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JUN 25 2018

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
SC Court of Appeals)
COUNTY OF LANCASTER) Civil Action Number: 2016-CP-29-329

Allen Keith Tunnell,)
)
Plaintiff,)
)
v.)
)
County of Lancaster, Charlene McGriff, Larry)
Honeycutt, Robert "Bob" Bundy, in their)
individual capacities,)
)
Defendants.)

ORDER

GRANTING SUMMARY JUDGMENT
TO DEFENDANTS AND DENYING
PLAINTIFF'S MOTION TO ALTER OR
AMEND.

This matter came before the Court on April 25, 2018 upon motion of Defendants. Specifically, Defendants filed a Motion for Summary Judgment with regards to all claims raised against them by Plaintiff. At the hearing, Defendants were represented by Daniel C. Plyler, Esquire of Davidson, Wren & Plyler, P.A. Plaintiff was represented by Julius W. Babb, IV, Esquire and Samantha E. Albrecht, Esquire of Cromer Babb Porter & Hicks, LLC.

Having considered the oral arguments presented, the briefs submitted by the parties, and the entirety of the record before this Court, including all filings made by all parties, the Court finds that summary judgment must be granted to Defendants based on Legislative Immunity and Legislative Privilege, and that the pending motion must be, and hereby is, **GRANTED**.¹

The Court finds that Plaintiff, Allen Keith Tunnell, brought this action against Lancaster County, Lancaster County Councilmembers Charlene McGriff, Larry Honeycutt, and Robert "Bob" Bundy, and others. In his Complaint Plaintiff alleges four causes of action against the

¹ Defendants also moved for summary judgment claiming Plaintiff's settlement with former Co-Defendants constitutes a full satisfaction under *Bartholomew v. McCartha*, 255 S.C. 489, 491, 179 S.E.2d 912, 913 (1971) and its progeny. Since the Court is granting the motion based on Legislative Immunity, the Court does not reach this other ground, and makes no ruling upon it.

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remaining Defendants.² Specifically, Plaintiff has brought a claims for 1) "Defamation and Defamation *per se*" against Defendants, 2) "Intentional Interference with Contractual Relations" against Defendants, 3) "Breach of Contract and Promissory Estoppel" against Defendant Lancaster County, and 4) "Civil Conspiracy" against Defendants McGriff, Honeycutt, and Bundy. *See*, Complaint. All of Plaintiff's allegations stem from the souring, and eventual dissolution, of the relationship between Lancaster County and the Lancaster County Economic Development Corporation (LCEDC).

Based on the record before the Court, Plaintiff worked for the LCEDC for 15 years, employed as the Assistant Economic Development Director for a year, and serving as President until 2015 when he was terminated by the LCEDC. LCEDC was a 501(c)(4) organization formed "to recruit new business and industry to the County." Despite being a registered 501(c)(4) organization, LCEDC received approximately 60% of its budget from Lancaster County, with the remainder coming from private sector dues paid to LCEDC.

Beginning in 2012, Lancaster County sought admittance into the I-77 Alliance, which is a regional, alliance of economic development entities, to develop the County economy and bring in industry in and around the I-77 corridor. However, Lancaster County's bid for admittance was rejected by the Alliance. In fact, the record reflects that Lancaster County was denied admission by an overwhelming majority of the Alliance's Board of Directors during a June 12, 2014 vote. The adamant denial of Lancaster County into the Alliance caused many of the County Councilmembers to begin trying to figure out why Lancaster County was denied membership, and what it would take for Lancaster County to be accepted into the Alliance.

² In, or about, October of 2017 Plaintiff settled with former Defendants I-77 Alliance and Greg Rutherford.

The record before the Court shows that, apparently, the concerns of the Alliance's board were multi-faceted. One of the concerns stemmed from a May 2014 Alliance meeting, where Alliance members alleged that Elaine McKinney, Plaintiff's assistant, surreptitiously recorded the Alliance's Board's executive session. Other concerns centered on the perceived relationship between the Alliance, its Board, and its members and Plaintiff, which apparently included animosity.

Following the vote denying admission into the Alliance, Lancaster County Council voted to freeze some of LCEDC funding in order to determine why the Alliance voted against admitting the County. *See*, Minutes of Lancaster County Council's June 27, 2014 Meeting. It was the decision of Lancaster County Council that it was very important for the County to be admitted into the Alliance because the County would have had access to greater economic opportunities through the Alliance. *Id.*

The record further shows that, around that same time, during the spring of 2014, Plaintiff, along with other people associated with LCEDC, took a business trip to China on LCEDC business. At least part of that trip was paid for with funds provided by Lancaster County as part of LCEDC's budget. Inquiring into questions their constituents had regarding the nature of the expenses of the trip, Defendants, at a County Council Meeting, requested travel records, as there were concerns regarding whether or not the accounting records matched LCEDC's reported travel expenses. The question regarding travel expenses was followed by a series of questions from Councilmembers relating to the expenses and finances of the LCEDC. The record reflects that some of the County Councilmembers perceived a lack of transparency on the part of the LCEDC, and eventually, in order to investigate the spending of County tax-payer funds,



Councilmembers approved a request for an independent auditor to perform a "forensic audit"³ of the LCEDC.

During the same period of time, efforts were initiated by Plaintiff and the LCEDC to pass new bylaws for the LCEDC, clarify issues relating to the structure of the LCEDC, and that would make it clear that Plaintiff and the other individuals working at the LCEDC were not County employees, and instead were solely employees of the LCEDC. The record shows that the LCEDC even petitioned, through Plaintiff, County Council on April 30, 2014 regarding these issues, setting forth a detailed history of the interactions between the two entities, and explaining how they envisioned the new structure to work. Such efforts resulted in an October 13, 2014 vote of County Council to authorize and approve the bylaws requested by the LCEDC.

Following the October 13, 2014 vote, Plaintiff signed an employment contract with the LCEDC in January of 2015. The employment contract resulted in a significant raise for Plaintiff, as well as other employees at the LCEDC, and caused concerns with many in Lancaster County on how those raises were going to be paid for and whether or not County funds were going to be used. Such concerns, on top of the serious concerns already existing between the County and the LCEDC, as discussed above, further soured the relationship. The culmination of which was County Council voting, in August of 2015, to no longer provide funding to the LCEDC. County See, Minutes of Lancaster County Council's August 10, 2015 meeting.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston*

³ Plaintiff asserts use of the term "forensic audit" implies there was criminal behavior. Complaint ¶ 46 fn. 1. However, a forensic audit is an audit that "is suitable to courts of law." *Forensic*, Black's Law Dictionary (10th ed. 2014).

County, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRCP. In ruling on a motion for summary judgment, the Court considers the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

“Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper.” *Evans v. Stewart*, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing *Bloom v. Ravoira*, 339 S.C. 417, 425, 529 S.E.2d 710, 714 (2000)). A party opposing summary judgment may not rest upon the mere allegations of the pleadings but must instead set forth or point to specific facts in the record showing that there is a genuine issue of material fact. *Bravis v. Dunbar*, 449 S.E.2d 495 (Ct. App. 1994).

DISCUSSION

Having considered the arguments presented by the parties, and fully reviewed all filings on record in this matter, the Court finds that Legislative Immunity and/or Legislative Privilege bar all of Plaintiff's claims against them in this case. Specifically, the Court finds that all of Plaintiff's claims arise from, or relate directly to, legislative decisions and/or functions of the Lancaster County Council, and therefore Defendants are entitled to Legislative Immunity under both the Common Law of South Carolina and the South Carolina Tort Claims Act. *See*, S.C. Code Ann. §§ 15-78-60(1), (2), and (4). It is clear, based on the record before the Court, that all of Plaintiff's allegations relate directly to the legislative decisions of Lancaster County, through

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its County Council, or stem from discussions and/or comments regarding matters under inquiry by those legislators.

As has been long been the case in South Carolina, "Legislative immunity protects legislators from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence, but for the public good. The public good is undermined by any restriction placed on a legislator's ability to exercise legislative discretion, including the fear of personal liability." *Public Interest Foundation v. Courson*, 420 S.C. 120, 125, 801 S.E.2d 185, 187 (Ct. App. 2017). Specifically, as our Supreme Court stated,

[a] sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties. Accordingly, an absolute privilege is recognized as to defamatory statements made by legislators in the course of their functions, if such statements are connected with, or relevant or material to, the matter under inquiry.

Richardson v. McGill, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979).

Plaintiff's claim for defamation against Defendants in this case is clearly barred by the public policy underscoring Legislative Immunity. While the Court finds that Plaintiff has not set forth a single, identifiable statement attributable to Defendants that is clearly defamatory, the Court further finds that any statement alluded to by Plaintiff in this case relates directly to matters under consideration by Defendants as they performed their legislative functions for the tax payers of Lancaster County. As such, even if Plaintiff were able to prove a defamatory meaning associated with any such statements, Defendants would still be entitled to Legislative Immunity and summary judgment. As such, the Court finds that Defendants' motion for summary judgment must be, and hereby is, **GRANTED** with regards to any claim by Plaintiff for Defamation in this case.



As to Plaintiff's claims for "Intentional Interference with Contractual Relations" and "Breach of Contract and Promissory Estoppel," the Court finds that Plaintiff has failed to establish the existence of any valid contract between Plaintiff and Defendants, and that any "interference" with Plaintiff's contract with LCEDC that may have been caused by Defendants was a direct result of a Legislative decision and vote undertaken by Lancaster County Council. Therefore, Defendants are entitled to Legislative Immunity with regards to these claims as well, and their motion for summary judgment must be, and hereby is, **GRANTED** with regards to such claims.

Finally, with regards to Plaintiff's Civil Conspiracy claim, the Court finds Defendants are entitled to Legislative Immunity on this claim as well. It is clear from the record before the Court that Plaintiff's Civil Conspiracy claim relates, yet again, to the Legislative decisions and votes of Lancaster County Council. As such, Defendants are entitled to Legislative Immunity and summary judgment.⁴ Therefore, Defendants' motion for summary judgment must be, and hereby is, **GRANTED** with regards to Plaintiff's Civil Conspiracy Claim.

Having found that summary judgment is appropriate on behalf of the Defendants on the grounds set forth herein, the Court need not reach the remaining arguments for summary judgment raised by the Defendants in its motion, and specifically declines to address them in this Order.

⁴ Furthermore, even if Plaintiff's Civil Conspiracy claim was not barred by Legislative Immunity, Plaintiff has failed to allege damages associated with that claim that are any different than Plaintiff's other claimed damages in this case. Our Court of Appeals has found that a Plaintiff must plead "special damages" arising from a purported Civil Conspiracy, and may not simply repeat the damages from other causes of action. *See, Hotel and Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 649-651, 780 S.E.2d 263, 271-272 (Ct. App. 2015); *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875 (Ct. App. 2009).



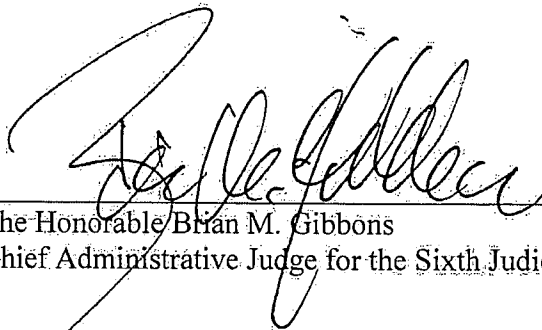
AS TO PLAINTIFF'S RULE 59 (E) MOTION

In an abundance of caution, the Plaintiff filed a Rule 59(e) motion based on the ^Bourts Form 4 order requesting a formal order to be submitted. I have taken this matter into consideration, and I find that a further hearing is not necessary. I further find that the Rule 59(e) motion should be **DENIED.**

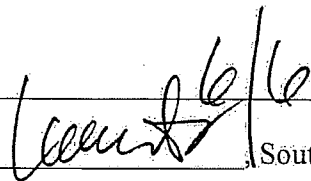
CONCLUSIONS

Therefore, the Court finds that Plaintiff's claims against Defendants must be, and hereby are, **DISMISSED** as a matter of law, and, as a result, this civil action is ended.

AND IT IS SO ORDERED



The Honorable Brian M. Gibbons
Chief Administrative Judge for the Sixth Judicial Circuit

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South Carolina