RECEIVED
JAN 27 2017
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No.: 2016-001811

James C. Owens, ... Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a
WQSC Radio, ADC Engineering, Inc., Tyler Flesch,
and Red Drum Capital Group, LLC, ...Defendants,

of whom ADC Engineering, Inc., is ..... Respondent.

APPELLANT'S REPLY BRIEF

John E. Parker
William F. Barnes, III
PETERS, MURDUAGH, PARKER, ELTZROTH,
& DETRICK, P.A.
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

ARGUMENT

I. VANDERHOFF DOES NOT SUPPORT THE LOWER COURT'S DECISION

In its Brief, ADC primarily relies on Vanderhoff v. John Deere Consumer Prods., No. C.A. 3:02-0685-22, 2003 WL 23691107, 2003 U.S. Dist. LEXIS 25805 (D.S.C. 2003), as the basis to affirm the lower court's grant of summary judgment. Vanderhoff is a district court opinion that is not binding on this Court. Further, Vanderhoff is contradictory to the binding authority from the South Carolina Supreme Court in Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) and Culler v. Blue Ridge Elec. Coop., 309 S.C. 243, 422 S.E.2d 91 (1992). In its Brief, ADC does not discuss Ludwick and Culler or explain why those decisions do not bind this Court and the lower court regarding a wrongful termination action based on S.C. CODE ANN. § 16-17-560.

ADC incorrectly asserts that § 16-17-560 does not provide a private cause of action and therefore, cannot be a basis for a wrongful termination action. (ADC Br. pp. 12-13). The Supreme Court in Culler clearly stated that the statute is a basis for a wrongful termination action. Id. at 246, 422 S.E.2d at 93. ("Thus, if Culler was discharged because he refused to contribute to a political action fund, he would have a ***cause of action for wrongful termination under Ludwick and S.C. Code Ann. § 16-17-560.***") (emphasis added). Given that the Supreme Court held in Culler that the plaintiff could bring a wrongful termination action under § 16-17-560, the statute does provide a cause of action.

ADC unsuccessfully attempts to use Vanderhoff to limit an action under § 16-17-560 as pertaining to "political party affiliation, political campaign contributions, and the right to vote." (ADC Br. p. 11). This is contrary to the plain language of § 16-17-560 and the Supreme Court's holding in Culler. Additionally, the Fourth Circuit Court of Appeals in Dixon v. Coburg Dairy,

369 F.3d 811 (4th Cir. 2004) – decided subsequent to Vanderhoff - noted three ways liability could be predicated on § 16-17-560: "(1) Dixon was fired because of his political opinions; (2) Dixon was fired for exercising political rights guaranteed by the United States Constitution; and (3) Dixon was fired for exercising political rights guaranteed by the South Carolina Constitution." Id. at 818. Conveniently, ADC fails to address or cite Dixon in its Brief, likely because it does not support the narrow interpretation of § 16-17-560 argued by ADCs. The Fourth Circuit made clear the three different ways liability can be predicated on § 16-17-560, including political rights guaranteed by the United States Constitution and South Carolina Constitution. Other than relying on Vanderhoff, ADC does not address the political rights guaranteed by the United States Constitution or South Carolina Constitution. Owens submits that all political rights guaranteed by the United States Constitution and South Carolina Constitution, including free speech, can be a basis to support an action under Culler and Dixon.

It is undeniable that Owens did not know ADC was involved with the Project during his opposition efforts. Furthermore, despite advising ADC of his opposition to the Project in June 2014, the Record is clear that none of ADC's partners informed Owens of ADC's involvement despite their knowledge of ADC's involvement with the Project. (R. p. 395, lines 1-8; p. 907, line 25 – p. 908, line 3; p. 982, line 21 – p. 983, line 6). Cook gave Owens permission to oppose the Project as long as he did not mention ADC and it was his personal opinion.[1] (R. p. 394, lines 22-25). On September 16, 2014, Flesch and Stubbs Muldrow summoned Dillon to a meeting regarding Owens' opposition to the Project. Flesch demanded that Dillon call Owens on the phone right then and terminate Owens' employment. (R. p. 535, line 24 – p. 536, line 3). Flesch

[1] Despite ADC's express approval of Owens' opposition to the Project in June 2014, ADC filed a counterclaim against Owens seeking both actual and punitive damages for his "willful, wanton and reckless actions." (R. p. 293, ¶ 33).

could not understand why Dillon would not terminate Owens immediately. (R. p. 535, line 24 – p. 536, line 3). Flesch also informed Dillon, during this meeting, that Owens sent emails and made Facebook posts during working hours, and ADC ultimately terminated Owens under the pretext of personal use of a work computer. (R. pp. 541-542; p. 604).

Interestingly, ADC takes the position that despite informing Stubbs Muldrow on September 17, 2014 that it was not terminating Owens, "[a]t least one of the partners at ADC had concerns over whether Owens had been sending emails from company computers during office time." (ADC Br. p. 15). This was the same information Flesch told Dillon during the meeting the day before on September 16, 2014. (R. pp. 541-542; p. 604). Despite this information, ADC decided not to terminate Owens on September 17, 2014. It was not until ADC realized Stubbs Muldrow and Flesch were serious in their threats of terminating ADC's contract that ADC reversed course and decided to terminate Owens. The evidence supports an inference that violation of the Technology Policy that expressly allows personal use was not the real reason ADC terminated Owens. For these reasons, the lower court's grant of summary judgment to ADC should be reversed.

Owens relies on and incorporates all other arguments made in his Brief.

[SIGNATURE PAGE TO FOLLOW]

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

January 26, 2017
Hampton, South Carolina

BY: _____

John E. Parker
William F. Barnes, III
101 Mulberry Street, East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
jparker@pmped.com
wbarnes@pmped.com
ATTORNEYS FOR APPELLANT

RECEIVED
FEB 09 2017
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No.: 2016-001811

James C. Owens, ... Appellant,

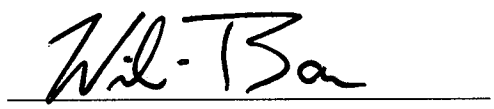
-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a
WQSC Radio, ADC Engineering, Inc., Tyler Flesch,
and Red Drum Capital Group, LLC, ...Defendants,

of whom ADC Engineering, Inc., is ..... Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Final Reply Brief complies with Rule 211(b), SCACR.



John E. Parker
William F. Barnes, III
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
ATTORNEYS FOR APPELLANT

February 8, 2017
Hampton, South Carolina