

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM THE BERKELEY COUNTY COURT OF COMMON PLEAS

Roger M. Young, Circuit Court Judge
Case No. 2010-CP-08-1771

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OCT 20 2015

Appellate Case No. 2014-000183

S.C. Supreme Court

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

vs.

South Carolina Coastal Conservation League and Edward Dana Beach, Defendants

Of whom South Carolina Coastal Conservation League is the Respondent.

APPENDIX

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Brief of Respondent	
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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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

v.

South Carolina Coastal Conservation League and Edward
D. Beach, Defendants,

Of whom South Carolina Coastal Conservation League is
the Respondent.

Appellate Case No. 2014-000183

Appeal From Berkeley County
Roger M. Young, Sr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-423
Heard May 6, 2015 – Filed August 12, 2015

AFFIRMED

Stanley E. Barnett and Ellison D. Smith, Smith Bundy
Bybee & Barnett, PC, of Mt. Pleasant; Charles E.
Reynolds, of Cincinnati, OH, all for Appellants.

John Phillips Linton, Jr., W. Andrew Gowder, Jr., and
George Trenholm Walker, Pratt-Thomas Walker, PA, of
Charleston, all for Respondent.

PER CURIAM: North Pleasant, LLC and Vanguard Development Group, LLC appeal the circuit court's decision (1) to grant summary judgment in favor of South Carolina Coastal Conservation League (the League) on its cause of action under the South Carolina Unfair Trade Practices Act; and (2) to direct a verdict on its remaining three claims—tortious interference with a contract, tortious interference with prospective contractual relations, and injurious falsehood. We affirm.

In February 2005, North Pleasant—an entity comprised of businessmen, real estate agents, and developers who collectively have many decades of experience—purchased a 4,478-acre parcel of woodland property in Berkeley County located off of Highway 41 for close to \$20 million. This property, known as the "Keystone tract," is in the Francis Marion National Forest and in close proximity to several historic properties along the Cooper River.

In March 2007, North Pleasant contracted with Pittenger Company—a land investment company—to sell approximately 2,600 acres of the Keystone tract for \$23,920,000. As required by the sales contract, Pittenger Company paid \$50,000 in earnest money. The sales contract included a 60-day inspection period for Pittenger Company to determine whether the property met its criteria for acquisition and resale to a developer. By its terms, Pittenger Company could terminate the sales contract for any reason before the end of the inspection period, and North Pleasant would be obligated to return the earnest money.

In early May 2007, during the 60-day inspection period, an employee with the League—an organization whose mission is to protect the natural environment of coastal South Carolina by working with individuals, businesses, and government to ensure balanced solutions—learned Pittenger Company had an interest in the Keystone tract. On Friday, May 18—three days before the end of the inspection period—the employee called Pittenger Company to discuss the ongoing conservation efforts involving the Keystone tract. The employee left a message. From the message and a brief return phone call, Pittenger Company learned that the League and property owners in the area "were trying to curb development on the Highway 41 corridor." On Sunday, May 20, Pittenger Company requested an

extension of the inspection period until June 4, 2007, which North Pleasant granted.

On Friday, May 25—one week after the phone call—a Pittenger Company Employee met with the Berkeley County supervisor to learn more about the development potential of the Keystone tract. At this meeting, the supervisor said the Keystone tract was in an area that Berkeley County did not consider to be "a growth area." He further stated the County would not make water and sewer lines available for residential development, and it would be costly for Pittenger Company to "bring utilities to the tract." The supervisor warned that there was "broad opposition" to developing the property, and that Pittenger Company would have "great difficulty in getting greater density" and "maintaining the present [zoning] density."

Immediately after the meeting with the supervisor, Pittenger Company terminated the contract.

North Pleasant and Vanguard Development brought four causes of action against the League: (1) tortious interference with a contract, (2) tortious interference with prospective contractual relations, (3) violation of the Unfair Trade Practices Act, and (4) injurious falsehood. The League filed a motion for summary judgment as to all causes of action. The circuit court granted summary judgment on the unfair trade practices claim because it found the League "is not engaged in trade or commerce as defined by" South Carolina Code section 39-5-10(b) (1985). As to the remaining claims, the court denied the motion and held a jury trial. At the conclusion of North Pleasant and Vanguard Development's case in chief, the League moved for a directed verdict on all causes of actions, which the court granted.

We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in granting summary judgment on the League's unfair trade practices claim, we find no evidence the League committed any "unfair or deceptive" acts or practices. *See Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 37 (2013) ("An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56, SCRCP." (citation and internal quotation marks omitted)); Rule 56(c), SCRCP (providing the circuit court shall grant summary judgment if "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"); S.C. Code Ann. § 39-5-20(a) (1985) (stating under the Act, it is unlawful to engage in "unfair or deceptive acts or practices in the conduct of any trade or commerce"); *Johnson v. Collins Entm't Co.*, 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002) ("An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is 'deceptive' when it has a tendency to deceive." (citation omitted)).

2. As to whether the circuit court erred in directing a verdict on the tortious interference with a contract and tortious interference with prospective contractual relations causes of action, we find as a matter of law the League did not cause Pittenger Company to cancel the contract and the employee was justified to make the statements to Pittenger Company. See *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006) ("In ruling on a motion for directed verdict, the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion. The trial court must deny the motion when either the evidence yields more than one inference or its inference is in doubt." (citation omitted)); *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331, 732 S.E.2d 166, 171 (2012) ("When reviewing the trial court's ruling on a motion for a directed verdict . . . , this Court must apply the same standard as the trial court"); *Dutch Fork Dev. Grp. II, LLC v. SEL Props., LLC*, 406 S.C. 596, 604, 753 S.E.2d 840, 844 (2012) ("The elements of a cause of action for tortious interference with [a] contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." (citation and internal quotation marks omitted)); *Broach v. Carter*, 399 S.C. 434, 443, 732 S.E.2d 185, 189-90 (Ct. App. 2012) (stating the defendant must lack justification for his or her interference with a contract in order to be liable); 86 C.J.S. *Torts* § 52 (2014) ("[T]he interference must be wrongful beyond the fact of the interference. In other words, only improper interference is actionable."); *Bocook Outdoor Media, Inc. v. Summey Outdoor Adver., Inc.*, 294 S.C. 169, 177-78, 363 S.E.2d 390, 394 (Ct. App. 1987) (holding a plaintiff must prove the defendant's conduct "influence[d], induce[d], or coerce[d] one of the parties to the contract to abandon the relationship or breach the contract. The plaintiff must show that, but for the interference, the contractual relationship would have continued." (citation omitted)), *overruled on other grounds by O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993); *Smith v. Citizens & S. Nat'l Bank of S.C.*, 241 S.C. 285, 288, 128 S.E.2d 112, 114 (1962) ("[T]o constitute actionable interference with a contract, it must appear that the act complained of was the proximate cause of the injury or damage." (citations omitted)); *Gause v. Smithers*,

403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013) ("Proximate cause is normally a question of fact for determination by the jury . . ."); *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 390, 684 S.E.2d 566, 571 (Ct. App. 2009) ("Our courts have recognized that when only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court." (citation omitted)); *Eldeco, Inc. v. Charleston Cnty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007) ("To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: 1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury.").

3. As to whether the circuit court erred in directing a verdict on the claim for injurious falsehood, South Carolina recognizes no such cause of action. *See State v. Tucker*, 376 S.C. 412, 420-21, 656 S.E.2d 403, 408 (Ct. App. 2008) (recognizing the court of appeals "as an error correcting authority"); *State v. Elmore*, 368 S.C. 230, 238, 628 S.E.2d 271, 275 (Ct. App. 2006) (recognizing the supreme court as the arbiter of legal policy).

AFFIRMED.

FEW, C.J., and HUFF and WILLIAMS, JJ., concur.

**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

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Appellate Case No. 2014-000183

AUG 25 2015

SC Court of Appeals

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.

**PETITION FOR REHEARING BY APPELLANTS NORTH PLEASANT, LLC AND
VANGUARD DEVELOPMENT GROUP, LLC**

Appellants, North Pleasant, LLC and Vanguard Development Group, LLC, hereby petition pursuant to Rule 221 of the SCACR for rehearing of the decision of this Court filed August 12, 2015 affirming the rulings of the trial judge from which Appellants appealed granting summary judgment to the Defendant on their claim for violation of the S.C. Unfair Trade Practices Act and granting a directed verdict to Defendant on the claim for tortious interference with contract.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

I.

Summary of Proceedings

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 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.

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

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

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*.

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).

This Court affirmed the decision of the Circuit Court on August 12, 2015. The decision of this Court held that South Carolina does not recognize the tort of injurious falsehood. On the causes of action for tortious interference with contract and for violation of the S.C. Unfair Trade Practices Act, this Court held that there was no evidence in the record: 1) sufficient to allow the issue of causation as to the tort of tortious interference with contract to go to the jury; or 2) sufficient to raise a genuine issue of material fact as to whether the League committed unfair or deceptive acts within the meaning of the Act. In both of the latter holdings the Court disregarded substantial evidence in the record and in doing so was in error.

II.

Evidence of Unfair and/or Deceptive Acts by the League

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), SCRPC; *See 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.”

Evidence of Unfair or Deceptive Acts:

The trial judge did not find that there was a lack of evidence of unfair or deceptive acts within the meaning of the S.C. Unfair Trade Practices Act. He found that the League could not violate the Act because it was a public interest organization engaged in advocacy of issues related to what it claimed was environmental protection. This Court did not address that issue, but instead held that there was no evidence sufficient to give rise to a genuine issue of material fact which would make a grant of summary judgment erroneous. It has frequently been held that a “mere scintilla” of evidence is sufficient to defeat a motion for summary judgment. The record is more than sufficient to create a genuine issue of material fact that the League engaged in acts that were both unfair and deceptive within the meaning of the Act.

When the League, 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).³

III.

³ 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.

Evidence that the League's Actions Caused Pittinger to Breach the Contract

In its discussion of the record related to tortious interference with contract, this Court made the same mistake as the trial court. Only the evidence supporting an inference that Pittinger abandoned the contract because of motivations other than the dishonesty and the threats communicated to him by the League. In doing so, the Court disregarded the precedent cited in the decision to the effect that a directed verdict is proper only when the evidence is such that only one reasonable inference may be deduced from it and that such inference in the context of this case is that the League did not cause Pittinger to breach the contract. As the Court noted, proximate cause is normally a question of fact for determination by the jury. Eldeco, Inc. v. Charleston County School District, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007); and McKnight v. S.C. Department of Corrections, 385 S.C. 380, 390, 684 S.E.2d 566 (Ct. App. 2009).

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).

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 conceded, 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.

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 foreseeability 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

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 Pittenger’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.⁴

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.

⁴ 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.

The trial judge erred by weighing and evaluating the credibility of the evidence in deciding to grant the motion for directed verdict and this Court seems to have also done so.

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 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.⁵ The trial judge 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

⁵ Q: From your recollection, was it a true statement to say that the Coastal Conservation League fought D.R. Horton? A: No. (R.p. 1052, lines 15-18).

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

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 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.

CONCLUSION

Based on the arguments and evidence cited above, Appellants respectfully request that this Court reconsider its decision in this case affirming the grant of directed verdict as to the cause of action for tortuous interference with contract and the grant of summary judgment as to the S.C. Unfair Trade Practices Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stan Barnett", with a long horizontal flourish extending to the right.

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August 24, 2015

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM 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,

v.

South Carolina Coastal Conservation League and Edward Dana Beach Defendants,
of whom the South Carolina Coastal Conservation League is the.....Respondent.

**RETURN TO PETITION FOR REHEARING
BY RESPONDENT SOUTH CAROLINA
COASTAL CONSERVATION LEAGUE**

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Attorneys for Respondent

Respondent South Carolina Coastal Conservation League ("Respondent" or the "League") respectfully submits this Return to the Petition for Rehearing filed by Appellants North Pleasant, LLC and Vanguard Development Group, LLC ("Appellants"). For these reasons discussed herein, the Petition should be denied.

STANDARD OF REVIEW

In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument. Rule 221(a), SCACR; Kennedy v. S.C. Ret. Sys., 349 S.C. 531, 532-33, 564 S.E.2d 322, 322-23 (2001). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Jean H. Toal, Shahin Vafai & Robert Muckenfriss, Appellate Practice in South Carolina 309 (1999) (citing Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933)).

THIS COURT'S OPINION

This Court decided this appeal by issuing a memorandum opinion pursuant to Rule 220(b), SCACR, and made three specific findings, citing extensive precedent for each finding:

- There was no evidence that the Respondent committed any "unfair or deceptive" acts or practices.
- The Respondent did not cause Pittenger Company to cancel the contract, and the League's employee was justified to make the statements to the Pittenger Company.
- South Carolina recognizes no claim for injurious falsehood.

ARGUMENT¹

The Appellants have demonstrated no instance in which the Court has overlooked or misapprehended their argument. Instead, the Appellants disagree with the Court's ruling and rehash and reargue the same points they made at trial and on appeal before this Court. The Court should deny this petition for a rehearing.

1. There was no evidence that the League committed any "unfair or deceptive" acts or practices.

Appellants' Petition fails to show that this Court overlooked or misapprehended their argument that the evidence in the record showed the League committed an unfair or deceptive practice. Appellants made only two cites to the Record as evidence that the League engaged in unfair and deceptive acts. Neither cite supports their argument or supports their position in the Petition that the Court overlooked or misapprehended their argument.

One (R.p. 428-432) points to two letters from a program director at the League to the Mayor of the Town of Awendaw and to an official at SCDHEC/OCRM opposing a rezoning and a wetlands permit. These letters make many forceful arguments against regulatory decisions that would allow development in areas that the League contends are inappropriate for such disturbance and would significantly degrade water quality and other environmental conditions in those affected areas.

The only other record cite Appellants make in support of their argument, (R.p. 60-63, 434-486, 694-742), includes an affidavit and deposition transcript from a developer who the League opposed

¹ The League notes that the facts stated in the Summary of Proceedings and throughout are argumentative and in many cases without authority in the record below, but will not counter each fact stated in the petition as it is not necessary to address the petition based on the Court' standard of review here.

in a water quality permit challenge and a deposition excerpt from the developer of a project that the League opposed near the Angel Oak in Charleston County.

From the legal precedent cited on this point by this Court, it is evident that the Court agreed with the trial court that none of the facts represented by this and other testimony amounted to evidence of “unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. § 39-5-20(a); Johnson v. Collins Entm’t Co., 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002). Again, Appellants presented this evidence in the record to the trial court and to this Court, and this Court ruled it was not evidence that supported a cause of action for unfair or deceptive trade practices. This is simply a re-argument of this point, not an instance where this court overlooked or misapprehended the Appellant’s argument.

This argument for rehearing should be denied.

2. Respondent did not cause Pittenger Company to cancel the contract and the League’s employee was justified to make the statements to the Pittenger Company.

In arguing for a rehearing of this point, Appellants do not contend that the Court overlooked or misapprehended their argument: they simply disagree with the Court’s decision: “... this court made the same mistake as the trial court.” Pet.for Reh’g, p. 7, l. 2. This Court, in its memorandum opinion, affirmed the trial court’s finding that the evidence cited by Appellant was susceptible of only one inference: that the meeting with the county supervisor was the “but for” cause for Pittenger’s decision not to go forward with his contract. Further, the contact by the League’s employee, if it was “interference,” was justified and not wrongful.

Appellants attempt, again, in this Petition, to float the theory that Pittenger “effectively” terminated the contract on Sunday, May 20, after the call, when he requested additional due diligence time. Appellants argued this to the trial court and to this Court. Both, rightly, concluded

that the argument was not well founded because it ignored the sequence of events that put Pittenger's decision not to go forward with his contract immediately after his meeting with the country supervisor at which he learned he would not have access to the infrastructure or the density that he wanted. Josh Hulen's opinion and the statements by Mr. Pittenger that he was concerned about public opposition to development in the Francis Marion forest did not change the only evidence, from the email correspondence and Mr. Pittenger's testimony, and that of his employees, that he decided not to go forward based on what he learned on the Friday meeting with the county supervisor, which ended just minutes before he made the decision on the contract.

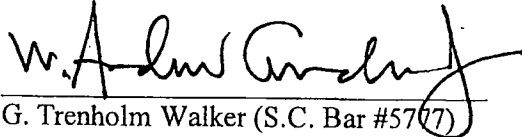
All of this evidence was before this Court in the Record and was presented to this Court in the briefs and arguments of counsel. This Court correctly affirmed the trial court's decision to direct a verdict on these causes of action for tortious interference with a contract and a prospective contract. There is nothing in Appellant's petition that this Court overlooked or misapprehended.

This argument for rehearing should be denied.

CONCLUSION

Therefore, for these reasons, this Court should deny the Appellants' Petition for Rehearing.

Respectfully Submitted,
PRATT-THOMAS WALKER, PA



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September 17, 2015
Charleston, South Carolina

The South Carolina Court of Appeals

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

v.

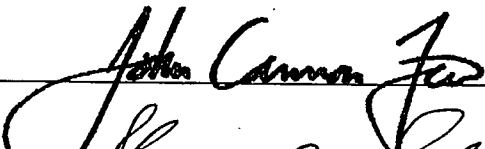
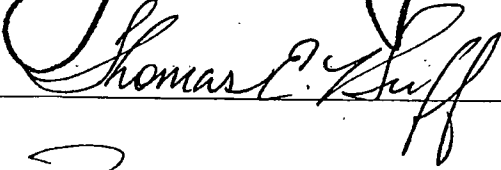
South Carolina Coastal Conservation League and Edward
D. Beach, Defendants,

Of whom South Carolina Coastal Conservation League is
the Respondent.

Appellate Case No. 2014-000183

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

FILED

September 22, 2015

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George Trenholm Walker, Esquire
W. Andrew Gowder, Jr., Esquire
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The Honorable Roger M. Young, Sr.
