

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE **RECEIVED**
 CASE NO. 2014-CP-10-6265

SFP 01 2016

SC Court of Appeals

James C. Owens

Bryan Crabtree, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered;
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This Order ends the case as to Defendant ADC Engineering, Incorporated.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

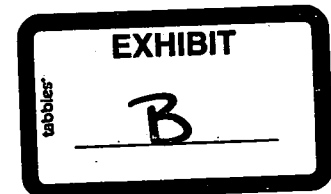
If applicable, describe the property, including tax map information and address, referenced in the order:
 N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge

2117
 Judge Code

6/22/16
 Date



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JAMES C. OWENS,
Plaintiff,

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING, INC.,
TYLER FLESCH, AND RED DRUM
CAPITAL GROUP, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-6265

**ORDER GRANTING DEFENDANT ADC
ENGINEERING, INCORPORATED'S
MOTION FOR SUMMARY JUDGMENT**

RECEIVED

SEP 01 2016

SC Court of Appeals

2016 JUN 22 PM 2:15
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This matter came before the Court for hearing on May 16, 2016, on Motion for Summary Judgment of Defendant ADC Engineering, Incorporated ("Defendant" or "ADC"). All parties were represented by counsel at the hearing. The Court fully considered the Motion presented, the Memorandum of Law in Support of the Motion, the Opposition submitted to the Motion, the evidence presented and the arguments of counsel. For the reasons discussed below, the Court grants Defendant ADC's Motion for Summary Judgment.

I. FINDINGS OF FACTS


ADC terminated Plaintiff James C. Owens' ("Plaintiff's" or "Owens'") employment on or about September 23, 2014, for misusing company equipment and time on personal activities to oppose construction of a parking garage on Shem Creek in Mt. Pleasant, South Carolina. ADC is an engineering firm that handles generally every aspect of engineering, predominantly on commercial projects. Owens was a construction administrator with the company for approximately ten years before his termination of employment.

gm

Owens' general work hours with ADC were 8:00 a.m. to 5:30 p.m., Monday through Thursday, and 8:00 a.m. to 12:00 p.m. on Friday. ADC provided him a cell phone, as well as a laptop computer that was hard-wired into a docking station at the office. The company's policy addressing use of this technology provides in part:

[A]ll employees should remember that electronic media and services provided by the company are company property and their purpose is to facilitate and support company business. . . . The employee should be aware that the firm might be required to produce e-mail messages if litigation develops. . . . Brief or incidental use of office technology for personal, non-business purposes is . . . acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company. . . . Failure to comply with these policies will result in discipline, up to and including termination of employment.

During the last year of Owens' employment, he was actively involved in opposition efforts regarding the construction of a parking garage structure being built on Shem Creek in Mt. Pleasant, South Carolina. ADC was the structural engineer for the parking garage building, having been hired by the architectural firm, Stubbs Muldrow Herin.

 Owens informed ADC of his opposition activities involving the Shem Creek parking garage in June of 2014. He contends that he did not know ADC was the engineer on the project but that he wanted to let ADC know of his activities as a courtesy. Owens had previously been involved in raising public concern over projects for clients of ADC without incident. According to Owens, ADC related his opposition to the Shem Creek parking garage project to his other opposition activities and instructed him to keep ADC out of the media. ADC did not object to Owens' actions, as long as he was acting on a private basis on his own time.

As part of his opposition to the parking garage, Owens set up a Saving Shem Creek Facebook page in March of April of 2014. He read posts on the page while employed at ADC, either at home or at the office. Owens confirmed numerous email communications concerning the Shem Creek parking garage project that occurred during the work day, during working hours

from equipment owned and provided by ADC. He also admitted to receiving assistance from another ADC employee with his personal opposition to the Shem Creek parking garage project, while the employee was being paid by ADC. Moreover, Owens sent a number of text messages from the phone issued to him by ADC during working hours when he was being paid by ADC pertaining to his personal endeavor. There is evidence, as well, that he attended meetings pertaining to the Shem Creek parking garage during working hours. According to Owens, if he had known ADC was the engineer on the parking garage project, he would have backed off on his opposition efforts, as it would have presented a conflict of interest.

On September 16, 2014, ADC met with Stubbs Muldrow Herrin and Tyler Flesch, a principal in the owner involved with the parking garage project, to discuss Mr. Flesch's concerns over Owens' opposition activities. After the meeting, ADC informed Stubbs Muldrow Herrin that it was not going to fire Owens. ADC subsequently received a letter from Stubbs Muldrow Herrin on or about September 18, 2014, terminating ADC from the Shem Creek project. At that time, ADC Engineering received an evidence preservation letter from the attorney for the developer of the Shem Creek project.


Owens also received a similar letter instructing him to preserve electronic evidence, which he forwarded to ADC. At least one of the partners at ADC expressed concerns then over whether Owens had been sending emails from company computers during office time.

Pursuant to a request from Owens, ADC met with him at the end of the day on Thursday, September 18, 2014, wherein Owens affirmed that he had used his work computer at ADC for matters associated with his opposition to the Shem Creek parking garage. On or about the same day, ADC had its IT specialist conduct an electronic search to preserve Owens' emails, in

conjunction with the electronic preservation letter. ADC also discovered Owens had used his cell phone for text messages related to the Shem Creek parking garage project.

On or about Friday, September 19, 2014, ADC decided to terminate Owens' employment as a result of his involvement of ADC, its time, resources and equipment in his personal pursuit against the parking garage project. Owens was out sick on Monday, September 22, 2014, such that his employment was terminated on September 23, 2014.

II. CONCLUSIONS OF LAW




Owens has asserted one cause of action against ADC for wrongful termination in violation of public policy. ADC has moved for summary judgment on the claim. Summary judgment is proper when the moving party demonstrates that there is no genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law. S.C.R.C.P. 56; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App. 2004). Because Owens cannot establish any genuine issue of material fact pertaining to his wrongful termination claim, ADC's Motion for Summary Judgment is granted.

South Carolina is an employment at-will state. See *Culler v. Blue Ridge Electric Co-op, Inc.*, 309 S.C. 243, 422 S.E.2d 91, 92 (S.C. 1992). Indeed, South Carolina has a strong policy favoring at-will employment. *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 335, 516 S.E.2d 923, 925 (1999). The general rule is that an employer may terminate an at-will employee at any time for any reason or for no reason at all. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011). Owens was an at-will employee who was terminated as a result of his use of ADC's resources during his pursuit of a personal endeavor that harmed the company. His termination does not give rise to a claim for wrongful termination in violation of

public policy.

In certain limited situations, the discharge of an at-will employee may give rise to a cause of action for wrongful termination when there is a violation of a clear mandate of public policy. *Id.* To constitute a claim for wrongful termination under this theory, the employee's termination must "contravene a clear mandate of public policy." *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213, 215 (S.C. 1985). This exception is a narrow one, to be very narrowly applied. *Id.*; see also *Taghivand v. Rite Aid Corp.*, 768 S.E.2d 385 (S.C. 2015) (noting the court exercises "restraint when undertaking the amorphous inquiry of what constitutes public policy.") Because Owens' termination did not violate any mandate of public policy, his claim against ADC is dismissed, as a matter of law.

 Owens contends that his termination violated S.C. Code Ann. § 16-7-560, which provides that: "It is unlawful for a person to . . . discharge a citizen from employment or occupation, . . . because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State." S.C. Code Ann. § 16-17-560. The statute does not provide for a private cause of action by Owens against ADC, and Owens' termination did not otherwise violate the statute.

Owens was terminated for using ADC's equipment to pursue a personal endeavor on company time, while being paid by ADC. ADC had permitted Owens previously to pursue a personal endeavor on his own time regarding opposition to a matter involving a client of ADC. ADC afforded Owens the same courtesy with regard to his opposition to the parking garage structure, notwithstanding that the architect on the project was a client of ADC.

ADC is an engineering firm that works predominantly on commercial matters, which necessarily involves development. Owens, as a ten-year employee, knew and understood his

employer's business. Indeed, Owens at least tacitly acknowledged ADC's development role generally, if not specifically, when he informed the company of his opposition to the Shem Creek parking garage as a courtesy. And, as before, ADC permitted him to pursue personal endeavors on his own time without involving ADC. Owens' disregard for those parameters, admittedly using ADC's equipment during company time to the detriment of ADC, resulted in his termination. Under these circumstances, his termination does not give rise to any claim for wrongful termination in violation of public policy.

Additionally, any activity by Owens opposing the Shem Creek parking garage project does not amount to protected political speech under the statute at issue. *See Vanderhoff v. John Deere Consumer Products, Inc.*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003)(finding that the displaying of a confederate flag decal on an employee's toolbox at work as an expression of his political view of the Confederate flag coming down from the state house is not political opinion that is covered by Section 16-17-560). Similar to the *Vanderhoff* court's determination, Owens' opposition to the Shem Creek parking garage "is not a political opinion or the exercise of any political right or privilege as that phrase is intended by this criminal statute because such expression is not protected as a matter of clear public policy either as set forth in section 16-17-560 or otherwise." *Id.* at 2.

Section 16-17-560 expressly protects only "political" opinion, and the statute does not define what is meant by this phrase. However, because Section 16-17-560 is a criminal statute, it must be construed narrowly. *Vanderhoff v. John Deere Consumer Products, Inc.*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003). Under the narrow construction of the statute, Owens' opposition to the construction of a parking garage structure on Shem Creek does not constitute protected "political" speech.

This Court agrees with the court in *Vanderhoff*, which further defined what speech was to be covered by the statute at issue:

Further, the available case law suggests the state court would not construe the phrase to extend to all opinion and expression which, if a matter of public concern, may be protected under the First Amendment of the United States Constitution or under Article I, section 2, of the Constitution of the State of South Carolina. *Rather, this court concludes that the political opinion and expression covered by section 16-17-560 extends only to matters directly related to the executive, legislative, and administrative branches of Government, such as political party affiliation, political campaign contributions, and the right to vote.*

Id. (emphasis added)(citing *Culler v. Blue Ridge Elec. Coop., Inc.*, 422 S.E.2d 91, 92-93 (S.C.1992) (finding that if plaintiff was discharged "because he refused to contribute to a political action fund [supported by his employer], he would have a cause of action under *Ludwick* and ... [section] 16-17-560"). In that case, the court found that to hold that the plaintiff's actions constituted protected political speech would allow an infinite number of social issues to fall within the ambit of public debate. *Id.*

Similarly, Owens' opposition to the construction of a parking garage on Shem Creek does not constitute "political" speech governed under the statute. His actions do not pertain to political party affiliation, political campaign contributions or the right to vote. They simply are not actions that fall under the purview of Section 16-17-560. As in the *Vanderhoff* case, "[s]uch expression or belief may be a matter of public concern generally protected under the United States and South Carolina Constitutions. It is not, however, a 'political' opinion or the exercise of a political right or privilege within contemplation of section 16-17-560." *See id.* at *3.

Indeed, it would be illogical to suggest that an employer, who depends on business to generate revenue to pay its employees, would somehow be prohibited from terminating an employee who actively opposed a specific project on which the employer was working, particularly where, as here, the employee used the employer's equipment and time as part of his

efforts. Moreover, Owens, as an employee, would have access to inside information pertaining to the very project he was opposing. Even Owens acknowledged that ADC's role as the engineer on the parking garage project he opposed presented a conflict of interest. Owens' actions in opposing a project on which his employer was working, regardless of whether or when he knew his employer was involved, simply does not amount to any political speech protected under section 16-17-560. Accordingly, Owens' claim for wrongful termination in violation of public policy fails, as a matter of law.

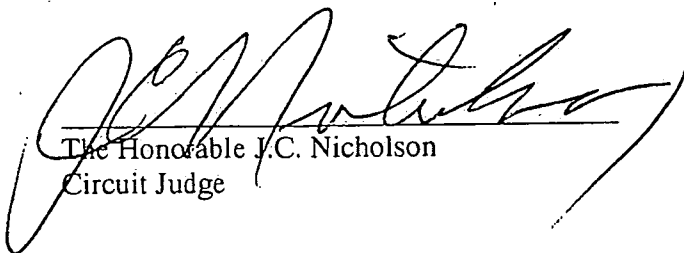
III. FINAL ORDER AND JUDGMENT

This Court **GRANTS** Defendant ADC Engineering's Motion for Summary Judgment such that Plaintiff's claim against Defendant ADC Engineering is **DISMISSED** in its entirety. Because there is no just reason for delay, it is hereby **ORDERED, ADJUDGED AND DECREED** that this is a **FINAL JUDGMENT** as a matter of law as to Plaintiff's claim for wrongful termination against ADC Engineering, Incorporated, such that final judgment is hereby entered.

AND IT IS SO ORDERED.

6/22, 2016

Charleston, South Carolina


The Honorable J.C. Nicholson
Circuit Judge