THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2015-002173

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.

RESPONDENT'S RETURN TO PETITION FOR A WRIT OF CERTIORARI

G. Trenholm Walker (SC Bar # 5777)
W. Andrew Gowder, Jr. (SC Bar #7895)
John P. Linton, Jr. (SC Bar # 14065)
Pratt-Thomas Walker, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
(843) 727-2200
Attorneys for Respondent

Other Counsel of Record

Stan Barnett
Ellison D. Smith IV
Smith, Bundy, Bybee & Barnett, P.C.
P.O. Box 1542
Mount Pleasant, S.C. 29465

Charles E. Reynolds
Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202

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QUESTIONS PRESENTED

I. As argued in the Petition for a Writ of Certiorari, is certiorari appropriate in this case?

II. When the only evidence introduced at trial was that the sole proximate cause of the Pittenger Company's decision not to proceed with the contract was learning from Berkeley County officials that it had insufficient utility access to support a dense residential development on the property to be purchased, did the Court of Appeal err in deciding that there was no evidence that the League committed any "unfair or deceptive practice"?

II. When the only evidence introduced at trial was that the sole proximate cause of the Pittenger Company's decision not to proceed with the contract was learning from Berkeley County officials that it had insufficient utility access to support a dense residential development on the property to be purchased, did the Court of Appeals err in deciding as a matter of law that the League did not cause Pittenger Company to cancel the contract and the League employee was justified to make the statements to the Pittenger Company?

STATEMENT OF THE CASE

On May 20, 2010, Appellants North Pleasant, LLC ("North Pleasant") and Vanguard Development Group, LLC ("Vanguard Development") (collectively "Appellants") filed a complaint against Respondent South Carolina Coastal Conservation League ("the League" or "Respondent") and Edward Dana Beach ("Dana Beach"), alleging causes of action for tortious interference with a contract, tortious interference with prospective contractual relations, violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), and injurious falsehood. **(R.pp. 20-16, ¶¶ 17-48).** In their Complaint, Appellants allege that statements made by the League caused a prospective purchaser of a tract of land owned by Appellant North Pleasant to decide not to purchase the land. **(R. pp. 18-20 ¶¶ 6-16).**

On July 30, 2012, the League and Dana Beach filed a Motion for Summary Judgment as to all causes of action. **(R. pp. 168-170)** On December 18, 2012, the Honorable Roger Young granted the League and Dana Beach's Motion in part: granting the Motion as to tortious interference with contractual relations and tortious interference with prospective contractual relations of action against Dana Beach; granting the Motion as to the cause of action for Unfair Trade Practices Act as to both Dana Beach and the League; and denying the Motion for the causes of action for tortious interference with contractual relations and tortious interference with prospective contractual relations as to the League. **(R. pp. 3-6)**. All parties filed Motions to Alter or Amend the Court's Order of December 18, 2012 **(R. pp, 740-743; R. pp. 739A- 739D).** By Order dated March 4, 2013, the Circuit Court issued an Order clarifying that "[t]he Court meant to deny the Motion for Summary Judgment on the injurious falsehood cause of action as to the [L]eague and to grant it as to [Dana] Beach." **(R. p. 7).**

The remaining causes of action against the League as the sole defendant proceeded to trial in Berkeley County on December 9-11, 2013. At the conclusion of Appellants' case, the League moved for a directed verdict as to all causes of action. **(R. p. 961, line 22- R. p. 972, Line 14).** The Honorable Roger Young granted the League's Motion for a Directed Verdict as to all three remaining causes of action. **(R. p. 1007, line 12- R. p. 1013, line 5)**. Appellants filed a Motion to Alter or Amend on December 18, 2013 which was denied on January 17, 2014. **(R. pp. 752-759; R. pp. 9-10)** Appellants filed a Notice of Appeal on January 7, 2014. **(Notice of Appeal)**.

On August 12, 2015, the Court of Appeals, after briefing and oral argument by the parties, issued an unpublished per curiam opinion affirming the decision of the trial court

on all appealed issues. (**Unpublished Opinion of S.C. Court of Appeals dated August 12, 2015**) The Appellants filed a Petition for a Rehearing on August 25, 2015, which the Court of Appeals denied on September 22, 2015 **(Order of S.C. Court of Appeals dated September 22, 2015)**.

STATEMENT OF FACTS

Founded in 1989, the League is a non-profit, tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code. The League's mission is to protect the natural environment of the South Carolina coastal plain and to enhance the quality of life of local coastal communities by working with individuals, businesses and government to ensure balanced solutions. **(R. p. 884, lines 2-19)**

In 2005 North Pleasant bought a large parcel of woodlands in Berkeley County in the middle of the Francis Marion National Forest commonly known as the Keystone tract ("the Keystone tract") from International Paper Company for between $19,000,000 and $20,000,000. **(R. p. 768, Lines 3-5; R. p. 809, line 25-R. p. 810, line 2)**. The principals in North Pleasant are members of the Reynolds family, who have been involved as developers for a number of large-scale residential projects, including Reynolds Plantation in Georgia. **(R. p. 766, line 24-R. p. 767, Line 20).** They are sophisticated businessmen with substantial experience in real estate transactions. **(R. p. 766, lines 17-23).**

Because of the Keystone tract's critical location in the heart of the national forest and its proximity to several historic properties along the Cooper River, both then-Governor Sanford and the South Carolina Department of Natural Resources ("DNR") urged North Pleasant, after it purchased the Keystone tract, to implement a low-density development or

consider the sale of the Keystone tract to a conservation buyer who would protect it in its natural state. **(R. pp. 810, line 3-p. 812, line 4; R. pp. 811-A, 811-B).** In December 2005, DNR made a written proposal to North Pleasant to purchase the entire Keystone tract for $26,000,000, millions more than North Pleasant has paid in acquiring the Keystone tract just months earlier. **(R. p. 812, line 5-R. p. 814, line 1; R. p. 813-A; R. p. 1246) .** Additionally, that offer exceeded North Pleasant's appraisal of the Keystone tract, which was completed approximately two months before the DNR offer. **(R. p. 815, lines 1-16; R. pp. 1247-1339).** North Pleasant refused the offer and took the position that it would accept no less than $35,000,000 for the Keystone tract. **(R. p. 816, lines 7-19).**

Around this same time, a number of organizations, including The Nature Conservancy and the League and other concerned groups and individuals, engaged in conversations with large property owners in the Highway 41 corridor to control sprawl and dense development along the Cooper River and in and adjoining the Francis Marion National Forest. **(R. pp. 838, line 22; R. p. 840, line 18; R. p. 892, lines 8-22).** These efforts included assisting developer D.R. Horton to complete a land swap with the United States Forest Service to move D.R. Horton's proposed development next to the national forest to a more suitable location and requesting the Berkeley County government to lower the zoning density in that area. **(R. p. 948, line 10- R. p. 949, line 7).** The United States Forest Service believed that high density residential development was incompatible with the purposes, uses, and maintenance of the national forest and opposed the high density residential development being considered by North Pleasant. **(R. p. 818, line 11-25; R. p. 818-A; R. p. 948, line 10-R. 949, line 7).**

On March 15, 2007, in the midst of this activity and concern, North Pleasant entered into a sales contract with Vanguard Properties of the Carolinas, LLC, ("Vanguard Properties" or "Pittenger")[1] for the sale of a large portion of the Keystone tract—approximately 2600 acres out of 4300 acres ("the Property")—for $23,920,000. **(R. pp. 1163-64; R. pp. 1166-67; R. p. 777, lines 1-5).** As required by the sales contract, Pittenger put $50,000 earnest money down at the time it entered into the contract. **(R. pp. 1166-78).**

The sales contract included a 60 day inspection period for Pittenger to determine whether the Property met its criteria for acquisition and resale. **(R. pp. 1166-78).** By its terms, Pittenger could unilaterally 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. **(R. pp. 1166-78).**

Pittenger's standard practice was to put a property under contract and then investigate the prospects for profitable development during the due diligence period. **(R. p. 1090, line 17- R. p. 1094, line 21).** As part of its initial due diligence Pittenger would investigate, among other things, the existing physical and regulatory conditions of the property including environmental, archeological, endangered species, wetlands, zoning, and the availability of utilities. **(R. p. 1095-A, lines 8-14).** In the case of this Property, Pittenger wanted to confirm during the due diligence period that the physical conditions and the zoning entitlements allowed for residential development on the Property with a minimum density of one residential unit per acre. **(R. p. 1118, lines 6-9).**

[1] Vanguard Properties is controlled by the Robert Pittenger Company; throughout this brief, Vanguard Properties and the Robert Pittenger Company entities are collectively referred to as Pittenger.

During the 60-day inspection period, Pittenger engaged in normal due diligence for a property of this type and had lingering concerns about an endangered species report, title objections, and surveying issues. **(R. p. 1095-A, lines 2-18; R. p. 848, line 1-R. p. 849, line 5; R. p. 1205)**. The sales contract provided that on May 21, 2007—the end of due diligence—Pittenger would deposit an additional $450,000 of earnest money. **(R. p. 847, lines 12-24; R. p. 1167).** Pittenger decided to move forward and deposited the additional $450,000 on May 21, but on May 20 requested an extension of the due diligence period until June 5, 2007, which North Pleasant granted. **(R. p. 856, lines 4-6; R. p. 784, lines 14-20).**

At some point during May 2007, Hamilton Davis, an employee of the League, learned that Pittenger was considering acquiring an interest in the Keystone tract. **(R. p. 885, line 24-R. p. 887, line 2).** He did not know the level of Pittenger's interest or whether a contract existed. **(R. p. 888, lines 9-15; R. p. 890, line 21- R. p. 891, line 4; R. p. 915, lines 13-25; R. p. 915-A lines 1-9).** Hamilton Davis located a number for Pittenger and placed a phone call to Daniel Burns, a senior manager with Pittenger, to begin a conversation with him about what Pittenger might have in mind for the Property and to tell him about ongoing conservation efforts by adjoining landowners and others in the area. **(R. p. 889, lines 4-7; R. p. 915-A, lines 10-15; R. p. 916, lines 1-14).** Hamilton left the following voice mail message for Burns, introducing himself and asking that Burns call him back:

> Hey Mr. Burns this is Hamilton Davis and I work for the Coastal Conservation League in Charleston South Carolina. I wanted to speak with you about ya'll's (sic) recent I guess not purchase but interest in the 2,600 acre parcel in Berkley (sic) County. I wanted to give you some information about what's going on in that area right now that you would probably be interested in. Call me back when you get a

chance please 843-725-2061, and again, my name is Hamilton Davis and I work for the Coastal Conservation League. Thank you.

(R. p. 1161) The record is unclear whether Daniel Burns called back or whether the two only exchange voiced mails—Hamilton Davis remembers Burns calling him back and their having a brief, cordial conversation, while Daniel Burns does not remember whether or not the two ever spoke on the phone or just exchanged voicemail messages. **(R. p. 889, lines 8-18; R. p. 916, line 19-R. p. 917, line 6; R. p. 1038, line 1-24).**

Though Daniel Burns testified he did not specifically remember calling Hamilton Davis back. **(R. p. 1038, lines 1-24).** On the following Monday, at his colleagues' request before he left town for vacation, Burns e-mailed those colleagues and gave his impressions and interpretation of his exchange with Hamilton Davis:

> To recap my conversation on Friday Afternoon:
>
> Received a voicemail from Hamilton Davis with the Coastal [C]onservation League in Charleston, SC and called him back around 4pm, and then forwarded his voicemail for you to be aware of the issue. Hamilton stated that he was aware that we had the Keystone Tract under contract to purchase and that we'd probably like to know that his group, coupled with the efforts of large plantation owners, is trying to stop development in the Hwy 41 corridor because of it's (sic) proximity to the national forest. He said they are particularly targeting the Keystone property since it's such a large tract and adjacent to the forest. He mentioned that DR Horton has a property just south of ours that the Conservation League has fought, and that now DR Horton is trying to do a land swap to get out of the Hwy 41 tract.
>
> The scariest thing mentioned, was that they are working with the county to get rezoning for the Keystone tract to a conservation easement so it can't be development, and said they were getting close with joint efforts from the plantation owners. I don't know how much of this is reality or smoke blowing, but if they've in fact halted DR Horton, they've accomplished something.
>
> Senator- do you know if the Coastal Conservation League can get the county to rezone a property to a conservation easement without the owner's consent?

(R. p. 1186).

During the week of May 21, Neil Robinson, a prominent land use lawyer retained by Mr. Pittenger to assist him in assessing the zoning entitlements for the Property, arranged for Mr. Pittenger to meet with Dan Davis, the Berkeley County supervisor, to learn more about the availability of utilities and the existing zoning in that area. **(R. p. 1111, lines 1-10)**. At this meeting Supervisor Dan Davis explained to Mr. Pittenger that the Keystone tract was in an area of Berkeley County that the County did not consider to be a growth area and that the County would not be making water and sewer available to any residential development in that area:

Q: All right, sir. And do you remember what you told him?

A: Well, you know, we have a comprehensive plan for the county, and it lays out areas where we consider growth areas. That is not a growth area. Number one, we don't have utilities in that area. We have, just on the fringes right near the river where BP and BP is located, but we don't have interior utility lines, water or sewer, so that's just not considered a growth area. So in the immediate future, I don't see that that's going to have a lot of growth.

Q: So the county, if somebody were to -- had been before -- of course, it's a development agreement on that property now, correct, but before that, it was flex one [zoning]; isn't that correct?

A: Right.

Q: And if somebody had put some kind of development up there, the county wasn't going to be running water and sewer up 41?

A: No.

Q. And you told them that; is that correct?

A: Right.

(R. p. 943, line 23- R. p. 944, line 19). Immediately after this meeting where he learned the County's position, Mr. Pittenger decided not to move forward and told his employees, Daniel Burns and Daniel Fogarty, to notify North Pleasant. **(R. p. 1111, lines 18-19** ("I

called the office and said cancel it"); **(R. p. 1115, line 25-R. p. 1116, line 1.)** (". . . what nailed the lid was I had lunch with the three individuals from the county. . ."**).**

Mr. Pittenger's e-mails, immediately following his lunch meeting with Supervisor Dan Davis and other Berkeley County officials, confirm his testimony.

Specifically, at 1:38 p.m. on May 25, 2007, Mr. Pittenger e-mailed Daniel Fogarty as follows:

Max density is one lot in fifteen acres. Get our money back and cancel contract

(R. p. 1194) (Italics added)**.**

Then, two minutes later at 1:40 p.m., Mr. Pittenger sent another e-mail to Daniel Fogarty:

Its (sic) over. Too many conservation easements between us and the river cost prohibitive to run sewer look for land out 176

(R. p. 1195) (Italics added).

Then, less than an hour later at 2:28 p.m. Mr. Pittenger sent a third e-mail to Daniel Fogarty, again instructing Fogarty to have their lawyer terminate the contract because of three issues he discussed with Dan Davis:

tell neil robinson we will terminate the contract following the discussion with Dan Davis who said that there is a significant number of conservation easements between the river and our property that would preclude cost effective sewer lines and also that the maximum density that he saw from the tract was one lot/fifteen acrees (sic)...

(R. p. 1199) (Italics added).

Mr. Pittenger testified, without contradiction, the reasons for terminating the contract during the inspection period were as stated in his contemporaneous e-mails: (1) lack of access to municipal sewer and water service; (2) low density zoning requirements

in that area of the county; and (3) the number of conservation easements in the area. **(R. p. 1113, line 23-R. p. 1114, line 13; R. p. 1116, line 10-R. p. 1118, line 9; R. p. 1119, line 17-R. p. 1120, line 11; R. p. 1124, line 17; R. p. 1125, line 19).** In his testimony, Mr. Pittenger recounted his sending these e-mails in succession after his meeting with Dan Davis:

Q: Immediately after that lunch, did you send an e-mail to Daniel Fogarty?

A: Either Fogarty or Burns, one, e-mail or phone call. I said it's done. It's over.

* * *

Q: On page 374 is a printout an e-mail from you to Daniel Fogarty at 1:38 p.m., Friday, May 25th. What did you tell Mr. Fogarty?

A: Per the e-mail, said we can only get one lot per 15 acres, get our money back and cancel the contract.

Q: Then on the next page two minutes later you sent another e-mail, a follow-up to Mr. Fogarty, did you not, at 1:40? Do you see that?

A: Yes.

Q: In that follow-up e-mail you said it's over?

A: Yeah.

Q: Too many conservation easements between us and the river, cost prohibitive to run sewer, look for land out 176, correct?

A: Uh-huh.

Q: Is that an accurate statement of your views at the time?

A: Yes. I mean there was a combination of those two e-mails, very low density and the fact of not having other properties that could be developed that would make sewer cost effective as well.

Q: Then if we go to page 381. There is another e-mail within the hour, and this one is from you to Daniel Fogarty at 2:38 p.m. on Friday May 25th, and in this you say tell Neil Robinson we will terminate the contract following the discussion with Dan Davis, who said that there is a significant number of conservation easements

between the river and our property that would preclude cost effective sewer lines and also that the maximum density that he saw from the tract was one lot/15 acres. Is that what you instructed Mr. Fogarty to do?

A: Yes.

Q: And in your estimation, was that the primary reason why you terminated?

A: Those two reasons.

Q: Are the primary reasons you terminated, correct?

A: Correct.

Q: And the only two reasons that you stated in your e-mail, correct?

A: Well, that was enough.

(R. p. 1125, line 20-R. p. 1127, line 21).

Daniel Burns, the only person from Pittenger who had any contact with the League (through his brief exchange with Hamilton Davis) did not have any role in the decision to terminate the contract:

Q: And is it true that ultimately Mr. Pittenger made a decision not to buy the Keystone tract?

A: Yes.

Q: And did you have any role in that decision at all?

A: I did not.

Q: Okay. It was purely his own decision?

A: Yes.

(R. p. 1040, line 24-R. p. 1041, line 6).

While he did not have a role in the actual decision to terminate the contract, Daniel Burns agreed that the e-mails from Mr. Pittenger accurately represented his understanding of why Mr. Pittenger decided to terminate the contract. **(R. p. 1044, line 16-R. p. 1045,**

line 1) (citing the number of conservations easements, sewer and density as the "three big factors").

By letter dated May 25, 2007, the same day as Mr. Pittenger's meeting with Supervisor Dan Davis, Pittenger gave notice that it had decided to terminate the contract. **(R. p. 1197)**. North Pleasant did not object to Pittenger's exercise of its right under the contract to terminate and promptly returned Pittenger's earnest money. **(R. p. 1134, lines 1-13).** In fact, Jamie Reynolds, a principal in North Pleasant, testified that Pittenger was entitled to cancel the contract without penalty, that the earnest money was returned, and that Pittenger had not breached the Purchase agreement by exercising its right not to proceed with the closing:

Q: And when you refunded the $500,000, I think you testified you agreed he was entitled to that money, correct?

A: Yes, sir. I sent it back.

Q: He didn't breach his agreement, did you (sic)?

A: I'm not a lawyer, but no, I don't think he breached his agreement.

Q: Did you send an e-mail saying you think he was fully entitled?

A: Yes, I did.

(R. p. 802, lines 12-21).

After the contract was terminated, North Pleasant worked with the League (and specifically Hamilton Davis, on behalf of the League) and was able to persuade Berkeley County to approve a Development Agreement, vesting the zoning characteristics in place for the Keystone tract. **(R. p. 803, line 20-R . p. 804, line 23; R. p. 805, line 25-R. p. 807, line 11; R. p. 911, line 16-R. p. 915, line 6).** During this collaborative process where they sought the League's help, North Pleasant never mentioned that they had any grievance with

the League and certainly never told the League their intention to file this lawsuit against the League and Dana Beach, its executive director, seeking millions of dollars in damages. **(R. p. 807, line 12-R. p. 808, line 24).**

Three years after the termination of the contract, and one day before the statute of limitations would have run, North Pleasant brought this suit against the League and Dana Beach contending, among other things, that Hamilton Davis' short Friday afternoon exchange with Daniel Burns was the proximate cause of Pittenger's decision to exercise his contractual right to unilaterally terminate the purchase contract. **(R. p. 20, ¶ 16).** Vanguard Development, North Pleasant's real estate agent, also a Plaintiff and Appellant, has sought to recover the real estate commission it would have earned had Pittenger purchased the property. **(R. p. 22, ¶¶ 23-28; R. p.p. 24-25, ¶¶ 34-38, R. p.p. 25-26, ¶¶ 39-48).**

ARGUMENT

I. Certiorari is not appropriate under the standards of Rule 242, SCACR.

Rule 242 of the South Carolina Appellate Court Rules clearly states that a writ of certiorari "will be granted only where there are special and important reasons." See Rule 242, SCACR. This case presents neither special nor important circumstances justifying the requested review by the Supreme Court. In fact, none of the reasons set forth in Appellate Rule 242 are present in this case:

1. There are no novel questions of law;
2. There was no dissent in the decision of the Court of Appeals;
3. The decision of the Court of Appeals is not in conflict with a prior decision of the Supreme Court;

4. No constitutional issues are involved – directly or otherwise; and

5. No federal question was addressed by the Court of Appeals.

A review of the Petition for Writ of Certiorari confirms certiorari is not appropriate. None of Rule 242's enumerated reasons for certiorari are argued by the Appellant. In fact, the Appellant simply disagrees with the Court of Appeals, as it did with the trial court: "In its discussion of the record related to tortuous (sic) interference with contract, the Court of Appeals made the same mistake as the trial court." **(Petition, page 10, lines 6-7)**

This is not a case for which certiorari should be granted under Rule 242, SCACR. The Appellant's request for Certiorari should be denied.

II. The Court of Appeals properly decided that the granting of summary judgment should be affirmed because there was no evidence that the League engaged in any unfair or deceptive practice.

"An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269, 536 S.E.2d 399, 407 (S.C. Ct. App. 2000) (citing Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320, 396 S.E.2d 105 (Ct. App.1989), *aff'd in part, rev'd in part on other grounds*, 309 S.C. 263, 422 S.E.2d 103 (1992). "A deceptive practice is one which has a tendency to deceive." Id. (citation omitted) "Even a truthful statement may be deceptive if it has a capacity or tendency to deceive." Id. (action omitted). The undisputed facts in this case are clear that Mr. Pittenger's decision was based upon information he obtained during his meeting with Dan Davis. Any of the other allegations regarding an unfair or deceptive practice on the part of the League do not relate to the transaction and thus are not relevant to this lawsuit. Appellants do not articulate any unfair

or deceptive action taken that in any way impacted Pittenger's decision to terminate the contract in this case. Appellants do make numerous allegations about the League's activities with respect to other unrelated projects. However, putting aside whether these allegations could be supported by any evidence, Appellants do not articulate how any of their complaints with the League's activities affected Mr. Pittenger's decision.

The Court of Appeals was correct in affirming the Circuit Court's order granting the League's Motion for Summary Judgment as to the SCUTPA cause of action because there was no genuine issue of material fact as to whether the League engaged in any practice that was deceptive or unfair; in fact, there was absolutely no evidence supporting such a conclusion.

III. The Circuit Court properly granted the League's Motion for Directed Verdict as to Appellants' tortious interference with a contract and tortious interference with prospective contractual relations causes of action because no evidence introduced at trial supported a conclusion that the League was the proximate cause of Pittenger's decision not to proceed with the contract and close on the Property.

a. The only evidence introduced at trial was that Mr. Pittenger made his decision based upon factors he learned during his meeting with Dan Davis, the Berkeley County Supervisor.

Appellants alleged that Pittenger decided, during the due diligence period, not to purchase the Property based on the brief exchange between Hamilton Davis and Daniel Burns. No testimony or other evidence admitted at trial, however, support that theory. In fact, as the Circuit Court properly ruled that the evidence presented at trial, when viewed in the light most favorable to Appellants, is susceptible only to one reasonable inference: Hamilton Davis's voicemail for Daniel Burns and possible follow up phone conversation was not the proximate cause of Pittenger's decision not to purchase the Property or the proximate cause of Appellants' alleged damages. The evidence is, rather, that the

information that Mr. Pittenger learned at his meeting with Dan Davis, the Berkeley County Supervisor, caused him to decide not to purchase the property.

Both Appellants' cause of action for tortious interference with a contract and Appellants' cause of action for tortious interference with a prospective contractual relationship require a plaintiff to show damages proximately caused by wrongful conduct. For example, "[t]he elements of a cause of action for tortious interference with 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." Camp v. Springs Mortgage Corp., 310 S.C. 514, 517, 426 S.E.2d 304, 305 (S.C. 1993) (citations omitted). "[A]n action for tortious interference protects the property rights of the parties to a contract against unlawful interference by third parties." Threlkeld v. Christoph, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct. App. 1984). "Therefore, it does not protect a party to a contract from actions of the other party." Id. "[T]he alleged act of interference must influence, induce, or coerce one of the parties to the contract to abandon the relationship or breach the contract." Focused Systems, Inc. v. Aerotek, Inc., 2011 at *2 (citing Bocook Outdoor Media, Inc. v. Summey Outdoor Adver., Inc., 294 S.C. 169, 363 S.E.2d 390, 394 (Ct. App.1987), *overruled on other grounds by,* O'Neal v. Bowles, 314 S.C. 525, 431 S.E.2d 555 (S.C. 1993)). "In order to maintain a cause of action for interference with a contract that is terminable at will, the plaintiff must show that, but for the interference, the contractual relationship would have continued." Focused Systems, Inc. v. Aerotek, Inc., C.A. No. 6:10–2899, 2011 WL 2162729, *2 (D.S.C. June 2, 2011) (citations and internal quotation marks omitted).

"[I]n order to constitute actionable interference with a contract, it must appear that the act complained of was the proximate cause of the injury or damage." Smith v. Citizens and Southern Nat. Bank of South Carolina, 241 S.C. 285, —, 128 S.E.2d 112, 114 (S.C. 1962) (citations omitted); see also, Gauld v. O'Shaugnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85-86 (Ct. App. 2008) (stating that ". . . in order for damages to be recoverable the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy. Neither the existence, causation nor amount of damages can be left to conjecture, guess, or speculation.") (citations omitted).

While the elements of a cause of action for tortious interference with prospective contractual relations are different, a plaintiff seeking to recovery on a cause of action for tortious interference with prospective contractual relations must still provide proof of damages proximately caused by wrongful conduct. Specifically, "[t]o establish a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: (1) that the defendant intentionally interfered with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) that the interference caused injury to the plaintiff. D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 537, 730 S.E.2d 340, 355 (Ct. App. 2012) (citing Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 266, 395 S.E.2d 179, 180 (1990)). "While it is not necessary that the interfering party intend harm, it is necessary that he intend to interfere with a prospective contract." Id. (citing Eldeco, Inc. v. Charleston Cnty. Sch. Dist., 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007)). "If a defendant acts for more than one purpose, his improper purpose must predominate in order to create liability." Crandall Corp. v.

Navistar Intern. Transp. Corp., 302 S.C. 265, 267, 395 S.E.2d 179, 180 (S.C. 1990) (citations omitted).

The Circuit Court correctly granted Respondent's Motion for a Directed Verdict, because Mr. Pittenger's testimony is clear that Supervisor Dan Davis and the other individuals from Berkeley County gave him information bearing on the major issues that were important to him in determining whether to move forward to acquire the property: the availability of public water and sewer service, and the county's plans related to density. **(R. p. 1124, line 17-R. p. 1125, line 19)** (Pittenger stating that the county officials at the lunch informed him of a proposal to change the zoning of that area to allow only one house per 15 acres, that running utilities to the Keystone tract would be cost prohibitive, and that there were a large number of conservation easements in the area). These issues were all matters that impacted how Pittenger could use the property, and specifically whether he would achieve his minimum threshold density of one unit per acre he required in order to purchase a tract of raw land. **(R. p. 1095-A, lines 8-14)** ("Q. What is the typical due diligence that your firm would perform for an acquisition of property like this? A. We want to see Phase I, environmental. We look for archeological, endangered species, wetlands. We want to know about zoning. We want to know about utilities."); **(R. p. 1118, lines 6-9)** (Mr. Pittenger stating that his plans for the Property hinged on the ability to develop the Property with a minimum density of one residential unit per acre).

After the meeting with Supervisor Dan Davis, Mr. Pittenger e-mailed Daniel Fogarty multiple times explaining that he thought they would only be able to have zoning for one lot per 15 acres and that it would be cost prohibitive to run sewer to the property

because there were too many conservation easements on properties between the Keystone tract and the river. **(R. p. 1126, line 1-R. p. 1127, line 21)**.

Mr. Pittenger may have been under the impression that water was available for residential use because Josh Hulen, the broker for North Pleasant, had told Pittenger that there was a water line in front of the property:

Q:.....[D]id you talk to Mr. Fogarty about the availability of water?

A: Yes.

Q: All right. Did you tell him that the water line was only for industrial use for Nucor and that the owners of that property would not have access to it?

A: No.

Q. What did you tell them?

A: I told them water was available at the property.

Q: Was that correct?

A: There is a water line in front of the property.

Q: Did you have any information whether or not that water line could be accessed for residential use by the owners of this property?

A: I didn't represent that there was available for residential use. I told him there was water in front of the property.

(R. p. 879-A, lines 8-24) In one of the e-mails sent minutes after meeting with Dan Davis, Mr. Pittenger instructed Fogarty that he had decided not to purchase the property based on the information he learned from that meeting:

Q: . . . There is another e-mail within the hour, this one from you to Daniel Fogarty at 2:38 p.m. on Friday May 25th, and in this you say tell Neil Robinson we will terminate the contract following the discussion with Dan Davis, who said there is a significant number of conservation easements between the river and our property that would preclude cost effective sewer lines and also that the maximum density that he saw from the tract was one lot/15 acres. Is that what you instructed Mr. Fogarty to do?

A: Yes

Q: And in your estimation, was that the primary reason why you terminated?

A: Those two reasons.

Q: Are those the primary reasons you terminated, correct?

A: Correct.

Q: And the only two reasons that you stated in your e-mail, correct?

A: Well, that was enough.

(R. p. 1126, line 25-R.p. 1127, line 21). As is made clear by Mr. Pittenger's testimony, the information Mr. Pittenger learned at his meeting with Dan Davis convinced him not to purchase the property. Mr. Pittenger knew best the motivations for his decision, since it was his decision, alone. **(R. p. 1040, line 24-R. p. 1041, line 6);** (stating that Mr. Pittenger acted alone in making the decision not to purchase the Keystone tract)).

Furthermore, even if such a minor event—Hamilton Davis' voicemail and possible short follow up conversation with Daniel Burns—could somehow be considered to have played a role in the causal chain of events that led to Mr. Pittenger's decision, no evidence presented at trial would support a conclusion that it was the proximate cause of the damages claimed by the Plaintiffs, as required to recover under these two causes of action. See Smith v. Citizens and Southern Nat. Bank of South Carolina, 241 S.C. 285, 288, 128 S.E.2d 112, 114 (1962) ("in order to 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); D.R. Horton, at 537, 730 S.E.2d at 355 (stating the elements of tortious interference with a prospective contract).

Appellants, in arguing that Hamilton Davis's voice mail and possible follow up conversation with Daniel Burns somehow caused Mr. Pittenger to decide not to purchase the property completely disregard the testimony and engage in pure speculation and invention. For a jury to believe their theory of liability, the jury would have to disregard Mr. Pittenger's unchallenged, unequivocal, and uncontradicted testimony as to why he decided to cancel the contract. No one testified that the reason Mr. Pittenger terminated the contract was related to the League, nor was his credibility ever impeached. Therefore, because the testimony was susceptible to one conclusion only and a reasonable jury is not entitled to disregard uncontradicted testimony, the Circuit Court's Order granting the League's Motion for a Directed Verdict should be affirmed. See Page v. Crisp, 303 S.C. 117, 118-19, 399 S.E.2d 161, 162 (Ct. App. 1990) ("We recognize that a jury is not required to believe testimony when reasonable persons could disagree as to facts, but it is not permitted to disbelieve testimony unless there is good reason for questioning the credibility of the witnesses."); Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 476-77, 514 S.E.2d 126, 130 (1999) ("When the evidence yields only one inference, a directed verdict in favor of the moving party is proper.").

b. The Court of Appeals properly decided that the statements allegedly made by the League in its activities as an environmental advocacy organization were justified.

The Appellants failed to argue in their Petition that the Court of Appeals erred in ruling that the statements allegedly made by the League—statements regarding the effect of dense development on property taxes and utilities at various public meetings—were justified. **(R. pp. 1110-14)**. This finding, even if the Court of Appeals were incorrect in their decision that there was no evidence the statements caused Pittenger not to close, would support the Court of Appeal's decision.

Specifically, the Circuit Court ruled that the Motion for a Directed Verdict should be granted because ". . . [t]o the extent that [the] Coastal Conservation League played a role in making these changes on the zoning and in organizing neighborhood opposition to that sort of thing, I think it's protected by the First Amendment, and I don't find what they did could, by any jury, be found to be anything other than a valid and reasonable exercise of their First Amendment rights." **(R. p. 1014, lines 14-20).**

The Court of Appeals agreed with that ruling and gave justification as a second ground for upholding the Circuit Court's grant of directed verdict on the interference causes of action. The Appellant's failure to argue that the Court of Appeals erred in this finding presents yet another reason to deny the petition.

CONCLUSION

Therefore, for all of these reasons, this Court should deny the Petition for a Writ of Certiorari.

Respectfully Submitted,
PRATT-THOMAS WALKER, PA

G. Trenholm Walker (S.C. Bar #5777)
W. Andrew Gowder, Jr. (S.C. Bar # 7895)
John P. Linton, Jr. (S.C. Bar #79130)
P.O. Drawer 22247 (29413-2247)
16 Charlotte Street
Charleston, SC 29403
Phone: (843) 727-2200
Email: gtw@p-tw.com; wag@p-tw.com
jpl@p-tw.com

November 19, 2015
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS

Roger M. Young, Circuit Court Judge

Case No. 2015-002173

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.

PROOF OF SERVICE

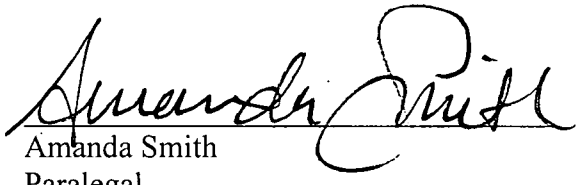
I certify that I served Respondent's Return to Petition for a Writ of Certiorari; Postage prepaid, to the addresses below, on November 19, 2015.

Stanley Barnett, Esquire
Ellison D. Smith IV
Smith, Bundy, Bybee & Barnett, PC
Post Office Box 1542
Mount Pleasant, SC 29465

Charles R. Reynolds, Esquire
Santen & Hughes
600 Vine Street, Suite 2700
Cincinnati, Ohio 45202

[Signature on following page]

Respectfully Submitted,
PRATT-THOMAS WALKER, PA



Amanda Smith
Paralegal

November 19, 2015
Charleston, South Carolina