

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

**RECEIVED**

APR 21 2017

SC Court of Appeals

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Civil Action No. 2016-CP-40-07353  
Appellate Case No. 2017-000134

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Richardson Construction Company, Inc. ....Appellant  
v.

Richland County, a political subdivision, and  
McClam & Associates, Inc. .... Respondents

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**INITIAL BRIEF OF APPELLANT**

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April 20, 2017

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**STATEMENT OF ISSUES ON APPEAL**

1. **Whether the trial court erred in holding that Richardson Construction Company, Inc. would not have a likelihood of success on the merits in its procurement protest and appeal before the Richland County Procurement Review Panel?**
2. **Whether the trial court erred in finding RCC had an adequate remedy at law?**
3. **Whether the trial court erred in requiring Richardson Construction Company, Inc. to overcome a heightened burden for obtaining a temporary injunction against a public entity?**
4. **Whether the trial court erred in holding that RCC admitted its bid was nonresponsive?**

## STATEMENT OF THE CASE

This matter arises out of Richland County's issuance of an invitation to bid on a project to construct an extension of Shop Road. Three bidders submitted bids: Richardson Construction Company, Inc. ("RCC"), C.R. Jackson, Inc. ("Jackson"), and McClam & Associates, Inc.'s ("McClam"). (Compl. ¶ 11.) Contrary to the best interest of Richland County, Richland County Council voted to award the contract to McClam and set December 18, 2016, as the date to execute the contract with McClam. (Notice of Intent to Award p. 1.) RCC filed this lawsuit on December 15, 2016, requesting a temporary restraining order, temporary injunction, and mandamus. (Compl.). The basis for RCC seeking the temporary injunction was to postpone Richland County signing the contract with McClam until RCC's procurement protest and appeal could be heard by the Richland County Procurement Review Panel. (Compl. ¶¶ 97-105.) On December 16, 2016, at the hearing on RCC's request for restraining order, the parties agreed that Richland County would not sign a contract with McClam until RCC's request for a temporary injunction could be heard. (Or., filed Dec. 16, 2016.) RCC's request for a temporary injunction was heard by the trial court on December 21, 2016. The trial court denied RCC's request. (Or., ¶ dated Dec. 22, 2016.) This appeal followed.

## STATEMENT OF THE FACTS

On July 20, 2016, Richland County advertised for bids on the contract for construction of the Phase 1 extension of Shop Road ("Shop Road Project"). (Compl. ¶ 6.) When the bids were opened on September 14, 2016, only three bidders had submitted bids. Those bids were as follows: RCC submitted a bid of \$21,666,330.02, C.R. Jackson, Inc. ("Jackson") submitted a bid of \$22,788,344.33, and McClam submitted a bid of \$24,539,282.95. (Compl. ¶ 11.) RCC's bid was \$2.87 million lower than McClam's bid.

One goal of the Shop Road Project was to have Disadvantaged Business Enterprise ("DBE") and Small Local Business Enterprise ("SLBE") participation at 7% and 4.37%, respectively. (Compl. ¶ 14.) McClam identified Taylor Brothers Construction Company, Inc. ("Taylor Brothers") as their SLBE subcontractor and also as a DBE subcontractor. (McClam bid submission pp. 38, 40.) McClam proposed to direct to \$1.8 million in work to Taylor Brothers, which would be used duplicatively by McClam to achieve both its DBE and SLBE goals. (Compl. ¶ 17.) In contrast, RCC proposed to direct \$1.7 million (5.5% of RCC's total) in work to DBE subcontractors and \$1.187 million in work to its SLBE subcontractors. (RCC bid submission pp. 38, 40.) Thus, McClam's bid would direct less than \$1.8 million dollars to the DBE/SLBE community compared to the almost \$2.9 million dollars that RCC would direct to the DBE/SLBE community. (Am. Compl. ¶ 18.)

The Richland County Penny Tax Program Development Team ("PDT") initially reviewed the bids and sought to make a recommendation to the Richland County Council. The PDT's recommendation was contained in a letter from Dale Collier of the PDT to Rob Perry, the Richland County Director of Transportation, dated October 11, 2016. (Letter from Collier to Perry, dated Oct. 11, 2016.) The PDT was of the opinion that RCC's bid was unresponsive

because of RCC listed LAD, Inc. as its SLBE subcontractor. (Letter from Joseph Richardson to PDT, dated Sept. 19, 2016.)

The day after bid opening, the PDT staff contacted RCC because LAD, Inc. was not a certified SLBE contractor. (Compl. 24.) Five days after the bid opening, RCC met with PDT staff and explained that the listing of LAD, Inc. as its SLBE contractor was inadvertent and that the correct SLBE contractor was Sharpe's Contracting Services, LLC. (Compl. ¶ 25.) At that meeting, RCC provided the PDT with the actual quote from Sharpe's Contracting Services, LLC that RCC had used to prepare its bid. (Compl. ¶ 26; letter from Joseph Richardson to PDT, dated Sept. 19, 2016; Aff. of Bill Sharpe.)

As can also be seen from Dale Collier's October 11, 2016 letter, Jackson's bid failed to include sufficient work to meet the SLBE goal. (Letter from Collier to Perry, dated Oct. 11, 2016.) Based upon statements in that letter, it appears that PDT staff contacted the Richland County Procurement Department, who informed the PDT that it would be permissible for the PDT staff to work with Jackson to find a way to increase their SLBE participation to meet the SLBE goal, even though this was after the bids were opened. (*Id.*) After improving their bid, the PDT staff determined that Jackson met the SLBE goal and had the lowest responsive bid. (*Id.*) Based upon that determination, Dale Collier recommended to Richland County Council that it award the Shop Road Project contract to Jackson. (*Id.*)

On October 17, 2016, RCC informed Richland County and the PDT staff about a misrepresentation regarding Sharpe's Contracting Services, LLC on Jackson's bid and requested that Richland County Council defer its vote on awarding the Shop Road Project contract. (Email from Kathleen McDaniel to Dale Collier, dated Oct. 18, 2016.) The vote on awarding the Shop

Road Project contract was deferred without a particular date for the matter to be heard. (Compl. ¶ 38.)

On December 2, 2016, the then interim Richland County Administrator, Gerald Seals, issued a letter stating his recommendation to Richland County Council. (Letter from Gerald Seals to County Council, dated Dec. 2, 2016.) In his letter, Gerald Seals made the policy determination that a provision within the PDT's Transportation Program Procurement Manual permitting the correction of bids after opening was inconsistent with the Richland County Procurement Ordinance. (*Id.*) Gerald Seals also made the determination that, "there was no indication from the bid submittal that could lead one to reasonably conclude that [Richardson] intended to be adequately responsive to the SLBE requirements of the bid or to deemed [sic] responsive to the bid solicitation." (*Id.*) Based upon this reasoning, Gerald Seals stated that both RCC and Jackson's bids were non-responsive and recommended that the Shop Road Project contract be awarded to McClam. (*Id.*)

In view of the fact that Gerald Seals was recommending that Richland County Council pay almost \$3 million more for the Shop Road project and lose the benefit of \$1.27 million to the DBE/SLBE community, RCC filed an appeal with the Richland County Procurement Review Panel pursuant to Richland County Code Section 2-621.4(a) on December 5, 2016. (Letter from Kathleen McDaniel to Richland County Procurement Review Panel, dated Dec. 5, 2016.) Representatives of RCC attended the December 6, 2016 meeting of the Richland County Council and requested that County Council defer a vote on the award of the Shop Road Project contract until the Richland County Procurement Review Panel could hear and decide RCC's appeal, or in the alternative, award the Shop Road Project contract to RCC instead of McClam. (Compl. ¶ 47.)

Despite this request, Richland County Council voted to award the Shop Road Project contract to McClam. (Compl. ¶ 48.) On December 7, 2016, Richland County issued a Notice of Intent to Award stating that it intended to award to the Shop Road Project contract to McClam on Sunday, December 18, 2016, at 10:00 a.m. (Notice of Intent.)

In addition to its appeal pending before the Richland County Procurement Review Panel, RCC filed an award protest challenging the contract award pursuant to Richland County Code § 2-621.1. (Am. Compl. ¶ 63.) As part of RCC's appeal to the Richland County Procurement Review Panel, counsel for RCC tried repeatedly to identify the members of the Richland County Procurement Review Panel and to obtain a copy of the Rules of Procedure for the Richland County Procurement Review Panel. (Am. Compl. ¶ 64; email chain between Kathleen McDaniel and representatives of Richland County.) As of the date of RCC's Amended Complaint, Richland County had provided none of the requested information, and it appeared that Richland County did not have a Director of Procurement (Am. Compl. ¶¶ 65-66.)

RCC filed this lawsuit on December 15, 2016, requesting a temporary restraining order and temporary injunction to postpone execution of a contract with McClam until the Procurement Review Panel could hear RCC's appeal and protest and a writ of mandamus directing Richland County to constitute a Procurement Review Panel. (Compl.) At a hearing on RCC's request for a temporary restraining order, the parties agreed that Richland County would not sign a contract with McClam until RCC's request for a temporary injunction could be heard. (Or., filed Dec. 16, 2016.)

RCC's request for a temporary injunction was heard by the trial court on December 21, 2016. The trial court denied RCC's request. (Or., ¶ dated Dec. 22, 2016.) On January 5, 2017, RCC filed a Motion to Alter or Amend the December 22, 2016 Order. (Motion to Alter or

Amend, filed Jan. 5, 2017.) On January 19, 2017, RCC filed an Amended Complaint adding a cause of action for violation of procedural due process. (Am. Compl.) On February 6, 2017, the trial court issued a Form 4 Order denying RCC's Motion to Alter or Amend. (Form 4 Order, filed Feb. 6, 2017.) RCC filed a second motion pursuant to Rules 59(e) and 60, SCRCP, to request the trial court correct the Form 4 Order to correctly reflect that the denial of RCC's request for temporary injunction did not end the case. (Rule 59(e) and 60, SCRCP, filed Feb. 22, 2017.) The trial court issued an Amended Form 4 Order, making the requested correction, on March 21, 2017.

### STANDARD OF REVIEW

The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion. *Gilley v. Gilley*, 327 S.C. 8, 11–12, 488 S.E.2d 310, 312 (1997); *MailSource, L.L.C. v. M.A. Bailey & Assocs.*, 356 S.C. 363, 367, 588 S.E.2d 635, 637–38 (Ct. App. 2003). An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law. *Ledford v. Pa. Life Ins. Co.*, 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976); *County of Richland v. Simpkins*, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

### ARGUMENT

- 1. The trial court erred in holding that Richardson Construction Company, Inc. would not have a likelihood of success on the merits in its procurement challenges before the Richland County Procurement Review Panel.**

When seeking a temporary or preliminary injunction, the Plaintiff need not prove an absolute legal right; the Plaintiff need only present “a fair question to raise as to the existence of such a right.” *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912). The determination of whether an injunction is granted should not be based on the merits of the underlying case

except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made. *MailSource, L.L.C. v. M.A. Bailey & Assocs.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct.App.2003) (citing *Transcon. Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969)). A temporary injunction may only be issued upon a showing by the moving party that “without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 583, 586-87, 694 S.E.2d 15, 17 (2010). In *Poynter*, the Supreme Court also clarified that a balancing of the equities is “neither necessary nor appropriate” in consideration of a temporary injunction. *Id.* The trial court abused its discretion in holding that RCC had not demonstrated a likelihood of success on the merits of matters before the Procurement Review Panel because it failed to properly consider certain items presented by RCC.

- A. **The trial court erred in failing to consider that the clerical error made by RCC is non-material as evaluated by the standard of Richland County Code ¶ 2-591(c)(6).**

Pursuant to the competitive sealed bids procedure for Richland County, a contract shall be awarded to the “lowest responsive and responsible vendor whose bid complies materially with the specifications publicized.” Richland County Code § 2-608(e) (emphasis added). The trial court Order fails to address that the clerical error made by RCC is non-material as evaluated by the standard of Richland County Code § 2-591(c)(6), which states:

The director of procurement, in his sole discretion, shall have the right to waive any minor irregularities or informalities of a proposal from the material requirements of the request for proposals. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the request for proposals having no effect or merely a trivial or negligible effect on total price, quality, quantity, or performance of the contract, and the correction or waiver of which would not be prejudicial to other offerors. The director of procurement shall either give the offeror

an opportunity to cure any deficiency resulting from a minor informality or irregularity in the request for proposals or waive any such deficiency when it is to the advantage of the county.

Although this language applies to a different procurement procedure, that procurement procedure is also for the expenditure of Richland County Penny Tax funds. Permitting a bidder to make minor bid revisions that have only a negligible effect on price, quantity, or quality comports with the concept of “material” compliance with the bid specifications. There should not be two inconsistent interpretations of the word “material” within the Richland County Procurement Code. RCC’s correction had no effect on the amount of RCC’s bid or its performance of the contract. Because it was already the lowest bidder, these corrections do not prejudice the other bidders and are to the advantage of Richland County. This weighs in favor of finding for a likelihood of success on the merits by RCC.

**B. The trial court erred in failing to recognize that the Richland County Procurement Code provides that contracts should be awarded in a manner which provides the greatest economy for the taxpayer.**

In considering the element of likelihood of success on the merits, the lower court failed to address the fact that the Richland County Procurement Code states, “All purchases shall be made in a manner which provides for the greatest economy for the taxpayer, the fairest selection of vendor, and the prevention of conflicts of interest.” Richland County Code § 2-598(a) (emphasis added). Nowhere does the trial court’s Order take into account that RCC’s bid was \$3 million less than the bid of McClam or that RCC’s bid would direct \$1.1 million more to the DBE/SLBE community than McClam. When compared, there can be no dispute that RCC would provide the greatest economy to the Richland County taxpayers by a margin of \$3 million thereby weighing in favor of finding that RCC would be likely be successful on the merits before the Richland County Procurement Review Panel.

- C. **The trial court erred in failing to address the fact that deficiencies in McClam's bid weigh toward finding by the Procurement Review Panel that McClam was non-responsive, thereby requiring a re-bid of the contract.**

The trial court's Order fails to address the fact that deficiencies in McClam's bid militate toward finding by the Procurement Review Panel that McClam was non-responsive, and thereby precipitating a re-bid of the contract as permitted by Richland County Procurement Code Section 2-621.1(f).

County Administrator Gerald Seals stated in his letter dated December 2, 2016, to County Council that it would be inconsistent with the Richland County Procurement Code to permit any correction following bid opening. (Letter from Gerald Seals, dated Dec. 2, 2016.) If there can be no corrections to a bid post-opening, the following deficiencies in McClam's bid, existing at the time of bid opening, should lead to a finding by the Procurement Review Panel that McClam's bid was not responsive.

- a. It is contrary to the procurement code to permit McClam to stack Taylor Brothers' work to count toward its DBE and SLBE requirements. By double counting their SLBE as a DBE, these companies effectively allocated only 7% total to both the DBE and SLBE community where a total of 11.37% was required under the terms of the bid. This subverts the intent of the contract language and the purposes of the procurement code, which are to promote participation of minority and local businesses.
- b. The bid package required bidders to include the address and license number of its subcontractors. McClam failed to do this. (McClam bid submission.)
- c. There is no evidence that McClam submitted the required signed quotes from its DBE subcontractors.

McClam's bid is deficient; thus, if the Procurement Review Panel finds that RCC's bid was also deficient, then the Procurement Review Panel would find that there was no responsive bid. In that case, the Procurement Review Panel should have the ability to re-bid the contract. This information weighs in favor of finding that RCC could be successful on the merits before the Procurement Review Panel.

**D. The lower court erred in failing to consider and address the fact that the County took inconsistent positions on what is permitted and what is not permitted in terms of corrections post-bid opening.**

The trial court also failed to address the fact that it appears that the County took inconsistent positions on what is permitted and what is not permitted in terms of corrections post-bid opening. The trial court Order adopted the Affidavit of Christy Swofford for the proposition that non-material errors may be corrected. (Or. at 6.) However, this is inconsistent with the policy statement of County Administrator Gerald Seals that it would be inconsistent with the County Procurement Code to permit any corrections after bid opening. (Letter from Gerald Seals, dated Dec. 2, 2016.) Either corrections may be permitted or they may not. The trial court failed to address evidence that Richland County had taken inconsistent positions on interpretation of its own Procurement Code. This weighs in favor of finding that RCC could be successful on the merits before the Procurement Review Panel.

**2. The trial court erred in finding RCC had an adequate remedy at law.**

The trial court erred in finding that recovery of bid preparation costs is an adequate remedy at law. Richland County Procurement Code Section 2-621.1(f) sets forth the remedies available to the Procurement Review Panel. Pursuant to Section 2-621.1(f), the Procurement Review Panel may "direct an award of contract to the protestant, may require that a contract be re-bid, and may award reimbursement to the protestant of reasonable bid preparation costs."

However, the trial court held that limiting RCC to an award of bid preparation costs would be an adequate remedy at law.

In so ruling, the Court relied upon an order from the South Carolina Procurement Panel from 1990. *In Re: Protest by Gregory Electric Company, Inc.*, case no. 1989-17, 1990 WL 10008052 (S.C. Procure. Rev. Panel, Jan. 26, 1990.) However, there is no evidence that this decision was ever reviewed by a court of law.

The District Court for the District of South Carolina has determined that recovery of bid preparation costs is not an adequate remedy at law. *Funderburg Bldrs. v. Abbeville Cty. Mem. Hosp.*, 467 F.Supp. 821 (D.S.C., 1979). In *Funderburg*, the District Court held:

Finally, it is clear that Funderburg has no adequate remedy if the contract is wrongfully awarded to other than the lowest responsible bidder. It is well recognized that a construction contractor must bid on a number of jobs in order to submit the lowest bid on one and that the contractor must depend on the limited number of jobs it wins not only to earn a profit but also to absorb the cost of maintaining its organization and even to keep its organization together. For a contractor to arbitrarily be deprived of one of the jobs on which it is the lowest responsible bidder, not only deprives it of anticipated profit but also throws an undue overhead burden on the remainder of the contractor's work and may cause the contractor to lose key field personnel that it cannot readily employ. Nevertheless, notwithstanding this severe adverse impact, it has been uniformly held that a disappointed bidder may not recover even its anticipated profits. *Paul Sardella Construction Co. v. Braintree Housing Authority*, 329 N.E.2d 762 (Mass.App.1975); *Swinerton & Walberg Co. v. City of Inglewood*, 40 Cal.App.3d 98, 114 Cal.Rptr. 834 (1974). It is this clear lack of an adequate legal remedy that will dissuade contractors from competing where competitive bidding procedures are not equitably enforced.

In this case as in *Funderburg*, recovery of bid preparation costs is an inadequate remedy. RCC must be retain the ability to pursue all remedies available under the Richland County Procurement Code. However, as a practical matter, permitting Richland County to execute the contract with McClam, thereby authorizing McClam to begin work, was a step that significantly diminished the possibility that, even if the Procurement Review Panel found in RCC's favor, it

would impose the remedies of either awarding the contract outright to RCC or putting the contract back out for re-bid. Thus, permitting Richland County to execute the contract with McClam had the practical effect of limiting the remedies available to RCC and depriving it of all adequate remedies at law.

**3. The trial court erred in requiring Richardson Construction Company, Inc. to overcome a heightened burden for obtaining a temporary injunction against a public entity.**

In reaching its decision, the trial court held, "Plaintiff has not met the heightened burden for Plaintiff's attempting to enjoin a public entity." (Or. p. 9.) Erroneously applying this "heightened burden," the trial court gave significant weight to Richland County's argument that if the temporary injunction were issued, any delay in construction could cause Richland County to lose a large economic development investment. (*Id.*) In reaching this conclusion, the trial court relied upon two cases that do not stand precisely for the propositions cited and imposed a heightened burden on RCC for obtaining the temporary injunction than is provided for in case law.

The trial court first cites to *Hecht Co. v. Bowles*, 312 U.S. 321, 331 (1944), for the statement, "For the standards of the public interest, not the requirements of private litigation, measure the propriety and need for injunctive relief in these cases." *Hecht* is inapposite. In *Hecht*, the United States Supreme Court examined whether the federal government could obtain injunctive relief against a private company for violations of the Emergency Price Control Act during World War II. *Id.* In this case, it is the government entity which is sought to be restrained not the one seeking the restraint; thus, *Hecht* does not support the trial court's decision.

The trial court also relies upon a South Carolina case, *Moss v. S.C. Department of Transportation*, 223 S.C. 282, 75 S.E.2d 464 (1953), for the proposition that there is a heightened burden for a plaintiff in seeking to enjoin a public entity. In fact, in *Moss*, the Supreme Court applied the standard elements for a temporary injunction in upholding the lower court's denial of a temporary injunction. *Id.* Specifically, the Supreme Court held that because the plaintiff could pursue damages, she had an adequate remedy at law and a temporary injunction was not appropriate. *Id.* It was only in dicta that the Supreme Court stated that it is a "serious matter to enjoin the construction of great public works without a strong showing by the complainant, establishing, prima facie, a clear right to such injunction." *Id.* This language does not set forth the higher burden imposed by the trial court.

To the extent any consideration of the effect on Richland County of a temporary injunction was appropriate, the trial court failed to take into consideration the Affidavits of Robert Richardson and Scott Fant. (Aff. of Richardson; Aff. of Fant.) In these affidavits, Richardson and Fant testified that a temporary delay in the start of construction would not delay the completion of the first 1,000 feet of roadway, i.e. Phase 1A, and that the deadlines of December 2017 would still be met. (*Id.*) In particular Richardson and Fant testified that the work could be completed within 6 months of notice to proceed, to do so would not be particularly challenging, and the work would be completed before the December 2017 deadline. (*Id.*) Upon giving this testimony proper consideration, the trial court should have found that there was not a compelling argument by the County for opposing a temporary injunction for a brief period, i.e. a month or two, to permit the Procurement Director and Procurement Review Panel processes to proceed while maintaining as a practical remedy the reversal of County

Council's vote and the award of the contract to RCC. Accordingly, this Court should reverse the trial court's denial of Plaintiff's motion for a temporary injunction.

4. **The trial court erred in holding that RCC admitted its bid was nonresponsive**

In its Order, the trial court states, "First, this Court emphasizes that Plaintiff admits that it submitted a non-responsive bid by submitting a bid that identified LAD, Inc. as its certified SLBE vendor." (Or. p. 5.) RCC has not admitted that its bid was non-responsive. In fact, the entire purpose of the underlying lawsuit was to preserve all legal options to challenge Richland County's determination that its bid was not responsive. RCC admitted that it made a clerical error in identifying LAD, Inc. rather than Sharpe's Contracting, LLC as its SLBE vendor; however, that is not tantamount to an admission that RCC's bid was non-responsive. RCC has reviewed the transcript of the hearing before the trial court and can find no point at which it admitted its bid was non-responsive.

**CONCLUSION**

Based upon the foregoing, RCC respectfully requests that this court reverse the denial of RCC's request for temporary injunction or in the alternative remand the matter to the trial court for further consideration.

  
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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
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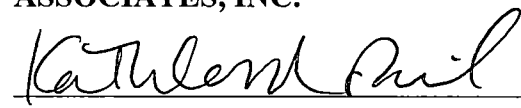
Richland County, a political subdivision, and  
McClam & Associates, Inc. .... Respondents

**PROOF OF SERVICE**

I certify that I served the Appellant's Initial Brief and Designation of Matter on all counsel of record by depositing a copy of same in the United States Mail, first-class, postage prepaid on April 19, 2017, addressed to the following:

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April 19, 2017

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RECEIVED  
APR 21 2017  
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**Re: Richardson Construction Company, Inc. v. Richland County, a political subdivision, and McClam & Associates, Inc.**  
**Appellate No: 2017-000134**  
**Case No: 2016-CP-40-07353**  
**Firm No: 6344.012**

Dear Ms. Kitchings:

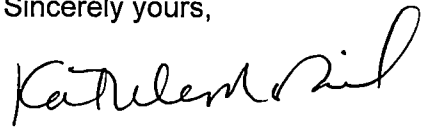
Enclosed for filing please find the original and one (1) copy of Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal, along with the original and one (1) copy of the Proof of Service. Please file the originals and return the clocked-in copies to our office by the enclosed addressed, postage pre-paid envelope.

By copy of this letter, I am serving same upon all counsel of record.

Thank you for your assistance in this matter.

With kind regards, I am

Sincerely yours,



Kathleen McDaniel

KMM/jrw

cc: Ned Nicholson, Esq.  
Alan Peace, Esq.  
Larry Smith, Esq.

Hasler

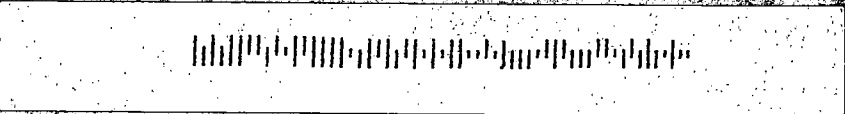
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Clerk, South Carolina Court of Appeals  
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