

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-40-4666  
Appellate Case No. 2016-001198

**RECEIVED**  
DEC 22 2016  
SC Court of Appeals

Kim Murphy.....Appellant,

v.

Richland-Lexington School District 5 Board of Trustees, Bobby Merle Bowers, and Robert Gantt, Defendants

Of whom Bobby Merle Bowers and Robert Gantt are the Respondents.....Respondents.

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**INITIAL REPLY BRIEF OF APPELLANT  
TO INITIAL BRIEF OF RESPONDENT ROBERT GANTT**

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## ARGUMENT

This case involves the unprecedented mid-term removal of Appellant “Murphy” from the Lexington-Richland Five School Board of Trustees. Murphy asserts that she, a political opponent of Respondent Gantt, was wrongfully removed by Gantt, in conjunction with Respondent Bowers, as a part of an actionable civil conspiracy. Murphy also asserts that she was publically defamed by Respondent Gantt. The Circuit Court granted summary judgment to Gantt and Bowers on these claims, which Murphy timely appealed. Gantt filed a response brief to Murphy’s initial brief on December 14, 2016. There Gantt argues that Murphy did not establish the elements of civil conspiracy against Gantt (Respondent’s Brief pp. 13-24,) and that there is no evidence, with respect to defamation, that Gant made a false statement about Murphy, and that Gantt, as a public figure, did not make statements about Murphy with a reckless disregard to the truth or with malice. (Respondent’s Brief pp. 24-36). Murphy respectfully replies in opposition, and asks this Court to remand this case to trial for the reasons that follow.

### I. MURPHY HAS AN ACTIONABLE CIVIL CONSPIRACY CLAIM AGAINST GANTT

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. *McMillan v. Oconee Mem’l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). Civil conspiracy consists of three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 387 S.E.3d 91 (Ct. App. 1989).

“To establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Pridgen v. Ward*, 391 S.C. 238, 705 S.E.2d 58 (Ct.

App. 2010) (citing *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005)). A civil conspiracy claim can be shown where a plaintiff pleads that she has been maliciously blacklisted. *Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987). "Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). "Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable by direct evidence." *Id.* (quoting *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)). "Moreover, the field of admissibility of evidence is broadened in proof of conspiracy." *Island Car Wash, Inc.*, 292 S.C. at 601 (citing *Hall v. Walters*, 226 S.C. 430, 85 S.E. (2d) 729 (1955)).

**A. There is sufficient evidence to demonstrate there was a combination of two or more people.**

Respondent Gantt argues that there is insufficient evidence that he and Respondent Bowers combined to harm Murphy. This argument, in light of the record evidence and broadened scope of review applicable to civil conspiracy claims, is unpersuasive. *See, Island Car Wash, Inc.*, 358 S.E.2d at 153. Civil conspiracies between the employees of a principal and an agent are recognized in South Carolina where the employees and agents act outside of the scope of their employment. *See, Pridgen* at 246, 705 S.E.2d at 63; *see also, Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986) (*holding*, "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment"). *Pridgen* envisions that conspirators are not protected from liability simply due to official designation if the conduct they engaged in was outside of their ordinary scope of authority. Such is the case here.

Gantt and Bowers together brought about the mid-term removal of Murphy from the Board by attempting to show that she did not live in Richland County. (Pl.'s Mem. in Opp'n, Ex. 23 at 32; Ex. 2 at 65 & 70; Ex. 20 at 38). The procedures performed by Gantt and Bowers did not follow established law. *See*, S.C. Code Ann. §§ 27-2-105 (1976), 27-2-105 (2014). Thus their actions together, outside of the realm of their authority as a matter of law, are reasonably inferred to raise at least a triable inference of an actionable combination to harm. The timing of the Individual Respondents' actions bolsters this inference. Gantt and Bowers were previously aware of an alleged residency issue with respect to Murphy's residence; as early as 2004, Respondents were told that Murphy may not live in Richland County, but chose not to challenge her residency through several election cycles. (Pl.'s Mem. In Opp'n, Ex 23: Bowers Dep. at 22; Pl.'s Mem. In Opp'n, Ex. 2 at 47-48). Furthermore, Gantt and Bowers did not challenge Murphy's residency via the appropriate channels. Gloria Wilson, a former chairman of the Richland County Board of Voter Registration, testified that the most appropriate course of conduct would have been for Gantt to have challenged Murphy's fitness to run for office through the County Board of Voter Registration. (Pl.'s Mem. in Opp'n, Ex. 4 at 42). Instead, in 2012, after Murphy had become a staunch political opponent to Respondent Gantt, Gantt contacted Bowers and they worked together to remove Murphy from her elected position on the basis of residency without involving the appropriate parties (Richland and Lexington Counties) or following the legal procedures for residency determination in the case of a county boundary dispute. S.C. Code Ann. § 27-2-105 (1976), (2014), *and* (Pl.'s Mem. in Opp'n, Ex. 2 at 47-48).

Removal of a board member in the middle of their term, based on residency, has not occurred before, and the procedure pursued by Gantt and Bowers was without a basis in the law. Gantt claims that he and Bowers' conduct was "the proper exercise of their legitimate public

positions.” (Respondent’s Brief p. 20). However, their failure to follow the law in this endeavor raises an actionable inference of conspiracy. Gantt’s brief, on this point, focuses on the amount of time Gantt and Bowers knew each other, and for what reasons they met to determine that they were acting within their official capacities. (Respondent’s Brief pp. 14-17). However, the amount of time the Respondents knew each other is not remotely dispositive to the elements of a civil conspiracy and the above circumstantial and direct evidence was enough to overcome summary judgment.

**B. There is sufficient evidence to demonstrate Bowers and Gantt acted in concert to harm Murphy.**

Respondent Gantt argues that there is insufficient evidence to show that he and Bowers bore the requisite purpose of harming Murphy. This argument is undermined by the pretextual nature of Gantt’s stated basis for taking action against Murphy. Respondent Gantt stated in his deposition that his motivations in requesting a review of Murphy’s residency were: that he was acting in the best interest of the public, by protecting the constituents of the District, and that he was following the law. (Pl.’s Mem. in Opp’n, Ex. 38 and Ex. 43: Gantt Public Statement, 3/19/13). Gantt’s proffered motivations are questionable when one considers that he knew of an issue with Murphy’s alleged residency status for nearly a decade. If Gantt was acting in the best interest of the public, then he would have immediately investigated the claim that she lived in another county. Gantt should have looked into the matter in 2004 when Murphy was running for the Board, or in 2010 when she ran again, but he waited eight years until he had a purpose to use this information to injure Murphy. (Pl.’s Mem. in Opp’n, Ex. 4 at 42). Gantt, after taking action on the residency issues raised, refused to allow Murphy to finish her term – despite the public requests that she be allowed to fulfill her term – and failed to fill her vacant seat. (Pl.’s Mem. in Opp’n, Ex. 38 and Ex. 43: Gantt Public Statement, 3/19/13). Gantt’s actions in “protecting the

constituents” left them unrepresented and without a voice on the Board for an extended period of time. (Pl.’s Mem. in Opp’n, Ex. 38 and Ex. 43: Gantt Public Statement, 3/19/13). The pretextual nature of Gantt’s asserted motivations for taking action against Murphy indicates that he indeed intended to harm her.

Furthermore, the timing of Gantt’s notification to Murphy and Bowers’ subsequent communications to both Lexington and Richland Counties are subject to suspicion. Gantt and Bowers decided against notifying Murphy of their investigation; despite her being arguably the best source for determining her county of residence. (Pl.’s Mem. in Opp’n, Ex. 2 at 70). Gantt did, however, inform Watson, another Board member, of the investigation into Murphy’s property ex parte. (Pl.’s Mem. in Opp’n, Ex. 2 at 55). Gantt’s inclusion of Watson, but exclusion of Murphy, shows Gantt’s motive was to leave Murphy in the dark and unable to defend herself. Gantt met, planned, and worked with Bowers and others for nearly three months before notifying Murphy of their investigation into her residency. (Pl.’s Mem. in Opp’n, Ex. 2 at 70). It is reasonably inferable that the investigation into Murphy’s residence was concealed from her to prevent her from taking action to defend herself. After acquiring the information necessary to call for Murphy’s removal, Gantt publically ambushed her with the information during a uniquely crowded Board meeting and then refused to allow Murphy to speak or make any rebuttal statements. (Pl.’s Mem. in Opp’n, Ex. 33). Gantt’s actions silenced Murphy, which he would not have done if his motive had truly been to protect the public.

Gantt requested only that Bowers determine Murphy’s residency issue; however, Bowers went beyond that request. Bowers’ employees contacted Lexington County regarding Murphy’s removal from the voter and tax rolls from Richland County without consulting Murphy, although he admittedly did not have authority to do so. (Pl.’s Mem. in Opp’n, Ex. 20 at 17).

Respondent's brief claims that Gantt and Bowers were not trying to harm Murphy, but that they were simply performing their statutory duties. (Respondent's Brief p. 22). However, it was not until a 2014 bill gave SCB&CB complete authority over residential county border issues through an appellate-like process, which may, arguably, have justified Respondents' actions. S.C. Code Ann. 27-2-105 (2014)<sup>1</sup>. William Roberts, Bowers' employee, testified that along with Murphy's property, several other properties were flagged as being registered to vote in the wrong county. (Pl.'s Mem. in Opp'n, Ex. 20 at 16). However, no one under Bower's authority or at SCB&CB took action to address these additional flagged properties; Murphy's property was, for all intents and purposes, singled out. (Pl.'s Mem. in Opp'n, Ex. 20 at 38-42). Bowers did not have a specific reason to only look into Murphy's property, which alludes to the conspiracy between he and Gantt. Gantt and Roberts respective testimony consistently agrees that they met before the formal December 20, 2012 request to discuss Murphy's residence and its investigation. (Pl.'s Mem. in Opp'n, Ex. 23 at 32; Ex. 2 at 65; Ex. 20 at 38). Bowers and Gantt met with District attorneys and others to discuss their plans. *Id.* Gantt, Bowers, and others, discussed, devised, and determined their course of action well before any formal action was taken or notice given to Murphy. *Id.*

The methods used by Bowers infer a combination to harm because they were not proper. Bowers stated he and his staff relied on three sources to determine that Murphy was not a resident of Richland County. (Pl.'s Mem. in Opp'n, Ex. 27: Ex. 5 to Bowers Dep). Bowers, Roberts, and John Alan Zupan (another South Carolina Geodetic Survey ("SCGS") employee reporting to Bowers) each admitted that they did not perform a survey, visit Murphy's property, or examine any physical markers on or around the boundary in dispute. (Pl.'s Mem. in Opp'n,

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<sup>1</sup> A review of the 2014 amendments to S.C. Code Ann. § 27-2-105 indicates, that even if this statute were in effect at the time of the residency proceedings undertaken by Gantt and Bowers the statute still was not followed.

Ex. 20 at 33). Zupan testified that he did not locate any ground evidence such as the stake viewed by Ronnie L. Tyler, Plaintiff's expert. (Pl.'s Mem. in Opp'n, Ex. 24 at 13-14). Tyler testified that their actions deviated from standard surveying practice and procedure. (Pl.'s Mem. in Opp'n, Ex. 31). Tyler concluded that SCB&CB's finding regarding Murphy's property was incorrect because: it did not utilize and rely upon recorded surveys; it failed to confirm the location of the statutorily defined "Rocky Ford;" it failed to inspect ground evidence on or near Murphy's property; and there were discrepancies in the maps they used to support their findings. (Pl.'s Mem. in Opp'n, Ex. 30).

The Supreme Court of South Carolina held in *Moore* that conspiracy may be inferred by parties' relationships and actions. *Moore*, at 228, 644 S.E.2d at 750. Applying *Moore*, a conspiracy can be inferred because (1) Gantt chose to seek the help from Bowers – a friend – rather than file an appeal with the Election Commission, which was required by law, (S.C. Code Ann. § 7-5-230); (2) Gantt and Bowers met in advance to discuss their investigation before a formal request letter was sent; (3) Bowers performed a rudimentary investigation into Murphy's residence; and (4) Bowers provided his unsupported findings to Gantt, so he could use the same as grounds to remove Murphy from the Board. *Pridgen* does not require anything more than circumstantial evidence to be produced to establish civil conspiracy. *Pridgen* at 208, 387 S.E.3d at 95. Based on *Pridgen*, Gantt's motivation for conspiring with Bowers to remove Murphy can reasonably be inferred by his conduct.

**C. There is sufficient evidence to demonstrate that Bowers and Gantt caused Appellant special damages.**

Respondent Gantt last argues, with respect to civil conspiracy, that there is insufficient evidence of special damages. The third element of a proper civil conspiracy requires a plaintiff to show special damages. *Hackworth v. Graywood at Hammett, LLC*, 358 S.C. 110, 682 S.E.2d 871

(Ct. App. 2009). “Special damages must be alleged in the complaint to avoid surprise to the other party.” *Allegro, Inc. v. Scully*, No. 2014-002055, 2016 WL 4474336 \*4 (S.C. Aug. 24, 2016) (citing, *Sheek v. Lee*, 289 S.C. 327, 329, 345 S.E.2d 496, 497 (1986)). The primary consideration with respect to special damages, prevention of a double recovery, requires that damages for a conspiracy be distinct from those sought on a plaintiff’s other claims. *See, Allegro, Inc.*, 2016 WL 4474336, at \*6 (Pleicones, *dissenting*) (“In *Todd*, the Court created a new rule of pleading for civil conspiracy claims, holding that the plaintiff in a civil conspiracy action must allege damages different from those alleged in any other of her tort causes of action.”). Furthermore, the cost of prosecuting an action is a cognizable special damage under South Carolina Law. *Benedict College v. Nat’l Credit Sys., Inc.*, 400 S.C. 538, 735 S.E.2d 518 (2012).

Murphy alleged that she suffered reputational harm, diminished likelihood of re-election, humiliation, embarrassment, and pain and suffering as a result of her defamation claim. (Complaint ¶ 25). Murphy alleged that she was blacklisted, ostracized, suffered economic loss from her loss of position on the Board, reputational harm, pain and suffering, and incurred costs and fees from prosecuting this action as a the result of her civil conspiracy claim. (Complaint ¶ 31). Murphy’s inability to be re-elected is a very particularized special damage in this case. Now, Murphy is not considered a citizen of either Lexington or Richland County at law and is thus singularly disenfranchised from seeking local public service. Murphy, has, therefore, been effectively blacklisted from her Board position.

Murphy’s civil conspiracy damages are distinct in substance and form from her defamation damages. *See, Grady v. Spartanburg Sch. Dist. Seven et. al.*, No. 7:13-CV-02020-GRA, 2014 WL 1159406 \*14 (D.S.C. Mar. 21, 2014) (“Plaintiff has alleged that these emotional damages came from being ostracized from her peers, distinct from the emotional damages of

losing her job”); *Austin v. Torrington Co.*, 810 F.2d 416, 421 (4th Cir. 1987) (“Rather, to effectuate a recovery under a blacklisting theory, the plaintiff must prove that there was a blacklist, a combination of employers who exchanged the information contained on the blacklist, and a willful or malicious use of that blacklist by one or more of the members of the combination, with resultant injury to the plaintiff.”) (interpreting South Carolina Law); and, *Benedict Coll. v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 548-49, 735 S.E.2d 518, 523 (Ct. App. 2012) (“The civil conspiracy claim then explicitly incorporates that assertion and limits the special damages it seeks to ‘the costs and attorney's fees associated with the defense of [the College]'s allegations.’ . . . NCS does not assert amorphous or unlimited grounds for special damages. The language provides sufficient specificity . . . [as to the] alleged special damages are being sought.”).

Gantt’s brief argued that Murphy lacked special damages separate and apart from her damages from her defamation claim. (Respondent’s Brief pp. 22-24). Even if Murphy’s damages were duplicative, the special damages rule would not be applicable to Respondent Bowers, and is questionable in its applicability entirety. *See, Allegro, Inc.*, fn. 6. Chief Justice Pleicones, dissenting in the Court’s August 24, 2016 decision in *Allegro*, reasoned “even if the Court were to preserve the *Todd* rule, the sole claim asserted against petitioner Corbin was civil conspiracy, and thus as to him the ‘special damages’ rule created by *Todd* [*v. S.C. Farm Bureau Mut. Ins. Co.*,] does not apply.” Notably Chief Justice Pleicones dissent in *Allegro* (joined in concurrence by Justice Beatty) concerned whether or not special damages should even be an element in the civil conspiracy analysis; the *Allegro* majority did not reject Pleicones’ position on this point, but observed that *Allegro*, a 12 year old case, was not the appropriate vehicle to reverse *Todd*. *Id.* at

fn. 3. However here, this Court need not address the propriety of the special damages element, as Murphy properly and sufficiently pled special damages.

Murphy has presented sufficient evidence that Bowers and Gantt acted together with personal motivation to harm her, and that she suffered special damages as a result of the same. The Circuit Court's holding to the contrary is reversible.

## II. THERE IS SUFFICIENT EVIDENCE THAT GANTT PER SE DEFAMED MURPHY.

Respondent Gantt argues that there is insufficient evidence of a defamatory statement or action by him against Murphy, and that there is insufficient evidence of the requisite malice or recklessness for a public official to be held liable for defamation. Appellant replies to those arguments as follows.

### A. Gantt made false statements about Murphy

A false or defamatory statement must have a defamatory meaning, which can be expressed directly through signs, pictures, etc. and indirectly by innuendo, insinuation, conduct or action. *Tyler v. Macks Stores of South Carolina*, 275 S.C. 456, 272 S.E.2d 633 (1980). A defamatory statement impeaches the honesty, integrity or reputation of a person; subjects her to public hatred, contempt, or ridicule; and injures a person's business or occupation. *See Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Smith v Bradstreet Co.* 63 S.C. 525, 41 S.E. 763 (1902). Extrinsic circumstances can render a statement defamatory when it would not ordinarily be interpreted as such. *Costas v Florence Printing Co.*, 237 S.C. 655, 118 S.E.2d 696 (1961); *see also Mains v. K-Mart Corp.*, 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988). "Where words used are capable of different meanings, one of which is slanderous, the jury must ascertain [the] sense in which they were published and decide which meaning was, in fact, conveyed." *Timmons v. News & Press, Inc.*, 232 S.C. 639, 103 S.E.2d 277 (1958).

A statement's falsity is presumed in common law, but under the First Amendment (such as where the plaintiff is a public official), the plaintiff carries the burden of proving falsity. *See Tharp v. Media Gen., Inc.*, 987 F.Supp. 2d 673 (D.S.C. 2013); *Parker v. Evening Post Publishing Comp.*, 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994). The plaintiff may do so by offering evidence that the defendant omitted material information. *Id.*

The South Carolina Supreme Court has held that an actionable defamatory insinuation may be made by action or conduct, not just by words. *Tyler v. Macks Stores of South Carolina*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980). Defamation can be actionable when it is indirect. *See Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *see also Tyler* at 458, 272 S.E.2d at 634. "To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain." *Tyler* at 458, 272 S.E.2d at 634 (citing *Timmons v. News and Press, Inc.*, 232 S.C. 639, 644, 103 S.E.2d 277, 280 (1958)).

The statement that Murphy is a resident of Lexington County is not true, and amounts to a direct insinuation that Murphy falsified her qualifications to be a public servant. She is still to this day – three years later – a resident of Richland County. (Pl.'s Mem. in Opp'n, Ex. 25 at 42; *see also Ex. 25, supra* at fn 9). Both counties treat Murphy as a resident of Richland County, and neither County has taken action to switch her and her family to Lexington's tax or voter rolls. *Id.* It was false and defamatory for Gantt to suggest that Murphy knew that she did not live in Richland County; that she falsified her candidacy application and oath; and that she should have resigned in the middle of her elected term. (Pl.'s Mem. in Opp'n, Ex. 33).

Gantt insinuated that Murphy's refusal to resign was wrongful conduct when he frequently insisted that Murphy should "do the right thing" and step down from the Board. (Pl.'s

Mem. in Opp'n, Ex. 33). Gantt prevented Murphy from defending herself during the highly attended Board meeting in which he revealed her residency issue in open session, which permitted the defamatory insinuation to ring aloud to the constituents that were present and serves as evidence of falsity. (Pl.'s Mem. in Opp'n, Ex. 2 at 70 and 74). Gantt permitted Board members and the public – including students – to ridicule, humiliate, and single out Murphy during Board meetings. (Pl.'s Mem. in Opp'n, Ex. 13). Gantt permitted Board members to make motions which publically, officially, and formally admonished and condemned Murphy. (Pl.'s Mem. in Opp'n, Ex. 2 at 92-93).

Throughout her tenure on the Board, the Board and Gantt publically published false statements concerning Murphy. (Pl.'s Mem. in Opp'n, Ex. 33). The Board and Gantt published that the District won the CHS lawsuit on a marquee located outside Murphy's children school after Murphy brought a lawsuit against Chapin High School to halt a large renovation project. (Pl.'s Mem. in Opp'n, Ex. 2 at 42). Gantt was not aware to any other lawsuit pending at the time of the marquee posting, thus, District constituents reading the sign were aware that the lawsuit referenced was Murphy's CHS appeal. *Id.* at 43. It was hardly a secret among the community that this message was displayed to spite Murphy and cause her unnecessary embarrassment and humiliation. The District also posted on its website limited and one-sided information about lawsuits involving Murphy. *Id.* All such statements and actions harmed Murphy's integrity and reputation. These statements and actions subjected her to public hatred, contempt, and ridicule, so much so that Murphy believes that she will never be re-elected to any seat – whether Richland or Lexington – on the Board.

The conduct of Gantt is actionable *per se* defamation. In *Eubanks v. Smith*, the Supreme Court of South Carolina held that a defamatory statement impeaches the honesty, integrity or

reputation of a person; subjects her to public hatred, contempt, or ridicule; and injures a person's business or occupation. 292 S.C. 57, 354 S.E.2d 898 (1987). Applying *Eubanks*, Gantt's public statements regarding Murphy's residence and suggestion that she knowingly ran under the wrong county are defamatory statements. Applying *Parrish v. Allison*, regarding the innate allegation that Murphy falsified her application and oath of office and *Woodward v. South Carolina Farm Bureau Ins. Co.*, regarding Murphy's fitness for office, Gantt's statements are *per se* defamatory. *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007) (impugning one as a criminal is *per se* defamatory); *Woodward v. S.C. Farm Bureau Ins. Co.*, 277 S.C. 29, 282 S.E.2d 599 (1981) (challenging one's professional fitness is *per se* defamation). Gantt's statements impeached Murphy's honesty, caused the public to question her integrity, subjected her to be ridiculed by the public, and resulted in a loss of income. Even if Gantt's statements are not found to be defamatory under *Eubanks*, they would still be considered defamatory under *Tyler*. The Supreme Court of South Carolina held in *Tyler* that indirect actions can qualify as defamation, thus the false claims are required to be made in a direct, public manner, but that false insinuations made with malice qualifies as defamation. *Tyler* at 458, 272 S.E.2d at 634. Based on *Tyler*, Gantt's false declaration that Murphy was a Lexington County resident and his insinuation that Murphy ran knowing the same qualifies as defamation because they were both false and made in a context which implies malice.

Murphy has presented sufficient evidence that Gantt made false statements about her, and his accusations were *per se* defamatory.

**B. Gantt, as a public figure, made statements with reckless disregard to the truth and malice.**

A defendant acting in reckless disregard for the truth has a "high degree of awareness of . . . probable falsity." *Erickson* at 477, 629 S.E.2d at 671. If one fails to investigate the truth of

material when “there are obvious reasons to doubt the veracity of the informant,” then one is recklessly disregarding the truth. *Id.* Constitutional actual malice is a statement “made with knowledge that it was false or with reckless disregard of whether it was true or false.” *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct 710 (1964). To find actual malice, “the court must use a subjective standard to test the ‘publisher’s good faith belief of the truth of his or her statements.’” *Anderson* at 595, 619 S.E.2d at 431.

Gantt announced to the public in a Board meeting that Murphy was not a Richland County resident before a proper investigation in the boundary line required by law was conducted. (Pl.’s Mem. in Opp’n, Ex. 33). Stewart Mungo, Gantt’s source on this residency issue, did not provide Gantt any reasons as to why he believed Murphy lived in Lexington County. (Pl.’s Mem. in Opp’n, Ex. 2 at 28). Under *Erickson*, Gantt acted with reckless disregard to the truth because nothing other than word of mouth supported his initial assertions, which supports a high degree of awareness of probably falsity. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006). The statement was a rumor that Gantt took at face value, and he failed to investigate the veracity of Mungo’s claim. Gantt took Mungo’s statement and went to Bowers, who gave him an unsupported basis for removing Murphy. Applying *Sullivan*, Gantt’s reckless disregard of his statement’s truthfulness proves constitutional actual malice. *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct 710 (1964).

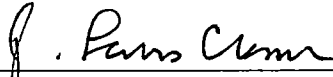
Murphy has demonstrated that Gantt acted with constitutional actual malice in stating and publishing false statements about her.

#### CONCLUSION

Appellant respectfully replies to the Respondent’s brief as set forth above and asks this Honorable Court to Reverse the holding of the Circuit Court, and Remand this case for trial.

*Respectfully Submitted,*

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December 21, 2016

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DEC 22 2016

SC Court of Appeals

Doyet A. Early, III, Circuit Court Judge

Case No. 2014-CP-40-4666  
**Appellate Case No. 2016-001198**

Kim Murphy.....Appellant,

v.

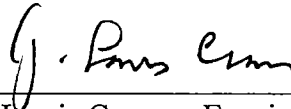
Richland-Lexington School District 5 Board of Trustees, Bobby Merle Bowers, and Robert Gantt, Defendants

Of whom Bobby Merle Bowers and Robert Gantt are the Respondents.....Respondents.

**Certificate of Counsel**

I hereby certify, as counsel of record in the above-captioned case, that the Initial Reply Brief submitted herewith contains no matter which is irrelevant to the appeal as required by Rule 208.

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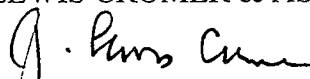
Of whom Bobby Merle Bowers and Robert Gantt are the Respondents.....Respondents.

**PROOF OF SERVICE**

I certify that I, the undersigned employee of J. Lewis Cromer & Associates, L.L.C., caused to have served Appellant’s Initial Reply Brief on Counsel for Respondents by depositing a copy of it in the United States Mail, postage prepaid, on December 22, 2016, addressed to Michael H. Montgomery, Esq., P.O. Box 11886, Columbia, SC 29211.

(SIGNATURE BLOCK ON NEXT PAGE)

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**SC Court of Appeals**

December 22, 2016

**Via Hand Delivery**

Honorable Jenny Abbott Kitchings  
Clerk of Court  
S.C. Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: *Kim Murphy v. Richland-Lexington School District 5 Board of Trustees, et al.***  
***Appellate Case No.: 2016-001198***

Dear Ms. Kitchings:

Enclosed please find the original and two (2) copies of the Reply Brief of Appellant. Also, enclosed are the original and one (1) copy of the Proof of Service and the Certificate of Counsel. Please file the originals and return the clocked copies to our courier. By copy of this letter, I am serving counsel of record with a copy of same.

Should you have any questions and/or concerns, please feel free to call us. Thank you in advance for your assistance in this matter.

With kind regards, I remain

Sincerely,



Elizabeth Bowen  
Law Clerk

/emb  
Enclosures

cc: Patrick J. Frawley, Esq.  
David L. Morrison, Esq.  
Michael H. Montgomery, Esq.  
Kim Murphy