

**BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
[In the Supreme Court]

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APPEAL BRIEF FROM Craig Molloy and Island Group, Inc.  
d/b/a Carolina Cleaning  
Court of Common Pleas

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Appellate Case No. 2018-002170

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

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**RECEIVED**  
FEB 25 2019  
SC Court of Appeals

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

Plaintiffs

Of which Steven Craig Molloy is the

Appellant

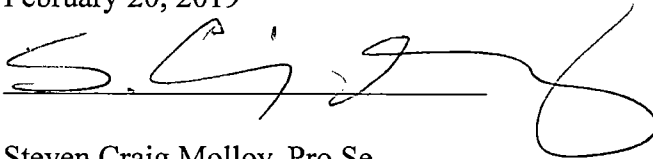
v.

Beaufort County Government,  
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 Beaufort County Council;  
Dave Thomas, Procurement Director Beaufort County, SC.  
Beaufort County Disabilities and Special Needs;  
Beaufort County DSN Board

Respondents,

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February 20, 2019



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Appellant

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- II. Did the lower court err in granting Summary Judgment in its determination the two-year statute of limitations was time-barred, when Appellant established that his knowledge of bid-rigging, price fixing, and a breach of contract accompanied with a fraudulent act was unknown to him, until it was revealed through Freedom of Information Requests. And, that these same emails also established the unconscionable, fraudulent actions taken by by the Procurement Director and other Respondents to violate procurement?
- III. Did the lower court err in granting Summary Judgment when Appellant had reason to believe the Respondents acted outside the scope of their job duties, in violation of South Carolina Procurement Code, as a genuine issue of material fact?
- IV. Did the lower court err in granting Summary Judgment, when Appellant provided to the lower court, by a preponderance of the evidence, and demonstrated through inter office emails the lack of good faith and the unconscionable fraudulent actions taken by Respondents in unfair trade practices?
- V. Did the lower court err in granting Summary Judgment when Appellant raised a genuine issue of material fact, that the Beaufort County DSN Board (aka "BCDSN Board") are, in fact, a "third party entity", aka a "vendor", and not a Department of Beaufort County?

**Argument**.....

...

proprietary information of Carolina Cleaning, all while knowing the BCDSN Board, a vendor, just like Carolina Cleaning, would be a competing bidder for this 2012 “open market” RFP.

(3) That the Procurement Director, Dave Thomas specifically stated in interoffice emails that he changed the 2012 RFP to benefit the BCDSN Board in order to save Beaufort County’s declining budget. Statements by the Respondents confirm that Beaufort County did not have the funds to pay Carolina Cleaning.

(4) That Gary Kubic, Beaufort County Administrator, and Bryan Hill, former Beaufort County Deputy Administrator, Josh Gruber, Beaufort County, in-house attorney, and Dave Thomas, Procurement Director, and others named were all members of the Beaufort County Government at the time of these alleged violations. ROA *See Exhibit Email dated 6/28/2012, filed 2/21/17*

This lawsuit was commenced on August 22, 2016, one year after the alleged bid-rigging, price fixing, unfair trade practices, and Procurement Code violations were discovered by Craig Molloy through the Freedom of Information Act, from August 2014 to September 2015. ROA *See two timelines filed 05/25/18* (Statute of Limitations)

On July 21, 2017, Beaufort County and other named Defendants moved for Summary Judgment on four (4) grounds:

(1) That the action was time-barred by the 2-year Statute of Limitation and claimed the action was brought beyond the limits set forth in such statute; and

(2) Claims failed on Procurement Code process

(3) Claims failed on Remedies under Beaufort County Procurement Code and;

(4) Claims against Respondents as a governmental entity are not liable for a tort claim under S.C. Torts Claim Act. ROA See Motion for Summary Judgment filed 7/21/17

On February 25, 2018, Plaintiffs filed a Notice of Motion and Motion to Compel Answers to Discovery and Depositions, Motion to Amend.

On March 22, 2018, Defendants filed a Memorandum in Opposition to the Motion to Compel Answers to Discovery and Depositions, Motion to Amend

On March 23, 2018 the Motion for Summary Judgment was heard by the Hon. Marvin H. Dukes, III

On November 27, 2018, Judge Dukes granted Summary Judgment to Beaufort County and Co-Defendants. ROA See Order, November 27, 2018.

The order was emailed on November 29, 2018 and received by Plaintiff's counsel on November 29, 2018.

On March 23, 2018, during the scheduled hearing on the Motions, the Appellant asserts the court failed to address genuine issues of material fact, failed to rule on the Plaintiffs Motion to Compel Discovery and Depositions, and granted Summary Judgment to the Defendants. Counsel further asserted the court failed to address the two-year statute of limitations of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-110 as to when the Appellant could have, or should have, known about the unconscionable fraudulent actions of bid-rigging, price fixing, and unfair trade practices. And, that Respondents willfully and deceptively conspired in inter-office emails to price fix and bid-rig to benefit the BCDSN Board. ROA See Court Filings (until after receipt of FOIA 9/2014 through 9/2015)

### Standard of Review

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), however, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). Appellant alleges that the lower court erred in granting Summary Judgment a drastic remedy which should have been cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Disputed factual issues and Motions that were never addressed during the March 23, 2018 hearing. ROA See March 23, 2018 Transcript.

Appellant alleges that on appeal from an order granting summary judgment, the appellate court applies the same standard that governs the trial court. The appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). Why did the lower court refuse to rule on the Appellant [Plaintiffs] Motion to Compel

Discovery and Depositions of Respondents as required as a matter of law for the granting of Summary Judgment?

### **Issue I**

Did the Lower Court err in granting Summary Judgment when Appellants were deprived of a full and fair opportunity to conduct discovery to address the inter-office emails of Procurement Director Dave Thomas, Mitzi Wagner, Alicia Holland, Shannon Loper, and other named Respondents regarding the 2012 RFP requirements in their original form? And in addressing the 2012 RFP changes that lowered the price point made by Procurement Director Dave Thomas, and other Respondents to the 2012 RFP, to benefit the BCDSN Board and **not provided to the other participating bidders on the “open market” 2012 RFP, to include Appellant Steven Craig Molloy, Island Group Inc. d/b/a Carolina Cleaning?**

- i. As a Genuine Issue of Material Fact, why didn't Beaufort County Procurement require the BCDSN Board to adhere to the same “minimum required specifications” for the 2012 Request for Proposal as all other bidders, to include the Appellant?
- ii. As a Genuine Issue of Material Fact, why did the Beaufort County Purchasing Director, Dave Thomas, in fact, allow the BCDSN Board and

BC Parks and Leisure personnel to change the 2012 RFP “minimum required specifications”?

- iii. As a Genuine Issue of Material Fact, Respondents claim they did not have to submit a Request for Proposal in 2012 because the Beaufort County DSN [Board] was an “in house county department”. Why then, did Beaufort County allow the Beaufort County DSN [Board] [Respondent] to submit a Proposal to this 2012 RFP?
- iv. As a Genuine Issue of Material Fact, why would the lower court ignore the FOIA’d emails and the Court requested timelines, that demonstrate the Appellant could not have known of the willful deception and fraudulent actions of the Respondents until receipt of the FOIA requests, and grant Summary Judgment?
- v. As a Genuine Issue of Material Fact, if, as the Respondents have claimed, they were in compliance with all South Carolina State Laws, then why wasn’t the Appellant copied on the inter-office emails and other documents by these Beaufort County employees? These communications were particular to the Appellant’s contract and discussed changes in the his 2010 awarded contract for Beaufort County buildings. And why are these emails only between the Respondents, including, but not limited to, the Beaufort County Procurement Director, Dave Thomas, and his references to South Carolina Procurement violations?

- vi. As a Genuine Issue of Material Fact, why did Judge Marvin Dukes not require Depositions in what Dukes describes in the transcript as a “complex case”, and where legal questions and subject matter are obvious, unanswered, incomplete and are matters of fact in the record of the March 23, 2018 hearing and per the transcript?
- vii. As a Genuine Issue of Material Fact, why did the lower court ignore prime facie evidence from internal Beaufort County emails that show Respondents discussed bid-rigging and fixing pricing to benefit an unqualified contractor (BCDSN Board) who did not even have a license to do business in Beaufort County?
- viii. As a genuine issue of material fact, in accordance with South Carolina State law, why did Beaufort County allow the unqualified, unlicensed BCDSN Board to submit a bid in 2012 for an “open market” RFP for janitorial work, in violation of South Carolina Consolidated Procurement, and Beaufort County RFP 2012 specifications for other 2012 RFP bidders?  
ROA, See Verified Amended Complaint, filed 06/05/2018

Under Rule 56 (c) Summary Judgment is only proper when “there is no Genuine Issue of Material Fact Baughman v. American Tel. Tel. Co., 306 S.C. 101, 114-15; 410 S.E. 2d.537, 545 (1991). Determining whether Summary Judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light

most favorable to the non-moving party, *Id.* 115, 410 S.E. 2d 545. Summary Judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery *Id.* 112, 410 S.E. 2d 543. Appellants assert that granting Summary Judgment was premature and that it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F. Supp. 483, 486 (D.S.C. 1975); see also *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Wright & Miller, Federal Practice and Procedure* § 2741, p. 543 (1983).

Respondents claim their Affidavits are ample discovery; this is untrue, and the Respondents affidavits have material issues of fact yet to be sought.

In Fact, Three (4) Respondents have failed to provide Affidavits (Beaufort County Administrator Gary Kubic, Beaufort County Attorney Josh Gruber and Beaufort County Deputy Administrator Bryan Hill and Beaufort County Finance Chairman, Stu Rodman) None of the aforementioned have submitted any Affidavits in this matter. All other Affidavits of Respondents have significant

misrepresentation of the facts and contradictions which must be explained and challenged, in order for due process and true fact finding to occur.

## **Issue II**

Did the lower court err in granting Summary Judgment regarding the two-year statute of limitations as time-barred, when Appellant could not reasonably have known about the bid-rigging, price fixing, unfair trade practices and the “unconscionable” breach of contract accompanied with a fraudulent act, until he received Freedom of Information request information? And, that these unconscionable, fraudulent actions by Respondents in violation of South Carolina Consolidated Procurement by the Procurement Director and others would be revealed in their interoffice email communications?

The S.C. Code Ann. § 15-78-110 provides the following statute of limitations regarding lawsuits against governmental entities: Except as provided for in S.C. Code Ann. § 15-3-40, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. Respondents claim that the Statute of Limitations is time-barred. Appellant asserts that the original action was filed within the two-year statute, based on when the Appellant received the FOIA’d emails and documents from Joy Nelson of Beaufort County.

*See Exhibit FOIA request ROA Verified Amended Complaint* [ From: **Nelson, Joy**  
<jnelson@bcgov.net>

Date: Wed, Sep 24, 2014 at 3:41 PM

Good Afternoon Mr. Molloy, Please see the attachments in response to your Freedom of Information Act request dated **September 10, 2014 asking for all communications regarding RFP 3910-120-221**. An extensive search has been made with each individual named in the request. The first attachment above is labeled emails. This is all email communication found in regard to RFP 3910-120-221. The other attachments are files/memos included in those emails.]

In response to the claims by Respondents, Appellant asserts this confirmation email demonstrates the Appellant could not have known of the willful, deceptive, and fraudulent actions of the Respondents to vitiate his 2010 awarded contract, as well as the lengths to which the Respondents would go to keep the Appellant and other bidders from being fairly awarded the 2012 RFP.

Respondents claim that the Statute of Limitations is time-barred, fails. The unconscionable, willful, deceptive and fraudulent actions and bid-rigging was not revealed until the acquisition of the FOIA'd documents, not as the Respondents claim at the June 2014 termination. This case was never about the termination of the contract; this case is, and always has been, about the Respondents actions and the manner listed above in which the Respondents willing acted and rendered Carolina Cleaning ineffective and unsustainable, and inoperable.

*S.C. Code Ann. § 15-78-110* is the exclusive remedy for statute of limitations relating to claims against governmental entities. As a matter of law, an action commenced within two years of when the "loss" could have been discovered

would not be barred by the Tort Claims Act. "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence. The remedy provided by the Tort Claims Act is "the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents." S.C. Code Ann. § 15-78-20. Where the legislature has covered the manner and timing for commencing a lawsuit, no other provision should be considered unless expressly allowed by the statute itself. In *Searcy v. S.C. Dep't of Educ.*, 303 S.C. 544, 402 S.E.2d 486 (Ct. App. 1991)

Under the discovery rule, a "Breach of Contract" action accrues of the date the injured party either discovered the breach or should have discovered the breach through the exercise of reasonable diligence, *State v. McClinton*, 369 S.C. 167, 173, 631 S.E. 2d 895, 898 (2006); *Santee Portland Cement Co. v. Daniel Int'l Corp.* 299 S.C. 269, 271, 384 S.E. 2d 693, 694 (1989) discovery rule applies in contract actions.

When it comes to lawsuits against the governmental entities, the legislature has insisted on strict adherence to its language. To "clarify any ambiguity" that "the government is only liable for torts as expressly prescribed and authorized in the 'South Carolina Tort Claims Act'," the General Assembly adopted S.C. Code Ann. § 15-78-200. Notwithstanding any provision of law, this chapter, the "South

Carolina Tort Claims Act", is the *exclusive and sole remedy* for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. ROA See *Verified Amended Complaint, filed 06/05/18; Exhibit Emails filed 2/21/2017*

### **Issue III**

Did the lower court err in granting Summary Judgment when Respondents acted outside the scope of their job duties in violation of South Carolina Procurement Code as a Genuine Issue of Material Fact?

*Under the South Carolina Tort Claims Act, 15-78-30*

*(d) "Governmental entity" means the State and its political subdivisions.*

*(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.*

*(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties. a governmental entity is liable solely for the acts of its employees.*

The FOIA request received by the Appellant revealed the unconscionable breach of contract accompanied with a fraudulent act, the bid-rigging, price fixing, and unfair trade practice by Respondents, which gives rise to actions for which Appellant can sue and get redress. South Carolina Tort Claims Act, 15-78-30 (f) *"Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury.*

The interoffice BC emails and supporting exhibits demonstrate the Respondents and others copied on emails willfully and deceptively conspired and acted outside the scope of their job duties through these emails and actions, in order to bid-rig and price-fix the 2012 RFP to benefit the BCDSN Board. These actions were to the detriment of the Appellant, Steven Craig Molloy, Island Group Inc. d/b/a as Carolina Cleaning when Beaufort County awarded the 2012 RFP to the BCDSN Board, utilizing the Appellant's "confidential proprietary" information, which was found contain within the BCDSN Board's 2012 RFP, gleaned from the pre-proposal meetings. Appellant asserts that Respondents Shannon Loper, and Alicia Holland and others employed by Beaufort County acted outside the scope of their job duties by sharing the Appellant's confidential information and conspired with another vendor, the BC-DSN Board as seen through inter-office emails where Mitzi Wagner gave a presentation for the benefit of the BCDSN Board in June 2012, stating that utilizing DSN "consumers" would be a financial win for Beaufort County.

As a Genuine Issue of Material Fact, why and how did Mitzi Wagner come to this conclusion that winning the 2012 RFP would be a financial win for Beaufort County? When at the time of her presentation, the 2012 RFP from vendors needed to be submitted by March 22, 2012?

Appellants further contend that a political subdivision and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances. S.C. Code Ann. §§ 15-78-40, no exemption can be claimed by Respondents who acted outside the scope of their official duties, which constitutes actual fraud, actual malice, intent to do harm, or a crime involving moral turpitude. Respondents claim that Beaufort County employees have immunity, S.C. Code §§ 15-78-62 (2) however, when actual fraud occurs, and intent to do harm occurs, no exemption can be claimed by the Respondents S.C. Code Ann. §§ 15-78-60 (17) ROA See *Verified Amended Complaint 06/05/18*

Appellant asserts as a genuine issue of material fact that, Procurement Director Dave Thomas intentionally committed a breach of contract accompanied with a fraudulent act when he allowed the employees of vendor BCDSN Board, as well as Beaufort County department heads and employees, to sit in on pre-bid meetings of Appellant, and later calling for a planning meeting to change with BCDSN and other BC employees, and exclude Appellant to discuss specification and changes that only benefited vendor BCDSN Board. Further, Thomas

intentionally allowed vendor BCDSN Board to submit *their* 2012 RFP three (3) months after the deadline of March 22, 2012 when all other vendors, to include the Appellant did not know that BCDSN was even submitting a bid and a competitor. See *ROA, Verified Amended Complaint, Exhibit Email dated 6/28/2012, filed 2/21/17*

- i. As a Genuine Issue of Material Fact, why did the lower court ignore Beaufort County internal emails which include statements in fact by Beaufort County Facilities Director Mark Roseneau that acknowledge the procurement violations and “warns all parties” to “take note that the specifications are different for BC-DSN” and “changed by Parks and Leisure (BC -Pals)” “working with BC-DSN” in order to drop the price” of the 2012 RFP after the March 22, 2012 deadline for the 2012 RFP?

Appellants assert Respondents had a duty under the *Budget and Control Board Procurement Regulations 19-445.2045 Receipt and Safeguarding of Bids; A. Procedures Prior to Bid Opening. 19-445.2050. Bid Opening A. Procedures; B. Postponement of Bid Opening; C. Disclosure of Bid Information.* To protect the Sealed Competitive Bid.

Appellants allege Thomas had a duty to protect the 2012 RFP bid by keeping the “confidential proprietary” information safeguarded during the bidding process and insuring all 2012 RFP bids were submitted by the March 22, 2012 deadline.

However, Thomas and other named Respondents actually changed the specifications in the 2012 RFP to bid-rig and price fix for the BCDSN Board.

*S.C. Code Ann. 11-35-410 (C) For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made. After June 30, 1992, the department shall recognize only county boards of disabilities and special needs that plan, administer, or provide services to persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries within a county or combination of counties which are created or established pursuant to this section, including those whose members are appointed by the South Carolina Governor. Legislative Oversight Committee: Healthcare and Regulatory Subcommittee Meeting dated: September 18, 2017 a discussion pertaining to the study performed on the South Carolina DSN on Tuesday, 10/10/2017. South Carolina Department of Disabilities and Special Needs Board of Governance dated October 3, 2017 clearly states, that the BCDSN Board is appointed by the South Carolina Governor. Beaufort County DSN Board at the time of this meeting in October of 2017 was not under the appointment of the Governor of South Carolina and was not in compliance from 2011 to 2018. Which lends to the credibility of Beaufort County claiming they were in total and complete compliance of South Carolina State Law. ROA See Verified Amended Complaint filed 5/25/18.*

As a Genuine Issue of Material Fact, why did Beaufort County Council change the BCDSN Board appointments from the statutory purview of the South Carolina Governor to non-statutory appointments by Beaufort County Council, specifically (then) Beaufort County Council Chairman Weston Newton (related family to the presiding judge in the lower court), and thereafter Beaufort County Administrator Gary Kubic and the County Attorney, Josh Gruber and others in BC?

As a Genuine Issue of Material Fact, it goes to their credibility of the Respondents, who covertly changed the *Beaufort County ordinance §46-92 in 2011*, said action going unbeknownst to the South Carolina Governor; thus, the BCDSN Board was “out of compliance” and “illegally operating between 2011 – 2018”. The BCDSN Board continued to operate out of compliance for five months after receiving the letter from the Governor’s Office liaison, Tommy Windsor, who directed Beaufort County to change the ordinance back. (Exhibis)

As a Genuine Issue of Material Fact, Appellant asserts the BCDSN Board was and is a “vendor”, and as such, they were required, like every other vendor, to adhere to the 2012 RFP specifications in accordance with South Carolina Consolidated Procurement for an “open market” RFP. Therefore, there is a genuine issue of material fact that the DSN Board did not comply with the 2012 RFP required specifications and was given preferential treatment by Purchasing Director Dave Thomas and other named Respondents.

Appellant in this case was required to comply with the “required specifications” and the same South Carolina Consolidated Procurement laws as the other vendors, and that Beaufort County, the “offeror”, established the “specifications”, none of which were adhered to by the BCDSN Board. The appointed department heads and regular employees of the BCDSN program conspired willfully, deceptively, fraudulently, and unconscionably, and in doing so violated rules of procurement and unfair trade practices. ROA See *Verified Amended Complaint filed 06/05/18*; See *Exhibit Emails, filed 2/21/17*; See *Affidavit Dave Thomas, filed 4/7/2017*

As a Genuine Issue of Material Fact, Appellants further allege that Thomas unsealed the 2012 RFP approximately around March 22, 2012 and changed the original specifications for this RFP for the benefit of the BCDSN Board “vendor”, as articulated in interoffice emails, where it also states that specifications were “omitted for [BC]DSN”, and in fact, Thomas allowed the BCDSN Board to submit the 2012 RFP *three months after* the March 22, 2012 deadline. See ROA, *Verified Amended Complain; Exhibit, BCDSN Board 2012 RFP filed 8/1/17*; See *Exhibit Emails, filed 2/21/17*

#### **Issue IV**

Did the lower court err in granting Summary Judgment when Appellants demonstrated for the lower court undisputed Preponderance of the Evidence demonstrating by and through interoffice emails the “unconscionable” fraudulent

actions taken by Respondents to violate the “Good Faith” required in fair dealings and the violation of the Unfair Trade Practices?

Appellants assert that Respondents had an obligation under S.C. Code §§ 11-35-20 (a) (b) (c) (d) (e) (f) (g) (h) Purpose and policies. The underlying purposes and policies of this code are:

*(a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;*

*(b) to foster effective broad-based competition for public procurement within the free enterprise system;*

*(c) to develop procurement capability responsive to appropriate user needs;*

*(d) to consolidate, clarify, and modernize the law governing procurement in this State and permit the continued development of explicit and thoroughly considered procurement policies and practices;*

*(e) to require the adoption of competitive procurement laws and practices by units of state and local governments;*

*(f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;*

*(g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process; and*

*(h) to develop an efficient and effective means of delegating roles and responsibilities to the various government procurement officers. to treat the Appellant fairly and in "good faith" by their actions.*

Under S.C. Code §§ 11-35-30 Respondents contend that they were in no way obligated to act in "Good Faith". Appellants assert that Respondents did not act in "Good Faith" under S.C. Code §§ 11-35-30, *Every contract or duty within this code imposes an obligation of good faith in its negotiation, performance or enforcement. "Good Faith" **means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealings.** ROA (See Verified Amended Complaint, filed 2/15/17, page 11, section 30, section 31; Page 12 – 13, section 32, section 33, section 34, and Page 13 - 14, section 35 and section 36, cont. to Page 14)*

### **Unfair Trade Practices**

Appellants assert that Respondents willfully committed Unfair Trade Practices in their dealings with the Appellant regarding the 2010 awarded contract, and the 2012 RFP, and the subsequent removal of buildings awarded through the 2010 Contract. The term "willful" as used in S. C. Code Ann. § 39-5-110 which creates

a statutory standard of willfulness different from the common law standard and, for purposes of Section 39-5-110, conduct is willful if the defendant should have known it violates Section 39-5-20, the standard being not one of actual knowledge, but of constructive knowledge, so if, in the ordinary exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Unfair Trade Practices Act, then such conduct is "willful" within the meaning of the statute. State ex rel. Medlock v. Nest Egg Soc. Today, Inc. (S.C.App. 1986) 290 S.C. 124, 348 S.E.2d 381.

Appellants further claim that under S.C. Code Ann § 39-5-20(a) and (b), Appellant [plaintiff] need not prove the elements of common law deceit in order to establish a violation of the South Carolina Unfair Trade Practices Act, since, under the statute, there is no need to show that a claim or representation was intended to deceive, but only that it had the capacity, effect, or tendency to deceive. State ex rel. McLeod v. C & L Corp., Inc. (S.C.App. 1984) 280 S.C. 519, 313 S.E.2d 334.

Appellants assert that Respondents violated the Unfair Trade Practice under S.C. Code Ann. § 39-5-20(a) which provides to the Appellants that fair methods of competition are adhered to. Appellants allege that Respondents were unfair in the trade practice due in part to Procurement Director, Dave Thomas in his and others and Respondents willfully conspired to remove buildings awarded to

Appellant in the 2010 contract as such one of several examples, the Bluffton Gym found in the FOIA request listed below and the fraudulent and unconscionable manner for which they removed the four (4) buildings which makes up the Bluffton Gym.

Under the FOIA request seen listed [ *From: Nelson, Joy <[jnelson@bcgov.net](mailto:jnelson@bcgov.net)>*

*Date: Wed, Sep 24, 2014 at 3:41 PM*

*Subject: Beaufort County Freedom of Information Act request*

*To: craig molloy <[admin@carolinacleaningcompany.com](mailto:admin@carolinacleaningcompany.com)>*

As a Genuine Issue of Material Fact, this specific email thread between Respondents dated, beginning December 5, 2012 to December 12, 2012 demonstrates the deception and willfulness by Respondents to violate S.C. Code Ann § 39-5-20 (a) and (b) showing removal of the Bluffton Gym from Carolina Cleaning's 2010 awarded contract and "giving" the building to Beaufort County DSN under their awarded 2012 contract without the 30-day written notice. Statement of fact, Shannon Loper, a Parks and Leisure Center employee, gave directives to the Purchasing Director, Dave Thomas to send out a 30-day Written Notice that Carolina Cleaning would no longer be cleaning the Bluffton Gym, and to "terminate"; acting well outside the scope of her duties as a BC employee.

- i. As a Genuine Issue of Material Fact, and a matter of fact, in the September 28, 2012 email thread from Mitzi Wagner where she stated that the Beaufort County DSN consumers were already cleaning the Bluffton Gym, and had billed Beaufort County for the janitorial services, Note: *[this was three (3) months prior to the December 5<sup>th</sup> emails]* the very same Bluffton Gym that was contracted to Carolina Cleaning in 2010. ROA See Exhibit filed 2/21/2017; See Carolina Cleaning signed 2010 Contract, filed 4/7/2017
- ii. As a Genuine Issue of Material Fact, the September 28, 2012 email thread revealed that the Bluffton Gym awarded to the Appellant in the 2010 Contractual Agreement had been removed in September and Appellant did not know that the building had been removed and could not have known the manner of which Respondents removed said building.
- iii. As a Genuine Issue of Material Fact, and Statement of Fact in the September 28, 2012 email from Mitzy Wagner to Shannon Loper, where Wagner stated that they have added the Bluffton Gym to their contract, and stating **“the cost is higher”** [The 2012 RFP in dispute that was awarded to BCDSN Board] when the said building [Bluffton Gym] was still under the Appellant’s 2010 contractual agreement, however removed by the deceitful actions of BC for a higher cost to Taxpayers, an unqualified and untrained, non-licensed option of BC-DSN?

Appellant alleges that Respondents knowingly were deceptive, fraudulent, and unconscionable in their actions and practices to remove “several” awarded Beaufort County buildings from the 2010 awarded contract to Carolina Cleaning and thus violated S.C. Code Ann. § 39-5-20(a) states that *unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful*. ROA See *Verified Amended Complaint filed 6/5/2018; Exhibit filed 2/21/2017*.

- i. As a Genuine Issue of Material Fact, and Statement in Fact by Respondents, actions took place behind the Appellant’s back, because the Appellant began asking questions about BCDSN Board programs that were offered to the Appellant as a way to employ their disabled subcontractors. The BCDSN Board wanted Carolina Cleaning to hire these disabled subcontractors and pay them less than minimum wage, so Beaufort County could salvage their declining budget by co-mingling the funding. Statement in fact, made by Respondents in submitted emails (ROA) that Beaufort County did not have the money to pay Carolina Cleaning.
- ii. As a Genuine Issue of Material Fact, and Statement of Fact, as seen in several submitted “protest letters” by the Appellant (ROA), Respondents would grant meetings with Appellant and led him to believe the differences would be corrected, all while conspiring and colluding in a

willful, deceptive, fraudulent, and unconscionable manner, as demonstrated by their private email communications, which ultimately rendered the Appellant's 2010 contract ineffective and unsustainable to maintain. ROA *See Verified Amended Complaint filed 6/5/2018 See Exhibit emails filed 2/21/17*

The Appellant alleges that in the August 2012 Beaufort County Finance Committee Meeting, (memorialized in emails between BCDSN vendor employee Wagner, and Beaufort County employee Loper [Respondents]), Wagner (and Loper) were actually seated on the bid selection committee and Wagner (and Loper) selected their own entry as the winning bid. Loper was included on this committee even after Loper was invited by Thomas to sit in on the 2012 Pre-Request for Proposal "confidential" meeting with the Appellant, which contradicts Thomas's statement [that the "DSN was never given any advantage with regard to bidding or contracting]. ROA *See Verified Amended Complaint filed 5/25/18*

Respondents claim that Appellants claims failed on remedies under Beaufort County Procurement Code. Respondents assert they complied with all South Carolina State Laws, per the signed 2010 Contract (5-year, with 1-year Renewals) between Carolina Cleaning and Beaufort County.

Appellants allege that Respondents were not in compliance with S.C. State Law regarding the appointment authority of the Beaufort County DSN Board, while under contract with Carolina Cleaning.

Appellants further allege that Respondents did in fact change the Beaufort County ordinance § 46-92 states that the Board shall be at least (7) seven members but not more than (11) eleven and shall be appointed by Beaufort County Council in direct violation of S.C. Code Ann. §§ 44-20-375, which superseded the S.C. Governors Appointment Authority of the Beaufort County DSN Board, from 2011 to November 2018. Respondents argued that they complied in all aspects of South Carolina Law and was governed accordingly.

Genuine Issues of Material Fact exist that Respondents claims fail of being in compliance of South Carolina Law. In the (*See Transcript, March 23, 2018, page 10, lines 15 to 21*). Details how the Request for Proposal is to be submitted and is Governed by the Laws of the State of South Carolina Consolidated Procurement Code.

Appellant further alleges that Respondents were not in compliance of South Carolina Consolidated Procurement, [See Listed under Statutes], and the Budget and Control Board Procurement Regulations. ROA *See Verified Amended Complaint filed 6/5/2018; Exhibit Emails filed 2/21/17*

## Issue V

Respondents have claimed by and through affidavits presented to the court that the Disabilities and Special Needs is a Department of Beaufort County, and in a sworn affidavit by Purchasing Director, Dave Thomas, stated the following: “In 2012 and 2013, in an effort to further reduce costs, Beaufort County began considering using **“its in-house Disabilities and Special Needs (DSN) (according to the Department of Labor is a “third party” entity, separate from Beaufort County)**, to provide janitorial service. Under this approach, “consumers” of DSN services i.e. individuals with disabilities and special needs would perform janitorial work for Beaufort County as **“employees of the county”**. Thomas further states “this would provide benefits to both those consumers and to the taxpayers of Beaufort County. Because any contract for the use of DSN was **“essentially a use of “in house” employees**. It was not technically required to be bid out under the South Carolina Consolidated Procurement Code or the Beaufort County Procurement Code. Nonetheless, in an effort to safeguard the taxpayers of Beaufort County, the County permitted the submission of competing proposals against DSN. Every RFP in which DSN submitted a proposal was in full compliance with all governing procedures. **“DSN was never given any advantage with regard to bidding or contracting. Based on FOIA information, Appellants know none of these statements by Thomas are true.**

As a Genuine Issue of Material Fact, the Department of Labor defines the BCDSN Board as “separate entity” aka “vendor”. Therefore, the BCDSN Board must submit any proposals pursuant to both State and Beaufort County Procurement law(s) just like Island Group d/b/a Carolina Cleaning or any other vendor (and to determine if BCDSN Board were even qualified to submit a bid under this challenged RFP). In other words, the BCDSN Board cannot be, simultaneously, the “offeror” and also the “vendor”. Either they are a “third party” entity as defined by the Department of Labor in documents received through FOIA, and (noted on the BCDSN Board’s Website) or they are a (self-described) county department, in which case they would not be eligible to submit bids in response to any county RFP’s. ROA *See Verified Amended Complaint filed 5/25/18; See Dave Thomas Affidavit, filed 4/7/17*

Purchasing Director, Dave Thomas has emphatically stated that the BCDSN Board did not get preferential treatment, and that they complied with State and Beaufort County Procurement then answer the following the genuine issue of material fact questions that are unanswered:

- i. As a Genuine Issue of Material Fact, why didn’t Beaufort County Procurement require the Beaufort County DSN Board to adhere to the same “minimum required specifications” for the 2012 Request for Proposal as all other bidders including the Appellant?

- ii. As a Genuine Issue of Material Fact, why did the Beaufort County Purchasing Director, Dave Thomas, in fact, change the “2012 RFP “minimum required specifications for BCDSN Board?
- iii. As a Genuine Issue of Material Fact, Respondents claim, that they did not have to submit a Request for Proposal in 2012, then why did Respondents [Beaufort County DSN Board] submit an “open market” Request for Proposal in 2012?
- iv. As a Genuine Issue of Material Fact, why did the lower court ignore Prima Facie evidence from internal BC emails that in fact show Respondents discussing bid-rigging and fixing pricing for a bid by an unqualified contractor, by South Carolina Laws definition and the requirements in and open market RFP that the contractor in fact must have a South Carolina license to do business.
- v. As a Genuine Issue of Material Fact, in accordance with South Carolina State law, why did Beaufort County allow the unqualified, with no business license, Beaufort County DSN Board to submit a bid in 2012 in an “open market” RFP a bid for janitorial work in violation of South Carolina Consolidated Procurement, and Beaufort County RFP 2012 specifications for other 2012 RFP bidders? ROA, See *Verified Amended Complaint, filed 06/05/2018*

- vi. As a Genuine Issue of Material Fact, Respondents have claimed in their affidavits that they complied with all South Carolina laws governing Procurement. Appellants contend that Respondents did not comply with all South Carolina Procurement law: **Competitive Sealed Proposals:** If this process is used, award must be made to the responsive and responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. The state may elect to conduct discussions or enter negotiations. The solicitation, or request for proposals (RFP), must state the relative importance of the factors to be considered in evaluating proposals.
- vii. As a Genuine Issue of Material Fact, according to state law, a **procurement officer shall not release a proposal** to a person without first obtaining from that person a written agreement regarding restrictions on the use and disclosure of proposals. The law expressly provides that such agreements are binding and enforceable. By signing this agreement, you agree to abide by the following restrictions on the use and disclosure of any proposal or source selection information you receive regarding this procurement. In addition, you acknowledge that your failure to abide by these restrictions could irreparably damage the integrity of this procurement. *Regulation 19-445.2010(E)*

- viii. Appellant asserts and exhibits show to include Statement of Facts by Respondent, Purchasing Director, Dave Thomas intentionally omitted required specifications of the 2012 RFP which gave Beaufort County DSN the unfair advantage over Carolina Cleaning and other bidders. These changes were done after the March 22, 2012 required deadline for submitted RFP's. ROA *See Beaufort County DSN Board 2012 RFP, Exhibit filed 8/1/2017*
- ix. As a Genuine Issue of Material Fact, Appellants further allege that in fact, the Purchasing Director, Dave Thomas unsealed the 2012 RFP approximately around March 22, 2012 and changed the original specifications of the 2012 RFP for the benefit of Beaufort County DSN Board "vendor" as seen in inter-office emails, and the 2012 RFP of the Beaufort County DSN Board where, it states that specifications were "omitted for DSN", and in fact, the Purchasing Director, Dave Thomas allowed the Beaufort County DSN Board to submit the 2012 RFP three months after the March 22, 2012 deadline. *See ROA, Verified Amended Complain; Exhibit, BCDSN Board 2012 RFP filed 8/1/17; See Exhibit Emails, filed 2/21/17*

### Argument

Under South Carolina Rules of Civil Procedure, Rule 9 (b); In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. In other words, the argument is simple, The lower court erred in granting Summary Judgment to Respondents when the lower court failed to address the Respondents “unconscionable” Breach of Contract Accompanied with a Fraudulent Act, the Violation of Budget and Control Board Procurement Regulations, South Carolina Consolidated Procurement, Bid-Rigging, Price Fixing, Unfair Trade Practices and Respondents lack of acting in “Good Faith” which has led to the filing of this action. As stated in Issues 1 – 5, Appellants did not have fair and adequate discovery under SCRCF Rule 56 (c), and that the lower court erred in granting Summary Judgment when the lower court failed on the Motion to Compel Discovery and Depositions, and the lower court erred in granting Summary Judgment on the issue of Genuine Issues of Material Fact, Preponderance of the Evidence and Prima Facie Evidence. Appellant asserts that Beaufort County, and the Beaufort County DSN Board, willfully, deceptively, unconscionably committed fraudulent acts, and conspired and colluded to remove 2010 awarded Beaufort County buildings and give them to the DSN janitorial cleaning contract without giving proper notice and giving the Appellant the

opportunity to meet or beat the price point per the [Appellant 2010 awarded contract] The motivation of Beaufort County in their fraudulent actions was money, to shore up their failing budget. Respondents inter-office emails confirm that Beaufort County could not honor the 2010 awarded contract financially to Steven Craig Molloy and Island Group Inc, d/b/a/ Carolina Cleaning. Appellants assert that when Carolina Cleaning refused to hire DSN Day program “consumers”, Beaufort County due to their budget shortfalls had to figure a way to rid Beaufort County of Carolina Cleaning. The removal of awarded buildings as seen in previous named issue significant portions of his 2010 awarded contract was removed, and when Carolina Cleaning would protest the changes, they took more buildings, and to compound the issue, Beaufort County in pre-Request for Proposal meetings the named Respondents conspired, colluded, committed Unfair Trade Practices, Breach of Contract Accompanied with a Fraudulent Act, in an unconscionable manner all without oversight from the South Carolina Government, and the State Fiscal Accountability Authority. ROA *See signed Carolina Cleaning 2010 Contract, filed 4/7/2017; See Exhibit Emails, filed 2/21/2017; See Exhibit filed 8/1/2017*

Appellant asserts and exhibits show to include Statement of Facts by Respondent, Purchasing Director, Dave Thomas intentionally omitted required specifications of the 2012 RFP which gave Beaufort County DSN the unfair advantage over Carolina Cleaning and other bidders. These changes were done after the March

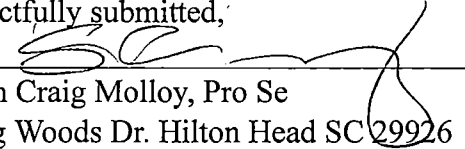
22, 2012 required deadline for submitted RFP's. ROA *See Beaufort County DSN Board 2012 RFP, Exhibit filed 8/1/2017*

Appellant asserts that inter-office emails clearly demonstrate the willfulness, deceptive, unconscionable, fraudulent, and unfair practices and the lengths to which Beaufort County, Beaufort County DSN Board, and the Beaufort County DSN would go to systematically and financially ruin Steven Craig Molloy, d/b/a Carolina Cleaning janitorial cleaning business as evidenced in the Verified Amended Complaint, Exhibits, and inter-office emails all of which are the Record of Appeal.

### **Conclusion**

The summary judgment should be reversed, and the case remanded.

Respectfully submitted,

By:   
Steven Craig Molloy, Pro Se  
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February 20, 2019

PROOF OF SERVICE

I hereby certify that on this date I caused to be served a copy of the foregoing BRIEF OF APPELLANT upon the individual whose name and address are listed below by placing a copy of it in the United States Mail with proper first-class postage affixed thereon.



Craig Molloy pro se Appellant

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843-368-7300

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February 20, 2019

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2/20/2019

Attn: Shelby  
SC Court of Appeals

Re: Appellate case # 2018-002170

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Shelby,

Please see enclosed the Brief of Appellant and the Proof of service and a \$ 50.00 check for filing.

I received your letter noting the Transcript order.

Please call if you have an other questions.

Thank you,

Craig Molloy  
Pro Se - Appellant  
843-368-7300

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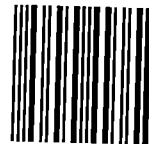


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