E**: page 3 para 3 states: *Given the complete failure of the Petitioner to abide by any program requirements for the month of November, Amanda Lawrence sent a letter Petitioner on November 30, 2010, placing Petitioner on suspension.*

Also, **Exhibit E page 4 para 4** states: *Given the testimony of the witnesses and documents submitted into evidence, the record readily supports the termination decision of the Respondents and, that even when taken in the light most favorable to the Petitioner, the evidence demonstrates a systematic and conscious failure of Petitioner to comply with the basic requirements of the Respondents' Financial Stability Project leading directly to Petitioner's termination, all in accordance with the Member Handbook.*

The termination process was not in accordance with the guidelines in the Member

Guidelines. These were **never** adjudicated under the binding arbitration agreement where the pre-arranged contractual agreement was breached and no agreement was made by both parties to amend the agreement. The breaches had to first occur, only then, could they be addressed. The arbitrator could nor should have been able to hear the claims. The courts do have jurisdiction.

A contract is an obligation which arises from actual agreement of the parties manifesting words, oral or written or by conduct. *Prescott v. Farmers Tel, Coop., Inc.* 335 S.C. 516 S.E. 2d 923 (1999).

A party breaches a contract when he does not perform as he agreed upon to perform under contract *Sechrest v. Forest Furniture Co.,* 141 S.E. 2d 292 (N.C.1965).

A contract exist where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act *Benya v. Gamble,* 282 S.C. 624, 628; 321 S.E. 2d 57, 60, (ct. App. 1984).

The Appellant (Plaintiff) did not deviate from the agreed upon terms of the contracts as the Respondents and the Appellant (Plaintiff) did not agree to amend the pre-arranged agreements.

The time of the statute of limitations starts with the knowledge of the breach and the utterance of the defamation of character and libel some provided in documentation. November 30, 2010 was only the “**gateway**” for future ones to occur. February 2011 and June 2011 the utterances all within the statutes of limitations. The May 13, 2011 hearing brought even more evidence all within the statute of limitations given the legal teams submission.

Breaches of contract with Fraudulent Intent the fraudulent act element is met by any act characterized by dishonesty, in fact unfair dealing or unlawful appropriation of another's property by design. *Perry v. Green*, 313 S.C. 250, 254, 437 S.E. 2d 150, 152, (Ct. App. 1993).

The Breach of Contract with the disciplinary Actions even after being made aware and still lied to the arbitrator to which Janice McKinney proves it against Amanda Lawrence in **Exhibit H page 1** (under verbal warning and outcome). Fortifying the Appellant's truth that the verbal and written warning **never** took place, but a lie was told to the arbitrator. Even defamation of character and libel to injure the reputation of the Appellant (Plaintiff) since the arbitrator asked for items to be in writing prior to their meeting. When the prohibited material/information about the neutral was provided to the arbitrator and documented in his so-called decision in **Exhibit A** common law malice with fraudulent intent accompanied the Breach of Contract. Breaching the contract signed January 26, 2011 with the neutral about confidentiality **Exhibit R pages 1 – 2** prior to the February 9, 2011 meeting again common law malice with fraudulent intent accompanied the Breach of Contract. Along with **Exhibit M page 2** of the Certified Mail from Trident United Way--Bonnie Bella stating that *the Program Director will take the necessary steps to followprotocol* also breached with common law malice and fraudulent intent. All were completed actions.

Slander is spoken defamation while libel is written or accompanied by actions or conduct *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 358, S.E. 2d 397 (Ct. App. 1987). The documents provided to the arbitrator and neutral and slander in testimony, the Respondents acted in ill will, wantonly injuring the Plaintiff along with common law malice *Jones v. Garner, Supra Lesesne v. Willingham*, 83F Supp. 918, 921 (E.D.S.C. 1949).

All criterias met for defamation of character.

Beneficiary 3rd Party Breach of Contract

When Trident United Way came into agreement with the service program they agreed to adhere to the governing rules and the implementation thereof; by breaching the simple agreements of the member guidelines and not making sure the child care assistance was already in place for members they breached their agreement with the service provider and the Appellant (Plaintiff) is a beneficiary to this also. The Appellant (Plaintiff) had reasonable expectation that Trident United Way would adhere to and meet their agreement **Exhibit W page 1.**

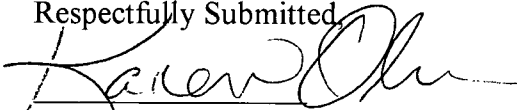
The aforementioned items in the previous paragraphs shows that the statutes of limitations is clearly not violated. Third party beneficiary to the contractual agreement to carry forth the program and adhere to the policies were also violated. The case was filed within the time limits and is not in violation. The publication of the so-called decision by the arbitrator with the breaches clearly shows their disregard for the contractual agreements. The judge's Order of 5-31-13 p. 3 that all items were adjudicated or should have been is incorrect because the events in claims were never adjudicated or could have been brought before the arbitrator as some did not take place until it was completed. Therefore, because the claims took place after and during the arbitration they are not precluded from the Circuit Courts res judicata is not applicable here *Palmetto Homes, 593 S.E.2d at 485*. The difference is the timing of events. There is no re-litigation. The Judge's Orders are in question. Even the arbitrator could not rule on it if it had not occurred, yet. When the judge refused to allow the acceptance and distribution of the Filed Supplemental Exhibits he did not review the contents which clearly are not being litigated again, and is under jurisdiction of the civil courts and does not violate the statutes of limitations.

In conclusion:

Isa 54:17

No weapon formed against thee shall prosper; and every tongue that shall rise against thee in judgment thou shalt condemn. This is the heritage of the servants of the LORD, and their righteousness is of me, saith the LORD.

Respectfully Submitted,



/Karen Oliver

July 4, 2015

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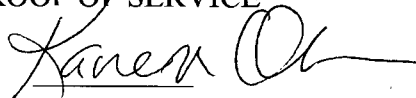
Appellant,

v.

Amanda Lawrence and Trident United Way,

Respondents.

PROOF OF SERVICE



I certify that I served the Reply Brief Amanda Lawrence and Trident United Way by depositing a copy of it in the United States Mail, postage prepaid, on July 4, 2015 addressed to their attorney of record, Andrew Lindemann of Davidson and Lindemann, P.A. P.O. Box 8568 Columbia, SC 29202.

July 4, 2015

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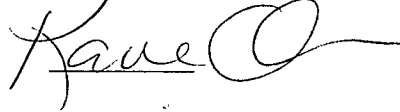
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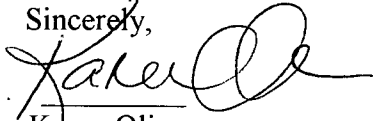
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Karen Oliver, Appellant, v. Amanda Lawrence and Trident United Way, Respondents.
Appellate Case No. 2013-002587

Dear Ms. Kitchings:

Please see the enclosed Reply Brief and Certificates of Service.

Sincerely,

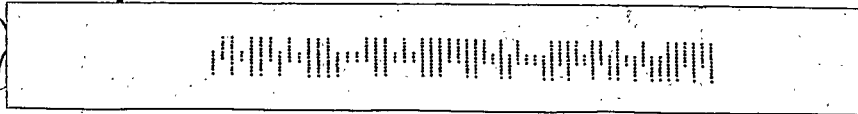


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