THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Clifton Newman

Trial Case No.: 2006-CP-10-1577
Appellate Case No. 2015-001844

Lawton Limehouse, Sr.....Appellant

Paul H. Hulsey and The Hulsey Litigation Group, LLC.....Respondent

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APPELLANT'S FINAL BRIEF

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article were false and the amount of the settlement and the reasons for the settlement had a tendency to make Plaintiff's contention that the statements were false more probable under Rule 401, SCRE.

STATEMENT OF THE CASE

The Appellant, Lawton Limehouse, Sr., ("Limehouse") filed this action in the Court of Common Pleas for Charleston County on April 19, 2006 seeking recovery against the Respondents, Paul H. Hulsey and The Hulsey Litigation Group, LLC (collectively "Hulsey") pursuant to a cause of action for defamation. (R.p.8; Complaint). The case originally came before Judge Roger M. Young who presided over jury trial on damages and the jury returned a verdict of Two Million Three Hundred Ninety Thousand 00/100 ($2,390,000.00) Dollars in actual damages and Five Million 00/100 ($5,000,000.00) Dollars in punitive damages against Hulsey. The judgment was entered on February 7, 2008 (R.p.5; jury verdict/judgment).

The case was then reversed/vacated and remanded by the South Carolina Supreme Court by Opinion filed June 26, 2013. (Limehouse vs. Hulsey, 404, S.C. 93, 744 S.E.2d 566 (2013 S.Ct).

Hulsey filed their Answer on August 12, 2013 (R.p.15 Answer).

The case came before Judge Clifton Newton who presided over a jury trial on March 23-27, 2015. The jury returned a verdict for the Defendants (R.p.6; jury verdict/judgment).

Limehouse filed a Motion for New Trial Absolute (R.p.620; Motion filed April 6, 2015). By Order filed July 29, 2015, Judge Clifton Newton denied Limehouse's Motion for a New Trial Absolute (R.p.4; Order of Judge Clifton Newton filed July 29, 2015).

STATEMENT OF THE FACTS

As alleged in the Complaint this case arose from false and defamatory statements made

by Hulsey to a reporter with the Charleston Post and Courier. The statements included:

A. That the Plaintiff engaged in a classic racketeering scheme;

B. That the Plaintiff's conduct set the community 150 years;

C. That the Plaintiff engaged in a blatant case of indentured servitude;

D. That the Plaintiff created a perfect racketeering enterprise just like Tony Saparano.

(R.8;Complaint, paragraph 11) (Defendants' Exhibit 9, R.p. 623).

In 1999, Limehouse and his son started a temporary staffing agency called L&L Services, LLC in the cellar in the bottom of his home. (R.p.161-162). The business continued to grow to employee approximately 200 people; had fourteen (14) to fifteen (15) vans; and a line of credit with Southcoast Bank (R.p.166-168).

Paul H. Hulsey is a practicing attorney (R.p.440-441).

On April 23, 2004, Hulsey filed a Class Action RICO lawsuit on behalf of certain individuals against Limehouse, Limehouse's son, L&L Services, LLC, WLL, LLC and unknown John Doe individuals and businesses (R.p.628) (Defendant's Exhibit 10).

On the day the Complaint was filed in Federal Court, Paul H. Hulsey, had a conversation with James Scott, a reporter from the Post and Courier, during which Hulsey told James Scott (1) this is a classic racketeering scheme; (2) this sets the community back 150 Years; (3) this is a blatant case of indentured servitude; and (4)L&L Services took advantage of the complexity of the system. They have created a perfect racketeering enterprise just like Tony Soprano. (R. pp.86-90). These statements were published in an article in the Post and Courier on April 24, 2004. (R.p.623, Defendant's Exhibit 9). Hulsey knew when he talked to James Scott that his quotes were going to be published in the Post and Courier. (R.p.478). According to the

testimony of the Director of Circulation of the Post and Courier 99,148 newspapers were sold on April 24, 2004 and the newspaper was read by 228,040 people. (R.p. 140-144).

On Monday following the publication of the April 24, 2004 article, L&L Services's phone was ringing off the hook with people calling to cancel their service. Limehouse closed the business down. (R.p.192-193).

In the television series, "The Sopranos", Tony Soprano was depicted and portrayed as a murderer; a drug dealer; ran a prostitution ring; owned a strip club; engaged in money laundering; was cruel; was violent; engaged in extortion; stole; and engaged in infidelity (R.p.184-185).

ARGUMENT

I. **The Trial Court's admission of the thirty-three (33) page Class Action RICO Complaint which was filed in the United States District Court by the Defendants into evidence violated Rule 43(g), SCRCP and constituted inadmissable hearsay.**

Rule 43(g) provides that "the pleadings shall not be submitted to the jury for its deliberations." The comment to Rule 43(g) provides "Rule 43(g) preserves Circuit Rule 85, except it prohibits submitting the pleadings to the jury for its deliberations, a needed change to avoid the jury treating pleadings as evidence..."

During the trial, Judge Newman allowed into evidence the thirty-three (33) page RCIO Complaint that was filed by the Defendants in United States District Court on behalf of their six (6) clients. He overruled the objection of Appellant's counsel. (ROA 169, Vol 2; R.p.628; Defendant's Exhibit 10, Class Action Complaint). The admission of

the Complaint prejudiced the Plaintiff as the Complaint was considered by the jury as evidence and it contained hearsay.

Examples of the hearsay contained in the Complaint are as follows:

a. paragraph 12 of the Complaint describes "the Defendants scheme of reporting false social security and other identification numbers".

b. Paragraph 14 states "the housing the Limehouse Defendants provide is substandard and yet the workers are charged for it."

c. Paragraph 15 states "that Defendants developed a scheme whereby they would illegally, willfully and consistently withhold portions of employees' wages without any justification or right under state or federal law."

d. Paragraph 23 states that "Defendants, by and through their agents, advised Flores that if he worked two shifts in one day he would need to use a different name at the second job."

e. Paragraph 24 states that "the Defendants then provided Flores with a resident alien card and Social Security card bearing the name of Oscar Mejias."

f. Paragraph 58 states that "the individual Defendants participated in the operation and management of this enterprise and conduct its affairs through their pattern of unlawful activity, including execution of their Scheme to Defraud, corrupt, cheat, steal, and convert the money and property of the Plaintiffs.

g. Paragraph 65 states in part that "the plan included the employment of

temporary laborers, typically aliens from Latin American countries, who were then effectively held in indentured servitude by a scheme of forced housing, transportation, threats of retaliation, and coercion."

h. Paragraph 65 goes on to state " in furtherance of this pattern, Defendants who used extortion and threats of retaliation by government authorities to keep Plaintiffs as virtual slaves."

i. Paragraph 78 states "the Defendants transported and caused to be transported property or money belonging to Plaintiffs, knowing that it had been converted to the Defendants' own use and benefit with a value in excess of $5,000.00. (R.p.628, Defendants' Exhibit 10, Class Action Complaint.

During a discussion concerning page line designations, Appellant's counsel made it clear that he was objecting to the Complaint coming into evidence as it was prohibited and contained hearsay. The exchange between Appellant counsel and the trial judge is as follows:

Mr. Cisa: Judge, I'm asking about allegations in the complaint. I'm trying to figure out what he knows of his knowledge. He doesn't know anything of his own knowledge. And I think it's inadmissable because we are talking about allegations of the complaint. Complaints don't come into evidence.

The Court: I overrule that object by you.

Mr. Cisa: All right. Next is page 76, line 8 to 78, line 23. Again, he has no foundation to say the things he's saying. I'm asking questions so I could find out information from a discovery standpoint. But he has no basis to

say these things. He's talking about what his clients told him. It's clearly hearsay too, Judge.

The Court: You are saying you have a lawyer who filed a suit based on what the client tells him, and then you are suing the lawyer because of the lawsuit, but you don't want the lawyer to be able to say what the client told him?

Mr. Cisa: I'm not suing the lawyer because of the lawsuit. I'm suing the lawyer because he said that my client engaged in indentured servitude, set the community back 150 years, that he created a perfect racketeering scheme just like Tony Soprano. That's why I'm suing this lawyer. I can't sue him for filing the lawsuit. Lawsuit is privileged. I understand that.

I have immunity. If I sue somebody and I say bad things about them, they can't sue me because it's in the context of a civil proceeding. Just like this lawyer Hulsey can't sue me if I say he's greedy. I didn't say that, but he can't sue me in the courtroom for saying that because this is a judicial proceeding.

So, I'm not suing him about the lawsuit. I'm suing him about– he knew James Scott was going to publish those statements in the newspaper. He said that in his deposition. He knew it. I'm suing him about the statements that damaged–I say damaged my client's reputation. I think he did. But I'm not suing him about the lawsuit, Judge. I'm not suing him about the lawsuit.

(R.p. 115-116).

The Court: Okay.

During the trial, the jury was reminded by Hulsey's RICO expert, Professor G. Robert Blakey, and defense counsel that the jury could read the Complaint and that it was in evidence. The portion of the G. Robert Blakey's testimony is as follows:

Q. Is there anything that you would add to that, Professor?

A. No. Keep this in your mind and you can read the complaint.

(R.p.512, L.2-5.)

During closing arguments, Hulsey's attorney commented on the RICO complaint and reminded the jury that the complaint was in evidence as Exhibit 10 and that they can look at it. (R.p.574, L.15 to L.18).

During the course of the trial Hulsey's attorney argued to the Court that pleadings, motions, judicial proceedings are all hearsay. (R.p.251).

II. **The Trial Court allowed the Defendant, Paul H. Hulsey, to testify about conversations he had with the clients he represented in the Class Action suit as well as other individuals to prove the truth of the statements he made to James Scott which were published in the April 24, 2004.**

Throughout the direct testimony of Paul H. Hulsey, the trial judge allowed Mr. Hulsey to testify to conversations he had with his clients and other individuals pursuant to his preparation of the Class Action Complaint that he filed in the United States District Court. Appellant's counsel continually objected on the basis that Mr. Hulsey laid no foundation for the testimony and that the testimony was hearsay. The Trial Court continually overruled Appellant's counsel objections.

The Appellant contends the following excerpts from the direct testimony of Paul H. Hulsey are examples of hearsay that was offered for the truth of the matter asserted:

Q. Did that give you any concern for what you anticipated would be included in the lawsuit that you had ultimately filed based on having spoken with Mr. Scott?

A. Well, no. Actually, it was very gratifying and relieving. I asked Mr. Scott if he stood behind everything that he had written. Mr. Scott is bilingual, too. He speaks Spanish, too. So he had interviewed all the folks that he wrote about in those articles. He had personally interviewed.

Mr. Cisa: Your Honor, I would object on the basis of foundation. He can only get this information from somebody else. Hearsay.

The Court: All right. Mr. Hood, what do you say?

Mr. Hood: Your Honor, it's being offered to establish the foundation for him proceeding with the filing of the complaint. So instead of the truth of the matter asserted it's being offered to fo to the issue of forth cause of action to the Plaintiff's cause of action–fourth element rather.

The Court: All right. Overrule the objection.

A. I forgot what you asked. I'm sorry.

Q. So my question was you know–let me back up. Before you met with James Scott did you have an idea about – or had you heard facts about how the workers were being treated and had some concerns?

A. Yes, sir. I had the direct interviews with my clients and many others and I had the articles, so I had a pretty good idea about what was doing on but I wanted to meet

with Mr. Scott to confirm everything.

Q. And after your meeting with Mr. Scott can you tell us whether you had any concern about the story that you were hearing in your investigation compared to what Mr. Scott was telling you?

A. I had none whatsoever. We were on solid ground. I even learned about the vetting process that the newspaper does before they let somebody write an article like that.

Q. And did he indicate that he stood by the investigation that he had done?

A. I understood he stood by every word of it.

(R.p. 445, L.18 to R.p.447, L.6)

Q. All right. And tell us, we've heard a lot about the details in all the articles but can you give the jury just a sense of, you know, what you understood the facts supporting the racketeering claim that you described in your Exhibit 10 to be?

Mr. Cisa: Your Honor, I would object. He's got to have a foundation for what he's testifying to, and if it's based on hearsay I object to it, unless he's going to bring people in to testify in this courtroom because I can't cross-examine hearsay.

The Court: The object is overruled.

A. In taking with the employees, former employees and employees and people with the city and things like that we determined that the way in which the businesses L&L, and WLL were being run was–created–I guess the best way to say it is a very, very stressful work relationship where the workers were being coerced,

where they were being forced to do things, where they were being forced to go to certain places, where they were being forced to live where they had to live.

We found that the way in which they were treating them was not the normal give and take that you expect an employer-employee relationship nowadays. We didn't believe that they were being treated as the law says you treat them. The United States Constitution says that immigrant laborers are entitled to the same rights and privileges that every else was. Our conclusions were they hadn't been treated like that.

We saw that they were required to live in a certain place, that they were required to go to the workplace in vans. That the vans took them back to where they were required to live, that they had to go wherever the vans took them to work. By the way, not always to the same job every day. That if they complained they were threatened with begin turned into the authorities. There were threatened with the INS.

And these workers are scared to death. They are in the United States and they are trying to send money back to their families. They are on a tightrope and they are scared to death and that threat and coercion is just– drives them crazy because they can't do anything about it. They have to work.

So we found that there were threats, coercion. If someone complained about the hours they worked or that they didn't get paid they were threatened. They were threatened with being deported.

We found that the living conditions were not–well, not up to par as even bad.

Some of the living conditions were horrible. They don't want to live 31 people to a house. I guarantee you that. I've dealt with Hispanics my entire life. They are no different than anyone else is.

Mr. Cisa: Your Honor, I note an objection about all of this. It's all hearsay. He's laid no foundation whatsoever. He's just rambling on about–he didn't testify he lived in any house. He hadn't testified about anything that he knows of his own personal knowledge. It's all hearsay. (R.p. 448-450).

Q. During your investigation did you ever uncover something that you considered to cause you to doubt the validity of truthfulness of the information contained in Exhibit 10?

A. No, not at all. No.

Mr. Cisa: Your Honor, this is why I object because he's using all this hearsay for the purpose of proving the truth fo the matter asserted. Everything he said is hearsay and he's using it to prove the truth of the matter asserted, and that's why I objected to it.

The Court: All right, sir.

Mr. Cisa: Unless he's going to bring people in.

The Court: Mr. Hood, any response?

Mr. Hood: Your Honor, again, he's providing this background and the basis for his preparation of Exhibit Number 10 which was the subject of a newspaper article on the 24th of April, which is what we are here about and it goes directly to the – as I mentioned, the fourth element of their cause of action.

The Court: Yes, sir?

Mr. Cisa: He just asked him about proving the truth of everything in that complaint. That's what he just asked him, Judge. That's why he's offering his testimony for the jury, and it's all hearsay. He needs to bring somebody in to say they were coerced.

The Court: All right. Next question.

(R. p.452, L.13 to R.p.453, L.13)

Pursuant to Rule 602, SCRE " a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter."

Mr. Hulsey could have called his clients as witnesses to prove hearsay statements he published before the jury but he failed to do so. Mr. Hulsey was attempting to prove the truth of the statements that he made to James Scott which were published in the April 24, 2004 Post and Courier article through hearsay.

III. **The Trial Court charged the jury that he had determined as a matter of law that the Defendants are entitled to the protection of the Fair Report Privilege although the defamatory statements made by Hulsey were not a report of the contents of a public record.**

"Fair and impartial reports in newspapers of matters of public interest are qualified privileged." Jones, 250 S.C. at 487, 158 S.E.2d at 913. "Under this defense [of qualified privilege], one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it [qualifedly or]

conditionally privileged, and (2) the privilege is not abused." *Swinton Creek Nursery vs. Edisto Farm Credit*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999) (citing Restatement (Second) of Torts § 593 (1977). Whether the occasion is one which gives rise to a qualified privilege is a question of law. 334 S.C. at 485, 514 A.E.2d 126, 134...the trial court correctly ruled that the publication of the article is subject to the fair report privilege. However, "[t]he privilege extends only to a report of the contents of the public record and any matter added to the report by the publisher, which is defamatory of the person named in the public records, is not privileged. *Jones*, 250 S.C. at 487, 158 S.E.2d at 913. Where there is conflicting evidence, "the question whether [a qualified] privilege has been abused is one for the jury." *West v. Morehead, 396, S.C. 720 S.E.2d 495 (2011).*

The day the complaint was filed Paul Hulsey told James Scott, a reporter from the Post and Courier that (1) this is a classic racketeering scheme; (2) this set the community back 150 years;(3) this is a blatant case of indentured servitude; and (4) L&L Services took advantage of the complexity of the system, they have created a perfect racketeering enterprise just like Tony Soprano. (R.p.86-90).

First, Paul Hulsey was not reporting on a public record. He was describing the way that the Appellant operated his business. James Scott was reporting and commenting on the Class Action lawsuit, not Mr. Hulsey. Mr. Hulsey is not reporting on a public record he is making statements of fact concerning the Appellant. There is nothing in any public record, that would support the contention that the Appellant created a perfect racketeering enterprise just like Tony Soprano. Uncontradicted evidence in the record is that Tony Soprano was depicted and betrayed as a murderer; a drug dealer; ran a prostitution ring; owned a strip club; engaged in money

laundering; was cruel, violent; engaged in extortion; stole; and engaged in infidelity. (R.p.184-185).

The trial judge should have ruled as a matter of law that the Fair Reporting Privilege was not available to Mr. Hulsey.

IV. The Trial Court did not allow testimony concerning the fact that the Plaintiff paid $20,000.00 to settle the RICO Class Action lawsuit even though it was offered for the purpose that the statements made by Mr. Hulsey to James Scott lacked merit, lacked veracity; and they were not truthful.

During the Appellant's case in chief, the Appellant sought to publish portion of the deposition of Paul H. Hulsey concerning settlement of the Class Action lawsuit. The Class Action lawsuit was settled for $20,000.00 and Hulsey had incurred about $31,000.00 to $32, 0000.00 in expenses. The page line designations from Mr. Hulsey's depositions are as follows:

Q. Okay. Was this class action case settled for $20,000.00?

A. Yes, it was.

Q. Okay. And what happened to the $20,000.00?

A. It was distributed among three plaintiffs and the expert was paid out of that and I ate $24,000 in expenses.

Q. Okay. All right. So you had $24,000.00 in expenses relative to the class action lawsuit that I have marked as Plaintiff's Exhibit 1?

A. About 31 or 32,000 but the plaintiffs paid the expert out of their settlement and I agreed to eat the rest of the expenses.

Q. How much was the expert paid?

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The trial judge should have ruled as a matter of law that the Fair Reporting Privilege was not available to Mr. Hulsey.

IV. The Trial Court did not allow testimony concerning the fact that the Plaintiff paid $20,000.00 to settle the RICO Class Action lawsuit even though it was offered for the purpose that the statements made by Mr. Hulsey to James Scott lacked merit, lacked veracity; and they were not truthful.

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Q. Okay. All right. So you had $24,000.00 in expenses relative to the class action lawsuit that I have marked as Plaintiff's Exhibit 1?

A. About 31 or 32,000 but the plaintiffs paid the expert out of their settlement and I agreed to eat the rest of the expenses.

Q. How much was the expert paid?

A. 7700 dollars.

Q. Who was the expert?

A. It was Dr. Blakey, Professor Blakey.

Q. Where does Professor Blakey work?

A. He was at-he was a Professor emertius at Notre Dame. I don't believe he's there anymore.

Q. Okay. So out of the 20,000 dollars the plaintiffs I guess–the two or three plaintiffs-

A. Three.

Q. Three plaintiffs paid Dr. Blakey (sic) 7,700 dollars, correct?

A. Yes, yes sir.

(R.p.680, L.12 to R.p.680, L.1)

Q. Okay. So that would have left–after you paid the 7700 dollars, that would have left 12,300 dollars?

A. I believe they got 4100 dollars apiece.

Q. Okay. So the three plaintiffs that, I guess, were left in your class action lawsuit that I've marked as Plaintiff's Exhibit 1, each received 4,100 dollars?

A. Yes

Q. I had another 24,000 expenses in the case.

(Page Line Designations, R.p.661; Deposition of Hulsey, R.p. 679-680, R.p. 60-63)

The purpose of seeking to introduce the amount of the settlement paid by the Plaintiff and amount of the expense paid by Hulsey was for the purpose of showing that the statements made

by Mr. Hulsey lacked merit and veracity. (R.p.73-R.p.80, L.17).

Pursuant to Rule 401, SCRE, "Relevant Evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence."

Pursuant to Rule 408, SCRE, "this rule also does not require exclusion when the evidence is offered for another purpose..."

Hulsey asserted truth as a defense in their answer. (R.p. 15;Answer).

The fact that the thirty-three page RICO action was settled for $20,000.00 and Hulsey had expenses of between $31,000.00 and $32,000.00 tended to show that the statements made by Mr. Hulsey to James Scott lacked merit and veracity.

In *QHG of Lake City, Inc. vs. McCutcheon*, 360 S.C. 196, p.210; 600 S.E.2d 105 P.112 (Ct. of Appeals 2004) the court stated "Nothing in the rule against settlement testimony requires court to exclude evidence that a party tendered a sum mutually understood to be due."

CONCLUSION

Based on the foregoing, it is respectfully requested that this case be reversed and remanded for a new trial.

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This 12th day of May, 2016

CERTIFICATION

I certify that this Final Brief of Appellant, Lawton Limehouse, Sr., complies with Rule 211(b), SCACR.

May 12, 2016

Frank M. Cisa
Attorney for Appellant, Lawton Limehouse, Sr.

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PROOF OF SERVICE

I certify that I have served a copy of the Appellant's Final Brief by U.S. Mail to the Respondents' attorneys, James B. Hood, Esquire and Deborah H. Sheffield with Hood Law Firm at 172 Meeting Street Charleston, SC 29401 and Cherie K. Durand, Esquire, Hulsey Litigation Group, LLC at 68 Queen Street, Charleston, SC 29402.

May 13th, 2016

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