

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Nathan Bluestein, Ettaleah Bluestein,) )  
 Theodore Albenesius and Karen )  
 Albenesius, )  
 )  
 Plaintiffs, )  
 )  
 Versus )  
 )  
 Town of Sullivan's Island and )  
 Sullivan's Island Town Council, )  
 )  
 \_\_\_\_\_ Defendants. )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 Case No. 10-CP-10-5449  
 Order Granting Summary Judgment to Defendants  
 Regarding Breach of Contract by Accompanied by  
 Fraudulent Act

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 JULIE BRISTONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

This matter comes before the Court pursuant to the Defendants' Motion for Summary Judgment. Plaintiffs sued the Town of Sullivan's Island complaining over the Town's management of Town-owned land. Naturally occurring plants located on the Town's land have grown to a height that partially obscures the Plaintiffs' view of the beach.<sup>1</sup> Plaintiffs contend that, by enacting ordinances in 1995 and 2005, the Town deprived them of a right to a view by failing to cut (or allow others to cut) vegetation growing on town-owned land that lies between Plaintiffs' houses and the ocean. In and around 2009 the Town considered the possibility of a further amendment to the ordinances. As part of this the Town commissioned a consultant to perform a study. One product of the consultant's work was a proposed citizen questionnaire by which the Town might gather citizen input on the AL issues. The exact phrasing of the

<sup>1</sup> Plaintiffs describe their right with various labels (right to have vegetation pruned, condemnation of their view or beachfront status, etc.), but in essence the dispute in this case revolves around whether the Plaintiffs can force the Town to engage in the vegetation cutting necessary to allow Plaintiffs to see the ocean. For ease of reference in this Order, regardless of Plaintiffs label, this will generally be termed "right to a view".

consultants draft questionnaire was not sent out to the public. Rather, a reworded version of the questionnaire was ultimately utilized. It is not clear how the change in wording came about. During this time there was also various communication between the Town and the consultant, including in at least one instance a directive that the consultant communicate with the Town directly, rather than with the public at large. The Plaintiffs claim that the Town's interactions with the consultant and use of the questionnaire in and around 2009 demonstrate the Town's fraudulent intent to harm the Plaintiffs by breaching the deed restriction promises. There was no evidence of fraud related to the passage of the actual 1995 or 2005 ordinances being challenged.

### Law

#### Standards for Decision

Summary judgment is appropriate where no genuine issues of material fact remain for trial when viewed in the light most favorable to the opponent. Tupper v. Dorchester County, 487 S.E.2d 187, 191 (SC 1997); Adamson v. Richland County School District One, 1998 WL 251387 (S.C.App. 1998). Mere denials contained within a party's pleadings are not sufficient under S.C.R.C.P. 56(e). And while the moving party has the initial burden of showing that no genuine issues of fact remain, there is no requirement that the moving party negate every aspect of the opponent's claim. Baughman v. American Telephone and Telegraph, 410 S.E.2d 537, 545 (SC 1991)(citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). Thus, the opponent must "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing there is a *genuine issue for trial*.'" Baughman, 410 S.E.2d at 545, citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Notably, while Summary Judgment may be inappropriate when *facts* remain in

dispute, the fact that the parties disagree on the legal interpretation of contract is a question of law for which Summary Judgment is particularly appropriate.

#### Legal Analysis

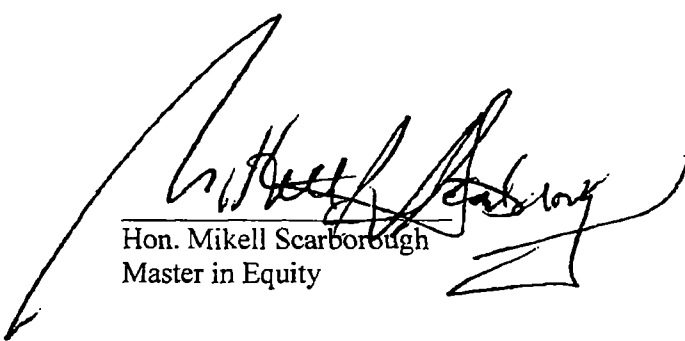
The Court finds that Summary Judgment is appropriate because the Defendants are immune from suit under the South Carolina Tort Claims Act. The South Carolina Tort Claims Act bars damages from being awarded for the alleged governmental conduct. See S.C. Code 15-78-60 (1) ( "legislative ... action or inaction"); (2) "administrative action or inaction of a legislative ... nature."); (4) "adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies."); (17) ("employee conduct outside the scope of his official duties or *which constitutes actual fraud*, actual malice, intent to harm, or a crime involving moral turpitude.") The Plaintiffs have sued for both Breach of Contract and Breach of Contract Accompanied by Fraudulent Act. They have specifically sought damages for the allegedly tortious fraud.<sup>2</sup> The distinction between Breach of Contract and Breach of Contract Accompanied by Fraudulent Act is, of course, the presence of "fraud." The Tort Claims Act tells us that the government is immune from fraud claims. Moreover, the allegedly fraudulent conduct, such as communicating with a consultant and drafting a public input questionnaire, unquestionably relates to the Town Council's legislative fact-finding process as it considered whether to adopt a future ordinance change. Legislative activities, and

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<sup>2</sup> See Para. 107, SAC, in which the Plaintiffs seek "consequential, actual, and/or punitive damages ... for the independent tortious wrong" associated with the alleged Breach of Contract.

administrative action supporting legislative activities, are immune from suit. Summary Judgment is appropriate.<sup>3</sup>

This 26 day of Nov., 2014



Hon. Mikell Scarborough  
Master in Equity

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<sup>3</sup> As an additional sustaining ground the Court notes that none of the alleged fraudulent acts, which occurred in or around 2009, appear to relate to either of the two ordinances being challenged.