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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Trial Court Case No. 2016-CP-07-01825

The Honorable Marvin H. Dukes, III

Appellate Case No. 2018-001569

RECEIVED

SEP 28 2018

SC Court of Appeals

Steven Craig Molloy and Island Group, Inc. d/b/a Carolina
Cleaning Appellants

v.

Beaufort County; Gary Kubic, Individually, and as Beaufort
County Administrator; Josh Gruber, Individually and as former
Beaufort County In-House Attorney; Bryan Hill, Individually and
as former Beaufort County Deputy Administrator; and Shannon
Loper, Individually, and as employee of the Beaufort County Parks
and Leisure; Stu Rodman, as finance Chair of Beaufort County
Council Respondents

RESPONDENTS' MOTION TO DISMISS APPEAL

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Attorneys for Respondents

Other Counsel of Record:

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Counsel for Appellants

Steven Craig Molloy
43 Big Woods Drive
Hilton Head, SC 29926
Pro Se Appellant

AND NOW COME Appellants Beaufort County; Gary Kubic, Individually, and as Beaufort County Administrator; Josh Gruber, Individually and as former Beaufort County In-House Attorney; Bryan Hill, Individually and as former Beaufort County Deputy Administrator; and Shannon Loper, Individually, and as employee of the Beaufort County Parks and Leisure; Stu Rodman, as finance Chair of Beaufort County Council (collectively "Respondents"),¹ by and through their undersigned counsel, and file the following Motion to Dismiss Appeal:

1. In the court below, the parties filed, briefed and argued various motions before the Honorable Marvin H. Dukes, III ("Judge Dukes").

2. For example, on or about June 20, 2018, Appellants filed a Motion to Recuse and Change Venue, which argued that Judge Dukes should disqualify himself because his first cousin was a potential witness. After due consideration, Judge Dukes denied that Motion to Recuse and Change Venue and a motion to reconsider that denial.

3. Additionally, Respondents filed a well-supported Motion for Summary Judgment in this matter. Judge Dukes allowed the parties a full and complete opportunity to litigate that Motion for Summary Judgment. On July 6, 2018, Judge Dukes notified counsel that he intended to grant Respondents' Motion for Summary Judgment and requested that Respondents send a proposed order, which they have done. To date, Judge Dukes has not actually entered an order granting summary judgment.

4. On August 30, 2018, Appellants filed a *second* Notice of Appeal (signed only by Appellant Steven Craig Molloy ("Mr. Molloy") *pro se*), purporting to appeal from Judge Dukes'

¹ These are the Defendants/Respondents identified in the official caption received from the Court of Appeals. However, the most recent caption in the trial court listed the following Defendants: BEAUFORT COUNTY; GARY KUBIC, Individually and as Beaufort County Administrator; JOSH GRUBER, Individually and as former Beaufort County In-House Attorney; BRYAN HILL, Individually and as former Beaufort County Deputy Administrator; SHANNON LOPER, Individually and as Employee of the Beaufort County Parks and Leisure; STU RODMAN, as Finance Chair of the Beaufort County Council; and DAVE THOMAS, Procurement Director for Beaufort County, South Carolina; DISABILITIES AND SPECIAL NEEDS (NON-PROFIT); and BEAUFORT COUNTY DSN BOARD. The instant Motion to Dismiss is filed on behalf of any and all Respondents that the Court determines are properly before it.

rulings on summary judgment, *even though Judge Dukes has never formally entered an order granting Respondents summary judgment:*

Final order Granting Summary Judgment to Defendants has not been filed in this case however reference has been made by Judge as to his intent to grant order.

To be prudent in this matter Appellant submits this Appeal in anticipation of Judge Dukes reference to Grant Summary Judgement to Defendants.

Notably, to date, Judge Dukes has not formally entered an order granting summary judgment in this matter.

5. On August 30, 2018, Appellants filed a *second* Notice of Appeal (signed by Mr. Molloy *pro se*), purporting to appeal from Judge Dukes' refusal to recuse himself or change venue because of alleged bias due to a familial relationship with a potential witness:

Steven Craig Molloy appeals the [Order of Denial of change of venue and recusal] of the Honorable Judge Marvin Dukes from this case for conflict. Judge Dukes refusal dated August 15, 2018 and Appellant received written notice of final entry of this order [Order of Denial of change of Venue and Refusal to Recuse] officially on August 21, 2018. This after the "recent" discovery of a direct family member of Judge Marvin Dukes who is a witness in this matter.

6. For the reasons that follow, this Court should dismiss the instant appeal as premature, because the Notices of Appeal do not seek appeal from properly appealable final orders.

7. Under South Carolina law, appeals may normally only be taken from final judgments disposing of all claims in a case.

Generally only final judgments are appealable. *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) (“‘Final judgment’ is a term of art referring to the disposition of all the issues in the case.”). A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942). An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory. *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005).

See Tillman v. Tillman, 420 S.C. 246, 248-49, 801 S.E.2d 757, 759 (Ct. App. 2017). None of the issues raised in Appellants' Notices of Appeal are immediately appealable.

8. With regard to the first Notice of Appeal, the trial judge has not yet actually entered an order granting Respondents' Motion for Summary Judgment. When Judge Dukes does so, it will certainly be appealable. However, it is premature to appeal from the stated intention to grant summary judgment. Therefore, this Court should dismiss the first Notice of Appeal, pending the entry of final judgment in the trial court.

9. Additionally, Judge Dukes' denial of the Motion to Recuse or Change Venue is not immediately appealable. *See Townsend v. Townsend*, 323 S.C. 309, 312, 474 S.E.2d 424, 427 (1996) (“A denial of a motion for disqualification of a judge is an interlocutory order not affecting the merits and, thus, is reviewable only on appeal from a final order.”); *Rogers v. Wilkins*, 275 S.C. 28, 29-30, 267 S.E.2d 86, 87 (1980) (finding denial of motion for disqualification is interlocutory and reviewable only on appeal from final judgment). Again, once final judgment is entered disposing of all claims in this case, appeal from the denial of the Motion to Recuse and Change Venue will be proper.

10. For the foregoing reasons, the Court of Appeals should dismiss the instant appeals as premature.

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Attorneys for Respondents

September 26 2018

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Trial Court Case No. 2016-CP-07-01825

The Honorable Marvin H. Dukes, III

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and Leisure; Stu Rodman, as finance Chair of Beaufort County
Council Respondents

PROOF OF SERVICE

I certify that I have served the Respondents' Motion to Dismiss Appeal on the above-
referenced Appellants by depositing a copy of it in the United States Mail, postage prepaid, on
September 26, 2018, addressed to them or to their attorneys of record, as follows:

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Attorneys for Respondents



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September 26, 2018

RECEIVED
SEP 28 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Steven Craig Molloy and Island Group, Inc. d/b/a Carolina Cleaning v. Beaufort County;
Gary Kubic individually, and as Beaufort County Administrator; et al
Appellate No. 2018-001569
BWPH File No.: 1.626

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Dismiss Appeal and the original and one (1) copy of a Proof of Service of the same. I have also enclosed a \$25.00 check for the filing fee. Please file the Motion and Proof of Service and return a clocked copy of each to me in the envelope provided. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to be "John W. Fletcher", is written over a faint, larger version of the same signature.

John W. Fletcher

JWF/jgc
Enclosures

cc (w/enclosures) Lauren L. Martel, Esq.
Steven Craig Molloy

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REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BARNWELL
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YEARS ■
1938-2013

P.O. Drawer H, Charleston, SC 29402-0197

1.626

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