THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

Case No. 2011-CP-42-4538
Appellate Case No. 2014-000902

Tietex International Ltd, ... Respondent,

v.

Gary G. Harris,..... Appellant,

PETITION FOR REHEARING

The Court of Appeals filed its opinion in this matter on June 29, 2016. By Order dated July 22, 2016, the Court of Appeals extended the deadline to file a Petition for Rehearing until July 29, 2016. Appellant now petitions the Court pursuant to Rule 221, SCACR, for rehearing on the grounds that the Court overlooked or misapprehended the following points:

(1) The Court did not properly rely on McBride v. Sch. Dist. Of Greenville Cty., 389 S.C. 546, 698 S.E.2d 845 (Ct. App. 2010) for the proposition that the description of the defamatory statements was too vague to be evaluated. The statements at issue in McBride

were described as 1) public comments made by the District superintendent and 2) public comments attributed to unnamed teachers at the school. Id. at 559, 698 S.E.2d at 851. The evidence for this was "vague references to the local newscast concerning McBride's arrest...." Id. at 562, 698 S.E.2d at 853. In McBride there was not a sufficient description of the alleged slander for the Court to analyze. In contrast, Appellant has identified specific written documents (R. 680, R. 683, R. 685, and R. 687) which contain the actual written statements which appellant claims are defamatory. These claims are not too vague to be evaluated;

(2) The Court overlooked evidence that Appellant specifically identified defamatory writings;

(a) February 9, 2007, email (R. 680). This writing claims that appellant advised his supervisor, Wade Wallace, that "he was confused, disoriented, and could not function." Appellant testified that this email was defamatory and that email was a "farce." (R. 693 ll. 10-23). Appellant maintained that this statement was false and that Mr. Wallace had fabricated the claim that Appellant was emotionally unstable. (R. 703 ll. 19-23). Appellant also testified that this email "is not representative of what took place." (R. 706 ll. 19-24);

(b) March 5, 2007, memo (R. 683). This writing accused Appellant of becoming "emotional and overly vocal," "not honoring the chain of command," and harboring "negativity

over past grievances with management...." Appellant clearly testified that the statements were defamatory. (R. 694 ll. 9-16). Appellant was asked whether any of the statements were false and he testified that all of them were. (R. 711 l. 25 – R. 712 l. 5). Again, Appellant was clear that he believed Mr. Wallace was fabricating the statements in this memo – "I mean, just to be frank, I think he's making it up." (R. 714 ll. 8-13);

(c) June 18, 2007, memo (R. 685). This writing accused Appellant of being in confidence in his job performance: "Gary exercised poor judgment by making claims and commitments that he could not deliver," (R. 685) and "I can conclude that Gary did not conduct adequate scientific and numerical analysis of the first trial ... [and] this negligence and applying the proper scientific analysis is unacceptable in the work of a Sr. Research Chemist." (R. 686). Again, Appellant clearly testified that this memo was defamatory. (R. 694 ll. 17-22). He specifically testified that the content of this memo was "incorrect" and it was a "pretext memo" to justify terminating him. (R. 716 ll. 5-21); and

(d) July 18, 2007, memo (R. 687). This memo restates the defamatory allegations raised in the February email and the June memo. It also accuses him of various "poor work habits." Again, Appellant clearly testified that this memo was

defamatory (R. 695 ll. 1-3) and that Appellant "disagree[d] with what [Wallace] said about my performance." (R. 736 ll. 12-16);

(3) The Court misapprehended Appellant's position – Appellant did not waive challenging the court's findings with regard to the February 9, 2007 email. Appellant's Final Brief at page 15 specifically identifies "**at least** three memoranda constituting malicious personal attacks outside any privilege and impugning [Appellant's] professional standards and abilities. (emphasis added). Appellant continues in the Final Brief and references specific deposition pages which referred to the February 9, 2007, email. (R. 693, R. 703, and R. 706);

(4) In finding that qualified privilege applied, the Court overlooked Appllant's testimony cited above that the statements in the memoranda were fabricated or made up;

(5) The Court did not consider the fact that since the statement was libelous, common law presumption of malice applies;

(6) The Court misapprehended the law regarding the qualified privilege. According to McBride, the Defendant has the burden of proving the statement was made in good faith in order to claim the qualified privilege. Id. at 562, 698 S.E. 2d at 853;

(7) The Court overlooked evidence that original complaint (R. 61) included pre-termination defamatory statements and should have

been liberally construed this pleading to do "substantial justice" under Rule 8(f), SCRCP. The defamation cause of action specifically incorporates all previous allegations of the Complaint. (R. 68). Paragraph 25 of the Complaint specifically references pretextual reasons given to terminate Appellant. This language was incorporated into the defamation cause of action. Furthermore, the specific statements identified above allege Appellant's lack of confidence in his trade or profession. Paragraph 42 of the Complaint should be read to include all of the defamatory statements cited above;

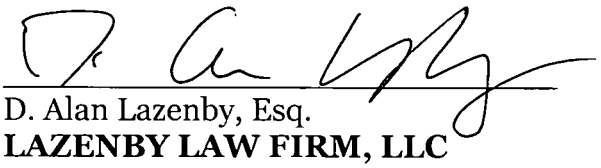
(8) The Court overlooked fact that the trial court ruled on statute of limitations issue at the August 30, 2013 hearing before Judge Frank Addy. Although Judge Addy's written opinion did not address the statute of limitations issue, Judge Addy orally ruled from the bench that the statute of limitations did not apply. Judge Addy expressly agreed with Appellant's argument that the defamation in this case was not a new claim, but simply additional evidence supporting the original defamation claim. (R. 588 ll. 10-21);

(9) The Court misapprehended Appellant's testimony regarding whether will that the original defamation complaint included the memos. It is clear in reading Appellant's testimony that he is testifying the February 9 email and the subsequent memoranda were not specifically referenced in the original Complaint. (R. 697-698). Furthermore, Appellant testified that the intent was to

include those memoranda, and if they were not included then it was because of an oversight on the part of his counsel. (R. 697 ll. 11-15).

For the reasons set forth above the Court misapplied the tolling provisions of § 1367(d); the result of which is to time bar Appellant's claims.

Respectfully submitted,



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July 29, 2016

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PROOF OF SERVICE

I, the undersigned, hereby certify the Appellant's Petition for Rehearing in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Fred Suggs, by sending to Ogletree Deakins Nash Smoak & Stewart PC, PO Box 2757, Greenville, SC 29602, on July 29, 2016.

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July 29, 2016

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July 29, 2016

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk of Court for Court Of Appeals
1220 Senate St
Columbia SC 29201

Re: ***Harris v. Tietex International Ltd.***
In the Court of Common Pleas for Spartanburg County
C.A. No: 2011-CP-42-4538
Appellate C.A. No: 2014-00902

Dear Ms. Kitchings:

I enclose herewith an original and seven copies of a Petition for Rehearing on behalf of Appellant and Proof of Service regarding same. I also enclose my firm check in the amount of $25.00 for the filing fee. Please file the original and send a clocked copy back with my courier. I appreciate your assistance in this regard.

Very truly yours,

D. Alan Lazenby
alan@lazenbylawfirm.com

DAL: je
Enclosures
cc: Fred Suggs, Esq.
Mr. Gary Harris (via email only)