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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Opinion No. 5616 (S.C. Ct. App. Filed January 16, 2019)

James C. Owens, ... Petitioner,

-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.

**APPENDIX
VOLUME I**

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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
Case No.: 2014-CP-10-6265

RECEIVED

JAN 27 2017

SC Court of Appeals

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.

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-6265

James C. Owens

Bryan Crabtree, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This Order ends the case as to Defendant ADC Engineering, Incorporated.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

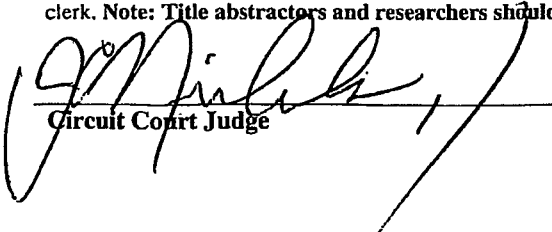
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117
Judge Code

6/22/16
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JAMES C. OWENS,

Civil Action No. 2014-CP-10-6265

Plaintiff,

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING, INC.,
TYLER FLESCHE, AND RED DRUM
CAPITAL GROUP, LLC,

Defendants.

**ORDER GRANTING DEFENDANT ADC
ENGINEERING, INCORPORATED'S
MOTION FOR SUMMARY JUDGMENT**

FILED
2016 JUN 22 PM 2:54
JULIE J. AUSTIN
CLERK OF COURT

gm
This matter came before the Court for hearing on May 16, 2016, on Motion for Summary Judgment of Defendant ADC Engineering, Incorporated ("Defendant" or "ADC"). All parties were represented by counsel at the hearing. The Court fully considered the Motion presented, the Memorandum of Law in Support of the Motion, the Opposition submitted to the Motion, the evidence presented and the arguments of counsel. For the reasons discussed below, the Court grants Defendant ADC's Motion for Summary Judgment.

I. FINDINGS OF FACTS

ADC terminated Plaintiff James C. Owens' ("Plaintiff's" or "Owens'") employment on or about September 23, 2014, for misusing company equipment and time on personal activities to oppose construction of a parking garage on Shem Creek in Mt. Pleasant, South Carolina. ADC is an engineering firm that handles generally every aspect of engineering, predominantly on commercial projects. Owens was a construction administrator with the company for approximately ten years before his termination of employment.

Owens' general work hours with ADC were 8:00 a.m. to 5:30 p.m., Monday through Thursday, and 8:00 a.m. to 12:00 p.m. on Friday. ADC provided him a cell phone, as well as a laptop computer that was hard-wired into a docking station at the office. The company's policy addressing use of this technology provides in part:

[A]ll employees should remember that electronic media and services provided by the company are company property and their purpose is to facilitate and support company business: The employee should be aware that the firm might be required to produce e-mail messages if litigation develops. . . . Brief or incidental use of office technology for personal, non-business purposes is . . . acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company. . . . Failure to comply with these policies will result in discipline, up to and including termination of employment.

During the last year of Owens' employment, he was actively involved in opposition efforts regarding the construction of a parking garage structure being built on Shem Creek in Mt. Pleasant, South Carolina. ADC was the structural engineer for the parking garage building, having been hired by the architectural firm, Stubbs Muldrow Herin.



Owens informed ADC of his opposition activities involving the Shem Creek parking garage in June of 2014. He contends that he did not know ADC was the engineer on the project but that he wanted to let ADC know of his activities as a courtesy. Owens had previously been involved in raising public concern over projects for clients of ADC without incident. According to Owens, ADC related his opposition to the Shem Creek parking garage project to his other opposition activities and instructed him to keep ADC out of the media. ADC did not object to Owens' actions, as long as he was acting on a private basis on his own time.

As part of his opposition to the parking garage, Owens set up a Saving Shem Creek Facebook page in March of April of 2014. He read posts on the page while employed at ADC, either at home or at the office. Owens confirmed numerous email communications concerning the Shem Creek parking garage project that occurred during the work day, during working hours

from equipment owned and provided by ADC. He also admitted to receiving assistance from another ADC employee with his personal opposition to the Shem Creek parking garage project, while the employee was being paid by ADC. Moreover, Owens sent a number of text messages from the phone issued to him by ADC during working hours when he was being paid by ADC pertaining to his personal endeavor. There is evidence, as well, that he attended meetings pertaining to the Shem Creek parking garage during working hours. According to Owens, if he had known ADC was the engineer on the parking garage project, he would have backed off on his opposition efforts, as it would have presented a conflict of interest.

gn
On September 16, 2014, ADC met with Stubbs Muldrow Herrin and Tyler Flesch, a principal in the owner involved with the parking garage project, to discuss Mr. Flesch's concerns over Owens' opposition activities. After the meeting, ADC informed Stubbs Muldrow Herrin that it was not going to fire Owens. ADC subsequently received a letter from Stubbs Muldrow Herrin on or about September 18, 2014, terminating ADC from the Shem Creek project. At that time, ADC Engineering received an evidence preservation letter from the attorney for the developer of the Shem Creek project.

Owens also received a similar letter instructing him to preserve electronic evidence, which he forwarded to ADC. At least one of the partners at ADC expressed concerns then over whether Owens had been sending emails from company computers during office time.

Pursuant to a request from Owens, ADC met with him at the end of the day on Thursday, September 18, 2014, wherein Owens affirmed that he had used his work computer at ADC for matters associated with his opposition to the Shem Creek parking garage. On or about the same day, ADC had its IT specialist conduct an electronic search to preserve Owens' emails, in

conjunction with the electronic preservation letter. ADC also discovered Owens had used his cell phone for text messages related to the Shem Creek parking garage project.

On or about Friday, September 19, 2014, ADC decided to terminate Owens' employment as a result of his involvement of ADC, its time, resources and equipment in his personal pursuit against the parking garage project. Owens was out sick on Monday, September 22, 2014, such that his employment was terminated on September 23, 2014.

II. CONCLUSIONS OF LAW



Owens has asserted one cause of action against ADC for wrongful termination in violation of public policy. ADC has moved for summary judgment on the claim. Summary judgment is proper when the moving party demonstrates that there is no genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law. S.C.R.C.P. 56; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App. 2004). Because Owens cannot establish any genuine issue of material fact pertaining to his wrongful termination claim, ADC's Motion for Summary Judgment is granted.

South Carolina is an employment at-will state. See *Culler v. Blue Ridge Electric Co-op, Inc.*, 309 S.C. 243, 422 S.E.2d 91, 92 (S.C. 1992). Indeed, South Carolina has a strong policy favoring at-will employment. *Prescott v. Farmers Tel. Coop., Inc.*, 335 S.C. 330, 335, 516 S.E.2d 923, 925 (1999). The general rule is that an employer may terminate an at-will employee at any time for any reason or for no reason at all. *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011). Owens was an at-will employee who was terminated as a result of his use of ADC's resources during his pursuit of a personal endeavor that harmed the company. His termination does not give rise to a claim for wrongful termination in violation of

public policy.

In certain limited situations, the discharge of an at-will employee may give rise to a cause of action for wrongful termination when there is a violation of a clear mandate of public policy. *Id.* To constitute a claim for wrongful termination under this theory, the employee's termination must "contravene a clear mandate of public policy." *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213, 215 (S.C. 1985). This exception is a narrow one, to be very narrowly applied. *Id.*; see also *Taghivand v. Rite Aid Corp.*, 768 S.E.2d 385 (S.C. 2015) (noting the court exercises "restraint when undertaking the amorphous inquiry of what constitutes public policy.") Because Owens' termination did not violate any mandate of public policy, his claim against ADC is dismissed, as a matter of law.



Owens contends that his termination violated S.C. Code Ann. § 16-7-560, which provides that: "It is unlawful for a person to . . . discharge a citizen from employment or occupation, . . . because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State." S.C. Code Ann. § 16-17-560. The statute does not provide for a private cause of action by Owens against ADC, and Owens' termination did not otherwise violate the statute.

Owens was terminated for using ADC's equipment to pursue a personal endeavor on company time, while being paid by ADC. ADC had permitted Owens previously to pursue a personal endeavor on his own time regarding opposition to a matter involving a client of ADC. ADC afforded Owens the same courtesy with regard to his opposition to the parking garage structure, notwithstanding that the architect on the project was a client of ADC.

ADC is an engineering firm that works predominantly on commercial matters, which necessarily involves development. Owens, as a ten-year employee, knew and understood his

employer's business. Indeed, Owens at least tacitly acknowledged ADC's development role generally, if not specifically, when he informed the company of his opposition to the Shem Creek parking garage as a courtesy. And, as before, ADC permitted him to pursue personal endeavors on his own time without involving ADC. Owens' disregard for those parameters, admittedly using ADC's equipment during company time to the detriment of ADC, resulted in his termination. Under these circumstances, his termination does not give rise to any claim for wrongful termination in violation of public policy.

g
Additionally, any activity by Owens opposing the Shem Creek parking garage project does not amount to protected political speech under the statute at issue. *See Vanderhoff v. John Deere Consumer Products, Inc.*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003)(finding that the displaying of a confederate flag decal on an employee's toolbox at work as an expression of his political view of the Confederate flag coming down from the state house is not political opinion that is covered by Section 16-17-560). Similar to the *Vanderhoff* court's determination, Owens' opposition to the Shem Creek parking garage "is not a political opinion or the exercise of any political right or privilege as that phrase is intended by this criminal statute because such expression is not protected as a matter of clear public policy either as set forth in section 16-17-560 or otherwise." *Id.* at 2.

Section 16-17-560 expressly protects only "political" opinion, and the statute does not define what is meant by this phrase. However, because Section 16-17-560 is a criminal statute, it must be construed narrowly. *Vanderhoff v. John Deere Consumer Products, Inc.*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003). Under the narrow construction of the statute, Owens' opposition to the construction of a parking garage structure on Shem Creek does not constitute protected "political" speech.

This Court agrees with the court in *Vanderhoff*, which further defined what speech was to be covered by the statute at issue:

Further, the available case law suggests the state court would not construe the phrase to extend to all opinion and expression which, if a matter of public concern, may be protected under the First Amendment of the United States Constitution or under Article I, section 2, of the Constitution of the State of South Carolina. *Rather, this court concludes that the political opinion and expression covered by section 16-17-560 extends only to matters directly related to the executive, legislative, and administrative branches of Government, such as political party affiliation, political campaign contributions, and the right to vote.*

Id. (emphasis added)(citing *Culler v. Blue Ridge Elec. Coop., Inc.*, 422 S.E.2d 91, 92-93 (S.C.1992) (finding that if plaintiff was discharged "because he refused to contribute to a political action fund [supported by his employer], he would have a cause of action under *Ludwick* and ... [section] 16-17-560"). In that case, the court found that to hold that the plaintiff's actions constituted protected political speech would allow an infinite number of social issues to fall within the ambit of public debate. *Id.*

Similarly, Owens' opposition to the construction of a parking garage on Shem Creek does not constitute "political" speech governed under the statute. His actions do not pertain to political party affiliation, political campaign contributions or the right to vote. They simply are not actions that fall under the purview of Section 16-17-560. As in the *Vanderhoff* case, "[s]uch expression or belief may be a matter of public concern generally protected under the United States and South Carolina Constitutions. It is not, however, a 'political' opinion or the exercise of a political right or privilege within contemplation of section 16-17-560." *See id.* at *3.

Indeed, it would be illogical to suggest that an employer, who depends on business to generate revenue to pay its employees, would somehow be prohibited from terminating an employee who actively opposed a specific project on which the employer was working, particularly where, as here, the employee used the employer's equipment and time as part of his

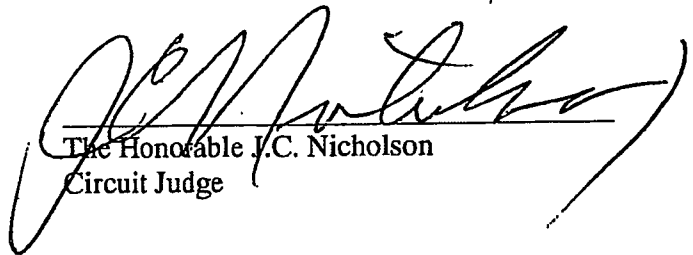
efforts. Moreover, Owens, as an employee, would have access to inside information pertaining to the very project he was opposing. Even Owens acknowledged that ADC's role as the engineer on the parking garage project he opposed presented a conflict of interest. Owens' actions in opposing a project on which his employer was working, regardless of whether or when he knew his employer was involved, simply does not amount to any political speech protected under section 16-17-560. Accordingly, Owens' claim for wrongful termination in violation of public policy fails, as a matter of law.

III. FINAL ORDER AND JUDGMENT

This Court **GRANTS** Defendant ADC Engineering's Motion for Summary Judgment such that Plaintiff's claim against Defendant ADC Engineering is **DISMISSED** in its entirety. Because there is no just reason for delay, it is hereby **ORDERED, ADJUDGED AND DECREED** that this is a **FINAL JUDGMENT** as a matter of law as to Plaintiff's claim for wrongful termination against ADC Engineering, Incorporated, such that final judgment is hereby entered.

AND IT IS SO ORDERED.

6/22, 2016
Charleston, South Carolina


The Honorable J.C. Nicholson
Circuit Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-6265

FILED

James C. Owens

2016 AUG -8 PM 1: 23

Bryan Crabtree, et al.

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE. ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Alter or Amend Judgment filed on 6/30/16 is **denied**.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2117
Judge Code

8/16/16
Date

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO.: 2014-CP-10-6265

James C. Owens)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

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

Defendant.)

Plaintiff's Attorney:

John E. Parker, Bar No. 4442

Address:

P.O. Box 457

Hampton, SC 29924

Phone: (803) 914-2004 Fax (803) 942-2014

E-mail: jparker@pmped.com

Defendant's Attorney:

Molly Hughes Cherry, Esquire,

Address:

Post Office Box 486

Charleston, SC 29402

Phone: (843) 577-9440 Fax (843) 414-8206

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend a Judgment

Estimated Time Needed: 15 min.

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature] June _____, 2016
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ **PAID – AMOUNT: \$25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED – AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS,

Plaintiff,

v.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO, ADC ENGINEERING, INC., TYLER
FLESCHE, AND RED DRUM CAPITAL
GROUP, LLC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-6265

**NOTICE OF MOTION
AND
MOTION TO ALTER OR AMEND A
JUDGMENT**

FILED
2016 JUN 30 PM 2:38
CLERK OF COURT
SY

TO: MOLLY HUGHES CHERRY, ESQUIRE, ATTORNEY FOR DEFENDANT, ADC
ENGINEERING, INC.:

You will please take notice that the plaintiff will move before the court at a time and date set by the court to alter or amend the judgment of the court dated June 22, 2014 granting the defendant, ADC Engineering summary judgment. The plaintiff moves to amend the judgment to deny the defendant ADC Engineering's motion for summary judgment because the order signed by the Court on June 22, 2014 fails to weigh the evidence using the proper standard for summary judgment, but instead, construes the evidence in a light favorable to the moving party rather than in a light most favorable to plaintiff.

The evidence when viewed in a light most favorable to the plaintiff establishes that the plaintiff was fired for opposing the Shem Creek Project after being given permission to do so by the employer and he was terminated for exercising his right to free speech. The termination of the plaintiff was in violation of the public policy of South Carolina.

[Signature Page to Follow]

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

BY: _____

John E. Parker
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

June 27, 2016
Hampton, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I, *Donna L. Mann*, legal assistant with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Plaintiff(s), have this date forwarded via facsimile and mailed via the U.S. Postal Service, a true and correct copy of the within ***PLAINTIFF'S NOTICE OF MOTION AND MOTION TO ALTER OR AMEND A JUDGMENT with MEMORANDUM IN SUPPORT OF MOTION TO ALTER OR AMEND A JUDGMENT*** with first class postage prepaid to:

MOLLY HUGHES CHERRY, ESQUIRE
NEXSEN PRUET, LLC
P.O. BOX 486
CHARLESTON, SC 29402
ATTORNEY FOR ADC ENGINEERING, INC.

RYAN A. EARHART, ESQUIRE
EARHART OVERSTREET LLC
P.O. BOX 22528
COLUMBIA, SC 29413
ATTORNEY FOR BRYAN CRABTREE

WILLIAM P. EARLY, ESQUIRE
PIERCE, HERNS, SLOAN & MCLEOD, LLC
P.O. BOX 22437
CHARLESTON, SC 29413
ATTORNEY FOR KIRKMAN BROADCASTING, INC.

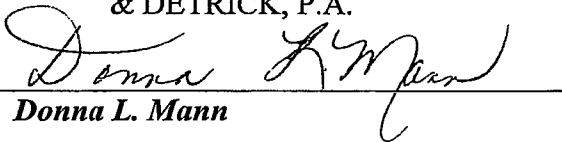
ANDREW S. HALIO, ESQUIRE
HALIO & HALIO
P.O. BOX 747
CHARLESTON, SC 29402
ATTORNEY FOR TYLER FLESCH

G. HAMLIN O'KELLEY, III, ESQUIRE
BUIST BYARS & TAYLOR, LLC
652 COLEMAN BLVD., SUITE 200
MT. PLEASANT, SC 29464
ATTORNEY FOR RED DRUM CAPITAL GROUP, LLC

RE: *Owens v. Crabtree, et al.*
C/A No.: 2014-CP-10-6265

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

BY:


Donna L. Mann

June 28, 2016
Hampton, South Carolina

FILED
2016 JUN 30 PM 2:38
JULIE J. ARTHUR, CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JAMES C. OWENS,)

Plaintiff,)

v.)

BRYAN CRABTREE, KIRKMAN)
BROADCASTING, INC. D/B/A WQSC)
RADIO, ADC ENGINEERING, INC.,)
TYLER FLESCHE, AND RED DRUM)
CAPITAL GROUP, LLC,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-10-6265

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO
ALTER OR AMEND A JUDGMENT**

FILED
2016 JUN 30 PM 2:38
JULIE S. HAYES
CLERK OF COURT
BY _____

PLEASE TAKE NOTICE that Plaintiff James C. Owens moves for reconsideration of the Court's order ("Order") dated and entered on June 22, 2016, that grants Defendant ADC Engineering, Inc.'s ("ADC") Motion for Summary Judgment. The undersigned counsel for the Plaintiff received notice of the signed order on June 27, 2016. The Plaintiff requests that the Court reconsider its findings as follows:

1. In granting Defendant ADC's Motion for Summary Judgment, the Order states that the Plaintiff does not have a private cause of action against ADC under S.C. Code Ann. § 16-17-560. (Order p. 5). However, the Supreme Court of South Carolina has found that there is a private cause of action created by both section 16-17-560 and the Supreme Court's holding in *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985). Section 16-17-560 provides that "[i]t is unlawful for a person to . . . discharge a citizen from employment or occupation . . . because of political opinions or *the exercise of political rights and privileges* guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State." S.C. Code Ann. § 16-17-560 (emphasis added). In *Culler v. Blue Ridge Electric Cooperative, Inc.*, the Court stated that "*Ludwick's* prohibition of retaliatory discharge in violation of clear mandate of public policy of this State extends at least to legislatively defined 'Crimes Against Public Policy.'" *Culler*, 309 S.C. 243, 246, 422 S.E.2d 91, 92-93

(1992). Section 16-17-560 is defined in Chapter 17, Title 16 of the S.C. Ann. Code as one of the “Crimes Against Public Policy.” *Id.* Therefore, if Mr. Owens was discharged for exercising a political right guaranteed by the Constitution of the United States, “he would have a cause of action for wrongful discharge under *Ludwick* and S.C. Code Ann. § 16-17-560 (1976).” *Id.*

2. The Order describes the activity for which Mr. Owens was discharged as a “personal endeavor.” (Order p. 5). However, Mr. Owens’ activities can hardly be considered to be a mere personal matter. Characterizing his activities in this fashion would be appropriate if he were participating in tasks ancillary to his private home life. Instead, Mr. Owens was acting in pursuit of rights guaranteed by the First Amendment of the United States Constitution and Article I, Section 2 of the Constitution of the State of South Carolina, namely the exercise of his rights to participate in the political process and engage in political speech. Quoting *Vanderhoff v. John Deere Consumer Products, Inc.*, this Court in its Order concludes that to be shielded by section 16-17-560, political expression must be “directly related to the executive, legislative, and administrative branches of Government” (Order p. 7); *Vanderhoff*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003). However, not only is the district court’s holding in *Vanderhoff* not binding authority over this Court, but its reasoning does not in fact extend to the activities of Mr. Owens. Mr. Owens was engaged in speaking out in opposition to a project that involved considerable public interest. Additionally, a forum for Mr. Owens’ speech was at town council meetings, where he participated when council was receiving input from the public to assist in executive decisions by the Town of Mount Pleasant. (Owens depo. at p. 36, ll. 5 - 12; p. 106, ll. 3 - 13; May 20, 2015). Under *Vanderhoff*’s interpretation of section 16-17-560, as well as the First Amendment and the South Carolina Constitution, Mr. Owens’ activities are considered protected political speech and opinion. *Vanderhoff*, 2003 WL 23691107, at *2.

The Court analogizes the facts of the present case to *Vanderhoff*, in which the district court found that the plaintiff's activity was not political opinion covered by section 16-17-560. *Id.* However, *Vanderhoff* and the present case are readily distinguishable. In *Vanderhoff*, the court found that an employee's display of a confederate flag decal on his toolbox was not a political opinion covered by the statute. *Id.* On the other hand, here Mr. Owens has not only voiced his opinion on an issue involving the local executive branch's zoning authority, he has done so in a public forum through town council meetings, as well as through social media that was viewed by thousands of Mt. Pleasant residents. (Owens depo. at p. 33, l. 16 – p. 34, l. 12; p. 36, ll. 5 – 12; p. 186, ll. 11 – 13). Mr. Owens' activities surely fall within the purview of what was considered by the district court to be protected political opinion and expression under section 16-17-560 in *Vanderhoff*, as Mr. Owens' exercise of free speech has much broader implications within the local political process than the simple display of a sticker on a toolbox, and is directly related to the functions of the executive organ of the local town government. *See Vanderhoff*, 2003 WL 23691107, at *2.

ADC contends it did not fire Mr. Owens for his opposition to the Shem Creek project but instead fired him for his personal use of company computers. The ADC employee handbook allowed limited use of the computers, but ADC ostensibly concluded that Mr. Owens' use was excessive. Mr. Owens contends the reason given by ADC for his firing was pretextual, and the actual basis for his termination was his opposition to the Shem Creek project. *See Connelly v. Wometco Enterprises, Inc.*, 314 S.C. 188, 191-92, 442 S.E.2d 204, 206-07 (Ct. App. 1994) (finding that evidence of good work performance, in conjunction with the timing of an employee's discharge, was sufficient to support a judge's decision to allow the jury to decide whether employee's firing was pretextual).

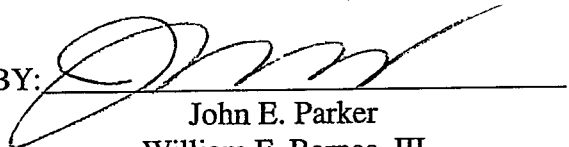
3. Summary judgment should only be proper when there are no genuine issues of material fact on which a reasonable jury could find for the plaintiff. Rule 56(c), SCRPC. The evidence must be

viewed in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002). In this case, there is evidence in the record that could lead a reasonable jury to conclude that Mr. Owens was fired for his political involvement in the Shem Creek controversy. ADC was told by developer Tyler Flesch that it would be fired from the Shem Creek project if it didn't "do something" about Mr. Owens opposition to the project. (Jones depo. at p. 4, l. 22 – p. 5, l. 1). ADC was also told that it would be fired from the project if it did not terminate Mr. Owens. (Jones depo. at p. 5, ll. 7 - 9). Additionally, Mr. Flesch threatened ADC with legal action. (Jones depo. at p. 7, ll. 7 - 9). Up until this point in his employment, Mr. Owens had not received any negative reviews and was considered to be an employee in good standing. (Jones depo. at p. 8, ll. 4 – 17). Despite this, Mr. Owens was terminated from his job a few days after the discussion with Mr. Flesch. (Jones depo. at p. 9, ll. 22 -24). Unsurprisingly, the architectural firm that hired ADC for the project is one of ADC's top clients, and the two had enjoyed a mutually beneficial relationship prior to the Shem Creek controversy. (Dillon depo. at p. 12, l. 16 – p. 13, l. 15). Viewing the evidence in the record in the light most favorable to the Plaintiff, a reasonable jury could conclude that Mr. Owens was fired for his political stance in order to preserve ADC's relationship with one of its most prominent clients.

This motion asks the Court to reconsider its findings that led to the granting of ADC's Motion for Summary Judgment. In reconsidering its Order, Plaintiff requests that the Court take into account that the legal issue at hand is a novel one for South Carolina state courts, and summary judgment is not appropriate as more time is needed to fully develop the facts of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 320 S.C. 143, 153, 463 S.E.2d 618, 624 (Ct. App. 1995) (stating that although all issues of novel impression do not require a trial, summary judgment is inappropriate where further inquiry into the facts is desirable to clarify application of the law); *see Shea v. State Dept. of Mental Retardation*, 279 S.C. 604, 611, 310 S.E.2d 819, 822 (Ct. App. 1983) ("If the statute's application is not absolutely

clear as a matter of law, [the] question should not be decided without fully developing the facts by means of trial.”). For all of the above mentioned reasons, the Plaintiff respectfully requests that the Court reconsider its Order, reverse its ruling, and enter judgment denying ADC’s Motion for Summary Judgment.

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

BY: 

John E. Parker
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

June 28, 2016
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS,

Plaintiff,

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC RADIO
AND ADC ENGINEERING, INCORPORATED,
TYLER FLESCH, AND RED DRUM CAPITAL
GROUP, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

CASE NO. 2014-CP-~~26-6216~~

10-6265

Plaintiff's Counsel: William F. Barnes Address: Peters, Murdaugh, Parker, Eltzroth & Detrick, PA P.O. Box 457 Hampton, SC 29924 phone: 803.943.2111 fax: e-mail: wbarnes@pmped.com other:		Defendant's Attorney: Molly Hughes Cherry, Esquire Bar No. 11188 Address: Nexsen Pruet, LLC P.O. Box 486 Charleston, SC 29402 phone: 843.577.9440 fax: 843.414.8209 e-mail: mcherry@nexsenpruet.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: DEFENDANT ADC ENGINEERING, INCORPORATED'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT Estimated Time Needed: 30 Minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant February 16, 2016 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE _____
☐ Other: _____	CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JAMES C. OWENS,

Civil Action No. 2014-CP-10-6265

Plaintiff,

**DEFENDANT ADC ENGINEERING,
INCORPORATED'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT**

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING,
INCORPORATED, TYLER FLESCHE, AND
RED DRUM CAPITAL GROUP, LLC,

Defendants.

2016 FEB 16 AM 10:35
JULIE J. ARTHUR
CLERK OF COURT

FILED

TO: JOHN E. PARKER, ESQUIRE AND WILLIAM F. BARNES, III, ATTORNEYS FOR
PLAINTIFF JAMES C. OWENS:

YOU WILL PLEASE TAKE NOTICE that Defendant ADC Engineering, Incorporated ("Defendant ADC"), by and through its undersigned attorneys, hereby move the Court, pursuant to Rule 56, SCRPC, for an Order granting summary judgment in favor of Defendant ADC on Plaintiff's claim for wrongful termination. The grounds for the motion are that there is no genuine issue of material fact on Plaintiff's claim, and Plaintiff cannot, as a matter of law, establish his claim for wrongful termination against Defendant ADC. No public policy is implicated by the alleged conduct in the Amended Complaint giving rise to a wrongful termination claim, nor is the alleged conduct in the Amended Complaint protected by statute, as a matter of clear public policy, by law or otherwise. Accordingly, Defendant is entitled to judgment as a matter of law.

This Motion is based upon the pleadings, the applicable law, and such other materials as may be served upon you before or at the hearing of the Motion.

The undersigned hereby certifies and affirms that consultation with the Plaintiff for the purpose of resolving the subject matter of the within motion is not required by Rule 11 of the South Carolina Rules of Civil Procedure.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.



Molly Hughes Cherry
Chase McNair
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

ATTORNEYS FOR DEFENDANT
ADC ENGINEERING, INCORPORATED

February 16, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing DEFENDANT ADC ENGINEERING, INCORPORATED'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 16th day of February, 2016.

John E. Parker, Esquire
William F. Barnes, III
Peters, Murdaugh, Parker, Eltzroth &
Detrick, PA
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924

*ATTORNEYS FOR PLAINTIFF
JAMES C. OWENS*

William P. Early, Esquire
Pierce, Hems, Sloan & McLeod, LLC
P.O. Box 22437
Charleston, SC 29413

*ATTORNEYS FOR DEFENDANT
KIRKMAN BROADCASTING, INC.*

G. Hamlin O'Kelley, III, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464

*ATTORNEYS FOR DEFENDANT
RED DRUM CAPITAL GROUP, LLC*

Ryan A. Earhart, Esquire
Nelson Mullins Riley & Scarborough,
LLP
P.O. Box 1806
Charleston, SC 29402-1806

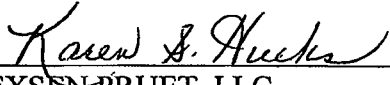
*ATTORNEYS FOR DEFENDANT
BRYAN CRABTREE*

Andrew S. Halio, Esquire
Halio & Halio
P.O. Box 747
Charleston, SC 29402-0747

*ATTORNEYS FOR DEFENDANT
TYLER FLESCH*

2016 FEB 16 AM 10:35
JULIE J. ARMSTRONG
CLERK OF COURT

FILED



NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, South Carolina 29402
Telephone: 843.577.9440

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JAMES C. OWENS,
Plaintiff,

Civil Action No. 2014-CP-10-6265

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING, INC.,
TYLER FLESCHE, AND RED DRUM
CAPITAL GROUP, LLC,

Defendants.

**DEFENDANT ADC ENGINEERING,
INCORPORATED'S MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

FILED
MAY 12 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant ADC Engineering, Incorporated ("Defendant ADC"), by and through its undersigned attorneys, pursuant to Rule 56, SCRPC, respectfully submits this Memorandum in Support of its Motion for Summary Judgment.

I. FACTS

This lawsuit arises out of Plaintiff James C. Owens' ("Plaintiff's") termination from employment with Defendant ADC on or about September 23, 2014, for misusing company equipment and time on personal activities to oppose construction of a parking garage on Shem Creek in Mt. Pleasant, South Carolina. ADC is an engineering firm that handles generally every aspect of engineering, predominantly on commercial projects: envelope, structural, landscape architects and civil design. (Owens depo. at p. 51, l. 23 – p. 52, l. 1; p. 54, l. 20 – p. 55, l. 4, attached as Exhibit A). Plaintiff was a construction administrator with ADC for approximately ten years.

At the time he was hired, he was presented an employment agreement that detailed a number of items, including working hours. (Owens depo. at p. 47, l. 16 – p. 48, l. 4;

Employment Agreement, attached as Exhibit B). His general work hours with ADC were 8:00 a.m. to 5:30 p.m., Monday through Thursday, and 8:00 a.m. to 12:00 p.m. on Friday. (Owens depo. at p. 49, ll. 20-23). He was also given an employee handbook. (Owens depo. at p. 56, ll. 16-24; Handbook, attached as Exhibit C). The employee handbook contains a number of policies, including a detailed policy addressing use of the company's technology, which provides in part:

[A]ll employees should remember that electronic media and services provided by the company are company property and their purpose is to facilitate and support company business. . . . All hardware, software, and all files on these systems are the sole property of ADC and may be accessed by ADC at any time. . . .E-mail messages can be traced to the sender even after they have been deleted. The employee should be aware that the firm might be required to produce e-mail messages if litigation develops. . . .Brief or incidental use of office technology for personal, non-business purposes is . . .acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company. . . .Failure to comply with these policies will result in discipline, up to and including termination of employment.

Employee Handbook, Technology Overview Policy, at pp. 11-12. Some of the technology ADC provided to Plaintiff included a cell phone, the number for which was: 843-991-7049. (Owens depo. at p. 38, l. 14 – p. 39, l. 2). ADC provided him with use of a laptop computer that was hard-wired into a docking station at the office. (Owens Depo. at p. 14, ll. 8-16).

During the last year of Plaintiff's employment, he was intimately and actively involved in opposition efforts regarding the construction of a parking garage structure being built on Shem Creek in Mt. Pleasant, South Carolina. (Owens depo. at p. 42, ll. 18-24). ADC was the structural engineer for the Shem Creek parking garage building, having been hired by the architectural firm, Stubbs Muldrow Herin. (Dillon depo. at p. 6, l. 11 – p. 7, ll.12, attached as Exhibit D). In fact, Stubbs Muldrow Herin had been a client of ADC since 1990, was one of ADC's largest clients, and actually designed ADC's office building. (Dillon depo. at p. 53, l. 17 – p. 54, l. 5).

Plaintiff had previously been involved in raising public concern over projects for clients of ADC, including specifically one with the Charleston County School District. (Owens depo. at p. 64, l. 4 – p. 67, l. 22). At that time of his actions, Plaintiff informed ADC of his opposition because he knew the Charleston County School District was a client of ADC. (Owens depo. at p. 67, ll. 2-22).

Similarly, Plaintiff informed ADC of his opposition activities involving the Shem Creek parking garage in June of 2014. (Owens at p. 80, ll. 4-25). Plaintiff contends that he did not know ADC was the engineer on the project; however, he wanted to let ADC know of his activities “as a courtesy.” *Id.* According to Plaintiff, ADC related his opposition to the Shem Creek parking garage project to the project regarding the Charleston County School District and instructed him to keep ADC out of the media, or “something along those lines.” (Owens depo. at p. 83, ll. 6-22). In fact, ADC did not object to Plaintiff’s actions with regard to the School District matter or the Shem Creek parking garage matter, as long as he was acting on a private basis on his own time. (Dillon depo. at p. 18, l. 23 – p. 19, l. 10).

As part of his efforts to oppose the Shem Creek parking garage, Plaintiff personally set up a Saving Shem Creek Facebook page in March of April of 2014. (Owens Depo. at p. 16, ll. 3-19). The purpose of setting up the Saving Shem Creek Facebook page was “[t]o make people aware of the ensuing project on Shem Creek.” (Owens depo. at p. 41, ll. 15-25). He was an administrator of the Facebook page, such that he could post and delete items on the page. (Owens Depo. at p. 25, ll. 16-21; p. 27, ll. 21-24). Plaintiff explained that he “possibly” posted things to the Facebook pages he set up while he was employed at ADC and that he was “sure” he read posts while employed at ADC, either at home or at the office. (Owens depo. at p. 30, l. 22 – p. 31, l. 1; p. 32, ll. 13-19). He was not certain whether he ever made any copies at ADC of

any documents related to the Saving Shem Creek Project, though he admitted he “could have.” (Owens depo. at p. 35, l. 23- p. 36, l. 2).

At a minimum, however, Plaintiff confirmed numerous email communications concerning the Shem Creek parking garage project that occurred during the work day, during working hours from equipment owned and provided by ADC. (Owens depo. at p. 88, l. 10 – p. 90, l. 9; May 20, 2014 e-mail exchange, attached as Exhibit E; p. 93, l. 12 – p. 94, l. 25; May 29, 2014 email, attached as Exhibit F; June 19, 2014 email, attached as Exhibit G; p. 95, l. 21 – p. 96, l. 6; June 30, 2014 email, attached as Exhibit H; p. 99, l. 10 – p. 101, l. 11; July 1, 2014 email, attached as Exhibit I; p. 101, l. 19 – p. 102, l. 24; July 29, 2014 email, attached as Exhibit J; p. 103, ll. 4-23; August 11, 2014 email, attached as Exhibit K; p. 104, l. 3 – p. 105, l. 4; August 29, 2014 email, attached as Exhibit L; p. 105, l. 19 – p. 106, l. 13; September 10, 2014 email, attached as Exhibit M).

Plaintiff also admitted to receiving assistance from another ADC employee with his personal opposition to the Shem Creek parking garage project, while the employee was being paid by ADC. (Requests to Admit, number 6, attached as Exhibit N; Dillon depo. at p. 50, l. 6 – p. 51, l. 5). Moreover, Plaintiff sent innumerable text messages from the phone issued to him by ADC during working hours when he was being paid by ADC pertaining to his personal endeavor. (Requests to Admit, number 8; Answers to Interrogatories, number 17, attached as Exhibit O).¹ There is evidence, as well, that Plaintiff attended meetings pertaining to the Shem Creek parking garage during working hours. (Dillon depo. at p. 16, l. 16 – p. 21, l. 6). Notably, Plaintiff testified that, if he had known ADC was the engineer on the parking garage project, he

¹ Redacted versions of Exhibits N and O are being submitted herewith. Un-redacted versions will be available at the hearing on this motion.

would have backed off on his opposition efforts, as it would have presented a “conflict of interest.” (Owens depo. at p. 85, l. 18- p. 86, l. 4).

On September 16, 2014, ADC met with Stubbs Muldrow Herrin and Tyler Flesch, a principal in the owner involved with the parking garage project, to discuss Mr. Flesch’s concerns over Plaintiff’s opposition activities. (Dillon depo. at p. 9, l. 18 – p. 10, l. 15). Specifically, Mr. Flesch informed ADC that it would be fired from working on the Shem Creek parking garage project, unless it fired Plaintiff. (Dillon depo. at p. 10, l. 23- p. 11, l. 3). Mr. Flesch also threatened a lawsuit against ADC and Plaintiff. (Dillon depo. at p. 21, l. 24 – p. 22, l. 12; p. 24, ll. 6-23).

The partners at ADC decided they would not terminate Plaintiff and informed Stubbs Muldrow Herrin that it was not going to fire Plaintiff. (Dillon depo. at p. 26, ll. 7-24; p. 47, ll. 12-25). Stubbs Muldrow Herrin then sent a letter to ADC, terminating ADC from the Shem Creek project, which ADC received on or about September 18, 2014. (Dillon depo. at p. 25, l. 24- p. 26, l. 1; September 16, 2014 letter, attached as Exhibit P). Moreover, on September 18, 2014, ADC Engineering received an evidence preservation letter from the attorney for Shem Creek Development Group, the developer of the Shem Creek project. (September 18, 2014 Letter to ADC Engineering, attached as Exhibit Q).

Plaintiff also received a similar letter instructing him to preserve electronic evidence pertaining to the Shem Creek development, which he forwarded to ADC. (Owens depo. at p. 108, l. 17 – p. 109, l. 11; September 18, 2014 email with preservation letter, attached as Exhibit R). At least one of the partners at ADC had concerns over whether Plaintiff had been sending emails from company computers during office time. (Truschka depo. at p. 17, l. 22 – p. 18, l. 6,

attached as Exhibit S; September 18, 2014 email, attached as Exhibit T; Dillon depo. at p. 47, l. 12 – p. 48, l. 10).

Plaintiff requested to meet with ADC and did at the end of the day on Thursday, September 18, 2014, during which meeting he affirmed that he had used his work computer at ADC for matters associated with the Shem Creek parking garage opposition. (Owens depo. at p. 116, l. 17 – p. 117, l. 8; Dillon depo. at p. 34, ll. 11-25). On or about the same day, ADC had its IT specialist conduct an electronic search to preserve Plaintiff's emails, in conjunction with the electronic preservation letter it received. (Graham depo. at p. 4, ll. 1-6; p. 5, l. 1 – p. 6, l. 8, attached as Exhibit U); Dillon depo. at p. 48, l. 6 – p. 49, l. 6). ADC also discovered Plaintiff has used his cell phone for text messages related to the Shem Creek parking garage project. (Dillon depo. at p. 49, ll. 4-6).

The four partners of ADC met on Friday, September 19, 2014, to discuss the matter. (Truschka depo. at p. 24, ll. 2-15). The decision was made to terminate Plaintiff's employment as a result of his involvement of ADC, its time, resources and equipment in his personal pursuits that damaged the company. (Dillon depo. at p. 61, l. 8 – p. 63, l. 19). He was out sick on Monday, September 22, 2014, and did not come into the office. (Owens depo. at p. 117, l. 15 – p. 119, l. 9; September 22, 2014 email, attached as Exhibit V). His employment was terminated on September 23, 2014.

II. LEGAL ARGUMENT AND CITATION OF AUTHORITY

Plaintiff has asserted one cause of action against Defendant ADC for wrongful termination in violation of public policy. (Amended Complaint at ¶¶ 21-25). For the reasons that follow, ADC is entitled to summary judgment on this claim and should be dismissed from this action.

A. Summary Judgment Standard

Summary judgment is proper when the moving party demonstrates that there is no genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law. S.C.R.C.P. 56; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). “Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct.App. 2004). Because Plaintiff cannot establish any facts to show a genuine issue of fact pertaining to his termination, ADC is entitled to summary judgment, as a matter of law.

B. Plaintiff’s Termination Did Not Violate Any Public Policy

South Carolina is an employment at-will state. See *Culler v. Blue Ridge Electric Co-op, Inc.*, 309 S.C. 243, 422 S.E.2d 91, 92 (S.C. 1992). The general rule is that an employer may terminate an at-will employee at any time for any reason or for no reason at all. *Small vs. Springs Industries, Inc.*, 300 S.C. 481, 388 S.E.2d 808, 810 (S.C. 1990). Plaintiff was an at-will employee who was terminated as a result of his use of ADC’s resources during his pursuit of a personal endeavor that harmed the company. His termination does not give rise to a claim for wrongful termination in violation of public policy.

In certain limited situations, the discharge of an at-will employee may give rise to a cause of action for wrongful termination when there is a violation of a clear mandate of public policy. *Id.* To constitute a claim for wrongful termination under this theory, the employee’s termination must “contravene a clear mandate of public policy.” *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213, 215 (S.C. 1985). This exception is a narrow one, to be very

narrowly applied. *Id.* Because Plaintiff's termination did not violate any mandate of public policy, his claim against ADC should be dismissed, as a matter of law.

Plaintiff contends that his termination violated S.C. Code Ann. § 16-7-560, which provides that: "It is unlawful for a person to . . . discharge a citizen from employment or occupation, . . . because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution, and laws of the United States or by the Constitution and laws of this State." S.C. Code Ann. § 16-17-560. As an initial matter, the statute cited by Plaintiff does not provide for a private cause of action by him against ADC.

Moreover, however, Plaintiff's termination did not violate the statute. Plaintiff was terminated for using ADC's equipment to pursue a personal endeavor on company time, while being paid by ADC. Notably, ADC had permitted Plaintiff previously to pursue a personal endeavor on his own time regarding opposition to a matter involving the Charleston County School District, even where the Charleston County School District was a client of ADC. ADC afforded Plaintiff the same courtesy with regard to his opposition to the parking garage structure, notwithstanding that Stubbs Muldrow Herin, the architect on the project, was a client of ADC.

ADC is an engineering firm that works predominantly on commercial matters, which necessarily involves development. Plaintiff, as a ten-year employee, knew and understood his employer's business. Indeed, Plaintiff at least tacitly acknowledged ADC's development role generally, if not specifically, when he informed the company of his opposition to the Shem Creek parking garage "as a courtesy." And, as before, ADC permitted him to pursue personal endeavors on his own time without involving ADC. Plaintiff's disregard for those parameters, admittedly using ADC's equipment during company time to the detriment of ADC, resulted in

his termination. Under these circumstances, his termination does not give rise to any claim for wrongful termination in violation of public policy.

Additionally, any activity by Plaintiff opposing the Shem Creek parking garage project does not amount to protected political speech under the statute at issue. See *Vanderhoff v. John Deere Consumer Products, Inc.*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003)(finding that the displaying of a confederate flag decal on an employee's toolbox at work as an expression of his political view of the Confederate flag coming down from the state house is not political opinion that is covered by Section 16-17-560)(attached as Exhibit W). Similar to the *Vanderhoff* court's determination, Plaintiff's opposition to the Shem Creek parking garage "is not a political opinion or the exercise of any political right or privilege as that phrase is intended by this criminal statute because such expression is not protected as a matter of clear public policy either as set forth in section 16-17-560 or otherwise." *Id.* at 2.

Section 16-17-560 expressly protects only "political" opinion, and the statute does not define what is meant by this phrase. However, because Section 16-17-560 is a criminal statute, it must be construed narrowly. *Vanderhoff v. John Deere Consumer Products, Inc.*, No. C.A. 3:02-0685-22, 2003 WL 23691107, at *2 (D.S.C. Mar. 13, 2003). Under the narrow construction of the statute, Plaintiff's opposition to the construction of a parking garage structure on Shem Creek does not constitute protected "political" speech.

The *Vanderhoff* court further defined what speech was to be covered by the statute at issue:

Further, the available case law suggests the state court would not construe the phrase to extend to all opinion and expression which, if a matter of public concern, may be protected under the First Amendment of the United States Constitution or under Article I, section 2, of the Constitution of the State of South Carolina. **Rather, this court concludes that the political opinion and expression covered by section 16-17-560 extends only to matters directly related to the executive, legislative, and administrative branches of**

Government, such as political party affiliation, political campaign contributions, and the right to vote.

Id. (emphasis added)(citing *Culler v. Blue Ridge Elec. Coop., Inc.*, 422 S.E.2d 91, 92–93 (S.C.1992) (finding that if plaintiff was discharged “because he refused to contribute to a political action fund [supported by his employer], he would have a cause of action under *Ludwick* and ... [section] 16–17–560”). In that case, the court found to hold that the plaintiff’s actions constituted protected political speech would allow an infinite number of social issues to fall within the ambit of public debate. *Id.*

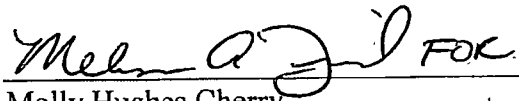
Similarly, Plaintiff’s opposition to the construction of a parking garage on Shem Creek does not constitute “political” speech governed under the statute. His actions do not pertain to political party affiliation, political campaign contributions or the right to vote. They simply are not actions that fall under the purview of Section 16-17-560. As in the *Vanderhoff* case, “[s]uch expression or belief may be a matter of public concern generally protected under the United States and South Carolina Constitutions. It is not, however, a ‘political’ opinion or the exercise of a political right or privilege within contemplation of section 16–17–560.” *See id.* at *3.

Indeed, it would be illogical to suggest that an employer, who depends on business to generate revenue to pay its employees, would somehow be prohibited from terminating an employee who actively opposed a specific project on which the employer was working, particularly where, as here, the employee used the employer’s equipment and time as part of his efforts. Moreover, Plaintiff, as an employee, would have access to inside information pertaining to the very project he was employee. Even Plaintiff acknowledged that ADC’s role as the engineer on the parking garage project he opposed presented a “conflict of interest.” (Owens depo. at p. 85, l. 18- p. 86, l. 4). Plaintiff’s actions in opposing a project on which his employer was working, regardless of whether or when he knew his employer was involved, simply does

not amount to any political speech protected under section 16-17-560. Accordingly, Plaintiff's claim under the statute for wrongful termination fails, as a matter of law.

III. CONCLUSION

For the foregoing reasons, Defendant ADC respectfully requests that its Motion for Summary Judgment be granted, and that Plaintiff's claim against ADC be dismissed.

A handwritten signature in black ink, appearing to read "Molly Hughes Cherry", is written over a horizontal line.

Molly Hughes Cherry
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P.O. Box 486
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843.577.9440

ATTORNEYS FOR DEFENDANT
ADC ENGINEERING, INCORPORATED

May 12, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

14-CP-10-6265

This is to certify that a copy of the foregoing DEFENDANT ADC ENGINEERING, INCORPORATED'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 12th day of May, 2016.

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FILED
2016 MAY 12 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT “A”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON
JAMES C. OWENS,
Plaintiff,
vs. CASE NO. 2014-CP-10-625
BRYAN CRABTREE, KIRKMAN BROADCASTING, INC.,
D/B/A WQSC RADIO, and ADC ENGINEERING, INC.,
Defendants.

DEPOSITION OF: JAMES C. OWENS
DATE: May 20, 2015
TIME: 10:02 AM
LOCATION: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: Priscilla Nay,
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly

Charleston, SC (843) 722-8414	Hilton Head, SC (843) 785-3263	Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224	Greenville, SC (864) 234-7030	Charlotte, NC (704) 573-3919



1 Q. Has anything happened to that computer
2 since, say, 2012? Has the hard drive crashed or
3 anything like that?

4 A. I don't think.

5 Q. So has that computer been in your
6 possession the entire time?

7 A. Yes.

8 Q. Okay. When you worked at ADC
9 Engineering did you have a computer?

10 A. I did.

11 Q. And...

12 A. Well, I didn't. ADC did. It was
13 dedicated to me.

14 Q. And was that a laptop or a desktop?

15 A. It was a laptop that was hard-wired
16 into a docking station.

17 Q. Okay. Other than the laptop at ADC
18 Engineering and the desktop that you've used at
19 home, did you use any other computer during your
20 employment at ADC Engineering?

21 A. My wife has a laptop.

22 Q. Okay. Any other?

23 A. Not that I'm aware of.

24 Q. Okay. Do you have a personal social
25 networking account?

1 A. I mean there are several other people
2 that are capable of submitting files and so forth.

3 Q. Okay. And do you know who set up that
4 Saving Shem Creek?

5 A. I did.

6 Q. When did you set it up?

7 A. March or April of 2014.

8 Q. Okay. Had you ever set up a Facebook
9 page?

10 A. I've never set up a Facebook page
11 before. Have you ever set one up?

12 Q. No.

13 A. It was just something that I used to
14 set up.

15 Q. Okay. Why did you set up the Saving
16 Shem Creek Facebook page?

17 A. Just to disseminate information.

18 Q. What kind of information?

19 A. Regarding Shem Creek.

20 Q. Anything specific about Shem Creek?

21 A. Yes, the project known as the office
22 parking garage.

23 Q. And correct me if I misstate something,
24 but you indicated that you shared that page with
25 other administrators?

1 board member with Save Shem Creek Corp.?

2 Q. Prior to September 23rd of 2014.

3 A. Of course.

4 Q. Are you all volunteers on the board?

5 A. Yes.

6 Q. Is any board member compensated in any
7 way?

8 A. Not at all.

9 Q. There is also a -- on the Saving Shem
10 Creek Facebook page as an administrator, do you
11 have access to posts on that page?

12 A. Yes.

13 Q. Okay. Are posts on the Saving Shem
14 Creek page deleted?

15 A. There have been.

16 Q. Okay. Who deletes posts from the
17 Saving Shem Creek Facebook page?

18 A. Only the administrator can do that.

19 Q. Okay. Have you deleted any posts from
20 the saving Shem Creek Facebook page?

21 A. Yes.

22 Q. Why have you deleted posts?

23 A. Well, there were times when my brother
24 would overreact and I would delete his information
25 that he'd post, not knowing all the facts.

1 Q. And who posted that?

2 A. I did.

3 Q. Did you as an administrator of the
4 saving Shem Creek Facebook page search Facebook
5 posts when you were looking for documents
6 responsive to the discovery requests in this case?

7 A. There were files posted on the Saving
8 Shem Creek website that are readily available to
9 anybody. Only administrators can delete it but
10 anybody can review it.

11 Q. Okay. Again, Mr. Owens, that wasn't
12 quite my question. Did you search the Facebook
13 page postings in looking for documents to respond
14 to the discovery requests?

15 A. Not that I can recall.

16 Q. Okay. Did you search any of the
17 deleted posts in looking for documents responsive
18 to discovery requests in this case?

19 A. Not that I can recall. I mean, I don't
20 know where you would find them.

21 Q. Okay. Were you the administrator of
22 the Saving Shem Creek Facebook page during the time
23 that you were employed by ADC Engineering?

24 A. Yes.

25 Q. Okay. Did you search the Save Shem

1 A. I think those are two separate Facebook
2 pages.

3 Q. So one is Protect Coleman Boulevard --

4 A. Yes.

5 Q. -- and the other is Protect Old Village
6 Neighborhood or --

7 A. Or just Old Village. I'm not sure.

8 Q. Okay. The Protect Coleman Boulevard
9 Facebook page, do you know who set that up?

10 A. Not completely. I believe that Janie
11 Hindman -- I believe that she was involved in that.

12 Q. Okay. Are you an administrator of that
13 page?

14 A. I am not.

15 Q. Have you posted anything to that page?

16 A. I may have commented. I haven't posted
17 really anything to it.

18 Q. Did you search that Facebook page for
19 any responsive documents to the discovery in this
20 case?

21 A. Not at all.

22 Q. Did you to your knowledge post any
23 comments to that page while you were employed at
24 ADC Engineering?

25 A. I may have at home. I don't know. I

1 can't recall. Possibly.

2 Q. And how about the Old village
3 Neighborhood Facebook page?

4 Did you set that page up?

5 A. No, I did not.

6 Q. Do you know who did?

7 A. No, I do not.

8 Q. Are you an administrator of that page?

9 A. I am not.

10 Q. Have you ever posted anything to that
11 page?

12 A. I'm sure I've commented on something
13 there.

14 Q. Did you post any comments on that page
15 when you were employed at ADC Engineering?

16 A. I can't be sure. I'm not sure.

17 Q. Did you search that Facebook page when
18 you were looking for documents responsive to
19 discovery in this case?

20 A. Not at all.

21 Q. Why not?

22 A. Pardon me?

23 Q. Why not?

24 A. There was nothing pertinent or relative
25 to Saving Shem Creek that was really associated

1 with either of those.

2 Q. Okay. Mr. Owens, do you understand
3 that ADC Engineering has asserted a counterclaim in
4 this case?

5 A. I have.

6 Q. Are there any other online forums in
7 which you might participate related to Shem Creek?

8 By that I mean blogs, list serves?

9 I'm asking about anything that maybe I
10 haven't identified like a social networking site or
11 a professional networking site.

12 A. Not that I'm aware of.

13 Q. Okay. I asked you, Mr. Owens, whether
14 you had posted anything to any of these Facebook
15 pages while you were employed at ADC Engineering.
16 Did you ever read anything, any other posts while
17 you were employed at ADC Engineering?

18 A. I'm sure I did. Could have been at
19 home or at the office.

20 What are you asking?

21 Q. I'm asking if you read any of those
22 pages prior to September 23rd of 2013?

23 A. I'm sure I did.

24 Q. Do you keep a diary of or log of your
25 activities to Save Shem Creek other than the folder

1 A. That didn't include the hard copies of
2 the petition. There were several hundred hard
3 copies to that petition as well and that must be
4 submitted to the Town of Mount Pleasant.

5 Q. Okay. He created the hard copies of
6 the petition?

7 A. Someone made copies or I may have made
8 copies. I don't know. I don't remember.

9 Q. And where did you make copies?

10 A. Probably at my house.

11 Q. You have a copier at your house?

12 A. I do.

13 Q. Do you ever make any copies while you
14 were at ADC Engineering?

15 A. Of what?

16 Q. Of the petition.

17 A. I don't recall.

18 Q. Okay. Do you know one way or the
19 other?

20 A. I don't.

21 Q. How about you asked me of what? I'm
22 going to make my question broader.

23 Did you ever make any copies at ADC
24 Engineering of any documents related to the Save
25 Shem Creek or Saving Shem Creek Project?

1 A. I'm not sure. I could have. I'm not
2 sure.

3 Q. Okay. And I may have asked this, but
4 what happened to the had petition on change.org?

5 A. It still exists. It's inactive, but it
6 was submitted to the Town of Mount Pleasant.

7 Q. Who submitted it?

8 A. I did.

9 Q. How was it submitted?

10 A. Through a town council meeting.

11 Q. Was that meeting in person?

12 A. Yes.

13 Q. Okay. Was it submitted to any town
14 council member prior to the meeting?

15 A. I'm not sure.

16 Q. Okay. During the time period that you
17 were employed at ADC Engineering, did you ever
18 e-mail any member of town council about the
19 Shem Creek Project we've been discussing?

20 A. Never on ADC, the ADC exchange. I
21 don't recall ever doing that.

22 Q. Okay. Again, Mr. Owens, that wasn't
23 quite my question. While you were employed for ADC
24 Engineering --

25 A. No.

1 of my question, he'll let me know. Otherwise, Mr.
2 Owens, if you answer my question, I'll assume you
3 understood it. Okay?

4 A. Okay.

5 Q. I was asking you about your search for
6 documents in this case. Did you search any texts?

7 A. From where? Anywhere you're saying?

8 Q. Sure. Let me just start with this:
9 Did you have a cell phone or iPhone, a handheld
10 device, if you will?

11 A. Uh-huh.

12 Q. Mobile phone?

13 A. Uh-huh.

14 Q. Did you have one when you were employed
15 with ADC Engineering?

16 A. I did.

17 Q. What kind of device was that?

18 A. It was a Motorola.

19 Q. And when you left ADC Engineering's
20 employ, did you keep that device or return that
21 device?

22 A. I returned the device.

23 Q. Okay. Was there a cell phone number or
24 a number associated with that device?

25 A. It was.

1 Q. Okay. What was that number?

2 A. 843-991-7049.

3 Q. And when you left ADC Engineering, did
4 you keep that number?

5 A. No.

6 Q. Okay. So do you have a new cell phone
7 or mobile number?

8 A. I do.

9 Q. What is that number?

10 A. 843-259-4341.

11 Q. And who is the carrier for that number?

12 A. Page Plus.

13 Q. Okay. Do you know who the carrier was
14 for your number with ADC Engineering?

15 A. I believe it was Verizon.

16 Q. Did you search for any texts on the
17 843-259-4341 number when you were looking for
18 documents responsive to the discovery requests?

19 A. No.

20 Q. Did you undertake any efforts to search
21 for texts associated with the 843-991-7049 number?

22 A. Not that I can recall.

23 Q. Okay. Other than those two cell phone
24 numbers, have you had any other cell phone number
25 since January 1 of 2014?

1 Q. Okay. Tell me which ones.

2 A. Etiwan Lodge, Number 95. Other
3 organizations I would have to -- I mean, you know,
4 I'm a member -- list of several different
5 organizations. I've got a number of certificates,
6 but I couldn't tell you all of those. I can
7 provide them to you.

8 Q. I think I've got a resume where they
9 may be listed and I'll ask you about that in just a
10 minute.

11 A. Okay.

12 Q. I was more interested in social
13 organizations that might not be something you'd
14 list on a resume, a club or anything like that.

15 Mr. Owens, I asked you about the
16 philosophy or at least I think -- I can't remember
17 exactly what my question was, but you were telling
18 me about the philosophy, I believe, of Saving Shem
19 Creek. Can you tell me the purpose for which the
20 Saving Shem Creek Facebook page was established?

21 A. To make people aware of the ensuing
22 project on Shem Creek.

23 Q. Any other reason than making people
24 aware?

25 A. That was the primary reason.

1 Q. Okay. How about a secondary reason?

2 A. Just a area where people could comment,
3 people could post whatever was on their mind.

4 Q. Okay. How about the Save Shem Creek
5 Corp.?

6 For what purpose was Save Shem Creek
7 Corp. formed?

8 A. For the purpose of ensuring that Mount
9 Pleasant in particular was watched over by citizens
10 who lived there.

11 Q. What do you mean by watched over?

12 A. Just detailing different circumstances,
13 whether it be a planning commission meeting, just
14 notification purposes, letting people know what was
15 coming, what projects were on the horizon, what
16 meetings were taking place, planning commission,
17 planning committee council meetings, and so forth.

18 Q. Did you advocate for any position
19 regarding -- I think you were mentioning the
20 parking garage at Shem Creek.

21 Did you advocate for or against the
22 project on any of these sites?

23 A. Yeah. I was -- I was opposing this
24 project.

25 Q. Do you have a copy of the articles of

1 the documents, the resume has been updated since
2 you asked for it..

3 BY MR. CHERRY:

4 Q. Mr. Owens, I think we got on the
5 record, as I understand it, that at least after the
6 discovery responses were submitted, you have an
7 updated resume?

8 A. Yes.

9 Q. I will follow up with a request to your
10 attorneys for that. But just so you know, I'm
11 going to be asking for a copy of it, okay?

12 A. No problem.

13 (DFT. EXH. 2, Owens employment
14 contract, was marked for identification.)

15 BY MS. CHERRY:

16 Q. All right. I'm going to hand to you
17 what I've marked as Exhibit Number 2, Mr. Owens.
18 My hope is this might help refresh your memory in
19 terms of answering some of my next questions about
20 your work with ADC Engineering.

21 A. Okay.

22 Q. Do you recognize Exhibit Number 2?

23 A. Well, it's dated 2004. It's kind of an
24 old document. It's one of the original, I think,
25 one of the first employment contracts that I

1 signed.

2 Q. Is that your signature on the second
3 page?

4 A. It is.

5 Q. I'm really just curious. Tell me when
6 you started working for ADC Engineering.

7 A. I think it was September 16, 2004,
8 somewhere thereabouts, September 18th.

9 Q. Okay. And tell me when you first
10 started working for ADC Engineering what you did.

11 A. I was the construction administrator
12 for ADC.

13 Q. Okay. And was that your position the
14 entire time you worked for ADC Engineering?

15 A. Yes.

16 Q. Okay. And as a construction
17 administrator, tell me what your responsibilities
18 generally were.

19 A. To work with the young engineers in the
20 office, to review their designs for construction
21 and review submittals, ensure the projects in the
22 field were being installed in accordance with plans
23 and specifications.

24 Q. Okay. In Paragraph 10, on the second
25 page, it's got a job description. One of the items

1 listed is: Client coordination. Do you see that?

2 A. Yes.

3 Q. Tell me just generally what client
4 coordination means.

5 A. I would -- just looking at that, think
6 it was relative to any kind of on-site meetings or
7 meetings in general.

8 Q. Did you have interaction with ADC's
9 clients?

10 A. Not primarily, but on occasion I would
11 sit in on meetings when the clients were there.

12 Q. Did your general duties for
13 ADC Engineering change during the time period that
14 you were employed?

15 A. Say that again, please?

16 Q. Did your general job duties as
17 construction administrator change while you were
18 with ADC Engineering?

19 A. They continued to grow.

20 Q. Okay. What were the general work hours
21 at ADC Engineering?

22 A. It was 8:00 to 5:30, Monday through
23 Thursday, and 8:00 to 12:00 on Friday.

24 Q. Okay. And was there a minimum number
25 of hours that ADC expected you to work?

1 A. Probably not. It was -- the time
2 periods ran to weeks and I was probably guilty of
3 not submitting it or writing it based on my time in
4 the office. So I would make time available to do
5 my time sheets.

6 Q. Okay. Was that something filled out in
7 your handwriting?

8 A. No. It was electronic.

9 Q. Okay. To your knowledge, did ADC
10 Engineering use any GPS monitoring on you or any
11 other employee in terms of to check whether you
12 were at a job site or where you might be?

13 A. Not that I'm aware of.

14 Q. Did you have to check in with anybody
15 at ADC in terms of where you were going?

16 A. Not really.

17 Q. Okay. Would it be fair to say that you
18 had some level of flexibility in terms of what you
19 did during the workday?

20 A. There were flexibility regarding some
21 of the projects. If there was some immediate need,
22 then I attended to the immediate need.

23 Q. Okay. What does ADC Engineering do?

24 A. They're engineering consultants,
25 bidding on every level: Envelope, structural,

1 landscape architects, civil design.

2 Q. Sounds like you identified four general
3 areas where ADC Engineering worked as an engineer
4 consultant. Is that fair?

5 A. That's fair.

6 Q. The building envelope, structural,
7 civil and landscape?

8 A. That's fair.

9 Q. Okay. And has ADC Engineering done
10 those four components of engineering consulting
11 since you've been employed?

12 A. Yes.

13 Q. Okay. Tell me what building envelope
14 means.

15 A. Well, there's roofing and
16 waterproofing.

17 Q. Okay. And is anyone in charge of the
18 building envelope aspect of the engineering
19 consulting?

20 A. One of the partners.

21 Q. Okay. Who is that?

22 A. Rick Cook.

23 Q. And did you during the time that you
24 were employed at ADC Engineering, did you do any
25 work on building envelope issues?

1 A. Warren Pruitt.

2 Q. Did you do any work with Warren or the
3 landscaping group?

4 A. Periodically.

5 Q. And of those four engineering groups,
6 any other engineering consulting that ADC
7 Engineering does?

8 A. There once was a survey group within
9 ADC.

10 Q. Okay. And within those -- let's just
11 stick with the four: The building envelope, the
12 structural, the civil and the landscaping.

13 Within those four components of the
14 engineering work that ADC does, do they do
15 residential work?

16 A. I think they just got into residential.

17 Q. Okay.

18 A. I was never involved in the residential
19 side.

20 Q. Okay. Was all your work on the
21 commercial side?

22 A. Pretty much. I mean, I did look at the
23 designs on the residential that was being done off
24 of 17 by Ryan Elmers, I think his name is. Then I
25 think it went on to Sid Dudley.

1 Q. Would it be fair to say that
2 predominantly ADC handles commercial engineering
3 work?

4 A. I would say that's a fair statement.

5 Q. As you understand it, who generally are
6 ADC Engineering's clients?

7 A. There are many. DOD, Department of
8 Defense...

9 Q. Okay.

10 A. I worked on several of those projects.
11 Milton Thomas who was another client did
12 commercial. Primarily those are -- those are the
13 ones that -- and the Charleston County Aviation
14 Authority.

15 Q. Okay. And when ADC Engineering gets
16 hired to work on a project, who generally hires
17 them?

18 A. I'm not sure. I'm not involved in any
19 of that.

20 Q. Does ADC Engineering work with any
21 architectural firms?

22 A. Yes.

23 Q. What architectural firms does ADC
24 Engineering work with?

25 A. LS3P, McMillan Smith, Stubbs Muldrow

1 Herin, many like that.

2 Q. Okay. Do you know how much of LS3P's
3 engineering work ADC Engineering does?

4 A. I don't.

5 Q. How about McMillan Smith?
6 Do you know how much of their work?

7 A. I do not know.

8 Q. How about Stubbs Muldrow?

9 A. I do not know.

10 Q. Have you ever worked on any projects
11 with ADC Engineering and Stubbs Muldrow?

12 A. I have.

13 (DFT. EXH. 3, ADC Engineering Employee
14 Handbook, was marked for identification.)

15 BY MS. CHERRY:

16 Q. I've handed you what we've marked as
17 Exhibit Number 3, Mr. Owens, and ask you if you
18 recognize this as the last portion of the employee
19 handbook when you were employed at ADC Engineering.

20 A. I'm sorry. Say that again.

21 Q. Do you recognize this as the last
22 revision of the employee handbook when you were
23 employed at ADC Engineering?

24 A. Yes.

25 (DFT. EXH. 4, ADC Engineering Employee

1 that.

2 Q. Okay.

3 A. I can verify that, if you'd like.

4 Q. Okay. Now as I understand it, during
5 the time period from 2004 to September of 2014 when
6 you were employed with ADC Engineering -- I don't
7 mean work hours. I just mean the general calendar
8 days during that time frame. As I understand it,
9 you have been involved before in other personal
10 oppositions to construction or development
11 projects. Is that correct?

12 A. There was some opposition with the
13 school district and that was -- there was a private
14 matter and also with regard to a development that
15 was behind my home.

16 Q. Okay. Let me --

17 A. It wasn't an opposition. There was
18 concern about the way the contractor had left the
19 site. It jeopardized the safety of children.

20 Q. Okay. Is that school district one or
21 the one at --

22 A. No. That was the one behind my house.

23 Q. Okay.

24 A. It was a residential development.

25 Q. Okay. Tell me a little bit about the

1 school district issue. Tell me what that was.

2 A. The school district was posing a 1031
3 land exchange for a parcel next to the wastewater
4 treatment plant, which in my opinion was
5 detrimental to the safety of children. The
6 bacteria coming from the scrubbers, that would have
7 affected their respiratory system years down the
8 road.

9 Q. And where was this?

10 A. This was in Mount Pleasant. It was
11 also marked by the Presidential directives as a
12 terrorist target.

13 Q. Okay.

14 A. The plant has to have -- they're
15 mandated by the Presidential directives to carry
16 terrorism plans, bioterrorism plans.

17 Q. The wastewater plant?

18 A. Yeah.

19 Q. How do you know that?

20 A. Years that I worked with the
21 municipality downtown; CPW.

22 Q. Okay. Did you do any research on that
23 or was that just based on your experience?

24 A. I'm sure there was research.

25 Q. And tell me where the school was.

1 A. It's right next to the wastewater
2 treatment plant in Mount Pleasant on Rifle Range
3 Road.

4 Q. I don't know where the wastewater
5 treatment plant is.

6 A. That's okay.

7 Q. And so this involved a school being
8 built by the wastewater plant?

9 A. There was a land exchange for the
10 current location of the elementary school to be
11 transferred to that site in exchange for a
12 development, a high-density patio home development,
13 taking place at the old Whitesides.

14 As it turned it out, the 1031 land
15 exchange was eliminated and the existing school
16 remains in place today.

17 Q. Okay. Is that because of your efforts?

18 A. I think that was partially because of
19 my efforts.

20 Q. Okay. And to your knowledge is the
21 school district a client of ADC Engineering?

22 A. Yes.

23 Q. Was the school district a client of
24 ADC Engineering at the time this 1031 land exchange
25 issue was going on?

1 A. I believe they were.

2 Q. Did you have any discussions with
3 anyone at ADC Engineering at the time about your
4 activities in opposition to the 1031 land exchange?

5 A. I believe I did.

6 Q. Okay. Who did you talk to?

7 A. I believe I talked to Greg Jones and
8 Chris Cook.

9 Q. And why did you talk to them?

10 A. Just to let them know that I was
11 opposing the project and that I was doing
12 everything I could, as far as a private citizen
13 goes, to eliminate that from happening.

14 Q. Okay. And why did you tell Greg Jones
15 and Chris Cook that?

16 A. I wanted to make them aware of my
17 opposition. I wanted them to be aware of what I
18 was doing and the way that I was doing it.

19 Q. Why did you want them to be aware of
20 your opposition as a private individual?

21 A. Because of the school district being a
22 client of theirs.

23 Q. Okay. And do you remember anything
24 about your conversations with Greg Jones and Chris
25 Cook?

1 looked through there and tried to find some
2 information about who they could discuss the
3 right-of-way issues with.

4 Q. Prior to September, the month of
5 September 2014, did you have any conversations with
6 any of the principals at ADC Engineering regarding
7 your opposition to the Shem Creek parking garage?

8 A. Yes.

9 Q. Okay. Who did you have conversations
10 with prior to September of 2014?

11 A. 2014 was Chris Cook.

12 Q. When did you speak with Chris Cook?

13 A. I would say it was in early June.

14 Q. Why did you speak to Chris Cook?

15 A. Because there was an article that was
16 going to have my name coming out in the Post &
17 Courier and I didn't want him to see that without
18 addressing it first and letting him know that I was
19 part of an opposition to this parking garage.

20 Q. Why did you want to let Chris Cook
21 know?

22 A. Out of courtesy, because I was involved
23 in a public setting, and I wanted to make certain
24 that they were aware of what I did as a private and
25 public citizen.

1 Q. Okay. And did you talk to any of the
2 other principals at ADC Engineering other than
3 Chris Cook prior to September of 2014?

4 A. Prior to 2014, September of 2014, no.
5 I don't believe I did.

6 Q. Okay. Tell me what you remember about
7 your conversation with Chris Cook.

8 A. I explained to Chris my opposition of
9 the parking garage and I believe I gave him details
10 as to why I opposed that project.

11 Q. Okay. Did Chris Cook tell you
12 anything?

13 A. He said, you know, he related to the
14 project with regard to the school district. Keep
15 us -- keep ADC out of the media.

16 Q. Is that the only thing Chris Cook said
17 to you?

18 A. Along those lines.

19 Q. When you say, along those lines, what
20 do you mean, Mr. Owens?

21 A. I'm not sure what else was said, but it
22 was they didn't want to be front page news.

23 Q. But as I understand it, ADC Engineering
24 was aware of your activities at least as of your
25 informing them in June of 2014?

1 reached out to Chris Cook that ADC Engineering was
2 the structural engineer for the project?

3 A. I did not.

4 Q. Okay. When did you learn that?

5 A. I learned that in a post that Bryan
6 Crabtree made on his Facebook page.

7 Q. And Mr. Owens --

8 A. That was an assumption on my part when
9 I saw the comment on Bryan Crabtree's page.

10 Q. And that wasn't quite my question. I
11 think -- and if I didn't this what I intended to
12 ask --

13 A. Okay.

14 Q. -- was when --

15 A. When did I know?

16 Q. Yes.

17 A. Probably the day I was terminated.

18 Q. Okay. If you had known that ADC
19 Engineering was the structural engineer on the
20 project, would that have changed your activities in
21 any way?

22 A. Absolutely.

23 Q. Okay. How?

24 A. It would have been the last day that I
25 performed as the person in the front of the line

1 for the Saving Shem Creek. I would have backed
2 off. It would have been a conflict of interest and
3 I would have said, somebody else has got to take
4 the reins.

5 Q. And that was going to be my question.
6 Like would it have changed because you think it
7 would have been a conflict of interest?

8 A. Of course. If I would have known that
9 I wouldn't have knowingly subjected my company to
10 any harm.

11 Q. Okay. Did you ever work on anything
12 related to the Saving Shem Creek and -- well, let
13 me back up for a minute, Mr. Owens.

14 When I say Saving Shem Creek, do you
15 understand that I mean the opposition to the
16 parking garage on Shem Creek?

17 A. Okay.

18 Q. The reason why I'm asking is, we've
19 talked about Shem Creek Corp., Save Shem Creek,
20 some other Facebook pages, and I just want to make
21 sure there's no misunderstanding. When I talk
22 about the Shem Creek -- when I talk about Saving
23 Shem Creek, I'm talking about the Shem Creek
24 parking garage project, okay?

25 A. Can we -- can we state that it's the

1 Owens 144, 145, and 146. This seems to be an
2 e-mail exchange and I'm going to ask first if you
3 recognize this e-mail exchange. I want to ask you
4 first if you recognize this e-mail exchange.

5 A. Yes.

6 (DFT. EXH. 5, 5/20/14 e-mail from C.
7 Nickels to J. Owens, was marked for
8 identification.)

9 BY MS. CHERRY:

10 Q. Mr. Owens, if you look at the first
11 page towards the bottom, it has your name and
12 actually has the e-mail address off to the right in
13 brackets. Do you see that?

14 I just want to confirm that that's the
15 Comcast e-mail account you identified for me
16 earlier.

17 A. Yes. At the bottom of the page?

18 Q. Okay. And if you look, that looks like
19 it was sent on a Tuesday, May 20th at 10:00 AM. Is
20 that correct?

21 A. What was that? Say that again, please.

22 Q. Sure. If you look on the first page of
23 what we've marked as Exhibit No. 5 --

24 A. Yes.

25 Q. -- if you go down just below the middle

1 of the page, where it says, from Jim Owens, it has
2 the Comcast account.

3 A. Right.

4 Q. It has a date and a time stamp for
5 when it's sent. Do you see that?

6 A. I do.

7 Q. Okay. Then if you look down underneath
8 your name, it says: Sent from my Verizon Wireless
9 4G LTE Droid.

10 A. Yes.

11 Q. Is that the device that you mentioned
12 to me earlier that ADC Engineering provided to you?

13 A. Yes.

14 Q. Okay. It looks to be an e-mail from
15 you to Chris Nickels.

16 A. That's what it looks like.

17 Q. Sure. Who is Chris Nickels?

18 A. He's a councilman for the Town of Mount
19 Pleasant.

20 Q. And why are you e-mailing Chris
21 Nickels?

22 A. Well, we'd had correspondence on an
23 ongoing basis for a couple of months.

24 Q. Okay. And what were you corresponding
25 with him about?

1 A. I don't remember what the context was
2 in that e-mail to him on the 20th. It doesn't have
3 any context to it.

4 Q. Okay.

5 A. It says: Push the meeting in the next
6 couple of weeks. I'm not sure what that was. It
7 might have been regarding a later meeting that he
8 was trying to initiate with the mayor. I don't
9 know. I don't remember.

10 Q. Okay. If you flip to the second page,
11 at the very top, it looks like that morning of
12 May 20th at 7:46 you wrote to him thanking him for
13 meeting with you the day before --

14 A. Okay.

15 Q. -- which it looks like it would have
16 been Monday, May 19th. Do you remember when you
17 met with Mr. Nickels?

18 A. What day was May 20th?

19 Q. According to the date stamp on the
20 front page, it's a Tuesday.

21 A. It's a Tuesday?

22 Q. So the day before would have been a
23 Monday.

24 A. It would have been a Monday, probably
25 at lunch.

1 A. Yes.

2 Q. And that's what I was trying to
3 understand. Do you have a personal calendar that
4 you looked at to make that determination?

5 A. No, but I remember sending this e-mail
6 and I know that I was home at the time, I believe,
7 that that was sent.

8 (DFT. EXH. 6, 9/16-14 e-mail from T.
9 Flesch to M. Dillon, was marked for
10 identification.)

11 BY MS. CHERRY:

12 Q. I'm going to hand you what we'll mark
13 as Exhibit Number 6, Mr. Owens. On the front page
14 of this, it looks like it's going from you, to
15 you --

16 A. Yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. -- on May 29th on a Thursday at 4:57
20 PM.

21 A. Okay.

22 Q. If you flip to the attachment, can you
23 tell me what this attachment is?

24 A. The attachment is the zoning code for
25 the Shem Creek waterfront overlay district.

1 Q. Okay. Where did you get the zoning
2 code?

3 A. I don't know if this was part of a
4 document that I may have sent to the office so that
5 I could review it in my spare time or what the case
6 might have been. I could have downloaded it off of
7 the internet during lunch, off of their website
8 that comes off of Mt. Pleasant's website.

9 (DFT. EXH. 7, 9/18/14 e-mail from T.
10 Flesch to M. Dillon, was marked for
11 identification.)

12 BY MS. CHERRY:

13 Q. I will hand you what we've marked as
14 Exhibit Number 7, Mr. Owens, and this looks like
15 another e-mail from you --

16 A. To me.

17 Q. -- to you on Thursday, June 9th at
18 2:54 PM. On the signature block, it shows you and
19 ADC Engineering.

20 Do you have any memory of whether you
21 were sick or at work on Thursday, June 19th?

22 A. June 19th?

23 Q. Yes, the date of this e-mail.

24 A. No. I was at the office when I sent
25 this to my home.

1 Q. Okay. In the body of the e-mail, it
2 says Chris.

3 A. Yes.

4 Q. Do you see that?

5 A. I do.

6 Q. Who is Chris?

7 A. Chris Nickels.

8 Q. Okay. Why are you sending an e-mail
9 from Chris to yourself?

10 A. So that I can send it to him at a later
11 time or later date or when I got home or whenever I
12 had time.

13 Q. Okay. When did you compose this
14 e-mail?

15 A. I'm not sure. It might have been at
16 lunch on the 19th of June. I don't know.

17 (DFT. EXH. 8, 9/22/14 e-mail from T.
18 Truschka to M. Dillon, was marked for
19 identification.)

20 BY MS. CHERRY:

21 Q. Okay. I'm going to hand you what we've
22 marked as Exhibit Number 8, Mr. Owens. This
23 document looks like another e-mail from you to you
24 and the signature block has ADC Engineering?

25 Do you have any reason to believe that

1 you were not at work on June 30th at 1:32 PM?

2 A. No. I was at work and this was an
3 e-mail that was sent to my -- that was sent to my
4 Comcast account that I apparently copied and pasted
5 and forwarded it on so that I could review it at
6 home when I had time.

7 Q. Okay. When I flip over to the
8 attachment, it looks like the attachment is
9 addressed to you. It says, Mr. Owens. Do you see
10 that at the top?

11 A. Yes.

12 Q. Okay. Do you know who sent this
13 communication or -- well, let me ask you this: Did
14 you get this communication?

15 A. This looks like it's part of the
16 earlier communication from Elton Carrier.

17 Q. Okay. But we talked about --

18 A. Uh-huh.

19 Q. That we talked about -- I don't
20 remember the Exhibit number, but from May 20th?

21 A. Somewhere in that -- no. It was April
22 17th. It was April 17th because that was my son's
23 birthday.

24 Q. All right. Let's just make sure that I
25 get for the record that we have the right -- so we

1 A. That is -- I'm sorry for laughing, but
2 that's just something you'll find on every one of
3 my e-mails. It's not the heading, but my signature
4 page. I've got it on each one of my e-mails from
5 ADC.

6 (Dft. EXH. 9, 9/18/14 e-mail from T.
7 Flesch to M. Dillon, was marked for
8 identification.)

9 BY MS. CHERRY:

10 Q. I'll hand you what we've marked as
11 Exhibit No. 9, Mr. Owens. This looks like another
12 e-mail from you to you. And this one just says FYI
13 in the cover e-mail. Do you see that on the first
14 page?

15 A. Uh-huh.

16 Q. This one doesn't have the language
17 where you say, please let me know if you have any
18 additional questions.

19 A. Because maybe it was sent by Michael
20 Graham.

21 Q. So the FYI is from Michael Graham, not
22 from you?

23 A. I don't know. You'll have to ask him.
24 I don't know.

25 Q. Okay. Let me --

1 A. It just says: Document one, document
2 FYI. Did I send it to myself? Yeah. I don't
3 know.

4 Q. Okay. On --

5 A. It's a good --

6 Q. I'm sorry. Go ahead.

7 A. I'm not sure. I have no idea how that
8 came about. Anything that was relative to the ADC
9 would have had, please let me know if this was
10 sent -- if this was sent. I don't know if the
11 Jim Owens was a Comcast account, so I don't know.
12 I have no idea what that was about.

13 Q. Sure. So do you think Michael Graham
14 has access to your Comcast account?

15 A. I don't know what he -- I don't know.
16 I couldn't answer that for you.

17 Q. Okay. Who is Michael Graham?

18 A. He is the IT person at ADC.

19 Q. If you flip to the attachment to this
20 e-mail, it's starts off with, with the latest
21 developments of this project.

22 Do you see that?

23 A. Yes, uh-huh.

24 Q. Did you draft this document that's
25 attached?

1 A. If you'll give me a minute to review
2 it, I'll confirm.

3 Q. Absolutely. Take all the time you
4 need.

5 A. Okay. Yes. I drafted it.

6 Q. Okay. When did you draft it?

7 A. I'm not sure.

8 Q. Do you know how long it took you to
9 draft it?

10 A. No. I'm sure if it occurred in even
11 one day or two.

12 Q. Mr. Owens, can you tell me the exhibit
13 number is I just handed you?

14 A. Nine.

15 (DFT. EXH. 10, 7/29/14 e-mail from
16 J. Owens to J. Owens, was marked for
17 identification.)

18 BY MS. CHERRY:

19 Q. I'm going to hand you what we'll mark
20 as number 10. This appears to another be another
21 document you sent to yourself on July 9th at 2:52
22 PM and if you look there are two pages. It looks
23 like it's one attachment.

24 A. Uh-huh.

25 Q. Can you tell me what this attachment

1 is?

2 A. This is information about one of the
3 planning commissioners.

4 Q. Okay. From where did this information
5 come?

6 A. Probably off of the town's website.

7 Q. Okay. Is this information you pulled?

8 A. Probably.

9 Q. Okay. Can you tell me why you pulled
10 it?

11 A. She was -- I don't remember the exact
12 reason, but there was some contention on a project
13 located in the Coleman Boulevard overlay district
14 that she was voting on as far as the height was
15 concerned.

16 Q. Okay.

17 A. I never met her until probably the
18 night of this particular planning commission
19 meeting.

20 Q. So did you pull this information to
21 prepare for that meeting?

22 A. No, just to discover who she was,
23 familiarize myself with what she's done in the
24 past, and what she's -- who she was.

25 (DFT. EXH. 11, 8/11/14 e-mail from

1 J. Owens to J. Owens, was marked for
2 identification.)

3 BY MS. CHERRY:

4 Q. I'm going to mark as Exhibit Number 11,
5 Mr. Owens, another e-mail dated August 11th at
6 5:45 PM from you to you. And ask you -- there is
7 attachment to this e-mail and I wanted to ask you
8 if you drafted the attachment after you've had time
9 to read it.

10 A. This was a draft that was never sent to
11 anyone in particular other than myself for editing
12 later on.

13 Q. Okay. Did you draft this?

14 A. I believe I did.

15 Q. Okay. Do you know when you drafted
16 this?

17 A. I think that it was over the course of
18 maybe a couple of days, maybe one night. I'm not
19 sure.

20 Q. Okay. Were you sending this from ADC
21 Engineering to your Comcast account?

22 A. That's what it looks like, according to
23 Michael Graham.

24 (DFT. EXH. 12, 8/29/14 e-mail from
25 J. Owens to J. Owens, was marked for

1 identification.)

2 BY MS. CHERRY:

3 Q. I'll hand you what we'll mark as
4 Exhibit Number 12, Mr. Owens, and this appears to
5 be an August 29, 2014 e-mail at 8:51 from you to
6 you from you to you e-mailing another e-mail
7 attachment.

8 This one appears to be two pages and at
9 the top of it says, saving Shem Creek. And at the
10 end it has your name, Mount Pleasant. Do you see
11 that on the second page?

12 A. I do.

13 Q. Okay. Did you draft this page
14 attachment?

15 A. Yes. I drafted that probably the night
16 before or two because this page is an article
17 you'll find -- you should see in the Moultrie News,
18 was posted in the Moultrie News.

19 Q. Okay. How long did it take you to
20 draft this?

21 A. I don't know. Whatever my free time
22 would allow between myself, my family, and my kids
23 asking for my time and staying up hours I needed to
24 do get things done.

25 Q. Sure.

1 A. And I probably sent this to -- or
2 somehow got this to ADC just to review, to make
3 sure that I didn't have any further edits when I
4 could when I had time to review it.

5 Q. Okay.

6 A. But I didn't draft it at ADC.

7 Q. Would it be fair to say that you spend
8 a fair amount of your free time on the Saving Shem
9 Creek?

10 A. Yeah. I'd say that I didn't have a lot
11 of free time.

12 Q. Okay. Mr. Owens, could you tell me
13 what that last exhibit was?

14 A. That was 12.

15 (DFT. EXH. 13, 9/10/14 e-mail from
16 J. Owens to J. Owens, was marked for
17 identification.)

18 BY MS. CHERRY:

19 Q. I mark as Exhibit 13 another e-mail
20 that appears to be coming from you to you on
21 September 10th, a Wednesday, at 8:44 AM. Did you
22 draft this e-mail, Mr. Owens?

23 A. I don't remember if that was just -- I
24 know that a major portion of this was just a copy
25 and paste and the -- it was referencing highlights

1 of the council meeting. So I'm not sure where the
2 upper portion came from.

3 Q. Did you attend the council meeting the
4 night before?

5 A. I don't remember if it was the night
6 ninth or the eighth of September.

7 Q. Did you -- whether it was the eighth or
8 the ninth, did you attend that council meeting?

9 A. I attended it briefly. I left early
10 because my wife and I had a concert and dinner
11 reservations. I was going to provide a
12 presentation that I did not have an opportunity to
13 provide.

14 Q. Okay. What do you mean?

15 A. A PowerPoint presentation.

16 Q. Okay. You were going to the town
17 council meeting --

18 A. Yes.

19 Q. -- for that purpose?

20 A. Well, and to hear all of what was going
21 on. But I had a brief PowerPoint presentation to
22 provide.

23 Q. Okay. What was the PowerPoint
24 presentation on?

25 A. I would have to come back and look. I

1 Q. Do you have an electronic -- not a hard
2 copy but an electronic copy of it?

3 A. I believe I do.

4 Q. Where would that be?

5 A. It would be in my documents.

6 Q. Okay. When you say your documents, you
7 mean on your computer?

8 A. Uh-huh.

9 Q. Okay. Under what directory in your
10 computer is that?

11 A. It would be under Saving Shem Creek, I
12 believe.

13 (DFT. EXH. 14, 9/18/14 e-mail from H.
14 O'Kelley to J. Owens, was marked for
15 identification.)

16 BY MS. Cherry:

17 Q. I'm going to hand you what I've mark as
18 Exhibit 14, Mr. Owens and then ask you if you
19 recognize that document.

20 A. I do.

21 Q. What is this?

22 A. Are you asking me what it is?

23 Q. Yes.

24 A. It looks like an evidence preservation
25 letter.

1 Q. Have you ever gotten an evidence
2 preservation letter before?

3 A. No, ma'am.

4 Q. What did you do when you got this
5 e-mail from Hamlin O'Kelley sending you an evidence
6 preservation letter on this?

7 A. I also copied Mark on this and I also
8 read and wrote to -- well, forwarded it and wrote
9 to Greg and Christ on this, that I just received
10 this, and that I wanted them to be aware and that
11 to please contact me if you have any questions.

12 Q. Okay. Did you comply with the evidence
13 preservation letter?

14 A. I believe that I have.

15 Q. Tell me what you did to comply with the
16 evidence preservation later that he had sent.

17 A. Well, ADC had removed my computer and
18 taken upon themselves to get whatever information
19 that was on there. So I don't know what's happened
20 that to that information.

21 Q. Sure. Mr. Owens, that wasn't quite my
22 question.

23 A. Okay.

24 Q. I want to know what you did. Did you
25 do anything individually to comply with the

1 meeting was?

2 A. The exact time and time I don't. I
3 believe it was at the end of the day.

4 Q. Okay. And do you recall anything you
5 discussed in that meeting?

6 A. Just that I wanted to make sure that
7 they were aware. You know, I felt like I didn't do
8 anything wrong and that they were trying to
9 intimidate me and top stopping me from the
10 opposition with this project, they being Buist,
11 Byars & Taylor.

12 Q. Did you have any discussions with Greg
13 and Chris about whether you had sent e-mails
14 regarding the parking garage office project from
15 ADC's computer?

16 A. Can you repeat the question?

17 Q. Sure. Why don't -- I'll ask it a
18 little more broadly. Tell me what you said to Greg
19 and Chris that you recall in this meeting that you
20 had with them.

21 A. That I -- I'll repeat this: That I
22 didn't do anything wrong, and that I think all this
23 is an effort to intimidate me and my efforts to end
24 this opposition of this project.

25 Q. Okay. Did you tell either of them that

1 you had sent e-mails in opposition to the project
2 from your work computer?

3 A. They asked if I had used my work
4 computer for anything associated with this and my
5 response was in the affirmative and what I said was
6 -- is that I'm not sure how many e-mails, but it
7 was never sent from ADC. It was always from my
8 private account.

9 Q. Okay. Is there anything else that you
10 remember about your discussion with Greg and Chris?

11 A. The only thing that I remember is that
12 they said that they were going -- this was
13 uncharted territory and they were going to need to
14 converse with their attorney.

15 Q. Okay. That -- I think September 18th
16 looks like it was a Thursday. Did you work on
17 Friday, September 19?

18 A. I'm not sure.

19 Q. Any reason to think that you did not?

20 A. It might have been the events of this.
21 I'm not sure. I don't know. Apparently, I became
22 ill. I'm not sure. That would have to be
23 verified. I'm not sure if I was there or not. I
24 don't remember.

25 Q. Okay. When you say you apparently

1 became ill, why do you make that statement?

2 A. Just all the events. I just couldn't
3 believe that this was happening.

4 (DFT. EXH. 17, 9/22/14 e-mail from C.
5 Cook to M. Dillon, was marked for identification.)
6 BY MS. CHERRY:

7 Q. I'm going to hand you what I'm marked
8 as Exhibit 17. Do you recognize this e-mail at the
9 bottom from you to Chris and Greg?

10 A. Okay. It was Monday and I knew that it
11 was -- you know, I wasn't sure if it was Friday
12 or -- or Monday.

13 Q. Okay. But -- so you do recognize the
14 e-mail from you to Chris and Greg indicating you
15 don't know feel well?

16 That is what you were talking about,
17 becoming sick?

18 A. I had a doctor's appointment scheduled
19 for that day as well. As always, I'm available by
20 phone, if needed.

21 Q. Okay. What doctor was your appointment
22 with?

23 A. Probably Kenny Caldwell.

24 Q. And did you see Dr. Caldwell on Monday,
25 September 22nd?

1 A. I did.

2 Q. Okay. What kind of doctor is
3 Dr. Caldwell?

4 A. Orthopedic.

5 Q. And why did you see him on the 22nd?

6 A. To get an injection in my knee.

7 Q. Did you see any other physician on
8 Monday the 22?

9 A. Not to my knowledge.

10 Q. Okay. And tell me why you were getting
11 an injection in your knee.

12 Have you had knee surgery or knee
13 issues or --

14 A. I have had knee surgery in the past.

15 Q. Okay. Was the injection in your knee
16 related in any way to your opposition activities to
17 the Shem Creek office building parking garage?

18 A. I don't know how.

19 Q. Okay. Now, I understand that your
20 employment with ADC Engineering was terminated and
21 that's why you filed this lawsuit against the
22 company. Is that correct?

23 A. I would say, yes.

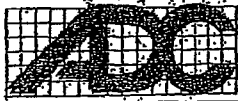
24 Q. Okay. Why have you sued ADC
25 Engineering?

EXHIBIT “B”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265



CIVIL ENGINEERING
STRUCTURAL ENGINEERING
ROOFING AND WATERPROOFING CONSULTING
LAND PLANNING AND LANDSCAPE ARCHITECTURE



CHARLESTON • SOUTH CAROLINA
CHARLOTTE • NORTH CAROLINA

September 16, 2004

Mr. James C. Owens
1197 Island View Drive
Mt. Pleasant, SC 29464

SUBJECT: Employment Contract

Dear Mr. Owens:

Please allow this letter to serve as our written offer of employment. ADC Engineering, Inc. is excited about the possibility of having you join us and hope you find this offer acceptable. Please review the items listed below and let me know if anything is found different than we discussed.

1. **STARTING SALARY:** ADC will offer you a base salary of \$45,000 dollars per year, and the below benefits package. This salary will be paid twice a month in accordance with our current payroll system. Annual reviews are provided based on your initial start date. A copy of our Employee Handbook will be provided to you on your first day of work, and can be provided sooner if needed.
2. **BONUSES:** We have historically paid bonuses to all Employees based on their commitment, productivity, extra effort and other factors. These bonuses are based on company profits, department profits, and individual performance and assigned projects. Bonuses typically range from 0-5%.
3. **INSURANCE:** ADC Engineering, Inc. will provide medical and dental coverage for you. The effective date of your health and dental coverage will be November 1, 2004, for a starting employment date of September 20, 2004. Family medical and dental can also be provided with the entire cost of the premium paid by the employee. A copy of our policy can be forwarded or faxed to you upon your request. Additionally, ADC Engineering, Inc. will pay the costs associated with providing you with our standard disability and life insurance coverage as well as the standard Workman's Compensation coverage.
4. **RETIREMENT SAVINGS:** ADC Engineering, Inc. has a 401K plan for our Employees retirement program, which allows tax-deferred deposits for Employee contribution per year, and ADC Engineering, Inc. will provide matching funds up to 5%.
5. **BUSINESS EXPENSES:** ADC Engineering, Inc. will pay for any approved expenses related to your position. Local business mileage and out-of-town project mileage is paid at .31¢ per mile, or for out of town travel you may get a rental car. We have an established account with Enterprise.

Travel and per diem for projects is paid at the government rates for the applicable city, less South Carolina, which is \$25.00 per day for meals throughout the state. Any company related travel that requires an employee to be more than seventy-five (75) miles from the office, entitles that employee to a per diem based on the current GSA rates for that location.

6. **START DATE OF EMPLOYMENT:** MAY 24, 2004.

1226 YEAMANS HALL ROAD
3020-I PROSPERITY CHURCH ROAD PMB 136

HANAHAN, SOUTH CAROLINA 29406
CHARLOTTE, NORTH CAROLINA 28289

PH 843.566.0161
PH 704.494.3362

FAX 843.566.0162
FAX 704.494.3362

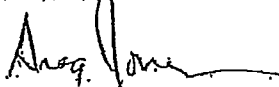
www.adcengineering.com
email@adcengineering.com

April 5, 2004

7. **WORK WEEK:** Our current core workweek consists of nine-hour workdays Monday through Thursday and a four-hour workday on Friday. It is expected, and should be anticipated, that a standard workweek would entail a minimum 40 to 45 hours.
8. **HOLIDAYS AND VACATION:** ADC observes approximately 56 hours of paid holidays per year. A listing of the holiday schedule is located in the Employee Manual. Each Employee is entitled to 80 hours of paid vacation time per year. We make every effort to close the office the week between Christmas and New Years, and ask each employee to make every effort to save one week of vacation for this time. Also, 40 hours of paid personal leave is available to each employee. Please refer to the Employee Handbook for calculation of vacation and personal leave.
9. **EDUCATION/REGISTRATION:** After your first three months, ADC will assist in the costs associated with pre-approved job related continued education on a rated scale tied to the grade you receive for the class.
10. **JOB DESCRIPTION:** Your starting position will be titled Construction Administrator and your responsibilities will include construction administration, client coordination, general technical support duties, general office support, field investigations, and other tasks as assign by your department head.
11. **CONFIDENTIALITY AGREEMENT:** By accepting this position, you agree to honor ADC Engineering, Inc. client information, projects, procedures, information and data, as confidential information not to be used, shared, or provided to anyone outside of this company. All products, documents, drawings etc. are the property of ADC.

Again, ADC Engineering, Inc. and I look forward to having you join our firm. We believe if you apply yourself, you can develop to be a valuable, long-term asset to our team. Please let me know if you have any questions or need any additional information. I look forward to hearing from you.

Sincerely,



Greg Jones, PE
ADC Engineering, Inc.
Mobile (843) 991-7043

Accepted:

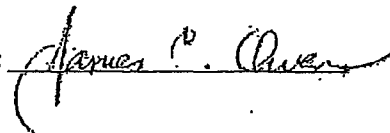


EXHIBIT “C”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

employee handbook

Whether you have just joined our staff or have been at ADC for a while, we are confident that you will find our company a dynamic and rewarding place in which to work and we look forward to a productive and successful association. We consider the employees of ADC to be the most valuable resource. This manual has been written to serve as the guide for the employer/employee relationship.

IMPORTANT NOTICE

ADC IS AN "AT WILL" EMPLOYER AND AS SUCH EMPLOYMENT WITH ADC IS NOT FOR A FIXED TERM OR DEFINITE PERIOD AND MAY BE TERMINATED AT THE WILL OF EITHER PARTY, WITH OR WITHOUT CAUSE, AND WITHOUT PRIOR NOTICE. NO SUPERVISOR OR OTHER REPRESENTATIVE OF THE COMPANY HAS THE AUTHORITY TO ENTER INTO ANY AGREEMENT FOR EMPLOYMENT FOR ANY SPECIFIED PERIOD OF TIME, OR TO MAKE ANY AGREEMENT CONTRARY TO THE ABOVE, EXCEPT THE PRINCIPALS OF THE COMPANY WHO MUST DO SO IN WRITING SIGNED BY THEM.

THIS HANDBOOK STATES ADC'S POLICIES AND PRACTICES IN EFFECT ON THE DATE OF PUBLICATION. THESE POLICIES AND PROCEDURES ARE CONTINUALLY EVALUATED AND MAY BE AMENDED, MODIFIED OR TERMINATED AT ANY TIME. HOWEVER, NOTHING CONTAINED IN THE HANDBOOK MAY BE CONSTRUED AS CREATING A PROMISE OF FUTURE BENEFITS OR A BINDING CONTRACT WITH ADC FOR BENEFITS OR FOR ANY OTHER PURPOSE.

I ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF ADC'S EMPLOYEE HANDBOOK. I AGREE TO READ IT THOROUGHLY, INCLUDING THE STATEMENTS IN THE IMPORTANT NOTICE AND FOREWORD DESCRIBING THE PURPOSE AND EFFECT OF THE HANDBOOK. I AGREE THAT IF THERE IS ANY POLICY OR PROVISION IN THE HANDBOOK THAT I DO NOT UNDERSTAND, I WILL SEEK CLARIFICATION FROM THE BUSINESS MANAGER.

Please sign and date this receipt and return it to the Business Manager.

Date: _____

Signature: _____

Print Name: _____

Revised 12/18/2013



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Foreword

ADC Engineering, Inc. is a company that provides Civil and Structural Engineering, Roofing and Waterproofing Consulting Services as well as Land Planning and Landscape Architecture for our clients. The success of any organization is dependent upon the quality, motivation and performance of its employees, working together with a common set of values, principles and goals. Based on this belief, we rely upon our employees' knowledge, creativity, energy and commitment to provide the highest quality service and superior value to our selected clients, thereby ensuring the lasting success of ADC.

There are several things that are important to keep in mind about this handbook. First, it contains only general information and guidelines. It is not intended to be comprehensive or to address all the possible applications of, or exceptions to, the general policies and procedures described. For that reason, if you have any questions concerning eligibility for a particular benefit, or the applicability of a policy or practice to you, you should address your specific questions to the Business Manager. Neither this handbook nor any other company document, confers any contractual right, either express or implied, to remain in the company's employ. Nor does it guarantee any fixed terms and conditions of your employment. Your employment is not for any specific time and may be terminated at will, with or without cause and without prior notice, by ADC or you may resign for any reason at any time. No supervisor or other representative of ADC has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement contrary to the above, except for the principals who must do so in a writing signed by them.

Second, the procedures, practices, policies and benefits described here may be modified or discontinued from time to time. We will try to inform you of any changes as they occur.

Third, this handbook and the information in it should be treated as proprietary, confidential information of the company. No portion of this handbook should be disclosed to others, except ADC employees and others affiliated with ADC whose knowledge of the information is required in the normal course of business or as may be required by law.

Finally, some of the subjects described here are covered in detail in official policy documents. You should refer to these documents for specific information, because this handbook only briefly summarizes those benefits. Please note that the terms of the written insurance policies are controlling.

Employment Policies and Procedures

Equal Employment Opportunities

ADC does not discriminate against any applicant or employee because of race, color, religion, sex, age, national origin, disability, genetic information, veteran status or any other status or condition protected by applicable federal, state, or local law.

We have an ongoing obligation to hire and develop the best people, basing our judgment on their job-related qualifications. We pay and promote only on the basis of merit and performance.

These policies extend to all areas of our employment practices, including: recruiting, hiring, training, job placement, promotion, compensation, benefits, transfers, terminations, and company sponsored education, social and recruitment programs.

Employees are directed to bring any violation of this policy to the immediate attention of their direct supervisor, the Business Manager, or a Principal of the Company. Any employee who violates this policy or knowingly retaliates against an employee making a good faith report or complaint of a violation of this policy shall be subject to immediate disciplinary action, up to and including termination. Complaints brought under this policy will be promptly investigated and handled with due regard for the privacy and respect of all involved.

Americans With Disabilities Act Policy

ADC is committed to complying with all applicable provisions of the Americans with Disabilities Act ("ADA") and the Americans with Disabilities Amendments Act ("ADAAA"), which are referred to herein collectively as the ADA. It is the company's policy not to discriminate against any qualified employee or applicant with regard to any terms or conditions of employment because of such individual's disability or perceived disability so long as the employee can perform the essential functions of the job with or without a reasonable accommodation. Consistent with this policy of nondiscrimination, the company will provide reasonable accommodations to a qualified individual with a disability, as defined by the ADA, who has made the company aware of his or her disability, provided that such accommodation does not constitute an undue hardship on the company.

Employees with a disability who believe they need a reasonable accommodation to perform the essential functions of their job should contact the Business Manager. ADC encourages individuals with disabilities to come forward and request reasonable accommodation.

Code of Business Ethics and Conduct

The successful business operation and reputation of ADC is built upon the principles of fair dealing and ethical conduct of our employees. Our reputation for integrity and excellence requires careful observance of applicable laws and regulations, as well as a scrupulous regard for the highest standards of conduct and personal integrity.

The continued success of ADC is dependent upon our customers' trust and we are dedicated to preserving that trust. Employees owe a duty to ADC and its customers to act in a way that will merit the continued trust and confidence of the public. ADC will comply with all applicable laws and regulations and expects its owners and employees to conduct business in accordance with all relevant laws and to refrain from any illegal, dishonest, or unethical conduct.

In general, the use of good judgment, based on high ethical principles, will guide you with respect to lines of acceptable conduct. If a situation arises where it is difficult to determine the proper course of action, the matter should be discussed openly with your Department Head.

Our company wholeheartedly subscribes to the "Fundamental Canon of Ethics for Professional Engineers". Compliance with this policy of business ethics and conduct is the responsibility of every ADC employee.

Harassment

The company is committed to a workplace free of discrimination and harassment. In keeping with this commitment, we will not tolerate unlawful harassment of our employees by anyone, including any principal, supervisor, co-worker, or third party. Harassment consists of unwelcome conduct, whether verbal, written, electronic, physical or visual, that is based on a person's race, color, national origin, religion, age, sex, disability, veteran status or any other status or condition protected by federal, state, or local law. Harassment that affects job benefits, interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment will not be tolerated.

- Harassment may include, but is not limited to, derogatory remarks, offensive jokes, the display or circulation of offensive printed, visual or electronic statements, pictures, comments, or other material, or offensive physical actions.
- Sexual harassment is unwanted sexual attention of a persistent or offensive nature made by a person who knows, or reasonably should know, that such attention is unwanted. Unwelcome sexual advances, requests for sexual favors, or other physical, verbal or visual conduct based on sex constitutes harassment when
 1. submission to the conduct is required as a term or condition of employment or is the basis for employment action, or
 2. the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive workplace.

Sexual harassment does not refer to occasional compliments of a socially acceptable nature or consensual personal and social relationships without a discriminatory employment effect. It refers to behavior which is not welcome and which is personally intimidating, hostile or offensive.

All ADC employees are responsible for helping to enforce this policy against harassment.

Any employee who has been the victim of prohibited harassment or who has witnessed such harassment must immediately notify his/her supervisor so the situation can be promptly investigated and remedied. If it is the supervisor who is responsible for the harassment or reporting the situation to the supervisor fails to remedy the situation, complaints of harassment must immediately be reported to the Business Manager. As an alternative, employees may bring the complaint to one of the Principals.

It is ADC's policy to investigate all harassment complaints thoroughly and promptly.

To the fullest extent practicable and permissible, the company will attempt to maintain the confidentiality of those involved. If an investigation confirms that harassment has occurred,

the company will take corrective action. Corrective action may include discipline, up to and including termination of employment.

ADC forbids retaliation against anyone who has in good faith reported harassment or who has cooperated in the investigation of harassment complaints.

All employees will receive mandatory training on the company's harassment policy, including in the area of sexual harassment.

Background Checks

To maintain a safe and productive work environment, ADC will conduct pre-employment background checks on all candidates who accept a conditional offer of employment. Background checks may include verification of any information on the candidate's resume.

All offers of employment are conditional upon receipt of a background check report and that are acceptable to ADC. All background checks are conducted in conformity with the Federal Fair Credit Reporting Act, the Americans with Disabilities Act, Genetic Information Nondiscrimination Act, and state and federal privacy and antidiscrimination laws. Reports are kept confidential and are only viewed by individuals involved in the hiring process.

If information obtained in a background check would lead ADC to deny employment, a copy of the report will be provided to the candidate, and the candidate will have the opportunity to dispute the report's accuracy. Background checks may include a criminal record check, although a criminal conviction does not automatically bar a candidate from employment.

Additional checks such as a driving record, credit report, terrorist database, and other checks may be made on candidates for particular job categories if appropriate and job related.

ADC also reserves the right to conduct a background check for current employees to determine eligibility for promotion/reassignment or as needed to meet client work site requirements in the same manner as described above.

Confidentiality

ADC and its general operations, procedures, services, clients, and products shall be kept confidential in every aspect.

All products generated by ADC shall remain the property of ADC. No ADC product, copies, paper, electronic data, or other media shall be provided or released to persons outside of ADC without approval by the employee's Department Head. Any employee leaving ADC for any reason may not take/acquire any property, documents, files, or other media from ADC.

Drug Free Workplace

ADC is dedicated to maintaining a drug-free workplace. All employees are required to perform their duties unimpaired by drugs or alcohol. If you are unfit to work because of alcohol consumption or drug use, you may be sent home. In addition, you will be subject to corrective action, up to and including termination of employment.

- **Alcohol:** Drinking alcohol while at work is strictly prohibited. Drinking alcohol at a company sponsored event is permissible. In these cases, and whenever you represent the firm, you are responsible for complying with the law, as well as all company policies

including specifically those regarding professional behavior, harassment and violence, even if you have consumed alcohol.

- **Illegal Drugs:** ADC has no tolerance for illegal drugs. Selling, buying, manufacturing, distributing, possessing, or using any illegal drug or any controlled substance on ADC's premises or while engaged in company business is prohibited and is cause for immediate termination of your employment. Illegal substances found on company premises may be turned over to outside legal authorities for further investigation.
- **Smoke-Free Workplace:** ADC provides a smoke-free workplace. As such, you are not permitted to use tobacco products in any of our facilities.

Safety

Maintaining a safe work environment requires the continuous cooperation of all employees. The Company strongly encourages employees to communicate with fellow employees and their supervisor regarding safety issues.

1. **Safety Equipment:** Hard hats, breathing equipment, goggles, and other necessary equipment as required, is provided by the company to all personnel who may need it in the course of performing their duties. Employees may be required to wear clothing of a type which promotes their safety. Employees must wear this equipment as required, and shall perform no task, where safety equipment may be required, without the proper equipment in place and in good working order.

a. Any required or needed safety equipment shall be requested to your Department Head.

2. **Injury or Illness:** All employees will be provided care, first-aid and emergency service, as required, for injuries or illnesses while on ADC premises. Employees should contact their supervisor, the nearest supervisor, and/or 911 in the event of an accident or emergency.

If an employee is injured on the job, ADC provides coverage and protection in accordance with the Worker's Compensation Law. When an injury is sustained while at work, it must be reported immediately to the employee's supervisor, who in turn will notify the Business Manager of the incident.

Failure to report accidents is a serious matter as it may preclude an employee's coverage under Worker's Compensation Insurance.

The official Worker's Compensation policy and procedure for ADC can be found on the company intranet.

Appearance and Conduct

As a business operation, we must operate in a professional manner and all employees are expected to maintain a professional appearance and conduct themselves in like manner at all times.

Each employee's dress code will be established by their Department Head and should be such that it reflects favorably on the company. Please discuss with a Department Head any questions or concerns you may have regarding acceptable standards of dress.

As a business, employee's conduct should be in a business-like manner. Such action as conversations involving gossip, rumors, and unfounded facts should not occur as they cause distrust, suspicions and results in lost efforts and hinders achieving company objectives. Such conduct can result in disciplinary action.

If you are between work assignments, do not disturb others who are working. You should seek other areas in which you can contribute until your next assignment is available.

Dating in the Workplace

You are responsible to advise your Department Head or the Business Manager if a casual dating, serious dating, romantic or other than platonic relationship develops between you and another company employee. A romantic, casual dating, serious dating, or other than platonic relationship is strictly prohibited between a supervisor and subordinate. If this policy is violated, disciplinary action up to and including termination of employment will apply to both the supervisor and subordinate.

Moonlighting

Employment at ADC must take priority over all other employment and may not interfere with work schedules or overtime needs. Full-time employees of ADC are discouraged from working second jobs. Any full-time employee who decides to take an extra job shall consult with their immediate supervisor to explore the possibility of a conflict before accepting such a position, and must submit a request in writing for approval.

Personal Business, Solicitations, and Distributions

Solicitations of business of a personal nature such as Tupperware, Avon, jewelry sales, etc. on the premises must not interfere with work. This type of activity must take place before or after work, or at lunchtime, and not interfere with the work of others.

Any personal or business involvement other than that of ADC during business hours is prohibited. The use of the company name, address, telephone, equipment, etc. to conduct personal business or for another business is prohibited.

Company Vehicles

ADC will maintain vehicles which may be used by employees for travel on corporate business. Please refer to the Company Vehicle Policy, which can be found on the intranet, for more information regarding the use of company vehicles by ADC employees.

Employee Reimbursable Expenses

All employee reimbursable expenses shall be submitted on the ADC Engineering, Inc. expense form. The form must be signed by the employee and all corresponding receipts attached. The employee will submit the form to their Department Head for approval for payment. Also, any receipts for expenses charged on an ADC Engineering credit card will be submitted to the Accounting Department separately with the project number noted on the receipt (no form needed). All Employee Reimbursable Expense forms are to be submitted to Accounting no later than the 15th of the following month. Expenses submitted after this date may not be accepted and not reimbursed. This procedure will allow

the expenses to be invoiced in a timely manner to our clients. Earlier submission of expense forms is allowed and is encouraged. Expense reimbursements will be paid within seven calendar days after submission to the Accounting Department.

Mileage Reimbursement: ADC Engineering, Inc. will reimburse the employee miles driven on company business using their personal vehicle using the published South Carolina Standard Mileage Rates.

Travel expenses within the state: All expenses will be based on actual expenses incurred and must be documented by a receipt. Meal expenses are not to exceed \$35 per day. An employee eating breakfast on their way out of town (prior to 7:30 am) will be approved as reimbursable. No other reimbursement for meals will be allowed within the tri-county area. Lodging expenses are not to exceed \$90 per day without prior approval.

Travel expenses out of state: Same as within the state with the exception that the maximum daily limits will be set based on the GSA published rate at the time of travel for the specific location.

Employee Classifications

1. **Full-time Salary (Exempt):** Exempt employees, as classified under the Fair Labor Standards Act (FLSA), are those employed as bona fide executive, administrative, professional or outside sales employees that are exempt from both minimum wage and overtime pay based on certain requirement tests regarding their job duties. Exempt employees in an engineering office must understand the need to adapt their work schedule to the office and its project needs. Workloads, deadlines, and day-to-day changes in priorities are all an inherent part of the profession and must be accommodated. Each employee is encouraged to manage their work to be timely, and in compliance with the requirements of the clients and owners of the firm. The exercise of this responsibility may require the employee to work additional time beyond regular office hours. The premise that your job should only entail forty hours per week is not valid.

Exempt employee salaries are calculated on an annual basis and are entitled to the benefits and paid time-off listed in this employee handbook.

2. **Full-time Hourly (Non-Exempt):** These employees work a regular schedule of thirty (30) or more hours per week. Non-exempt employees are those individuals that do not meet the exemption guidelines and therefore are entitled to receive at least minimum wage and overtime pay. Their salaries are calculated on an hourly basis and are entitled to the benefits and paid time-off listed in this employee handbook.
3. **Part-time Hourly (Non-exempt):** These employees work a regular schedule of twenty-nine (29) hours or less per week. Non-exempt employees are those individuals that do not meet the exemption guidelines and therefore are entitled to receive at least minimum wage and overtime pay. Their salaries are calculated on an hourly basis. These employees are not entitled to the benefits and paid time-off listed in this employee handbook.
4. **Temporary Employee (Non-exempt):** These employees are hired for a specific project or time frame and scheduled hours can vary. Non-exempt employees are those individuals that do not meet the exemption guidelines and therefore are entitled to receive at least minimum wage and overtime pay. Their salaries are calculated on an hourly basis. These

employees are not entitled to the benefits and paid time-off listed in this employee handbook.

Disciplinary Actions

Disciplinary actions will be taken when warranted by employee performance or actions. Circumstances surrounding events will be reviewed before any actions are taken. In any circumstance, the discipline to be implemented is determined at the sole discretion of the company.

Generally, employees may be counseled on unsatisfactory job performance and company policy. If an employee is counseled a second time, the employee will be given a warning or placed on a probationary status. However, there are circumstances where job performance and violations of company policy may result in warnings, probation, or immediate termination without counseling. The discipline to be implemented is at the sole discretion of the company.

Termination will occur for circumstances of sufficient severity. A few examples of these are provided as follows:

1. Deliberate interference to prohibit another employee from completing their assignment.
2. Insubordination, continual derogatory remarks about another and similar remarks that affect work conditions between employees.
3. Misuse, abuse, and reckless use of company property and equipment.
4. Any employee caught stealing or committing fraudulent acts.
5. Any employee who physically threatens any other employee in any manner.
6. Any employees fighting.
7. Any employee who does not call in for more than one (1) day.
8. Any employee caught drinking alcoholic beverages or taking hallucinogenic drugs on the job or reporting to work under the influence of such beverages or drugs.
9. Any employee purposefully destroying company property.
10. Inability to perform the job.
11. Continual lack of work and/or poor performance.
12. Disclosing and/or discussing any company financial, procedural, or client information to any unauthorized person.

Immediate termination may occur at the sole discretion of the company.

Personnel Files

Personnel files are kept in the Business Manager's office. These files are kept for the confidential use of the company; however, current employees may review their own personnel file upon request to the Business Manager at a time determined by the Business Manager. Only authorized management personnel will have access to your personnel file. However, we will cooperate with—and provide access to your personnel file to—law enforcement officials or local, state, or federal agencies, in accordance with applicable law and as may be authorized or required by law.



Under the Health Insurance Portability and Accountability Act (HIPAA), the private health information of employees will remain private and not be disclosed to other employees with the exception of the Business Manager, who will retain these records in a secured, separate location from the Personnel Files, or as otherwise authorized or required by law.

Personnel Data Changes

It is the responsibility of each employee to notify ADC of any changes in personal data. Personal mailing addresses, telephone numbers, number and names of dependents, individuals to be contacted in the event of an emergency, educational accomplishment, and other such status reports should be accurate and current at all times. If any personnel data has changed, please notify the Business Manager.

Technology Overview Policy

ADC encourages the use of electronic media and services, such as computers, e-mail, telephones, voicemail, fax machines, intranet, internet, etc. to communicate more efficiently and effectively with other employees and business associates. However, all employees should remember that electronic media and services provided by the company are company property and their purpose is to facilitate and support company business. All computer users have the responsibility to use these resources in a professional, ethical, and lawful manner.

All hardware, software, and all files on these systems are the sole property of ADC and may be accessed by ADC at any time. Any downloading, transferring or copying of these files for any purpose other than the direct work of the firm is strictly forbidden. Employees must get permission before downloading new software on their computers.

By opening e-mail, sending or receiving information, logging onto the internet or by using any of ADC's software, hardware or equipment, the employee is agreeing to and understands that this technology and information is the property of the firm. The employee should have no expectation of personal privacy when using company owned systems. Employees are not allowed to use unauthorized or secret passwords, and all passwords must be shared with management.

The employee should understand that e-mail is an extension of this firm and that all information transmitted in an email message should be professional and reflect the positive image of the firm. E-mail messages can be traced to the sender even after they have been deleted. The employee should be aware that the firm might be required to produce e-mail messages if litigation develops. For valid business purposes, including employee supervision, the firm may review, audit or download messages the employee sends or receives and may monitor internet access at any time without prior notice. Brief or incidental use of office technology for personal, non-business purposes is understandable and acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company. However, employees are strongly encouraged to wait until a lunch break or after business hours for all personal use, including personal email, use of instant messenger services, internet use, social media use, online forum use, etc. All such use should be done in a manner that does not negatively affect the systems' use for their business purposes. Employees are expected to demonstrate a sense of responsibility and not abuse this privilege. Management reserves the right to revoke this privilege at any time.

and on an individual or company-wide basis and to discipline any employee who abuses this privilege, up to and including termination.

Under no circumstances shall an employee use, whether business or personal, material or comments that violates any company policy or that might be viewed as being unprofessional, harassing, discriminatory, derogatory, obscene, sexually explicit, defamatory, threatening, offensive, or suggestive to others based on race, color, national origin, sex, religion, age, disability, or any other condition or status protected by local, state, or federal law. Nor shall an employee use material that is in violation of any license governing the use of software.

Use of personal cell phones for calls, email, internet use, etc. during business hours should be brief and incidental. Employees are strongly encouraged to wait until a lunch break or after business hours for all personal use. Management reserves the right to revoke this privilege at any time and on an individual or company-wide basis.

Failure to comply with these policies will result in discipline, up to and including termination of employment.

Office Phones

Use of office phones for personal use is acceptable provided that conversations are kept to a minimum, and that calls do not interfere with the employees or other employees' performance and duties. Office phones shall not be used for long distance phone calls.

Cellular Phones

Cell phones issued to employees by ADC are the property of the company. Cell phones should only be given to employees who have a legitimate business need to have one. If an employee's personal use of a company-owned cell phone results in fees or costs beyond what ADC would otherwise have to pay for the service, the employee may be required to reimburse the company.

All of our policies and rules of conduct apply to employee use of company-issued cell phones. All communications (email, instant messaging, and internet access) on company-issued cell phones are subject to the company's policies on appropriate use.

Cell phone use while driving should be kept to a minimum. Texting or emailing is strictly prohibited while driving. Drivers need to be aware when use of the cell phone is creating a distraction from safe driving and adjust their usage accordingly, including pulling off the road to continue/finish the conversation if needed. Whenever possible, drivers should complete calls while the vehicle is parked and/or use the phone in a "hands free" mode via a headset or speaker. Attention to the road and safety should always take precedence over conducting business over the phone. And, all employees must obey all traffic rules and laws when driving.

Hours of Work, Pay Policies, and Compensation

Hours of Operation

Core hours of operation are from 8:00 am to 5:30 pm, Monday through Thursday with a thirty-minute lunch break. Hours for Friday shall be 8:00 am to 12:00 pm with no lunch break. Unless approved in writing by a Department Head, all employees shall be present during core work hours.

Employees are to personally call in before the start of a scheduled workday to their Department Head if they will be late. Any employee, who is late three times and does not call, will be subject to disciplinary action up to and including termination.

Inclement Weather

ADC will continue operations during inclement weather unless extraordinary conditions warrant the need to close the office. The decision to close the office will be made by the Partners. If the office remains open, it is up to each individual employee to use their best judgment with regard to their safety and travel to work. Each employee has different circumstances related to their ability to travel to the office when there is inclement weather. Employees who choose to stay home during inclement weather when the office is open should contact their Department Head to communicate their absence and utilize PTO.

Timesheets

ADC Engineering, Inc. utilizes timesheets to keep track of hours worked. These timesheets are crucial to determine overtime and paid time-off.

➤ **Salaried Employees:** All timesheets for salaried employees are to be submitted monthly. Timesheets for any month must be submitted to your Department Head no later than the 10th of the following month. All approved timesheets must be given to the Accounting Department no later than the 15th of the following month.

➤ **Hourly Employees:** All timesheets for hourly employees are to be submitted semimonthly. Timesheets must be approved and submitted to the Accounting Department no later than 7 days after the pay period (15th and-end of month) ends.

Hourly employees should not work any hours outside of their scheduled work day unless their supervisor or Department Head has authorized the unscheduled work in advance. Do not start work early, finish work late, work during a meal break or perform any other extra or overtime work unless you are authorized to do so and that time is recorded on your time card. Hourly employees are prohibited from performing any "off-the-clock" work. "Off-the-clock" work means work you may perform but fail to report on your time card. Any employee who fails to report or inaccurately reports any hours worked will be subject to disciplinary action, up to and including discharge.

It is a violation of ADC's policy for any employee to falsify a timesheet, or to alter another employee's timesheet unless approval is given prior to altering the timesheet. It is also a serious violation of company policy for any employee, supervisor or Department Head to instruct another employee to incorrectly or falsely report hours worked or alter another employee's timesheet to under- or over-report hours worked. If anyone instructs you to incorrectly or falsely report hours worked, alter another employee's timesheet to

inaccurately or falsely report that employee's hours worked, or conceal any falsification of timesheets, do not do so. Instead, report it immediately to the Business Manager.

Compensation

ADC endeavors to pay their employees fairly for the time that they work. Therefore, you are expected to provide the company meaningful and productive use of your time on the job. Employee evaluations on job performance will be conducted periodically on all employees. Written copies by either party shall be kept in employee files.

It is our policy and practice to accurately compensate employees and to do so in compliance with all applicable local, state and federal laws. To ensure that you are paid properly for all time worked and that no improper deductions are made, you must record correctly all work time and review your paychecks promptly to identify and to report all errors. You also must not engage in off-the-clock or unrecorded work.

Payment of Salary: Employees are paid semi-monthly on the 15th and at the end of the month. If payday falls on a Holiday, payment will be made on the previous business day. It is important for you to fully understand how your pay is calculated and the manner in which you receive it. It is your responsibility to immediately report any suspected error in your paycheck to your Department Head or to the Business Manager. If you resign or are terminated, the final settlement of services or wages will be made no earlier than the next regular pay cycle, or in accordance with state law, whichever is sooner.

➤ **Basic Compensation:** Each employee is compensated based on his or her employee classification and as set during his or her individual employee review. ADC attempts to conduct employee reviews on an annual basis. This review is intended to discuss the specifics of the employee's contributions over the past year as well as the specific needs for the future. Compensation and benefits may be discussed and adjusted, as approved by the Department Head, during this review period.

➤ **Overtime Pay:** For non-exempt employees, time worked in excess of forty (40) hours per week (defined as Monday thru Sunday) will be at 1-1/2 times the regular hourly rate. Overtime shall be approved in writing by a Department Head prior to the employee working the overtime hours.

- Paid time-off cannot be used for overtime. Hours actually worked in the defined work week must be greater than forty hours in order to be paid as overtime.

For example: You work 40 hours Monday thru Thursday and take 4 hours of paid leave on Friday. The 4 hours of paid leave will be paid out as regular pay, not overtime pay.

➤ **Bonuses:** Employees are eligible to participate in our end-of-year bonus program. Bonuses are not a benefit to any employee. Bonus amounts are determined by the Partners, on an individual basis, and are primarily a function of performance and profitability, by the individual, by the department, and corporately. Annual bonuses are never guaranteed.

Review Your Pay Statement

We make every effort to ensure our employees are paid correctly. Occasionally, however, inadvertent mistakes can happen. When mistakes do happen and are called to our attention, we promptly will make any correction that is necessary. Please review your pay statement

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when you receive it to make sure it is correct. If you believe a mistake has occurred or if you have any question, please use the reporting procedure outlined below.

If you have questions about deductions from your pay, please contact the Business Manager immediately. If you believe your wages have been subject to any improper deductions or your pay does not accurately reflect all hours worked, you should report your concerns to your Department Head or the Business Manager. If the Department Head or Business Manager is unavailable or if you believe it would be inappropriate to contact either of them (or if you have not received a prompt and fully acceptable reply within three business days), you should immediately contact one of the Principals.

Every report will be fully investigated and corrective action will be taken, up to and including discharge of any employee(s) who violates this policy.

In addition, the company prohibits any form of retaliation against individuals who in good faith report alleged violations of this policy or who cooperate in the company's investigation of such reports. Any form of retaliation in violation of this policy will result in disciplinary action, up to and including discharge.

Employee Benefits and Time Away From Work

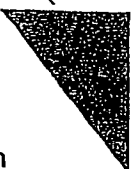
Benefits

ADC has established a variety of employee benefit programs designed to assist you and your eligible dependents in meeting the financial burdens that can result from illness and disability, and to help you plan for retirement. This portion of the Employee Handbook contains a very general description of the benefits to which you may be entitled as an employee of the company. Please understand that this general explanation is not intended to, and does not, provide you with all the details of these benefits. Therefore, this handbook does not change or otherwise interpret the terms of the official plan documents. Your rights can be determined only by referring to the full text of the official plan documents, which are available for your examination from the Business Manager. To the extent that any of the information contained in this handbook is inconsistent with the official plan documents, the provisions of the official documents will govern in all cases.

Please note that nothing contained in the benefit plans described herein shall be held or construed to create a promise of employment or future benefits, or a binding contract between the company and its employees, retirees or their dependents, for benefits or for any other purpose. All employees shall remain subject to discharge or discipline to the same extent as if these plans had not been put into effect.

As in the past, ADC reserves the right, in its sole and absolute discretion, to amend, modify or terminate, in whole or in part, any or all of the provisions of the benefit plans described herein, including any health benefits that may be extended to retirees and their dependents. Further, the company reserves the exclusive right, power and authority, in its sole and absolute discretion, to administer, apply and interpret the benefit plans described herein, and to decide all matters arising in connection with the operation or administration of such plans.

For more complete information regarding any of our benefit programs, please refer to the Summary Plan Descriptions, which were provided to you separately or contact the Business Manager. If you lost or misplaced those descriptions, please contact the Business Manager for another copy.

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- **Medical and Dental Insurance:** Medical and Dental Insurance is provided by a group plan and the company pays 100% of the premium for employees based on the premium rates for the employee at the time of employment. Employees may be required to pay for premium rate increases above the premium rate established at the time of employment. The payment of premiums or future increases by ADC is not guaranteed, unless otherwise stated in your Employment Contract. Specific coverage is outlined in the plan booklet. Unless approved otherwise, during employment negotiations, the cost of adding a spouse or dependent children is the responsibility of the employee. Please note that our Insurance policy has special requirements that you must be aware of. It is the employee's responsibility to review the policy and be aware of and conform to these requirements.
 - **COBRA Insurance Coverage:** COBRA Insurance coverage is provided in accordance with state laws, at the employee's expense.
 - **Retirement Program(s):** ADC currently provides and will endeavor to maintain a retirement program that accepts pre-tax employee contributions. We urge all employees to understand and to participate in the retirement program, as he or she desires. Additional information is available upon request. The retirement program is subject to change at the discretion of the Partners.
 - **401(K) Match:** ADC will match 100% percent on the first 5% percent of your employee contribution.
 - **Vision Insurance:** ADC provides vision insurance to eligible employees. Specific coverage is outlined in the plan booklet.
 - **Life Insurance:** ADC provides life insurance coverage to eligible employees. Specific coverage is outlined in the plan booklet.
 - **Payroll Deduction Program:** After proper arrangements have been made with the payroll section, payroll deductions are available for your cost of retirement, health insurance, and certain other expenses, as approved by management.
 - **Worker's Compensation:** If you are injured while working on the job, you are covered by the specific Workman's Compensation policy provided at that time.
 - **Disability Policy:** ADC provides limited short term and long term disability insurance to qualified employees. It is the employee's responsibility to discuss his or her eligibility with the Department Heads and to complete, submit, and return the appropriate insurance forms, as may be required to have such additional insurance in place and to file claims. Copies of these policies are on file in the accounting office and will be made available upon request.
 - **Flexible Spending Plan:** ADC Engineering, Inc. has established a flexible spending plan. This plan allows you to set aside a pre-tax amount to be used for various reimbursable health-care expenses and dependent day care.
 - **Employment Security:** Your job is covered through the South Carolina Security Employment Law. Unemployment benefits are payable if a former employee is qualified.
 - **Social Security:** Each employee is included in the Social Security Program. The cost of this program is paid one-half (1/2) by the company.

- **Continuing Education:** Employees are encouraged to continue their education and ADC Engineering, Inc. will monetarily support such efforts for qualified curriculums approved in advance.

- Books may be reimbursed if approved in advance. An employee may receive up to 100% reimbursement for qualified courses contingent upon performance and other factors (see chart below).
- The Seminar/Course Request form must be completed by the individual prior to the class/course semester. Approval of the class/course schedule and reimbursement for books will be made at ADC Engineering's sole discretion, prior to each class/semester commencing.
- The Continuing Education Reimbursement form must be submitted at the completion of each course/class/semester with receipts for all pre-approved courses/books, and the course grade.

% Reimbursement	Grade
100%	A
75%	B
50%	C
0%	D or Below

Paid Time Off

General

1. One weeks' notice is required for one day off. Time off in excess of one day shall be discussed with a Department Head at least fourteen days prior to the requested date of leave.
 - a. Employees should enter their paid time-off request on the Leave Request form. These forms should be submitted to the Department Head for approval.
2. Employees are to personally call in before the start of a scheduled workday to their Department Head if they will be late or are sick. Any employee, who is late three times and does not call, will be subject to disciplinary action up to and including termination.
3. Employees are responsible for keeping track of their own paid time-off balance throughout the year.
4. All leave shall be reflected accurately on employee timesheets.
5. If at the end of the year, an employee has utilized more paid time-off than accrued, the employee will have that time deducted from their pay as unpaid time-off. Please make sure to properly record unpaid time-off under the correct category on your timesheet.
6. Violations of the leave policies stated herein will be grounds for disciplinary action up to and including termination.

Holidays: ADC observes the following holidays with pay for eligible employees:

- New Year's Day
- Memorial Day
- July 4th
- Labor Day
- Thanksgiving
- Day after Thanksgiving
- Christmas Eve

1. Half Day (4.5 hours) when this day falls between Monday thru Thursday
2. 4 hours when this day falls on Friday

- Christmas Day
- New Year's Eve

1. Half Day (4.5 hours) when this day falls between Monday thru Thursday
2. 4 hours when this day falls on Friday

Other days may be observed as set by management.

Vacation: Vacation is granted to each eligible employee as follows:

- Two weeks (80 hours) annual vacation is granted on January 1st for each calendar year. A new employee's vacation is prorated for the first year based on date of hire.
 - Vacation for full-time hourly employees will be prorated based on their scheduled work hours. For example, if an employee is scheduled for 30 hours a week, they will receive sixty 60 hours of vacation for the year.
- Three weeks (120 hours) annual vacation is granted on January 1st of the next calendar year following an employee's 8th anniversary of employment at ADC.
- You can only use vacation time that is earned.
- The maximum amount of vacation leave that can be carried over from year to year is 40 hours.
 - Any hours over the 40 hours that are carried over, may be paid out to you at 50% your normal pay rate.
- ADC does not compensate employees for unused vacation time when your employment ends (voluntarily or involuntarily).
- No other type of leave may be used as vacation.

Personal Leave: Personal leave is granted to each eligible employee as follows:

- 40 hours of personal leave are granted on January 1st for each calendar year. A new employee's personal leave is prorated for the first year based on date of hire.
 - Personal leave for full-time hourly employees will be prorated based on their scheduled work hours. For example, if an employee is scheduled for 30 hours a week, they will receive 30 hours in personal leave for the year.
- Personal leave is to be used in case of inability to work because of sickness, doctor appointments, family emergency, funeral or caring for sick dependents.
- A doctor's certificate may be required.

- The maximum amount of personal leave that can be carried over from year to year is 160 hours.
 - Any hours over the 160 hours that are carried over, may be paid out to you at 50% of your normal pay rate.
- ADC does not compensate employees for unused personal time when your employment ends (voluntarily or involuntarily).
- Employees are encouraged to schedule appointments in such a way to minimize use of personal leave for doctor and dentist appointments.
- Vacation leave can be used for personal leave, but personal leave cannot be used for vacation leave.

Other Leave

Other leave is granted to each employee as follows:

- **Election Day:** ADC Engineering, Inc. feels that its employees should be patriotic and loyal citizens and have the right to vote. Time will be allotted, if necessary, for each employee to vote if they are a registered voter. Where possible, employees should schedule their time to vote in a manner to minimize the time off from work.
- **Jury Duty:** A leave of absence for jury duty will be granted to any full-time or part-time employee who has been notified to serve. During this leave, employees will be compensated by payment of an amount equal to the difference between their jury duty pay and their regular salary.

Upon receipt of the notice to serve jury duty, the employee should immediately notify his/her supervisor, as well as the Business Manager. Upon the employee's return, the employee must notify the Business Manager and must submit a signed Certificate of Jury Service indicating the number of days served.

- **Military Leave:** The Uniformed Services Employment and Reemployment Rights Act (USERRA) provides for time off for persons performing services for the Armed Forces of the United States, including Reservists and National Guard members, as well as persons applying for membership in the Armed Forces of the United States.

1. Notice

- a. Upon receipt of orders for active or reserve duty, an employee should notify his/her supervisor, as well as Human Resources, as soon as possible, and submit a copy of the military orders to his/her supervisor and the Human Resources Department (unless he/she is unable to do so because of military necessity or it is otherwise impossible or unreasonable).

2. Military Leave Pay

- a. Military leave granted to ADC employees will be partially paid. ADC will compensate an employee on military leave for the difference between the employee's military pay and the employee's regular hourly rate (as determined by the Federal Fair Labor Standards Act) for a maximum of 80 hours in any calendar year, for military service, training, or related obligations in accordance with applicable law. If all employees are given an increase in pay during an employee's military leave, the on leave employee will receive the same pay

Increase. Employees on military leave may substitute their accrued paid leave time for unpaid leave.

3. Continuation of Health Benefits

- a. Employees who are on leave for military service and their dependents will be covered for the first 31 days of service. After that, employees and their dependents are entitled to continuation of health insurance through COBRA for up to 24 months. Upon re-employment, employees and their dependents are entitled to reinstated health coverage without exclusions or waiting periods, except for illnesses or injuries deemed by the Department of Veteran Affairs to have been related to military service.

4. Continuation of Retirement Plans

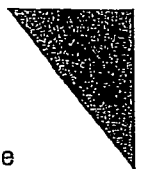
- a. When an employee returns from Military duty, he or she is treated as if there were no break in service. ADC will fund its portion of contributions as if the on-leave employee was continuously employed. However, contributions need not be made until the employee returns to work. If the employee were eligible to contribute to the plan, he or she is allowed make-up contributions up to three times the period of service or five years, whichever ends first. If the employee makes up the contributions, ADC will make up any matching contributions.

5. Return from Military Leave

- a. Under USERRA, employees who have completed military service are to be restored to their former position, to a position they would have attained if they had continued working, or to a position of like seniority, status, and pay. The right to reinstatement applies only if the employee is honorably discharged from his or her military service. An employee is generally not entitled to reinstatement if the cumulative length of military service exceeds five years, with some exceptions. Persons restored to employment may not be discharged from such positions without cause within one year of being restored if their military leave exceeded 180 days. Similarly, persons restored to employment may not be discharged from such positions without cause within 6 months if their military leave was 30-181 days.

Upon completion of military service, a person seeking to return to his or her employment must notify ADC of the intent to return to employment. The method of notification required generally depends upon the length of the returning employee's length of military service, as set forth below:

- 1) If the employee's period of military service was less than 31 days the employee must report to the employer for re-employment on the first full calendar day following completion of the service and the expiration of 8 hours after a "safe transportation" period.
- 2) If the employee's period of military service lasted for more than 30 days but less than 181 days, the employee must submit an application for re-employment with ADC no later than 14 days after the completion of service.

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- 3) If the employee's period of military service exceeds 180 days, the employee must submit an application for re-employment with the employer no later than 90 days after the completion of service.
 - 4) If an employee is hospitalized or convalescing, the time to report may be extended up to two years or more.
 - b. If an employee fails to report or submit an application in a timely manner the employee does not forfeit his or her rights to re-employment or benefits. Such an employee will be subject to ADC's normal policies, practices and disciplinary measures regarding unexcused absences.
 - c. An employee whose military service exceeds 30 days, and who wishes to return to employment with ADC following military service, must provide to ADC documentation establishing that:
 - 1) The application is timely;
 - 2) The period of military service did not exceed five years;
 - 3) The employee received an honorable discharge.
 - d. Please be advised that ADC may deny re-employment if:
 - 1) ADC's circumstances have changed so as to make re-employment impossible or unreasonable;
 - 2) Such re-employment would pose an undue hardship on ADC; or
 - 3) The employment from which the employee left for military service was for a brief, non-recurrent period and there was no reasonable expectation that such employment would continue indefinitely or for a significant period.
 - e. If a returning employee is disabled, or if a returning employee's disability is aggravated and the employee is no longer qualified for employment in the position in which he or she would have been employed if not for the military service, ADC must make a reasonable effort to accommodate the employee's disability. If accommodation is not possible, the employee shall be re-employed in an equivalent position of like seniority, status and pay for which he or she is qualified or could be qualified with reasonable training if such a position is available.

➤ **Family and Medical Leave Act:** The Family and Medical Leave Act (FMLA) provides eligible employees with up to 12 workweeks of unpaid leave for certain family and medical reasons during a 12 month period. During this leave, an eligible employee is entitled to continued group health plan coverage as if the employee had continued to work. At the conclusion of the leave, subject to some exceptions, an employee generally has a right to return to the same or to an equivalent position.

1. Eligibility

- a. FMLA applies to employees with at least 12 months of service who have worked a minimum of 1,250 hours during the 12-month period preceding the beginning of the leave.
- b. Full time employees are entitled to 12 weeks (480 hours) of leave in a rolling 12-month period measured backward from the date an employee uses FMLA leave as explained above.

- c. Part time employees are entitled to 12 weeks of prorated leave in a rolling 12-month period measured backward from the date an employee uses FMLA leave based on the total number of hours established to work, provided they meet the 12-month and 1,250 hours of service requirement.
- d. The employee must work at a location with 50 or more employees or where 50 or more employees are located within seventy-five (75) miles of the worksite.

2. Reasons for FMLA Leave

- a. The birth of a child and to care for that child;
- b. Placement of a child for adoption or foster care with an employee or to care for the child after placement;
- c. Care of an employee's spouse, child or parent with a serious health condition; or
- d. The employee's own serious health condition that renders an employee unable to work and/or perform one or more of the essential functions of his or her job.

A "serious health condition" is an injury, illness, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

3. Intermittent Leave or a Reduced Work Schedule

- a. Intermittent leave is leave taken in separate blocks of time. A reduced work schedule leave is a leave schedule that reduces an employee's usual number of hours per workweek or hours per workday.

When medically necessary, an employee may take leave on an intermittent or reduced schedule because of his or her own serious health condition or to care for a seriously ill family member.

Intermittent or reduced schedule leave may be taken for the birth of a child, or for adoption or foster care of a child only with the express approval ADC.

When an employee takes intermittent or reduced work schedule leave, ADC may temporarily transfer the employee to an alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave.

4. Use of Paid and Unpaid Leave

- a. FMLA provides eligible employees with up to 12 workweeks of unpaid leave. If an employee has accrued paid leave (e.g., vacation, personal leave), the employee must use any qualifying paid leave concurrently with the FMLA leave. "Qualifying paid leave" is leave that would otherwise be available to the employee for the purpose for which the FMLA leave is taken. The remainder of the 12 workweeks of leave, if any, will be unpaid FMLA leave. Any paid leave used for an FMLA qualifying reason will be charged against an employee's entitlement to FMLA leave. This includes leave for disability or workers' compensation injury/illness, provided that the leave meets FMLA

requirements. The use of paid leave concurrently with FMLA leave does not extend the 12 workweek leave period.

5. Requests for FMLA Leave

- a. An employee should request FMLA leave by completing the Request for Leave form and submitting it to the Human Resources department.

When leave is foreseeable for childbirth, placement of a child or planned medical treatment for the employee's or family member's serious health condition, the employee must provide ADC with at least 30 days advance notice, or such shorter notice as is practicable (i.e., within 1 or 2 business days of learning of the need for the leave). When the timing of the leave is not foreseeable, the employee must provide ADC with notice of the need for leave as soon as practicable (i.e., within 1 or 2 business days of learning of the need for the leave).

6. Required Documentation

- a. When leave is taken to care for a family member, ADC may require the employee to provide documentation or statement of family relationship (e.g., birth certificate or court document).

An employee may be required to submit medical certification from a health care provider to support a request for FMLA leave for the employee's or a family member's serious health condition.

If ADC has reason to doubt the employee's initial certification, ADC may: (i) with the employee's permission, have a designated health care provider contact the employee's health care provider in an effort to clarify or authenticate the initial certification; and/or (ii) require the employee to obtain a second opinion by an independent ADC-designated provider at ADC's expense. If the initial and second certifications differ, ADC may, at its expense, require the employee to obtain a third, final and binding certification from a jointly selected health care provider.

During FMLA leave, ADC may request that the employee provide recertification of a serious health condition at intervals in accordance with the FMLA. In addition, during FMLA leave, the employee must provide ADC with periodic reports regarding the employee's status and intent to return to work. If the employee's anticipated return to work date changes and it becomes necessary for the employee to take more or less leave than originally anticipated, the employee must provide ADC with reasonable notice (i.e., within 2 business days) of the employee's changed circumstances and new return to work date. If the employee gives ADC notice of the employee's intent not to return to work, the employee will be considered to have voluntarily resigned.

Before the employee returns to work from FMLA leave for the employee's own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider, with respect to the condition for which the leave was taken, stating that the employee is able to resume work.

FMLA leave or return to work may be delayed or denied if the appropriate documentation is not provided in a timely manner. Also, a failure to provide requested documentation of the reason for an absence from work may lead to termination of employment.

7. Status of Benefits during FMLA Leave

- a. During the FMLA leave period, ADC will continue the employee's health, dental, vision, life and disability benefits at the same level and under the same conditions as if the employee had continued to work. While an employee is on paid leave, ADC will collect the employee's share of the premiums through payroll deduction. When on unpaid leave, the employee must pay his or her portion of the premiums by the normal payroll dates. If an employee's premium payment is more than thirty (30) days late for any reason, ADC may discontinue the employee's coverage upon notice to the employee. Such notice will include information regarding COBRA insurance coverage.

8. Reinstatement

- a. Any employee who takes leave under this policy will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. An employee is entitled to reinstatement only if he/she would have continued to be employed had FMLA leave not been taken.

ADC reserves the right to deny reinstatement to salaried, eligible employees who are among the highest paid 10 percent of ADC's employees employed within 75 miles of the worksite ("key employees") if such denial is necessary to prevent substantial and grievous economic injury to ADC's operations.

An employee returning to work after a serious medical condition may be required to submit a fitness for duty certification from the employee's health care provider.

9. Military Family Leave Qualified Under FMLA

- a. FMLA also provides employees leave rights related to military service:

- 1) **New Qualifying Reason for Leave.** Eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.
- 2) **New Leave Entitlement.** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.



CIVIL ENGINEERING
STRUCTURAL ENGINEERING
ROOFING AND WATERPROOFING CONSULTING
LAND PLANNING AND LANDSCAPE ARCHITECTURE

CHARLESTON • SOUTH CAROLINA
CHARLOTTE • NORTH CAROLINA

September 16, 2004

Mr. James C. Owens
1197 Island View Drive
Mt. Pleasant, SC 29464

SUBJECT: Employment Contract

Dear Mr. Owens:

Please allow this letter to serve as our written offer of employment. ADC Engineering, Inc. is excited about the possibility of having you join us and hope you find this offer acceptable. Please review the items listed below and let me know if anything is found different than we discussed.

1. **STARTING SALARY:** ADC will offer you a base salary of \$45,000 dollars per year, and the below benefits package. This salary will be paid twice a month in accordance with our current payroll system. Annual reviews are provided based on your initial start date. A copy of our Employee Handbook will be provided to you on your first day of work, and can be provided sooner if needed.
2. **BONUSES:** We have historically paid bonuses to all Employees based on their commitment, productivity, extra effort and other factors. These bonuses are based on company profits, department profits, and individual performance and assigned projects. Bonuses typically range from 0-5%.
3. **INSURANCE:** ADC Engineering, Inc. will provide medical and dental coverage for you. The effective date of your health and dental coverage will be November 1, 2004 for a starting employment date of September 20, 2004. Family medical and dental can also be provided with the entire cost of the premium paid by the employee. A copy of our policy can be forwarded or faxed to you upon your request. Additionally, ADC Engineering, Inc. will pay the costs associated with providing you with our standard disability and life insurance coverage as well as the standard Workman's Compensation coverage.
4. **RETIREMENT SAVINGS:** ADC Engineering, Inc. has a 401K plan for our Employees's retirement program, which allows tax-deferred deposits for Employee contribution per year, and ADC Engineering, Inc. will provide matching funds up to 5%.
5. **BUSINESS EXPENSES:** ADC Engineering, Inc. will pay for any approved expenses related to your position. Local business mileage and out-of-town project mileage is paid at .31¢ per mile, or for out of town travel you may get a rental car. We have an established account with Enterprise.

Travel and per diem for projects is paid at the government rates for the applicable city, less South Carolina, which is \$25.00 per day for meals throughout the state. Any company related travel that requires an employee to be more than seventy-five (75) miles from the office, entitles that employee to a per diem based on the current GSA rates for that location.

6. **START DATE OF EMPLOYMENT:** MAY 24, 2004

1226 YEAMANS HALL ROAD
30201 PROSPERITY CHURCH ROAD PMB 136

HANAHAN SOUTH CAROLINA 29406
CHARLOTTE, NORTH CAROLINA 28289

PH 843.566.0161
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www.adcengineering.com
email@adcengineering.com

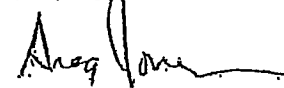
ADC_000175

April 5, 2004

7. **WORK WEEK:** Our current core workweek consists of nine-hour workdays Monday through Thursday and a four-hour workday on Friday. It is expected and should be anticipated that a standard workweek would entail a minimum 40 to 45 hours.
8. **HOLIDAYS AND VACATION:** ADC observes approximately 56 hours of paid holidays per year. A listing of the holiday schedule is located in the Employee Manual. Each Employee is entitled to 80 hours of paid vacation time per year. We make every effort to close the office the week between Christmas and New Years, and ask each employee to make every effort to save one week of vacation for this time. Also, 40 hours of paid personal leave is available to each employee. Please refer to the Employee Handbook for calculation of vacation and personal leave.
9. **EDUCATION/REGISTRATION:** After your first three months, ADC will assist in the costs associated with pre-approved job related continued education on a rated scale tied to the grade you receive for the class.
10. **JOB DESCRIPTION:** Your starting position will be titled Construction Administrator and your responsibilities will include construction administration, client coordination, general technical support duties, general office support, field investigations, and other tasks as assign by your department head.
11. **CONFIDENTIALITY AGREEMENT:** By accepting this position, you agree to honor ADC Engineering, Inc. client information, projects, procedures, information and data, as confidential information not to be used, shared, or provided to anyone outside of this company. All products, documents, drawings etc. are the property of ADC.

Again, ADC Engineering, Inc. and I look forward to having you join our firm. We believe if you apply yourself, you can develop to be a valuable, long-term asset to our team. Please let me know if you have any questions or need any additional information. I look forward to hearing from you.

Sincerely,



Greg Jones, PE
ADC Engineering, Inc.
Mobile (843) 991-7043

Accepted:

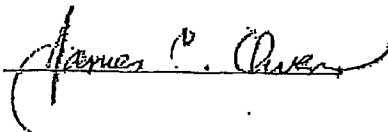


EXHIBIT “D”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON
4 JAMES C. OWENS,
5 Plaintiff,
6 vs. CASE NO. 2014-CP-10-625
7 BRYAN CRABTREE, KIRKMAN BROADCASTING, INC.,
8 D/B/A WQSC RADIO, and ADC ENGINEERING, INC.,
9 Defendants.
10 DEPOSITION OF: JEFFREY MARK DILLON
11 DATE: May 20, 2015
12 TIME: 3:55 PM
13 LOCATION: Nexsen Pruet, LLC
14 205 King Street
15 Suite 400
16 Charleston, SC
17 TAKEN BY: Counsel for the Defendants
18 REPORTED BY: Priscilla Nay,
19 Certified Shorthand Reporter
20 A. WILLIAM ROBERTS, JR., & ASSOCIATES
21 Fast, Accurate & Friendly
22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376
24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 1

1 Mr. Owens professional?

2 A. Yes.

3 Q. Did he do a good job?

4 A. To my understanding.

5 Q. Prior to this event here, are there any
6 negative things about Mr. Owens that you were aware
7 of?

8 A. No.

9 Q. When did you first learn the issues
10 that we're here about?

11 A. The first, I guess, was when I was
12 called to a meeting at Stubbs Muldrow Herin on
13 September 16.

14 Q. And who called you about that?

15 A. My direct client was Charles Muldrow.

16 Q. And he is an architect?

17 A. Yes.

18 Q. And did he call you and tell you why he
19 wanted to talk with you?

20 A. Yes.

21 Q. And what did he tell you?

22 A. He said that there was a problem with
23 one of our employees who was strongly objecting to
24 a project that we were involved in.

25 Q. And prior to September the 16th, did

1 you -- what work had ADC done on the project?

2 A. Our role on that project was as
3 structural engineer, primarily for the foundation
4 design. The perimeter design, wall design, and
5 some of the -- what I would call the secondary or
6 insulation structures of the building. So at that
7 point in time, we had some meetings.

8 My recollection is that we had done
9 some very preliminary work with the architect, just
10 looking at concept, things like that. I don't
11 believe at that stage we had any formal drawing
12 submission.

13 Q. Had you billed for any work at that
14 time?

15 A. I don't recall. I didn't look that up.

16 Q. Did you see what work had, in fact,
17 been done on the project as you prepared for the
18 deposition?

19 A. At this current time?

20 Q. Yes.

21 A. The amount of work now?

22 Q. No. What was done as of September 16,
23 what involvement had the firm had -- had --

24 A. I did not review that.

25 Q. What is your recollection as to what

1 identification.)

2 BY MR. PARKER:

3 Q. I'm going to hand you what we've marked
4 as Plaintiff's Exhibit 1. Do you recognize that?

5 A. Yes.

6 Q. This is an e-mail that appears to be
7 from Tyler Flesch. Is that correct?

8 A. Yes.

9 Q. Do did you know who Mr. Flesch was?

10 A. As of this day, I did not.

11 Q. Did not?

12 A. I probably met him previously. I knew
13 that he was involved in the project.

14 Q. And you got apparently a number of
15 documents from Mr. Flesch in a Dropbox on that
16 date, yes?

17 A. Yes.

18 Q. On September 16 which documents were in
19 the Dropbox?

20 A. I don't recall specifically, but I
21 believe they where are various presentations
22 related to the Shem Creek Project.

23 Q. Do you recall who was relatively to the
24 Dropbox?

25 A. I don't know. I'd have to look.

1 Q. What was the significance?

2 A. Simply Jim's opposition to the project.

3 Q. Did Mr. Flesch then meet you?

4 A. We had met earlier in the day.

5 Q. Earlier, before this e-mail?

6 A. Before this e-mail.

7 Q. Where the did that meeting take place?

8 A. The office of SMHa, Stubbs Muldrow

9 Herin.

10 Q. They were in the same meeting that you
11 got called to come to?

12 A. Yes. Oh, yes.

13 Q. And I guess the e-mails at 2:51 say it
14 would have been before that, I presume?

15 A. It was.

16 Q. Then there's another e-mail that looks
17 to be at 5:15, I guess, but that was after that.
18 So the first documentation that you would have
19 received would have been at 2:51 PM --

20 A. I believe so.

21 Q. -- in the meeting at the architect's
22 office?

23 What did Mr. Flesch say?

24 A. He informed me of Jim's opposition
25 to the project. He informed me how unhappy he

1 was about the fact that he was an employee of ADC
2 Engineering. He informed me that we would be fired
3 from the job unless we fired Jim.

4 Q. And did he say what, in fact, Jim had
5 done wrong?

6 MR. CHERRY: Object to the form.

7 BY MR. PARKER:

8 Q. What was his complaint? I know --

9 A. In his opinion, it was his opposition
10 to the project.

11 Q. And did he know whether or not Jim even
12 knew about ADC's involvement in the project?

13 A. I don't know.

14 Q. Did you know about Jim's knowledge
15 about ADC's involvement in the project at that
16 point?

17 A. At that point, I did not know.

18 Q. And had you ever spoken to Mr. Owens
19 about the project?

20 A. No.

21 Q. And had you made any inquiry as to
22 whether or not he knew anything about ADC's
23 involvement prior to that?

24 A. No.

25 Q. Once you met with Mr. Flesch and

1 Would they have known about it?

2 A. I don't know.

3 Q. Do you recall talking about it with any
4 of the other principals about the project?

5 A. Not prior to that date.

6 Q. And so as far as -- as of September '16,
7 the remainder of the principals would not have
8 known of ADC's involvement with the project --

9 MR. CHERRY: Object do the form.

10 MR. EARLY: I object.

11 BY MR. PARKER:

12 Q. -- to your knowledge?

13 A. To my knowledge, I don't recall if we
14 discussed it or not. We often discussed large
15 projects which for that one -- for that project it
16 was considered a large project for me within my
17 structural group.

18 , So there is a -- there is a good
19 likelihood that it was brought up in conversation,
20 but I don't know specifically.

21 BY MR. PARKER:

22 Q. But you don't recall any specific
23 conversation about it?

24 A. Correct.

25 Q. If in fact -- does the firm have any

1 type of conflict checks to see if this there's
2 conflicts between projects or whereby you're
3 representing clients that may have opposing
4 positions on some issue?

5 A. We are aware to relative to --
6 if there's a -- a client issue, but this was not a
7 client issue. There was no conflict relative to
8 our client.

9 Q. Well, if Mr. Owens was working for ADC
10 and he informs management that he has opposition to
11 the project to let them know if, in fact, they did
12 know that y'all had a contract with the project
13 that he was opposing, wouldn't you have some
14 obligation to advise Mr. Owens of that?

15 MR. CHERRY: Object to the form.

16 THE WITNESS: I'm not sure I understand
17 the question.

18 MR. PARKER:

19 Q. The question -- let's go again. We'll
20 try it again.

21 If, in fact, the project for Shem
22 Creek, the garage there -- if, in fact, Mr. Owens'
23 supervisor knew about that contract that you had
24 and if, in fact Mr. Owens, had advised that
25 supervisor or one of the principals that he was

18
1 going to oppose the project shouldn't the principal
2 advise Mr. Owens of the potential conflict?

3 MR. CHERRY: Object to the form.

4 THE WITNESS: I really don't know what
5 would happen in that case. We have never had it
6 happen before.

7 BY MR. PARKER:

8 Q. Wouldn't you think that that would be
9 the advisable thing to do?

10 MR. CHERRY: Object to the form.

11 THE WITNESS: In a purely speculative
12 manner, with hindsight, I would actually expect
13 the employee to go straight to the specific project
14 manager for that project, which would be me.

15 BY MR. PARKER:

16 Q. How about if he didn't know about it,
17 the employee?

18 A. Then he couldn't say if he didn't know.

19 Q. Right. But if the principal knew about
20 it then he should have advised the employee, should
21 he?

22 MS. CHERRY: Object to the form.

23 THE WITNESS: Well, there could have
24 been discussion at that point in time, but that is
25 not what happened relative to the initial --



1 relative to opposition to a project and someone's
2 feelings on that project in a very private manner.
3 We respect that. I would not have gone to an
4 employee if they were acting solely on a private
5 basis on their own time. I would not have gone to
6 an employee and said stop.

7 BY MR. PARKER:

8 Q. Even if ADC had a contract to work on
9 the project?

10 A. Correct.

11 Q. How about if they were taking a public
12 position against the project?

13 A. That's what I'm talking about.

14 Q. You would not have gone to the
15 employee?

16 A. As long as they were keeping it in
17 their private sphere on their own time.

18 (PLF. EXH. 2, 9/16/14 handwritten notes
19 entitled "Shem Creek", was marked for
20 identification.)

21 BY MR. PARKER:

22 Q. I'm going to hand you Exhibit 2. If
23 you would, tell me if you can recognize Exhibit 2.

24 A. Okay. This appears to be notes that I
25 took.

1 Q. Okay. This is on 9/16/14?

2 A. Yes.

3 Q. Where did you take those notes?

4 A. In the meeting I had at Stubs Muldrow
5 Herin.

6 Q. This would be you writing down what you
7 were being told?

8 A. Yes.

9 Q. And let's go over -- it says: Parking
10 agreement. Is that what the first writing says?

11 A. It appears so. I have to decipher my
12 own handwriting sometimes.

13 Q. And the next says truthfulness,
14 wrongful statements.

15 A. Yes.

16 Q. Is this what Mr. Flesch is relaying to
17 you?

18 A. That's correct.

19 Q. And he's relaying to you what about
20 truthfulness?

21 A. It was his opinion that Jim was not
22 being truthful and that it was he that was issuing
23 wrongful statements.

24 Q. And what wrongful statements did he say
25 that Mr. Owens was stating, what he was stating

1 wrongfully and truthfully?

2 A. I don't remember specifics.

3 Q. And next is e-mails during working
4 hours. Is that something he told you also?

5 A. He mentioned that meetings during
6 working hours, work hours. Yes.

7 Q. Accessing company information. Is
8 that -- did I read that correctly?

9 A. That's correct.

10 Q. And do you know what he's talking about
11 do or do you recall?

12 A. I don't recall specifically there.

13 Q. And next is David Pagliarini, said
14 he -- attorney, I guess. I do know he is the city
15 attorney is why I'm saying that. Do you know why
16 he mentioned that?

17 A. I don't recall.

18 Q. And then he has the major under that?

19 A. Yes.

20 Q. What --

21 A. I don't recall the mention specific to
22 those other than stating their involvement with the
23 project.

24 Q. And then it says: Possible suit
25 against ADC?

1 A. Yes.

2 Q. He was threatening to sue ADC?

3 A. Yes.

4 Q. And what was he going to sue ADC about?

5 A. I don't know, but he was threatening.

6 Q. And what was his demeanor?

7 A. Very upset.

8 Q. Was he very angry?

9 A. Yes.

10 Q. And, I assume, directing it towards
11 you?

12 A. Yes.

13 Q. And it says: What rights does ADC have
14 to fire Jim?

15 A. Yes.

16 Q. Is that a question he asked or is that
17 something you posed?

18 A. I believe that was a question he asked.

19 Q. And it says: Jim shall not be the
20 front man. Is that -- did I read that correctly?
21 I'm not sure about that, the front.

22 A. Yes. I believe that's front man and I
23 believe he was talking about him being the front
24 man for the Shem Creek operation group.

25 Q. And it says: Direct ACD benefit in

1 did he use his association with ADC to get meetings
2 or people to accept his calls.

3 Q. And then it next says: Tex Smalls?

4 A. Yes.

5 Q. And what --

6 A. He was making a broader threat relative
7 to the fact that ADC does a good bit of work with
8 Walmart, and while Walmart is not specifically
9 involved with the Shem Creek Project that
10 Tex Smalls is and that that would hurt our
11 ability to get future work.

12 Q. So he was generally -- what was the
13 purpose of the meeting insofar as what you
14 discerned from what Mr. Flesch said?

15 A. The purpose of the meeting is what
16 we've already noted, that he wanted to let me know
17 about Jim's activity. He wanted to express his
18 displeasure over what was going on. He wanted to
19 express his displeasure with ADC. I remember one
20 of his comments was, how can I make pay you when
21 you may him, again threatening a lawsuit for ADC,
22 threatening a lawsuit against Jim, and then in
23 essence demanding that we fire Jim.

24 Q. And had you paid you any money at that
25 point in time?

1 A. I don't recall. We'd have to look into
2 the accounting.

3 Q. But as far as you knew, he had not?

4 MS. CHERRY: Object to the form.

5 THE WITNESS: I don't remember.

6 (PLF. EXH. 3, 9/16/14 letter from S.
7 Herin to M. Dillon, was marked for identification.)
8 BY MR. PARKER:

9 Q. MR. PARKER: Next, I'll hand you
10 Exhibit 3. Is this a letter you served from
11 Mr. Herin that was terminating the agreement?

12 A. Yes.

13 MS. CHERRY: Counsel, do you have a
14 copy for me?

15 MR. PARKER: Sure. I'm sorry.

16 MR. EARLY: Thank you.

17 MR. PARKER:

18 Q. When did this take place, the letter?
19 Did you get it after or before the meeting?

20 A. The meeting, I believe, was on the 13th
21 and this letter was the 16th.

22 Q. Your notes are dated the 16th is why I
23 ask that had if you'll look at Exhibit 2.

24 A. Okay. You're right. The meeting was
25 the 16th. I believe I actually received this on

1 the 18th.

2 Q. Been a couple of days later. It's
3 dated the 11th.

4 A. It was a couple of days.

5 Q. Did you receive it in the mail?

6 A. I believe he sent it by e-mail.

7 Q. Did you call Mr. Herin or Mr. -- Mr.
8 Muldrow or anyone else about this after you got it?

9 A. I did not.

10 Q. Why not?

11 A. Well, I knew it was final, first of
12 all. At that stage because of Jim's involvement at
13 that point in time it was my understanding that Jim
14 was acting as a private citizen we had determined
15 that that was something we were going to respect
16 and so at that point in time we had decided not to
17 fire Jim.

18 They knew that so we proceeded with the
19 termination of ADC Engineering.

20 Q. Did you tell Mr. Flesch you were not
21 going to fire Jim?

22 A. I told Charles Muldrow.

23 Q. When did you tell him that?

24 A. It was a phone call. It was probably
25 the next day after the meeting. So I'm going to

1 believe Chris and Greg talked with him next,
2 whenever that was. It was a fairly short
3 timeframe.

4 I believe Jim was dismissed on the
5 23rd. So, you know, it all happened somewhat
6 quickly, but I don't remember the exact sequence of
7 who talked next.

8 (PLF. EXH. 5, 9/18/14 meeting note, was
9 marked for identification.)

10 BY MR. PARKER:

11 Q. Let me hand you this. Exhibit 5
12 appears to be some notes of 9/18. It says, Chris,
13 meeting? At the top, meeting note?

14 A. Okay. Yes.

15 Q. Is this Chris's notes of the meeting
16 you had that you recall, if it is?

17 MS. CHERRY: Object to the form.

18 THE WITNESS: I believe this is the
19 meeting notes of Chris's and Greg's meeting with
20 Jim.

21 Q. And it said responded to Jim's request
22 to meet with Greg and I. Jim came to my office.
23 Greg and I asked Jim what he wanted to say or ask.
24 Jim said he was shocked by the letter and did not
25 expect it.

1 contact him.

2 (PLF. EXH. 10, 9/8/114 e-mail from
3 R. Cook to C. Cook, was marked for identification.)

4 BY MR. PARKER:

5 Q. I'm going to hand you Exhibit 9. Is
6 this an e-mail you received from Chris Cook?

7 MS. CHERRY: Johnny, for the record, I
8 think that should be 10.

9 MR. PARKER: It's 10? It is. Sorry.
10 We marked it.

11 BY MR. PARKER:

12 Q. Exhibit 10 is from Rick Cook to Chris
13 Cook, copy to yourself. It says if he is sending
14 these from office computer during office time my
15 opinion will likely change, this involving ADC
16 property intended or not.

17 Do you know what that's referring to?

18 A. My recollection is that the
19 conversations we had up to that time relative to
20 the conversations concerning Jim's employment were
21 that we could not, we could not, that Jim was
22 acting on his own time as a private citizen and
23 that we are not going to terminate him. That was
24 also part of us getting terminated from the job by
25 Stubbs Muldrow Herin. Evidently, something came up

1 with this relative to knowledge of Jim possibly
2 sending information from the office computer during
3 office hours.

4 So Rick is stating his opinion about
5 now not firing Jim could be changing.

6 Q. Did, in fact, you establish that Jim
7 had sent anything from his office computer, on
8 office time, concerning this to anyone other than
9 himself?

10 A. We did --

11 MS. CHERRY: Object to the form.

12 BY MR. PARKER:

13 Q. Go ahead.

14 A. We did essentially confirm that he did.

15 Q. And what did he send?

16 A. I don't remember the full record of all
17 that he sent, but as a result of the preservation
18 of evidence letter we had our IT person, Michael
19 Graham, go through and preserve the evidence as
20 directed to do so in the letter and as such he did
21 find e-mail correspondence.

22 I believe we also found documents that
23 he had worked on, various drawings presentations,
24 et cetera. I believe there was a PowerPoint
25 presentation, but, again, I'm not perhaps the best

1 one to state all that was involved. But there were
2 a number of documents that we found that were on
3 computers at the company.

4 I believe we also found that the
5 company cell phone had been used a number of times
6 relative to texts and posts and things like that.

7 Q. What is the policy of ADC concerning
8 use of an office cell phone?

9 A. Well, various employees do get office
10 cell phones. It would be unrealistic to think that
11 there's not an occasional personal use. But the
12 key point in all of that is that it not be
13 excessive and it not do harm to ADC, that it not be
14 in any way a debt related to ADC.

15 One of the overriding things as
16 partners -- and, gosh, we've been talking about
17 this a lot recently with the new juror partners, we
18 have to look out for everything everyone's best
19 interest.

20 We refer to ADC relative to -- as an
21 umbrella. So we have a duty to each and every
22 employee to protect ADC, the division of workload,
23 the representation of workload, all of those
24 things.

25 We owe it to everyone for their

1 constant and continued employment. So as part of
2 that, we're realizing that Jim did a good bit of
3 this from work, using work time, using work
4 resources, using work devices such as a computer as
5 well as a cell phone.

6 It is also our understanding that he
7 involved another employee, that the use of all of
8 those resources as well as company time as well as
9 drawing away -- when you're doing that at work,
10 you're not doing your work which is causing other
11 people to have to fill in for you, all of those
12 things together that it was new information for us.

13 Q. Let's go through that. What other
14 employee did he involve in opposing Shem Creek?

15 A. I don't remember his name, but it was
16 another employee in the civil department.

17 Q. And what did he involve then?

18 A. Preparation of some presentation
19 materials.

20 Q. And when you saw drawings what are you
21 talking about?

22 A. Drawings. I don't know how to better
23 describe that.

24 Q. Drawings of what?

25 A. I believe of the Shem Creek project, of

1 the Shem Creek site.

2 Q. And what would be the nature of those
3 drawings?

4 A. As part of his opposition to the
5 project.

6 Q. In other words, showing -- I'm trying
7 to understand what it would show, the height, as it
8 as opposed to what it should be or what aspect of
9 it.

10 A. That's possible. I don't remember the
11 specific drawing, but I am aware there was
12 assistance by another ADC employee.

13 Q. And during this drawing?

14 A. I believe it was for helping doing e
15 the drawings.

16 Q. But you don't recall that employee's
17 name?

18 A. I don't. He was not under my
19 supervision.

20 Q. And you said that you found out that
21 there was other things done on company time about
22 the Shem Creek project?

23 A. Yes.

24 Q. What other things?

25 A. Something of his most, something of his

1 done improperly?

2 A. He used company equipment, the computer
3 and the cell done.

4 Q. Other than that, anything else?

5 A. Not that I recall.

6 Q. There are no bright lines about using
7 the phone cell phone for personal use. Is that
8 correct?

9 A. As long as it doesn't do harm to ADC.

10 Q. And the same would be for the computer?

11 A. Yes.

12 Q. And if Mr. Owens was unaware that ADC
13 had any involvement with the project how could he
14 know he was doing any harm to ADC by opposing the
15 project?

16 MS. CHERRY: I object to the form.

17 THE WITNESS: Whether he knew or not,
18 he knows that we are in the business of
19 engineering, his department as well as the
20 structural defense as well as the building envelope
21 company department, the entire company.

22 He knows that we work with most every
23 architect in town. We should he should have know
24 that we work with SMHa because they designed their
25 office building.



1 A. They've been a client since 1990.
2 There is a general understanding of the need to be
3 developer-friendly. Developers are often times our
4 client. So whether the he knew or not, I see that
5 as irrelevant.

6 Q. And if he was going to oppose the
7 project then you would thing think that he should
8 ask his supervisor about it?

9 A. I --

10 MS. CHERRY: Object to the form.

11 THE WITNESS: I think it should have
12 simply been on his own time, not using company
13 time, not using company equipment and not using
14 company personnel.

15 Q. You were aware he was given permission
16 to oppose to the project?

17 MS. CHERRY: Object to the form.

18 THE WITNESS: If he were doing so on
19 his own time, that's a key piece.

20 BY MR. PARKER:

21 Q. And who did you talk to whether or not
22 he was given permission to oppose the project?

23 MR. CHERRY: Object to the form.

24 THE WITNESS: If we discussed it, it
25 would have been Chris and Greg.

1 assume you received a copy of this. It says --
2 says: To all. Are you part of all on the e-mail?

3 A. Sometimes.

4 Q. Exhibit 13 is an explanation of how to
5 respond to inquiries about an article that was in
6 the Post & Courier?

7 A. Yes.

8 Q. And it states: While ADC does not
9 generally comment on personnel and/or litigation
10 matters, we want to clarify for you that Jim was
11 not dismissed because of his public comments or
12 activities.

13 Indeed, ADC has had and has no issues
14 with Jim or any employee's votes, pursuits in the
15 community as an individual. However, as explained
16 to Jim, any such pursuits should not and cannot
17 involve ADC, its time, equipment, or property or
18 harm and damage the company.

19 Did I read that correct?

20 A. Yes.

21 Q. Now, what is the reason Jim's
22 employment was terminated?

23 A. For what it says here. He involved the
24 company, equipment, time, materials, another
25 employee. He did things on company time to an

1 activity that ultimately harmed ADC.

2 Q. And the things he did were to your
3 knowledge not approved bring anyone?

4 A. Not on company time, not using company
5 equipment, not using company employees and time and
6 resources. None of that was approved.

7 Q. When you go to work you from time to
8 time do things that are on your personal interest
9 at work, correct?

10 A. Yes.

11 Q. Everybody does.

12 A. Everybody does.

13 Q. And everybody will use the computer to
14 send a personal e-mail?

15 A. Occasionally.

16 Q. And everyone will use the cell phone to
17 makes a personal call?

18 MS. CHERRY: Object to the form.

19 THE WITNESS: Occasionally.

20 BY MR. PARKER:

21 Q. Is that true?

22 A. Yes.

23 Q. And to live in the world, that's what
24 we do, isn't it?

25 A. Yes.

1 Q. And so it was not, you think, expected
2 for Jim to use the -- his cell phone for let's not
3 say this project but anything that he might have
4 had some opposition to from time to time isn't --
5 that was not unexpected, was it?

6 A. He should not. If he's going to oppose
7 something in a way that's going to cause harm to
8 ADC, which it did by us getting fired from a job,
9 it hurt our representation and I believe was a part
10 of us not getting the Phase II of the Shem Creek
11 Project.

12 Certainly, it caused damage relative to
13 a relationship with a long-standing client. So
14 those things cause harm to ADC and he misused phone
15 equipment to do this.

16 If he wanted to act in those things, he
17 should have done it when he was not at work. He
18 should have done it with his own resources, with
19 his own equipment.

20 Q. Let me ask you a different way:
21 Suppose this was an opposing a business -- and I
22 won't put a name on it because it may be a client
23 or whatever -- but opposition to some particular
24 development of a business that was coming to
25 Mt. Pleasant and Mr. Owens thought the intensity

EXHIBIT “E”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Donna Mann

From: Chris Nickels <CNickels@tompsc.com>
Sent: Tuesday, May 20, 2014 5:09 PM
To: Jim Owens
Subject: RE: Message to Council

Follow Up Flag: Follow up
Flag Status: Flagged

push to have meeting in the next couple of weeks (before next Council meeting). I can provide a "safe" location (my law office would be fine as we have bathrooms, water, privacy, parking, etc.).

Also, never saw the email to/from EC --until today.

I think Mr. Scott is a good guy. I personally have no issue w/his attendance. . . all for now & thanks

Chris Nickels

Mount Pleasant Town Councilman

843.224.2406 [cell]

www.tompsc.com

From: Jim Owens [jcowenssr@comcast.net]
Sent: Tuesday, May 20, 2014 10:00 AM
To: Chris Nickels
Subject: Re: Message to Council

Linda said that she will set up a meeting...Like you, I hope so as well. I would like to invite James Scott to join us... any thoughts?

Yours Truly,

Jim

Sent from my Verizon Wireless 4G LTE DROID

Chris Nickels <CNickels@tompsc.com> wrote:



Ditto let's see if Chris and Linda will take that meeting I hope so.

On May 20, 2014, at 7:46 AM, "Jim Owens" <jcowenssr@comcast.net> wrote:

Chris,

Thank you for meeting with me yesterday, I believed in you and your capabilities prior to sitting down with you, but today, I consider you more as a friend. This is the email that I received and my response...not sure why you didn't get a copy since it was sent to councilclk@tompse.com?

Jim

From: Jim Owens [<mailto:jcowenssr@comcast.net>]

Sent: Thursday, April 17, 2014 10:49 AM

To: 'Elton Carrier'

Cc: 'councilclk@tompse.com'

Subject: RE: Message to Council

Councilman Carrier,

Thank you for your response. I sent it to the Moultrie News as a Message to Council, not as an open letter to Council as described, regardless transparency is key, just as your email below should be. Submitting to the Moultrie News should have no bearing on how it's perceived/received by you or your colleagues, it was a straight forward "message" that represented my accounts of the Council Meeting which took place on 4/8/14. I appreciate your willingness to straighten me out over one statement. The statements I made were factual, please forgive me for not elaborating on all of the specifics, I would likewise, like to call your attention to a statement that you made below regarding the OK Tire Store. Mt. Pleasant bought the site where the park sits from Mark Mason indirectly, who purchase the property from the OK Tire Store. Mr. Mason's intent was to build condo's and boat slips on Shem Creek, but because of public scrutiny the Town condemned the property and paid Mr. Mason \$6.0 Million for the property. The issue surrounded a proposed 24-unit condominium and boat slip project, not another office building. I don't believe that you were on Council at that particular time, but if I'm incorrect, please feel free to straighten me out again. I would like to draw your attention to your comment below stating that you're "through trying to convince the "old Mt. Pleasant" residents that our Town is now 73,000 strong and projected to be 100,000 by 2040 and not what it was in the old days. I would strongly encourage that you not give up on your neighbors and friends or any other residents that thought well to vote you into office, we all love this town and have few of our own ideas in protecting her welfare. The Coleman & Ben Sawyer Revitalization Plan is an integral part of where Mount Pleasant is going and many would like to see the policies adhered to, particularly relating to Shem Creek. No one is suggesting that people don't have a right in developing their respective properties, the message to Council clearly stated that the opponents of this ruling are pro-growth and believe that a parking garage is needed, but "finding the appropriate location" as stated in the CRAB is the challenge. In keeping with the CRAB there are other areas between Shem Creek and Camellia Drive, it doesn't have to be constructed at the cornerstone of Shem Creek, particularly since the project was given approval to be 55' high. To minimize the significance of the height of this project at Shem Creek would be a travesty. Maintaining Shem Creek in accordance with the Coleman & Ben Sawyer Boulevard RMP is essential. Lastly, I would agree that we have more to worry about and believe that public funds should be better spent in areas where it directly affects the public interest.

I have asked for a copy of the traffic study and EA (Environmental Assessment) for this proposed project, any chances of receiving a copy? Thanks again for your response. I look forward to seeing you at the dedication ceremony for the Peyton Johnson Moore Track & Field at Park West on Monday.

Sincerely,

Jim Owens

From: Elton Carrier [mailto:elton_carrier@bellsouth.net]
Sent: Wednesday, April 16, 2014 8:10 PM
To: Jim Owens
Subject: Letter To Council

Mr. Owens, I appreciate your letter to Council members regarding the proposed office/parking deck to be located at Coleman Blvd. & Mill St. I am disappointed you felt you needed to copy the Moultrie News. That gave it less attention by my colleagues I am sure. Just to straighten you out on one statement. The Town will have access to all 276 parking spaces in the facility on weekends where the need is most. The approval of the garage was based on a safety issue. If you have parked in the vicinity of the proposed building on Friday through Sunday you will see the need. It will only get worse as the summer comes. I have lived here 40+ years. I remember what was on that corner. A dilapidated strip center barely occupied and a white concrete building in the rear to Church St. that at one time was a car repair business. It was unsightly. Tearing both down was a blessing. I love Shem Creek. I live 5 blocks from it. I visit it 3 to 4 times weekly. I am presently very interested in saving the shrimp fleet. That will be a challenge for the Town as well as interested parties. Several years ago the Town purchased the OK Tire Store on the other side of the creek for 6M. That was to keep attorney Mason from building another office building on the site. You see the result with our Shem Creek Park. The proposed office building/parking deck will not hinder the vistas of Shem Creek. In fact the design of the building will only enhance what will eventually be a preferred business location in & around that area. I am through trying to convince the "old Mt. Pleasant" residents that our Town is now 73,000 strong and projected to be 100,000 by 2040 and not what it was in the old days. We have a lot more to worry about on Council than trying to appease those who cannot & will not understand what is happening to us in terms of growth, population & infrastructure needs. The Coleman Blvd Revitalization Plan was well thought out by the best of citizens & planners. Of course it does not appeal to some, but to most it is what is needed & desired for us. We will keep Shem Creek as best we can. We cannot get rid of the restaurants, bars, boats, kayakers & paddleboarders as some want. Property rights play a part in all this. People have a right to develop their properties. Enough for now.
Elton Carrier
Councilman

EXHIBIT “F”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Thursday, May 29, 2014 4:57 PM
To: jcowenssr@comcast.net
Subject: Document1
Attachments: Document1.docx

FYI



§ 156.332 SCW-OD; SHEM CREEK WATERFRONT OVERLAY DISTRICT.

(A) *Boundaries of the district.* The boundaries of the Waterfront Overlay are depicted on the official zoning map.

(B) *Purpose.* To foster and maintain the naturally water-dependent character of Shem Creek by allowing businesses that are closely related to waterfront activity, and allowing small-scale mixed uses in the area that are compatible with existing marine industries and adjacent neighborhoods.

(C) *Allowed uses.*

(1) This is an overlay district and, as such, would extend all allowed uses that currently exist within the Marine District zoning classification to all properties within the designated overlay.

(2) The permitted uses for an individual property shall also include those specifically referenced in the base zoning for all properties.

(3) For the purpose of the Overlay District, the Marine District zoning will be modified so that some uses allowed as permitted uses within the Marine District zoning classification shall become conditional uses within the Overlay District as follows.

(D) *Permitted uses.*

(1) Boat building and repair; provided it does not cause injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazard, dangerous radiation, or other conditions objectionable to adjacent or nearby areas.

(2) Seafood processing.

(3) Fuel docks.

(4) Ice houses.

(5) Marine equipment repair.

(6) Marine salvage operations.

(7) Seafood restaurant.

(8) Recreational boating.

(9) Marine equipment retail.

(10) Bait and tackle.

(11) Off-street parking and other access.

(E) *Conditional uses.* The following uses may be allowed in accordance with the provisions contained in § 156.112, subject to the additional conditions of this chapter.

(1) Retail and service establishments; provided they meet the conditions defined in the purpose of district.

(2) Residential uses; provided they are in areas designated "residential permitted" on the Master Plan.

(3) Furthermore, maximum density will be that allowed under medium density residential; height will be controlled by the Town Building Height Plan and setbacks will be in accordance with the multifamily zoned district.

(4) Outdoor eating or drinking establishments, provided that:

(a) No outside loudspeaker or amplified music systems are utilized, unless authorized by a valid special event permit;

(b) All lights or lighting arrangements used for purposes of advertising or night operations are directed away from adjoining or nearby residential properties;

(c) The use is not be located within 100 feet of residential property; and

(d) For the purposes of this section, **OUTDOOR** shall be defined as any activity not wholly conducted inside a completely enclosed building with solid walls.

(e) Required parking for any outdoor decks and porches shall be one space per every 100 square feet.

(5) Storage for recreational boats and other marine watercraft as well as marine warehouse and storage; provided that the following parking regulations are met:

(a) Dry stack boat storage shall have a parking ratio of 0.2 space per berth and one space per every three employees;

(b) Marina wet slip storage shall have a parking ratio of 0.5 space per slip and one space per every three employees.

(F) *Use limitation.* The rental and sale of jet-propelled personal watercrafts (PWC) shall be prohibited within the Overlay District.

(Ord. 03074, passed 1-13-04; Am. Ord. 06069, passed 2-13-07)

§ 156.112 CONDITIONAL USES.

(A) Conditional uses, as defined by the Zoning Code, may be permitted by the Zoning Administrator, provided the proposed uses comply with the conditions spelled out within each zoning district classification.

(B) Should an application for conditional use be denied, the same request may not be initiated on the same parcel or lot, or any part thereof, for a period of 12 months following the date of denial.

(1) A change of ownership shall not alter this requirement.

(D) *Extensions of vesting periods.* To request an extension of the vesting period beyond what is allowed in division (C) of this section, the property owner must submit a written request to the local governing body, as defined in this section, prior to the expiration of the vesting period, requesting an extension. The local governing body must approve applications for at least five extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval.

(E) *Conditions and limitations.*

(1) Site specific development plan provisions apply to projects that require the investment in grading; installation of utilities, streets and other infrastructure; and other significant expenditures necessary to apply for a building permit. For purposes of this section, the following are considered site specific development plans:

- (a) Town Council-approved planned developments;
- (b) Town Council-approved impact assessments;
- (c) Planning Commission-approved sketch plans or preliminary plats;
- (d) Board of Zoning Appeals-approved variances and special exceptions;
- (e) Final planning staff approvals and Design Review Board final approvals regarding Commercial Design Review Overlay District applications;
- (f) Town Appearance Commission- approved certificates of appropriateness; and
- (g) Conditional uses and sign permits approved by the Zoning Administrator or his or her designee.

(2) A site specific development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained.

(3) A vested site specific development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses.

(4) Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations.

(5) A vested right to a site specific development plan may be revoked by the local governing body upon its determination, after notice and a public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.

(Ord. 05035, passed 6-14-05; Am. Ord. 07071, passed 11-13-07)

EXHIBIT “G”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Thursday, June 19, 2014 2:54 PM
To: jcowenssr@comcast.net

Chris, are you aware of any project in recent history, prior to 2012, that was submitted, approved and constructed with height allowances from 45-55' on Coleman Blvd? I believe that Mark Mason's building 42' to the eves. As you know there has been a tremendous amount of A/E design changes since 1949 and 1979 respectively, but none take the place of common sense, moderation and good judgment. The town keeps throwing a history lesson relating to what the area once provided (150' to unlimited) yet can't offer one project that was submitted, approved and constructed during the history that's being sited. Am I missing the argument, or being reluctant to understanding it?

Please let me know if you have additional questions. Thanks

Jim

Jim Owens
Construction Administrator
Site Services/Structural



ENGINEERING SPECIALISTS
1224 YEAGANS HWY. NORTH
HAWAHAU, SC 29033
office 843-735-5165 / cell 843-991-7049
fax 843-566-0162
ADCENGINEERING.COM

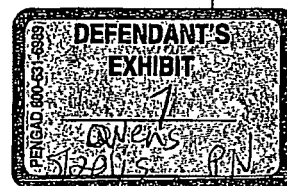


EXHIBIT “H”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Monday, June 30, 2014 1:32 PM
To: jcowenssr@comcast.net
Subject: FYI
Attachments: Email Correspondence - From a Concerned Citizen.pdf; Email Correspondence - From a Citizen.docx

Please let me know if you have additional questions. Thanks

Jim

Jim Owens
Construction Administrator
Site Services/Structural



ENGINEERING SPECIALISTS
1226 YEAMANS HALL ROAD
WILKINSON, SC 29410
office 843-735-5165 / cell 843-991-7049
fax 843-566-0162
ADCENGINEERING.COM



Mr. Owens, I appreciate your letter to Council members regarding the proposed office/parking deck to be located at Coleman Blvd. & Mill St. I am disappointed you felt you needed to copy the Moultrie News. That gave it less attention by my colleagues I am sure. Just to straighten you out on one statement. The Town will have access to all 276 parking spaces in the facility on weekends where the need is most. How many more parking spaces will it provide from what's currently utilized and how many people do you think will actually pay to use the garage? The approval of the garage was based on a safety issue. Please explain to me the resolution or reduction of the danger when the same or MORE cars are parked on the same floorplan in a garage. If you have parked in the vicinity of the proposed building on Friday through Sunday you will see the need. It will only get worse as the summer comes. I have lived here 40+ years. I remember what was on that corner. A dilapidated strip center barely occupied and a white concrete building in the rear to Church St, that at one time was a car repair business. It was unsightly. Tearing both down was a blessing. I love Shem Creek. I live 5 blocks from it. I visit it 3 to 4 times weekly. I am presently very interested in saving the shrimp fleet. Great, what are you doing? That will be a challenge for the Town as well as interested parties. Several years ago the Town purchased the OK Tire Store wrong on the other side of the creek for 6M. That was to keep attorney Mason from building another office building on the site. wrong again. You see the result with our Shem Creek Park. Will you please justify spending 6M on one side of the creek and then allowing, even subsidizing, a commercial structure to be built in almost the identical site on the opposite side of the creek? Is only HALF of the creek worth saving? The proposed office building/parking deck will not hinder the vistas of Shem Creek. Are you kidding? In fact the design of the building will only enhance what will eventually be a preferred business location in & around that area. Do you have a vested interest in the project? I am through trying to convince the "old Mt. Pleasant" residents that our Town is now 73,000 strong and projected to be 100,000 by 2040 and not what it was in the old days. Which speaks to your self-servient character. We have a lot more to worry about on Council than trying to appease those who cannot & will not understand what is happening to us in terms of growth, population & infrastructure needs. Explain to me how Urban Infill, Increased density and reduced parking requirements IMPROVE infrastructure and its ability to handle growth? The Coleman Blvd Revitalization Plan was well thought out by the best of citizens & planners. If it was so well thought out, why then are over 4000 of your citizens objecting to what it is producing? Why the upheaval over its end product, the UCOD Ordinance? Of course it does not appeal to some, but to most it is what is needed & desired for us. Please explain who "most" are. Where is this mass support for this project your are referencing? Are you OK with putting the development of Coleman Blvd to a referendum vote of all the citizens? We will keep Shem Creek as best we can. Really, how so? We cannot get rid of the restaurants, bars, boats, kayakers & paddleboarders as some want. No one wants to end or get rid of what is currently on the creek. Contrasting and limiting what is added to this precious, sensitive icon of our town. The parking garage will add restaurants and other parking. Exactly. Explain how that is going to improve a "safety issue." Property rights play a part in all this. People have a right to develop their properties. Yes, people have property rights, the rights of the property when they purchased it, NOT the right to have council improve their property rights to increase their profit margins on the development of these properties. ALL citizens' property rights must be considered. Explain to me why you think that the parking garage, the infill of Coleman, the pressure this brings to the corridor, will NOT negatively impact the property rights of those who live in the adjacent or surrounding streets. Can you do that? Enough for now.

Mr. Owens, I appreciate your letter to Council members regarding the proposed office/parking deck to be located at Coleman Blvd. & Mill St. I am disappointed you felt you needed to copy the Moultrie News. That gave it less attention by my colleagues I am sure. Just to straighten you out on one statement. The Town will have access to all 276 parking spaces in the facility on weekends where the need is most. How many more parking spaces will it provide from what's currently utilized and how many people do you think will actually pay to use the garage? The approval of the garage was based on a safety issue. Please explain to me the resolution or reduction of the danger when the same or MORE cars are parked on the same footprint in a garage. If you have parked in the vicinity of the proposed building on Friday through Sunday you will see the need. It will only get worse as the summer comes. I have lived here 40+ years. I remember what was on that corner. A dilapidated strip center barely occupied and a white concrete building in the rear to Church St. that at one time was a car repair business. It was unsightly. Tearing both down was a blessing. I love Shem Creek. I live 5 blocks from it. I visit it 3 to 4 times weekly. I am presently very interested in saving the shrimp fleet. Great, what are you doing? That will be a challenge for the Town as well as interested parties. Several years ago the Town purchased the OK Tire Store wrong on the other side of the creek for 6M. That was to keep attorney Mason from building another office building on the site. wrong again. You see the result with our Shem Creek Park. Will you please justify spending 6M on one side of the creek and then allowing, even subsidizing, a commercial structure to be built in almost the identical site on the opposite side of the creek? Is only HALF of the creek worth saving? The proposed office building/parking deck will not hinder the vistas of Shem Creek. Are you kidding? In fact the design of the building will only enhance what will eventually be a preferred business location in & around that area. Do you have a vested interest in the project? I am through trying to convince the "old Mt. Pleasant" residents that our Town is now 73,000 strong and projected to be 100,000 by 2040 and not what it was in the old days. Which speaks to your self-servient character. We have a lot more to worry about on Council than trying to appease those who cannot & will not understand what is happening to us in terms of growth, population & infrastructure needs. Explain to me how Urban Infill, increased density and reduced parking requirements IMPROVE infrastructure and its ability to handle growth? The Coleman Blvd Revitalization Plan was well thought out by the best of citizens & planners. If it was so well thought out, why then are over 4000 of your citizens objecting to what it is producing? Why the upheaval over its end product, the UCOD Ordinance? Of course it does not appeal to some, but to most it is what is needed & desired for us. Please explain who "most" are. Where is this mass support for this project your are referencing? Are you OK with putting the development of Coleman Blvd to a referendum vote of all the citizens? We will keep Shem Creek as best we can. Really, how so? We cannot get rid of the restaurants, bars, boats, kayakers & paddleboarders as some want. No one wants to end or get rid of what is currently on the creek. Controlling and limiting what is added to this precious, sensitive icon of our town. The parking garage will add restaurants and other parking. Exactly. Explain how that is going to improve a "safety issue." Property rights play a part in all this. People have a right to develop their properties. Yes, people have property rights, the rights of the property when they purchased it, NOT the right to have council improve their property rights, to increase their profit margins on the development of these properties. ALL citizens' property rights must be considered. Explain to me why you think that the parking garage, the infill of Coleman, the pressure this brings to the corridor, will NOT negatively impact the property rights of those who live in the adjacent or surrounding streets. Can you do that? Enough for now.

EXHIBIT “I”

James C. Owens

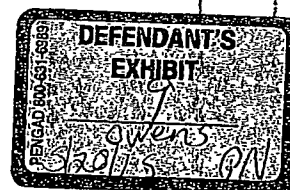
v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Tuesday, July 01, 2014 10:50 AM
To: jcowenssr@comcast.net
Subject: Document1
Attachments: Document1.docx

Fyi..



With the latest developments of this project, it's important to remain focused on the task at hand. While it may have seemed quiet, many of us have been working harder than ever and we will need all of your support going forward. The path is going to be a tedious and uncomfortable journey for many, however because of the circumstances, the options are limited. There have been a number of inconsistencies and irregularities which have encompassed the Council approval process of the Parking Garage/Off. Bldg. and unfortunately, it will now have to be exposed including the council members responsible. It is a sad day when the Town's governance sides with a development over the Will and Voices of the People.

A development who requested and was given by the Town a change in law/ordinance (height and flood) rather than file a variance, to maximize it's profits. A public notice (Text Amendment concerning a Special Meeting, not the regular meeting) that failed miserably at providing detailed information about the proposed project even though the 55' height allowance had already been approved and the committee members present at the Special Planning and Development Meeting who approved the modifications. Followed by the Town adding (9) Nine other parcels to avoid favoritism and spotzoning. We have tried to be open and honest, even transparent to a fault, because it was important to protect our Town from reproach.

EXHIBIT “J”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Tuesday, July 29, 2014 2:42 PM
To: 'jcowenssr@comcast.net'
Subject: Document1
Attachments: Document1.docx



APP. 0172

ADC_000051
ROA 171

But Michelle Sinkler, representing the Coastal Conservation League, said her organization supports the current height limits for the sake of limiting sprawl. If development isn't kept to certain areas, she said, Mount Pleasant will quickly spread up the coast toward McClellanville.

"We're not architects," Sinkler said. "I don't know if there's a magic height, and my hope is that whatever plan they come up with can accommodate adequate density and good design."

Town Council adopted the current zoning height restrictions in 2008 to encourage development along Coleman and Ben Sawyer boulevards at the recommendation of the Coleman Revitalization Advisory Board, often called the CRAB. Since then, Mount Pleasant residents, developers and government leaders have clashed multiple times on how best to manage the speed and scale of the city's growth.

Name:	Michelle Loy Sinkler 
Status:	Inactive
Licensed:	17 years
Law School:	CU Law, 1995
Location:	10 Saturday Road Mount Pleasant, SC 29464

Jon Chalfie

- Works at Lee & Associates Charleston and Mount Pleasant Business Association Studied BA Economics at University of Wisconsin-Madison • From Cincinnati, Ohio



Admissions

- South Carolina

Areas of Law

- Government Relations and Administrative Law

- Public Policy and International Law
- Real Estate

Saila Milja-Smyly, AICP

Land Use/Planning Counsel
saila.milja-smyly@nelsonmullins.com
 T: 843.534.4417
 F: 843.534.4272
 Liberty Center, Suite 600
 151 Meeting Street
 Charleston, SC 29401

Saila Milja-Smyly practices in the areas of land use and zoning law and real estate development in Nelson Mullins Riley & Scarborough LLP's Charleston office.

Experience

- Counsels clients on entitlements throughout the land development process, from zoning map amendments to annexations and land subdivisions
- Has experience in matters requiring representation before public bodies, such as planning commissions and design review boards, and advises clients in negotiating planned developments and development agreements
- Assists with appeals from administrative decisions made pursuant to local land use and zoning regulations
- Professional Planner, certified by the American Institute of Certified Planners, the professional institute of the American Planning Association
 - To become certified, an APA member must meet requirements for education and experience and pass the AICP Comprehensive Planning Examination
- Experience with local zoning and land development regulations arises in part out of her prior work as a municipal planner for the Town of Mount Pleasant, S.C.
 - Participated in various stages of the land development review processes and implemented new planning programs
- Familiar with the planning principles of smart growth, new urbanism, and sustainable development
- Certified by the American Translators Association as a professional translator from English into Finnish

EXHIBIT “K”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Monday, August 11, 2014 5:45 PM
To: jcowenssr@comcast.net
Subject: Is this the path you want to pave for our future ages.docx
Attachments: Is this the path you want to pave for our future ages.docx



Is this truly the path that you want to pave for our future ages? This illustration was taken from the TOMP GIS website providing the current height allowances for Coleman and Ben Sawyer Blvd. Is this a vision of your plan or your blindness to a scheme? Are you representing the property rights of all, which include the residents who have invested in Mount Pleasant for generations and paved the way for its current character and charm or just a select few.

I have heard it said that every morning I wake up and think of ways of helping the citizens of Mount Pleasant enjoy a better quality of life; I've also heard that I don't have friends to reward or any enemies to punish. To you, we will hold you to your word and will remain your accountability partners.

Is your Oath of Office polarized in your mind and conscience, is it emblematic of the charge that embraces the character of the men and women willing to serve...to serve in swearing to faithfully execute & discharge all the duties appertaining to your office and to protect and serve the Town and its citizens to the best of your ability, so help you God. Is your goal to serve out of prestige or the willingness to make a positive difference and leave behind a family legacy?

The Local Citizens along Coleman & Ben Sawyer have always supported the local businesses over the many decades and have been loyal patrons of each. The Citizens of MP have bought your goods and services helping you make payroll and paying for the frontage along Coleman Blvd only to find some willing to sell to the highest bidder. As with everything, there are benefits or consequences with every action. I hope that you can always rely on the citizens of MP for their support.

CRAB – living breathing document to amend as necessary and make our Town better. It's been said that a lot of work was put into this document and it shouldn't change – When a consultant comes in and selects a "capable" handpicked group to represent a committee, some not living in MP, the outcome usually resembles the prognosis of the task. However, we appreciate the willingness of some to question the validity of its character in keeping with MP. There are other living breathing documents, Preserving the Character of SC, Coleman rev. master plan, Comp. Plan these guidance documents are on the verge of being completely ignored relative to impending development along Shem Creek. What makes the CRAB more vital than these, in fact the CRAB states that Careful Consideration should be given by the Town of MP complimenting Shem Creek's natural beauty.

I didn't come here to lobby for or against the CRAB, you've seen enough of that already. I'm here to support you and offer the support of our Townspeople. Realistically, the rhetoric is over and I'm anticipating great things from this Council. I have often said that I will continue to believe in this Council until they give me a reason not to. I will tell you that that particular thought has been challenged from time to time, but I remain hopeful. I have high expectations of your willingness and ability to do the right thing despite the constant pressures by some. I still believe that bringing the right people to the right place at the right time will give us the right result.

Hopefully tonight will represent the closing of this issue and allows us to spend our energy towards making MP the envy of the State. One where businesses continue to flourish and property values continue to climb. A wrong decision tonight you do at your own peril and it will forever be the defining characteristic of your legacy

EXHIBIT “L”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

Michael K. Graham

From: Jim Owens
Sent: Friday, August 29, 2014 8:51 AM
To: jcowenssr@comcast.net
Subject: Emailing: Saving Shem Creek (amended).docx
Attachments: Saving Shem Creek (amended).docx

Your message is ready to be sent with the following file or link attachments:

Saving Shem Creek (amended).docx

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



Saving Shem Creek

It's time to engage in the simple truths relative to the Shem Creek Parking Garage/Off. Bldg. For the Townspeople, Shem Creek is most definitely worth every effort in Saving.

It's important to note that the Townspeople of Mount Pleasant foresee and welcome change and future growth, but not at the expense of losing our own identity, character or unique charm. Mount Pleasant will always be a strong and vibrant community.

In July of 2013, the developer of the Parking Garage/Off. Bldg. sent a request to MP Planning Committee that he discovered his project would not meet two present requirements in the current overlay district. He requested to raise the height to 55' and a flood exemption, both of which he received. A meeting notice, Text Amendment, was submitted for a September 2013 meeting notifying residents/citizens of a development located at the corner of Mill Street and Coleman Blvd. What's peculiar is that this notice was submitted without any specifics or details which were previously known in July. The Special Planning and Development Committee convened on 9/10/2013 and within 15 minutes decided to approve the proposal without any knowledge of a definitive or vested project. In November 2013 the Parking License Agreement (PLA) was signed and executed by the Town, again without vested rights attributed.

The agreement included \$2.8 million dollars of ATAX (Public) funds to be disbursed to the developer over 15 years without any return on the investment other than the a public cost for the use of 132 parking spaces during peak hours, which will be paid for (through an automated pay as you park attendant) by each respective user. It's important to note the developer would be required to provide 146 spaces due to the square footage of the office building, without any cost to the Town. Within the (PLA), the developer proposed 276 parking spaces, 144 would be used by his tenants, but could be utilized by the public during off peak hours and on the weekends. A concerns with this project is the developer appears to have serious challenges in meeting the terms of the specified 276 spaces within the garage.

On May 30, 2014 Mayor Page provided an email statement to the public that the project was economically unfeasible for the developer to pursue. Again, the (PLA) was signed by the Town in November 2013 and here we are ten (10) months later with no approval of what the developer initially proposed. As of June 4, 2014, and according to the Town, the developer was not vested, did not have a viable plan under review, requested the Town grant yet another concession, and argued that Church Street not be considered a street and lastly, didn't meet the terms of the PLA and garnered absolutely no public support for a project expecting \$2.8 million dollars in public funds.

Placing a 55' high structure, resembling the height of the Boulevard, on the parcel contiguous to Shem Creek will soon take the place of the most despised building in Mount Pleasant; (not because of its appearance, but because of its location). The guidance documents are specific to the special considerations and requirements of Shem Creek and are referenced below.

If the developer can't perform what he's promised, why should the town be obligated by a higher standard, yielding to his height request as of July, later realizing that he can't provide what he promised in his proposal? Does anyone actually believe that folks who are currently using the surface parking lot and aren't paying to park there now, are going

to willingly pay to park in a garage? We already have proof of this scenario at the Boulevard where parking has become a nuisance for existing homeowners living on King Street, where vehicles line the resident maintained "Right of Way".

It's been said, "the Town is under contract with the developer and to rescind funding will intentionally, recklessly and knowingly breach a contract." Since the developer can't provide the number of spaces which he agreed under the current agreement (P.L.A), some are questioning, who's actually breaching the contract? Wasn't it the goal to maximize parking spaces as stipulated in the Special Planning and Development Meeting Minutes of 9/10/2013?

According to the Town, the developer recently missed his opportunity to resubmit to staff. If the Town continues its course towards this project, it's believed that public perception will probably judge them unfavorably. They, save Gary Santos and possibly one or two others, are also causing a public perception that our public officials are violating their solemn obligation towards the protection of our Town. It's already widely known the guidance documents have been ignored which their predecessors provided to protect Shem Creek. Failing to stand with the Townspeople can certainly result in a lack of public trust which all of us are hoping doesn't happen. Is the goal to serve out of notoriety and prestige or the willingness to make a positive difference, leaving behind an honorable legacy? This avoidable and controversial issue should have never seen the light of day. It's understood that errors/mistakes occur, but to continue down that path isn't leading, it's following. Not being able to admit making and walking back an obvious mistake is a most serious lapse of good judgment.

Shem Creek, without question must be protected and preserved in accordance with all Four (4) of the guidance documents (including the CRAB). Shem Creek is the "Heart and Soul" of the residents of Mount Pleasant and requires special consideration. This isn't a question of how or why the guidance documents were ignored; it's a question of what you do going forward? If costs are a concern, which weighs more heavily; monetary damages through the threat of a lawsuit or losing the respect and confidence of the Townspeople? The Town continues to have an opportunity to get this right, but to forgo this opportunity and public responsibility, will be an egregious and well-documented failure.

Referenced Guidance Documents:

1. 2002 Preserving the Character of Shem Creek
2. Coleman and Ben Sawyer Boulevard Revitalization Master Plan
3. TOMP Comprehensive Plan
4. CRAB - Coleman Revitalization Advisory Board

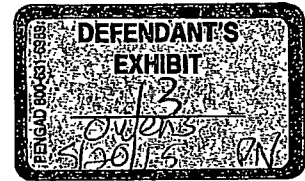
Jim Owens,
Mount Pleasant

EXHIBIT “M”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265



Michael K. Graham

From: Jim Owens
Sent: Wednesday, September 10, 2014 8:44 AM
To: jcowenssr@comcast.net
Subject: Meeting

9/9/2014

Highlights of Council Meeting:

Council voted to approve projects consisting of \$250,000.00 to go through a staff review or have the option to have it reviewed by the DRB. DRB was approved with the exception being projects falling under the Economic Development criteria.

The Digital Billboards were stricken from the Agenda with no discussion.

Council convened in chambers for executive session for new appointments which likely included a vacated seat in the Planning Commission.

The Town of Mount Pleasant's Urban Corridor....A Pleasant Way of Life

The Urban Corridor

Take 1.5 square miles of land along a seven mile loop along Johnnie Dodds, Chuck Dawley and Coleman Boulevard. Add 20 years of mindful planning and collaboration among citizens, business owners, developers and government agencies. Plus \$144.6 million in new private investment and \$142.3 million in public investment. Now you've got one thriving city center where businesses and people come together for the good of all.

Imagine a city center of walkable streets, easy accessible businesses, and the opportunity to live, work, shop and dine, all just a walk or bike ride away. This is the Mount Pleasant Urban Corridor.

Downtown Mount Pleasant

The Coleman and Ben Sawyer Boulevard Corridor "Downtown Mount Pleasant" is part of the Urban Corridor. In 2011, the town opened Shem Creek Park in the heart of downtown. The park offers a 2,200 linear foot boardwalk through 40 acres of marsh and access to the commercial fishing and shrimping fleet as well as 250 feet of dock space for boaters. The Town Farmer's Market located on the Moultrie Commons, next to Moultrie Middle School, provides a civic anchor in the center of the commercial district. In addition, in 2012, construction began on the Boulevard, a mixed-use residential/commercial development with an estimated construction cost of \$20 million dollars.

Today Downtown Mount Pleasant is alive and flourishing. It is one of Mount Pleasant's most popular dining and entertainment destinations offering a variety of options for all tastes. Downtown Mount Pleasant preserves and promotes the natural, historical, cultural and civic asset of Mount Pleasant and is a vibrant Lowcountry corridor that is attractive and enjoyable to both residents and visitors.

Purpose

The Urban Corridor Overlay District (UC-OD) is a series of unique, mixed-use commercial districts located along the principal Mount Pleasant boulevards. The UC-OD was created to foster traditional business districts that offer flexibility for developers and property owners in creating retail, office, and residential spaces.

Incentives

- Base density is 16 units per acre and increases depending upon the type and location of a particular development.
- Maximum height ranges from 40 feet to 80 feet, depending on location.
- Commercial and residential uses are permitted on the same property and in the same building
- Setbacks have been reduced in order to maximize development potential.

- Buffers may be reduced or eliminated in certain instances.
- Shared parking is encouraged. Where it cannot be accomplished, parking for commercial uses may be reduced by 20%. On-street parking and the construction of parking structures are encouraged.

Permitted Uses

The Urban Corridor is an overlay zoning district that enhances and expands the uses and development standards allowed in the underlying or base zoning district. On parcels where the underlying zoning districts residential, permitted uses include detached single-family dwelling units, duplexes, townhouses, and multi-family dwelling units. On parcels where the underlying zoning district is commercial, all residential uses specified above are permitted in addition to all uses permitted in the Town's OP, Office Professional; NC, Neighborhood Commercial; AB, Areawide Business; and PI-1, Public Institutional-1 Districts. These districts include a wide variety of office, retail, restaurant, entertainment, and public or quasi-public uses. Outdoor and streetside dining are allowed and do not require special exception approval.

Activity Zone

The Activity Zone is a twenty to thirty foot wide, quasi-public space defined as the area located between the street right-of-way and the front of the building, which may be utilized for pedestrian-friendly uses, such as, but not limited to, streetside dining, entertainment, pushcarts, outdoor display of merchandise, planters, A-frame signs, benches, trash receptacles, and other street furnishings. The Activity Zone is one of the most important components of the UC-OD; establishment of the Activity Zone will help to ensure successful development and redevelopment that meets the purpose and intent of the district for a vibrant pedestrian realm.

The UC-OD is found in Town of Mount Pleasant Code of Ordinances §156.329. The UC-OD ordinance section is available online in the Planning and Development Document Library at <http://www.tompso.com/index.aspx?nid=368>

EXHIBIT “N”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS

Plaintiff(s)

v.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING,
INCORPORATED

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-6265

**PLAINTIFF'S RESPONSES TO
DEFENDANT ADC ENGINEERING, INC.'S
FIRST SET OF REQUEST TO ADMIT**

**TO: MOLLY HUGHES CHERRY, ESQUIRE, ATTORNEY FOR THE
DEFENDANT, ADC ENGINEERING, INC.:**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following constitutes the Plaintiff's Responses to the Requests to Admit propounded by the Defendant:

1. Admit that the attached Exhibit A is a true and correct copy of ADC Engineering's Technology Overview Policy.

RESPONSE: Plaintiff admits.

2. Admit that you were informed by one or more of your supervisors at ADC Engineering not to involve ADC Engineering in any way in your personal opposition to the Shem Creek Project.

RESPONSE: Plaintiff admits. Through his discussion with Chris Cook, it was stated that Mr. Owens would not make it known for whom Mr. Owens worked for during his opposition to the Shem Creek Project. Mr. Owens also did not know ADC engineering had any connection with the Shem Creek Project.

3. Admit that you drafted, created, edited or revised documents pertaining to your personal opposition to the Shem Creek Project on a computer owned by ADC Engineering.

RESPONSE: Plaintiff admits but states that this activity was within the scope of what he was told he could do in opposing the Shem Creek Project.

4. Admit that you drafted, created, edited or revised documents pertaining to your personal opposition to the Shem Creek Project during working hours for which you were paid by ADC Engineering.

RESPONSE: Plaintiff admits. Mr. Owens was a salaried employee and was never notified that his work was deficient in any way. His activities concerning the Shem Creek Project was in keeping with his communications with his supervisor.

5. Admit that you e-mailed to your personal e-mail account from the e-mail account provided to you by ADC Engineering documents pertaining to your personal opposition to the Shem Creek Project.

RESPONSE: Plaintiff admits. Plaintiff emailed his personal email account regarding company functions as a reminder and in order to schedule with his family.

6. Admit that you received assistance on your personal opposition to the Shem Creek Project from another ADC Engineering employee while the employee was being paid by ADC Engineering.

RESPONSE: Plaintiff admits. This was courtesy assistance that was not requested and related to converting a kml file to a video file.

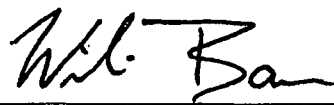
7. Admit that you sent personal text messages from the phone provided to you by ADC Engineering during working time when you were being paid by ADC Engineering.

RESPONSE: Plaintiff admits. Mr. Owens, like most salaried employees, also sent text messages, accepted and returned calls to clients and ADC associates during his lunch and on Friday afternoon's.

8. Admit that the attached Exhibit B is a true and correct copy of the cell phone records from January to September 2014, documenting the time, length and receiving and cell phone numbers for text messages sent to or received by the cell phone issued to you by ADC Engineering.

RESPONSE: Plaintiff admits. This appears to be from the phone issued to Mr. Owens by ADC. Mr. Owens was told by ADC's IT representative that the cell phone services included unlimited text, talk, and data so he assumed the cost remained the same. Most of the personal calls were made on his way to and/or from a project while making site visits for ADC. ADC's Technology Overview Policy acknowledges the personal use of the ADC cellular phone: "Brief or incidental use of office technology for personal, non-business purposes is understandable and acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company."

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

By: 
John E. Parker
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFFS

December 11, 2014
Hampton, South Carolina

CERTIFICATE OF SERVICE

This is to certify that I, **Megan C. Davis**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiffs, have this date mailed via the U.S. Postal Service, a true and correct copy of the within *Plaintiff's Answers to Defendant, ADC Engineering, Inc.'s First Set of Request to Admit* with first class postage prepaid to:

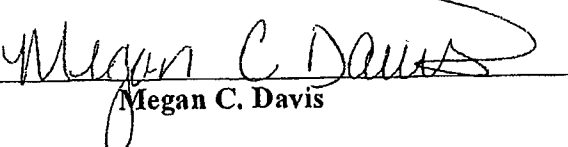
Molly Hughes Cherry, Esquire
Nexsen Pruet, L.L.C.
Post Office Box 486
Charleston, SC 29402

-And-

Ryan A. Earhart, Esquire
Nelson Mullins Riley & Scarborough, LLP
Post Office Box 1806
Charleston, SC 29402-1806

RE: OWENS v. CRABTREE, ET AL.
C/A No.: 2014-CP-10-6265

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

BY: 
Megan C. Davis

December 11th, 2014
Hampton, South Carolina

EXHIBIT “A”



Under the Health Insurance Portability and Accountability Act (HIPAA), the private health information of employees will remain private and not be disclosed to other employees with the exception of the Business Manager, who will retain these records in a secured, separate location from the Personnel Files, or as otherwise authorized or required by law.

Personnel Data Changes

It is the responsibility of each employee to notify ADC of any changes in personal data. Personal mailing addresses, telephone numbers, number and names of dependents, individuals to be contacted in the event of an emergency, educational accomplishment, and other such status reports should be accurate and current at all times. If any personnel data has changed, please notify the Business Manager.

Technology Overview Policy

ADC encourages the use of electronic media and services, such as computers, e-mail, telephones, voicemail, fax machines, intranet, internet, etc. to communicate more efficiently and effectively with other employees and business associates. However, all employees should remember that electronic media and services provided by the company are company property and their purpose is to facilitate and support company business. All computer users have the responsibility to use these resources in a professional, ethical, and lawful manner.

All hardware, software, and all files on these systems are the sole property of ADC and may be accessed by ADC at any time. Any downloading, transferring or copying of these files for any purpose other than the direct work of the firm is strictly forbidden. Employees must get permission before downloading new software on their computers.

By opening e-mail, sending or receiving information, logging onto the internet or by using any of ADC's software, hardware or equipment, the employee is agreeing to and understands that this technology and information is the property of the firm. The employee should have no expectation of personal privacy when using company owned systems. Employees are not allowed to use unauthorized or secret passwords, and all passwords must be shared with management.

The employee should understand that e-mail is an extension of this firm and that all information transmitted in an email message should be professional and reflect the positive image of the firm. E-mail messages can be traced to the sender even after they have been deleted. The employee should be aware that the firm might be required to produce e-mail messages if litigation develops. For valid business purposes, including employee supervision, the firm may review, audit or download messages the employee sends or receives and may monitor internet access at any time without prior notice. Brief or incidental use of office technology for personal, non-business purposes is understandable and acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company. However, employees are strongly encouraged to wait until a lunch break or after business hours for all personal use, including personal email, use of instant messenger services, internet use, social media use, online forum use, etc. All such use should be done in a manner that does not negatively affect the systems' use for their business purposes. Employees are expected to demonstrate a sense of responsibility and not abuse this privilege. Management reserves the right to revoke this privilege at any time.



and on an individual or company-wide basis and to discipline any employee who abuses this privilege, up to and including termination.

Under no circumstances shall an employee use, whether business or personal, material or comments that violates any company policy or that might be viewed as being unprofessional, harassing, discriminatory, derogatory, obscene, sexually explicit, defamatory, threatening, offensive, or suggestive to others based on race, color, national origin, sex, religion, age, disability, or any other condition or status protected by local, state, or federal law. Nor shall an employee use material that is in violation of any license governing the use of software.

Use of personal cell phones for calls, email, internet use, etc. during business hours should be brief and incidental. Employees are strongly encouraged to wait until a lunch break or after business hours for all personal use. Management reserves the right to revoke this privilege at any time and on an individual or company-wide basis.

Failure to comply with these policies will result in discipline, up to and including termination of employment.

Office Phones

Use of office phones for personal use is acceptable provided that conversations are kept to a minimum, and that calls do not interfere with the employees or other employees' performance and duties. Office phones shall not be used for long distance phone calls.

Cellular Phones

Cell phones issued to employees by ADC are the property of the company. Cell phones should only be given to employees who have a legitimate business need to have one. If an employee's personal use of a company-owned cell phone results in fees or costs beyond what ADC would otherwise have to pay for the service, the employee may be required to reimburse the company.

All of our policies and rules of conduct apply to employee use of company-issued cell phones. All communications (email, instant messaging, and Internet access) on company-issued cell phones are subject to the company's policies on appropriate use.

Cell phone use while driving should be kept to a minimum. Texting or emailing is strictly prohibited while driving. Drivers need to be aware when use of the cell phone is creating a distraction from safe driving and adjust their usage accordingly, including pulling off the road to continue/finish the conversation if needed. Whenever possible, drivers should complete calls while the vehicle is parked and/or use the phone in a "hands free" mode via a headset or speaker. Attention to the road and safety should always take precedence over conducting business over the phone. And, all employees must obey all traffic rules and laws when driving.

EXHIBIT “B”

ROA 194

ROA 195

[illegible]

ROA 198

ROA 200

ROA 201

[illegible]

ROA 203

ROA 204

ROA 205

ROA 206

ROA 207

ROA 208

ROA 210

[illegible][illegible]

ROA 212

ROA 214

ROA 215

ROA 216

EXHIBIT “O”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JAMES C. OWENS,)
Plaintiff.)
)
v.)
)
BRYAN CRABTREE, KIRKMAN)
BROADCASTING, INC. D/B/A WQSC)
RADIO AND ADC ENGINEERING,)
INCORPORATED,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-10-6265

**PLAINTIFF'S ANSWERS TO
DEFENDANT, ADC ENGINEERING, INC.'S
FIRST SET OF INTERROGATORIES**

**TO: MOLLY HUGHES CHERRY, ESQUIRE, ATTORNEY FOR THE DEFENDANT,
ADC ENGINEERING, INC.:**

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. **James C. Owens**
1197 Island View Drive
Mt. Pleasant, South Carolina 29464

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Owens is expected to testify to his knowledge of the facts, circumstances, and events surrounding his relationship, dealings, and employment with Defendant ADC Engineering, Inc.

- b. **Lydia Owens**
[REDACTED]
Mt. Pleasant, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mrs. Owens is the Plaintiff's wife and is expected to testify to her knowledge of the events surrounding the subject termination and how the Plaintiff has been affected by the subject incident and the damages suffered by her husband as a result thereof.

c. Chris Cook
c/o ADC Engineering, Inc.

[REDACTED]
Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Cook is an employee of ADC Engineering, Inc. and is expected to testify to his knowledge of the facts, circumstances, and events surrounding the subject incidents and the resultant termination of the Plaintiff from ADC Engineering, Inc.

d. Greg Jones
c/o ADC Engineering, Inc.

[REDACTED]
Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Jones is an employee of ADC Engineering, Inc. and is expected to testify to his knowledge of the facts, circumstances, and events surrounding the subject incidents and the resultant termination of the Plaintiff from ADC Engineering, Inc.

e. James Scott
Mount Pleasant, South Carolina 29464

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Scott is a friend of the Plaintiff and is expected to testify to his knowledge of how the Plaintiff has been affected by the subject incident and his knowledge of the events surrounding the subject incident.

f. Josh Hawkins
c/o ADC Engineering, Inc.

[REDACTED]
Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Hawkins is an employee of ADC Engineering, Inc. and is expected to testify to his knowledge of any events, assistance, or interaction with the Plaintiff during their employment with the Defendant.

g. York Dilday
c/o ADC Engineering, Inc.

[REDACTED]

Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Dilday is an employee of ADC Engineering, Inc. and is expected to testify to his knowledge of any events, assistance, or interaction with the Plaintiff during their employment with the Defendant.

h. Larry Barthelemy
c/o ADC Engineering, Inc.
[REDACTED]

Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Barthelemy was Plaintiff's co-worker and is expected to testify to his knowledge of any events, assistance, or interaction with the Plaintiff during his employment with the ADC Engineering, Inc.

i. Sebastian Davis
c/o ADC Engineering, Inc.
[REDACTED]

Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Davis was Plaintiff's co-worker and is expected to testify to his knowledge of any events, assistance, or interaction with the Plaintiff during his employment with the ADC Engineering, Inc.

j. Bryant Stowe
c/o ADC Engineering, Inc.
[REDACTED]

Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Stowe was Plaintiff's co-worker and is expected to testify to his knowledge of any events, assistance, or interaction with the Plaintiff during his employment with the ADC Engineering, Inc.

k. Linda Page
Mayor, Mount Pleasant
[REDACTED]

Mount Pleasant, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mayor Page is expected to testify to her knowledge of the events surrounding the subject incident and how the Plaintiff has been affected by the subject incident as a result thereof.

l. Chris Nickels

[REDACTED]
Charleston, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Nickels is expected to testify to his knowledge of how the Plaintiff has been affected by the subject incident and his knowledge of the events surrounding the subject incident.

m. Amanda Matlock
c/o ADC Engineering, Inc.

[REDACTED]
Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Ms. Matlock was Plaintiff's co-worker and is expected to testify to her knowledge of any events, assistance, or interaction with the Plaintiff during his employment with the ADC Engineering, Inc. and the policies and procedures in effect at ADC Engineering, Inc.

n. John Gering
c/o ADC Engineering, Inc.

[REDACTED]
Hanahan, South Carolina [REDACTED]

No written or recorded statement in possession of Plaintiff or Plaintiff's attorney. Mr. Gering was Plaintiff's co-worker and is expected to testify to his knowledge of any events, assistance, or interaction with the Plaintiff during his employment with the ADC Engineering, Inc. and the policies and procedures in effect at ADC Engineering, Inc.

2. For each person listed in answer to Interrogatory No. 1 above, set forth either a summary sufficient to inform the Defendant ADC of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

See Plaintiff's Answers to Defendant's Interrogatories Number 1.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff or his counsel that relate to the claim or defense in the case.

ANSWER:

Plaintiff's attorney is in possession of the following documents:

- Correspondence (Owens 1 – 194)
- Lee & Associates Commercial Site Plans (Owens 195 – 206)
- Coleman and Ben Sawyer Boulevards Revitalization Master Plan (Owens 207 – 265)
- Parking License Agreement (Owens 266 – 279)
- Bryan Crabtree Articles/Facebook Posts (Owens 280 – 288)
- Newspaper Articles:
 - Moultrie News' 5/20/2014 Article - *"The parking garage debate continues"* (Owens 289 – 290)
 - Moultrie News' 04/16/2014 Publishing - *"Letters to the Editor"* (Owens 291 – 292)
 - Moultrie News' 08/27/2014 Publishing - *"Letters to the Editor"* (Owens 293 – 294)
 - Charleston City Paper's 08/05/2014 Article - *"Saving Shem Creek: It's not a real cause until a bumper sticker is made"* (Owens 295 – 298)
 - Post & Courier's 10/16/2014 Article - *"Lawsuit: Mount Pleasant man fired, defamed for speaking against growth"* (Owens 299 – 305)
 - Moultrie News' 10/22/2014 Article - *"Local man sues for defamation and wrongful termination"* (Owens 306 – 315)
 - Post & Courier's 08/14/2014 Article - *"Mount Pleasant vote won't affect controversial Shem Creek building"* (Owens 316 – 318)
 - Post & Courier's 06/02/2014 Article - *"Developer plans to move forward with Shem Creek parking garage"* (Owens 319 – 322)
- Owens W-2 for 2012 & 2013 (Owens 323)

4. Identify any expert witness whom the Plaintiff proposes to use as a witness at the trial of this case.

ANSWER:

Plaintiff has not retained an expert witness at this time but reserves the right to do so.

5. Identify each and every person with whom Plaintiff has communicated about this case and/or the facts of this case.

ANSWER:

Plaintiff objects to this interrogatory. Discovery is ongoing. Plaintiff reserves the right to supplement his response at a later time.

6. Set forth an itemized statement of all damages claimed to have been sustained by the Plaintiff as a result of the incidents described in the Complaint involving ADC Engineering.

ANSWER:

- **Loss of Income;**
- **Mental Anguish;**
- **Mental Distress;**
- **Anxiety;**
- **Depression**

7. Identify any other lawsuits in which Plaintiff has been involved, whether as a plaintiff or defendant, by case caption and court.

ANSWER:

In 1999, plaintiff had a divorce action in Charleston County family court.

8. Please describe all efforts made by Plaintiff to mitigate his alleged damages:

ANSWER:

Please see Plaintiff's answer to Interrogatory Number 9.

9. Identify all employers with whom Plaintiff has sought employment, since September of 2014.

ANSWER:

Plaintiff has applied for various positions with the following companies:

- a. **Weston & Sampson Engineering**
672 Marina Drive, Suite 204
Charleston, South Carolina 29492
- b. **Lowcountry Land Development Consultants**
3030 Ashley Town Center Drive
Charleston, South Carolina 29414
- c. **Water Missions International**
1605, 1150 Kinzer Street
North Charleston, South Carolina 29405
- d. **MeadWestvaco**
5255 Virginia Avenue
North Charleston, South Carolina 29406
- e. **Choate Construction Company**
1671 Belle Isle Avenue
Mount Pleasant, South Carolina 29464
- f. **Medical University of South Carolina**
171 Ashley Avenue
Charleston, South Carolina 29425
- g. **Charleston Water Systems**
103 St. Philip Street
Charleston, South Carolina 29403
- h. **Premier Integrated Consultants**
1240 Winnowing Way, Suite 102
Mount Pleasant, South Carolina 29466
- i. **Healthcare Trust of America, Inc.**
463 King Street, Suite B
Charleston, South Carolina 29403
- j. **Dorchester County Public Works**
2120 East Main Street
Dorchester, South Carolina 29437

- k. **Armchem International Corporation**
 3563 NW 53rd Court
 Fort Lauderdale, Florida 33309
- l. **Power Home Technologies**
 9565 William Aiken Avenue #106
 Ladson, South Carolina 29456
- m. **US Health Group, Inc.**
 300 Burnett Street, Floor 2
 Fort Worth, Texas 76102
- n. **Jones Ford**
 5757 Rivers Avenue
 Charleston, South Carolina 29406
- o. **JacksonBuilt Custom Homes**
 901 Island Park Drive #202
 Daniel Island, South Carolina 29492

10. Identify all employers from whom Plaintiff has received a job offer since September of 2014.

ANSWER:

Plaintiff has not received any job offers since his termination with Defendant, ADC Engineering, Inc.

11. Please state each and every fact and identify each and every document upon which Plaintiff intends to rely to support Plaintiff's contention that he is entitled to punitive damages.

ANSWER:

Plaintiff objects to this interrogatory as being overly broad. Discovery is ongoing. Plaintiff reserves the right to supplement his response at a later time.

12. For each Request for Admission that Plaintiff denied, in whole or in part, set forth the basis and a substantive explanation for the denial.

ANSWER:

Not Applicable.

13. Identify every social media site and blog on which Plaintiff has posted any opposition to the Shem Creek Project.

ANSWER:

Plaintiff is a member of the following Facebook groups/pages:

- **Saving Shem Creek Group**
- **Save Shem Creek Group**
- **Protect Coleman Boulevard and our Old Village Neighborhood Group**
- **Save Shem Creek Corp. Page**

All of the above-referenced Facebook pages are Public Groups/pages.

14. Identify every social media site and blog Plaintiff has created, individually or jointly, for the direct or indirect purpose of opposing the Shem Creek Project.

ANSWER:

Plaintiff is a member of the following Facebook groups/pages:

- **Saving Shem Creek Group**
- **Save Shem Creek Group**
- **Protect Coleman Boulevard and our Old Village Neighborhood Group**
- **Save Shem Creek Corp. Page**

All of the above-referenced Facebook pages are Public Groups/pages.

15. Identify all e-mail accounts from which Plaintiff has sent or received communications pertaining or related to his personal opposition to the Shem Creek Project.

ANSWER:

Plaintiff utilizes the following email account with regards to his personal opposition to the Shem Creek Project:

jcovenssr@comcast.net

16. Identify all non-profit organizations Plaintiff has formed or joined for the indirect or direct purpose of opposition the Shem Creek Project and identify the officers of all such organizations.

ANSWER:

Plaintiff has joined the Facebook group "Save Shem Creek Corp.". The officers of the Save Shem Creek Corp. are as follow:

- Ann Edwards;
- George Debnam, Sr.
- Dr. Mark Ghegan;
- Jimmy Bagwell;
- Brett Bennett;
- Tom Utsey;
- Will Bagwell;
- Peter Lorris;
- Jim Owens; and
- Lewis Horton

17. Identify the owner or account holder of the following telephone numbers: 843-296-4381; 843-991-2395; 843-697-5358; 843-729-5406; 843-214-4218; 843-560-2540; 321-223-9801; 803-600-0929; 843-224-3131; 843-514-2453; 843-412-0263; 000-074-8379; 000-004-4833; 000-008-4483; 843-906-7908; 843-425-5939; 843-834-4720; 201-739-3674; 843-819-0095; 843-224-2599; 843-813-5661; 843-224-2406; 843-709-6661; and 843-425-2431.

ANSWER:



Lydia Owens, Plaintiff's wife;
Larry Barthelemy, ADC Engineering, Inc.;
Mark Lamb, Friend;
Linda Page, Mayor of Mount Pleasant;
Easton Owens, Plaintiff's Son;
Unknown to Plaintiff;
Ryan Owens, Plaintiff's Son;
Chandler Construction
Charlie Montgomery, Friend;
Gary Santos, Mount Pleasant Town Council;

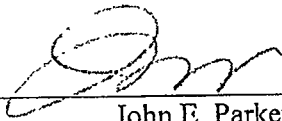
 Noah Moore, Friend;
Unknown to Plaintiff;
Unknown to Plaintiff;
Unknown to Plaintiff;
Unknown to Plaintiff;
Jimmy Owens, Plaintiff's Son;
Nancy Gage, Plaintiff's sister;
Shawn Fox, Charleston Aviation Authority;
Courtney O'Leary, Charleston City Paper;
Ken Glasson, Mount Pleasant Town Council;
Will Haney, Moultrie News;
Chris Nickels, Mount Pleasant Town Council;
Unknown to Plaintiff;
Dr. Joanna Ghegan

18. Identify each person who answered or assisted in the preparation of the answers contained in these Interrogatories.

ANSWER:

Jim Owens, Plaintiff and counsel.

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

By: 

John E. Parker
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFFS

March 5, 2015
Hampton, South Carolina

CERTIFICATE OF SERVICE

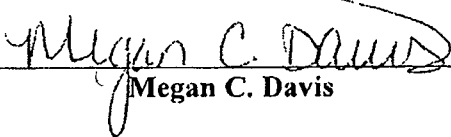
This is to certify that I, **Megan C. Davis**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiffs, have this date mailed via the U.S. Postal Service, a true and correct copy of the within ***Plaintiff's Answers to Defendant, ADC Engineering, Inc.'s First Set of Interrogatories*** with first class postage prepaid to:

Molly Hughes Cherry, Esquire
Nexsen Pruet, L.L.C.
Post Office Box 486
Charleston, SC 29402

ATTORNEY FOR DEFENDANT, ADC ENGINEERING, INC.

RE: OWENS v. CRABTREE, ET AL.
C/A No.: 2014-CP-10-6265

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

BY: 

Megan C. Davis

March 5th, 2014
Hampton, South Carolina

EXHIBIT “P”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265



STUBBS MULDROW HERIN architects, Inc.

September 16, 2014

Mr. Mark Dillon, President
ADC Engineering
1226 Yeaman's Hall Road
Hanahan SC 29410



Re: Shem Creek Office and Parking Deck
SMHa Project Number 1347
ADC Project Number 13307

Dear Mark:

As discussed, we are terminating our agreement for structural services on the Shem Creek Office and Parking Deck Project dated September 27, 2013 per the terms of the Standard Agreement (Article 9.1) between our firms dated March 23, 2010. This article references the Prime Agreement, which stipulates that we may terminate the Agreement for convenience with seven days notice. While the actual date of termination is September 23, 2014, I believe we are in agreement that services will be suspended as of today.

Sincerely,
STUBBS MULDROW HERIN architects, Inc.


Samuel B. Herin, AIA

cc: Charles S. Muldrow, AIA

SMHA

400 Hibben Street, Mount Pleasant, South Carolina 29484 843 881 7642 843 884 5021 fax www.smha.com

ADC_000004

EXHIBIT “Q”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265



652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

September 18, 2014

G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
Hamlin.okelley@buistbyars.com

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED &

VIA EMAIL: markd@adcengineering.com; stevent@adcengineering.com;
chrisc@adcengineering.com; gregj@adcengineering.com

ADC Engineering, Inc.
1226 Yeaman's Hall Road
Hanahan, SC 29401

Re: Evidence Preservation Demand
0 Coleman Boulevard, Mount Pleasant, SC

Dear Sir or Madam:

I represent Lucasville Investment Group, LLC (the tenant under a 99-year ground lease) and Shem Creek Development Group (the property developer) in the above-referenced matter. Your firm formerly provided engineering services to our clients.

We demand that you preserve all documents, tangible things, and electronically stored information ("ESI") relevant to this matter and relevant to any and all documents, tangible things, and electronically stored information ("ESI") of your employee Jim Owens, a Construction Administrator in the Civil Engineering Department of your firm. As used in this letter, "you" and "your" refers to ADC Engineering Specialists and Jim Owens, either collectively or separately, and your predecessors, successors, parents, subsidiaries, divisions, affiliates, employees, partners, officers, directors, partners, or other persons occupying similar positions and performing similar functions.

You should anticipate that much of the information subject to disclosure or responsive to potential discovery in litigation is stored on your current and former computer systems or other media and devices, including, but not limited to, digital assistants, voicemail, voice-messaging, online repositories and cellular or mobile phones.

Electronically stored information ("ESI") should be afforded a broad, sweeping, all-encompassing definition by you and includes, but is not limited to, the following potentially relevant information electronically, magnetically, or optically stored as follows:

{00520761.DOCX}

ADC_000137

APP. 0234

ROA 233

1. Digital communications (e.g. emails, voicemails, voice-messages, instant messages, text messages);
2. Word processed documents (e.g. Word or WordPerfect documents and drafts);
3. Spreadsheets and tables (e.g. Excel or Lotus worksheets);
4. Accounting Application data (e.g. QuickBooks, Money);
5. Image and Facsimile Files (e.g. .PDF, .Tiff, .JPG, .GIF images);
6. Sound Recordings (e.g. .WAV and .MP3 files);
7. Video and Animation (e.g. .AVI and .MOV files);
8. Databases (e.g. Access, Oracle, SQL Server data, SAP);
9. Contact and Relationship Management Data (e.g. Outlook, ACT!);
10. Calendar and Diary Application Data (e.g. Outlook, Google Drive, Sharepoint);
11. Online Access Data (e.g. Temporary Internet Files, Cookies, History);
12. Presentations (e.g. Powerpoint)
13. Network Access and Server Activity Logs;
14. Project Management and Application Data;
15. Computed Aided Design/Drawing ("CAD") Files;
16. Back Up and Archival Files (e.g. Zip).

ESI resides in areas of electronic, magnetic, and optical storage mediation reasonably accessible to you but also in areas you may deem NOT reasonably accessible. You are required to PRESERVE potentially relevant evidence and materials from all sources of ESI, even if you may not be required to produce such ESI.

This demand that you preserve documents, tangible things, and ESI, both accessible and inaccessible, is reasonable and necessary. Pursuant to the Federal Rules of Civil Procedure that are approved by the United States Supreme Court, you must identify all sources of ESI that you decline to produce and you must demonstrate to a court why such sources are not accessible.

You must act immediately to preserve all relevant ESI including, without limitation, information related to the 0 Coleman Boulevard Project and all communications from and to Jim Owens from July 1, 2013, to the present time.

Adequate preservation of ESI requires more than refraining from destroying or disposing of such evidence. You must intervene to prevent loss due to the routine operations of your firm. Sources of ESI are altered and erased by use of computers or other devices. Alteration or corruption or erasure of ESI may result from your failure to act diligently and responsibly to preserve the loss or corruption of ESI.

NOTHING IN THIS DEMAND SHOULD BE UNDERSTOOD TO DIMINISH YOUR OBLIGATION TO PRESERVE DOCUMENTS, TANGIBLE THINGS, AND OTHER POTENTIALLY RELEVANT EVIDENCE IN ADDITION TO ESI.

You are instructed to initiate a litigation hold for potentially relevant documents, tangible things, and ESI and to act in good faith to secure and audit compliance with such litigation holds. You are directed to identify and modify or suspend features of your information

systems and devices that, in your routine business practices, operate to cause the loss of any potentially relevant information, including ESI. Examples include purging of email by age or date, using data or media wiping, overwriting, erasing, or destroying back-up systems, running antivirus programs that effect metadata, using stripper utilities, executing drive or defragmentation compression programming.

You should anticipate that employees or officers, including but not limited to Jim Owens, may seek to hide, destroy, alter, or delete ESI and you must act to prevent or guard against such actions. This is true where your machines have been used to access the Internet or World Wide Web for any personal communications. You should anticipate that users may seek to delete that information which they may regard as personal, confidential, embarrassing, controversial, and, in doing so, they may delete the relevant ESI. This concern is not unique to you. It is an event that occurs regularly and any custodian of ESI should guard against such occurrences.

You should take affirmative steps to prevent anyone with access to your data, systems, files, and archives from seeking to modify, destroy, or hide electronic evidence on network, or local hard drives. One way to protect this data is by the creation and authentication of a forensically qualified image of all sectors on the local hard drive. Such a duplicate may also be called a "bitstream" image or "clone" of the drive. A conventional backup of the hard drive is not a forensically qualified image as it only captures active, unlocked data files and fails to preserve forensically significant data that may exist in such areas as unallocated space, slack space and the swap file.

With respect to hard drives and storage devices of Jim Owens, as well as other persons likely to have information pertaining to this matter, demand is made that you IMMEDIATELY obtain, authenticate, and preserve forensically qualified images of the hard drives in the computer system (including any portable computers used by that person from July 1, 2013, to the present date).

Each forensically qualified image should be labeled to identify the date of acquisition, the person acquiring the image, and the system and medium from which it was obtained. Each image must be preserved without alteration.

You should anticipate that ESI, including spreadsheets and databases, will be sought in the form ordinarily maintained. You should preserve the native forms and not select methods to preserve ESI that remove or degrade the ability to search your ESI by electronic means.

You should anticipate the need to disclose and produce system and application metadata and act to preserve it. Metadata is information describing the history and characteristics of ESI. This information is associated with tracking an electronic file and includes data reflecting a file's name, size, custodian, dates of creation, last modification, and access. Such metadata is automatically included or embedded in electronic files but may not be apparent to users, including deleted content, draft language, comments, collaboration, and distribution data and dates of creation or printing. Metadata may be overwritten or corrupted by careless handling of

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

ESI. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment, in addition to the To, From, Subject, Receive, CC, and BCC fields.

The content of servers used to manage electronic mail, e.g. Microsoft Exchange, or network storage, should be completely preserved. There are ways to preserve the contents of a server depending upon its RAID configuration and whether or not it can be downed or must be online constantly.

You will act swiftly to preserve data at your office workstations and servers, but you should also determine if any home or portable systems may contain relevant data and information. To the extent anyone with your firm has sent or received potentially relevant emails or created or reviewed documents away from the office, you must preserve the contents of those systems, devices, and media used including data from home computers, laptop computers, thumb drives, CD's, and the users PDA, smart phone, voice mailbox, or other forms of ESI. Similarly, if you used any online browser or browser based emails, AOL, Gmail, Yahoo, these accounts must be preserved. Also, any and all social media accounts accessed by you and by anyone from your firm, Facebook, Instagram, Snapchat, should be preserved and archived accordingly.

The paper preservation of ESI is inadequate. Hard copies do not produce or preserve electronic search-ability or metadata.

Your preservation obligation extends to any current or former agent, attorney, employee, custodian, or contractor.

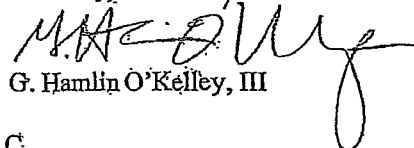
We suggest that with respect to Jim Owners, removing their ESI systems, media and devices from service and sequestering them and protecting them may be appropriate and the most cost-effective form of preservation.

We will work with you upon an acceptable protocol.

These matters must not be delayed. You should not defer preservation steps as ESI may be lost or corrupted as a consequence. Should you fail to preserve these matters and this failure results in the corruption, loss, or delay in production of evidence, we will seek sanctions against you in any litigation.

Please confirm by September 25, 2014, that you have taken steps to comply with this request to preserve the items set forth herein. With kind regards, I am,

Sincerely,



G. Hamlin O'Kelley, III

cc: Shem Creek Development Group LLC
Lucasville Investments, LLC

EXHIBIT “R”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

From: Hamlin O'Kelley <hamlin.okelley@buistbyars.com>
Sent: Thursday, September 18, 2014 11:37 AM
To: Jim Owens; jcowenssr@comcast.net
Cc: Steven Truschka; Mark Dillon
Subject: Evidence Preservation Letter to Jim Owens
Attachments: Evidence Preservation Letter to Jim Owens (00520943).pdf

Dear Mr. Owens:

Attached is an Evidence Preservation Letter being sent to you via certified mail today. It requires you preserve documents, tangible items, and matters defined as electronically stored information ("ESI") both at work and personally, including, but not limited to, the Facebook pages "Saving Shem Creek" and "Save Shem Creek". We are aware that you are posting information to those pages while you are at work at ADC Engineering Specialists.

You have a duty to comply with the request.

G. Hamlin O'Kelley, III
Attorney at Law
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste 200
Mt. Pleasant, SC 29464
Email: Hamlin.okelley@buistbyars.com
Direct Line: 843.284.1408
Main Office: 843.856.4488



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**BUIST
BYARS &
TAYLOR**
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0613 W buistbyars.com

September 18, 2014

G. HAMLIN O'KELLEY, III
ATTORNEY AT LAW
Hamlin.okelley@buistbyars.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED &
VIA EMAIL: jimo@adcengineering.com; jcowenssr@comcast.net

Mr. Jim Owens
ADC Engineering, Inc.
1226 Yeaman's Hall Road
Hanahan, SC 29401

Re: Evidence Preservation Demand
0 Coleman Boulevard, Mount Pleasant, SC

Dear Mr. Owens:

I represent Lucasville Investment Group, LLC (the tenant under a 99 year ground lease) and Sherr Creek Development Group (the property developer) in the above-referenced matter. Your firm formerly provided engineering services to our clients.

We demand that you preserve all documents, tangible things, and electronically stored information ("ESI") relevant to this matter and relevant to any and all documents, tangible things, and electronically stored information ("ESI") at ADC Engineering Specialists and your personal accounts. As used in this letter, "you" refers to Jim Owens.

You should anticipate that much of the information subject to disclosure or responsive to potential discovery in litigation is stored on your current and former computer systems or other media and devices, including, but not limited to, digital assistants, voicemail, voice-messaging, online repositories and cellular or mobile phones, whether at ADC Engineering Specialists or at home.

Electronically stored information ("ESI") should be afforded a broad, sweeping, all-encompassing definition by you and includes, but is not limited to, the following potentially relevant information electronically, magnetically, or optically stored as follows:

1. Digital communications (e.g., emails, voicemails, voice-messages, instant messages, text messages);
2. Word processed documents (e.g. Word or WordPerfect documents and drafts);

{00520929.DOCX}

ADC_000127

3. Spreadsheets and tables (e.g. Excel or Lotus worksheets);
4. Accounting Application data (e.g. QuickBooks, Money);
5. Image and Facsimile Files (e.g. .PDF, .Tiff, .JPG, .GIF images);
6. Sound Recordings (e.g. .WAV and .MP3 files);
7. Video and Animation (e.g. .AVI and .MOV files);
8. Databases (e.g. Access, Oracle, SQL Server data, SAP);
9. Contact and Relationship Management Data (e.g. Outlook, ACT!);
10. Calendar and Diary Application Data (e.g. Outlook, Google Drive, Sharepoint);
11. Online Access Data (e.g. Temporary Internet Files, Cookies, History);
12. Presentations (e.g. Powerpoint);
13. Network Access and Server Activity Logs;
14. Project Management and Application Data;
15. Computed Aided Design/Drawing ("CAD") Files;
16. Back Up and Archival Files (e.g. Zip).

ESI resides in areas of electronic, magnetic, and optical storage mediation reasonably accessible to you but also in areas you may deem NOT reasonably accessible. You are required to PRESERVE potentially relevant evidence and materials from all sources of ESI, even if you may not be required to produce such ESI.

This demand that you preserve documents, tangible things, and ESI, both accessible and inaccessible, is reasonable and necessary. Pursuant to the Federal Rules of Civil Procedure that are approved by the United States Supreme Court, you must identify all sources of ESI that you decline to produce and you must demonstrate to a court why such sources are not accessible.

You must act immediately to preserve all relevant ESI including, without limitation, information related to the O'Coleman Boulevard Project and all communications from and to Jim Owens from July 1, 2013, to the present time, including any information for the Facebook page "Saving Shem Creek" or "Save Shem Creek".

Adequate preservation of ESI requires more than refraining from destroying or disposing of such evidence. You must intervene to prevent loss due to the routine operations of your firm. Sources of ESI are altered and erased by use of computers or other devices. Alteration or corruption or erasure of ESI may result from your failure to act diligently and responsibly to preserve the loss or corruption of ESI.

NOTHING IN THIS DEMAND SHOULD BE UNDERSTOOD TO DIMINISH YOUR OBLIGATION TO PRESERVE DOCUMENTS, TANGIBLE THINGS, AND OTHER POTENTIALLY RELEVANT EVIDENCE IN ADDITION TO ESI.

You are instructed to initiate a litigation hold for potentially relevant documents, tangible things, and ESI and to act in good faith to secure and audit compliance with such litigation holds. You are directed to identify and modify or suspend features of your information systems and devices that, in your routine business practices, operate to cause the loss of any potentially relevant information, including ESI. Examples include purging of email by age or

date, using data or media wiping, overwriting, erasing, or destroying back-up systems, running antivirus programs that affect metadata, using stripper utilities, executing drive or defragmentation compression programming.

You should anticipate that employees or officers, including, but not limited to Jim Owens, may seek to hide, destroy, alter, or delete ESI and you must act to prevent or guard against such actions. This is true where your machines have been used to access the Internet or World Wide Web for any personal communications. You should anticipate that users may seek to delete that information which they may regard as personal, confidential, embarrassing, controversial, and, in doing so, they may delete the relevant ESI. This concern is not unique to you. It is an event that occurs regularly and any custodian of ESI should guard against such occurrences.

You should take affirmative steps to prevent anyone with access to your data, systems, files, and archives from seeking to modify, destroy, or hide electronic evidence on network, or local hard drives. One way to protect this data is by the creation and authentication of a forensically qualified image of all sectors on the local hard drive. Such a duplicate may also be called a "bitstream" image or "clone" of the drive. A conventional backup of the hard drive is not a forensically qualified image as it only captures active, unlocked data files and fails to preserve forensically significant data that may exist in such areas as unallocated space, slack space and the swap file.

With respect to your hard drives and storage devices, demand is made that you IMMEDIATELY obtain, authenticate, and preserve forensically qualified images of the hard drives in the computer system (including any portable computers used by that person from July 1, 2013, to the present date.

Each forensically qualified image should be labeled to identify the date of acquisition, the person acquiring the image, and the system and medium from which it was obtained. Each image must be preserved without alteration.

You should anticipate that ESI, including spreadsheets and databases, will be sought in the form originally maintained. You should preserve the native forms and not select methods to preserve ESI that remove or degrade the ability to search your ESI by electronic means.

You should anticipate the need to disclose and produce system and application metadata and act to preserve it. Metadata is information describing the history and characteristics of ESI. This information is associated with tracking an electronic file and includes data reflecting a file's name, size, custodian, dates of creation, last modification, and access. Such metadata is automatically included or embedded in electronic files but may not be apparent to users, including deleted content, draft language, comments, collaboration, and distribution data and dates of creation or printing. Metadata may be overwritten or corrupted by careless handling of ESI. For electronic mail, metadata includes all header routing data and Base 64 encoded attachment, in addition to the To, From, Subject, Receive, CC, and BCC fields.

BUIST, BYARS & TAYLOR, LLC
ATTORNEYS AT LAW

The content of servers used to manage electronic mail, e.g. Microsoft Exchange, or network storage, should be completely preserved. There are ways to preserve the contents of a server depending upon its RAID configuration and whether or not it can be downed or must be online constantly.

You will act swiftly to preserve data at your office workstations and servers, but you should also determine if any home or portable systems may contain relevant data and information. To the extent anyone with your firm has sent or received potentially relevant emails or created or reviewed documents away from the office, you must preserve the contents of those systems, devices, and media used including data from home computers, laptop computers, thumb drives, CD's, and the users PDA, smart phone, voice mailbox, or other forms of ESI. Similarly, if you used any online browser or browser based emails, AOL, Gmail, Yahoo, these accounts must be preserved. Also, any and all social media accounts accessed by you and by anyone from your firm, Facebook, Instagram, Snapchat, should be preserved and archived accordingly.

The paper preservation of ESI is inadequate. Hard copies do not produce or preserve electronic search-ability or metadata.

Your preservation obligation extends to any current or former agent, attorney, employee, custodian, or contractor.

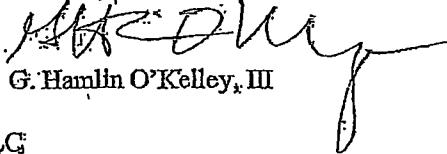
We suggest that with respect to your ESI at ADC, you should remove your ESI systems, media and devices from service and sequestering them and protecting them may be appropriate and the most cost-effective form of preservation.

We will work with you upon an acceptable protocol.

These matters must not be delayed. You should not defer preservation steps as ESI may be lost or corrupted as a consequence. Should you fail to preserve these matters and this failure results in the corruption, loss, or delay in production of evidence, we will seek sanctions against you in any litigation.

Please confirm by September 25, 2014, that you have taken steps to comply with this request to preserve the items set forth herein. With kind regards, I am

Sincerely,


G. Hamlin O'Kelley, III

cc: Shen Creek Development Group LLC
Lucasville Investments, LLC

EXHIBIT “S”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 James C. Owens,

4 Plaintiff,

5 vs.

CASE NO. 2014-CP-10-6265

6 Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a
7 WQSC Radio, and ADC Engineering, Incorporated,

8 Defendants.
9

10 DEPOSITION OF: Steven Truschka, Jr.

11 DATE: June 3, 2015

12 TIME: 10:00 AM

13 LOCATION: Law Offices of Nexen Pruet, LLC
14 205 King Street
15 Suite 400
16 Charleston, SC

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: JANE MESSINEO, Registered
19 Professional Reporter, CSR-NJ

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 1

1 took his laptop, and saved all his e-mails and
2 documents and took a backup copy of everything.

3 Q. On y'all's computer system, do you have
4 a central server?

5 A. We do.

6 Q. Did he do anything with that?

7 A. I am not sure.

8 Q. I'd have to ask him?

9 A. I think you'd have to ask him.

10 Q. Okay.

11 MR. EARLY: It looks like you gave me
12 something that wasn't what y'all might have --

13 MR. PARKER: Gave you more than I
14 should have?

15 MR. EARLY: Yes. It's three copies of
16 something.

17 MR. PARKER: That's next.

18 (PLF. EXH. 7, Copy of e-mail dated
19 September 18, 2014, Bates stamped ADC_000116, was
20 marked for identification.)

21 BY MR. PARKER:

22 Q. Exhibit 7 is another e-mail on which
23 you were copied and this is also on the 18th at
24 12:32 p.m.; is that correct?

25 A. That's correct.

1 Q. And it says: If he is sending these
2 from office -- I assume he means computer, during
3 office time, my opinion will likely change. This
4 is involving ADC improperly, intended or not; and
5 that's from Rick Cook. Is that correct?

6 A. That's correct.

7 Q. Did y'all have a meeting on the 18th?

8 A. I can't recall. I believe we did.

9 Q. And where was that meeting?

10 A. At ADC.

11 Q. And who was present?

12 A. I believe it was all the partners and
13 me.

14 Q. Next I am going to hand you Exhibit 8.
15 (PLF. EXH. 8, Copy of e-mail dated
16 September 18, 2014, Bates stamped ADC_000110, was
17 marked for identification.)

18 BY MR. PARKER:

19 Q. Exhibit 8 is an e-mail that afternoon
20 on September the 18th at 2:30 p.m., 2:31, I think.
21 Is that correct?

22 A. That's correct.

23 Q. And you received a copy of that?

24 A. Yes.

25 Q. And who is Gray Taylor?

1 A. Yes.

2 Q. Why was a five-day delay between
3 September the 18th when y'all tentatively decided
4 to terminate Mr. Owens and his official termination
5 on September 23?

6 MS. CHERRY: Object to the form.

7 THE WITNESS: We wanted to meet with
8 the other partners on Friday to make sure that
9 everyone was on the -- understood what we were
10 doing; and any decision we make, especially when it
11 comes to terminations, we don't make in a rush
12 decision. We always like to sleep on it, think
13 about it some more, and I think the intent was that
14 Monday, and Jim had called out that Monday, and so
15 it became that Tuesday.

16 BY MR. PARKER:

17 Q. I am going to next hand you Exhibit 11.

18 (PLF. EXH. 11, Copy of e-mail dated
19 September 23, 2014, Bates stamped ADC_000081, was
20 marked for identification.)

21 BY MR. PARKER:

22 Q. Exhibit 11 is a memo, an e-mail from
23 you to others. And in it you are forwarding a
24 link to the Bryan Crabtree show?

25 A. Yes, sir.



EXHIBIT “T”

James C. Owens

v.

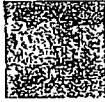
Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

From: Tyler Flesch <tyler@redtyadvisors.com>
Sent: Thursday, September 18, 2014 10:39 AM
To: Mark Dillon; Steven Truschka; Chris Cook; Greg Jones
Subject: RE:

Mark,

I have copied all of your partners on this as well as my attorney just to be thorough. You will see a screenshot of a Facebook post made by Jim Owens 16 minutes (You can see the time in the lower right hand corner). He is recapping his continued efforts and now is asking for numerous documents from the town. Additionally he is asking the Town for their opinion on our vested rights and the status/compliance with our Parking License Agreement. Also, Jim was interviewed (again) on TV and expressed his opinions. This is completely unacceptable, especially considering the conversation you and I have had. I would highly suggest that your partners and myself meet in the very near future, before this gets even more out of hand. Tyler





Jim Owens

10 mins · Edited

Below is an email that I sent to the Town this morning. I'll let you know the response I receive.

David,

I received confirmation from the Mayor that Christiane informed her that project was given final review approval yesterday. With that said, I've copied Christiane in hope that she can elaborate on the approval and the impending process going forward. The recent submittal that was placed online (projects and applications map) is a non stamped set of an LA drawing, does this mean that the previous site plan was approved without comments? Please forward a set of approved drawings as well as staff comments electronically (pdf or dwg) for this project at the earliest. Hopefully these documents can be an extension of my original FOIA request. If necessary, I will re-file. I realize that you are reviewing the vested rights interest for this project and would appreciate a response at the earliest. I would also appreciate notification of the Town's position relating to the terms of the Parking License Agreement as it relates to the \$2.8 mil in funding. Again, I'm happy to pick up any documents that can't be sent electronically. Thanks again for your help.

This was sent to David Palglierini, Town Atty; Eric DeMoura, Town Admin and Christiane Ferrell, Director of Planning

Like · Share

 9 people like this:

Tyler Flesch
Principal

EXHIBIT “U”

James C. Owens

v.

**Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265**

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON
4 James C. Owens,
5 Plaintiff,
6 vs. CASE NO. 2014-CP-10-6265
7 Bryan Crabtree, Kirkman Broadcasting, Inc. D/b/a
8 WQSC Radio, ADC Engineering, Incorporated,
9 Defendants.

10 DEPOSITION OF: MICHAEL GRAHAM

11 DATE: June 3, 2015

12 TIME: 10:53 AM

13 LOCATION: Law Offices of Nexen Pruet, LLC
14 205 King Street
15 Suite 400
16 Charleston, SC

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: JANE MESSINEO, Registered
19 Professional Reporter, CSR-NJ

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
23 (843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



1 Q. And you work for ADC Engineering?

2 A. Yes, sir.

3 Q. And have for how long?

4 A. A little over seven years now.

5 Q. And what is your present position?

6 A. My title is IT specialist.

7 Q. And you have been that for the whole
8 seven years?

9 A. Yes, sir.

10 Q. And what training do you have in the
11 field of IT?

12 A. I have an NCSE which is an older one,
13 it's DNT 4 back when Microsoft first got into the
14 networking stuff. I have a CCNA which is Cisco
15 certification for network instructor and also
16 network administration.

17 Q. And you keep the computer system going
18 for ADC?

19 A. Yes, sir.

20 Q. And I assume y'all have a main server
21 of some description?

22 A. Yes, sir. We have several servers
23 that serve different purposes. And we have what
24 we call a data storage which is where all of our
25 data lives.

1 Q. And were you asked at some point in
2 time to check to see what Jim Owens had been using
3 his computer for?

4 A. Yes, sir. Excuse me. Yes, sir.

5 Q. And when were you asked to do that?

6 A. As a date?

7 Q. Yes.

8 A. Gosh. I really don't remember the
9 date.

10 Q. Is is there some document you would
11 have, I assume somebody notified you to do it?

12 A. Yes, sir. It was in documentation.
13 I was just asked to see his laptop.

14 Q. Who asked?

15 A. Chris Cook and Greg Jones.

16 Q. Was that after Mr. Owens was
17 terminated?

18 A. No, sir.

19 Q. It was previous to that?

20 A. Yes, sir.

21 Q. And how far previous to him being
22 terminated?

23 A. A couple of days. I don't recall
24 exactly how many.

25 Q. What were you told? What were you

1 told about why you were doing this?

2 A. I was handed a letter from an attorney
3 for data, electronic transmission, to seize it all.
4 I kind of followed that letter.

5 Q. Tried to do whatever it --

6 A. Yes, sir.

7 Q. -- asked --

8 A. Yes, sir.

9 Q. -- you to do. Let me hand you Exhibit
10 14. And these are documents we have been produced
11 in the case and I'll try to go through and look at
12 the ones where your name was on it.

13 A. Okay.

14 Q. As being what you downloaded from
15 Mr. Owens' computer, look through that if you would
16 and see if those are the documents that you took
17 off of Mr. Owens' computer whenever you did it.

18 A. Yes, sir. I remember the first one
19 there.

20 (PLF. EXH. 14, Copy of group exhibit,
21 Bates stamped ADC_000017 through 74, was marked for
22 identification.)

23 THE WITNESS: Yes, sir.

24 BY MR. PARKER:

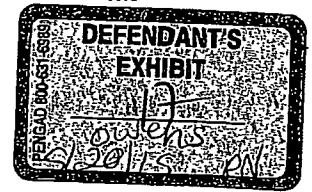
25 Q. Do you recall any other documents not

EXHIBIT “V”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265



From: Chris Cook <chrisc@adcengineering.com>
Sent: Monday, September 22, 2014 6:54 AM
To: Mark Dillon; Steven Truschka; Rick Cook (roofguru@aol.com)
Subject: FW: Personal Leave

FYI

Chris Cook PE, LEED
Partner
Site Services / Civil Engineering



ENGINEERING SPECIALISTS
1226 YEAMANS HALL ROAD
HANAHAN, SC 29410
office 843-566-0161 / mobile 843-991-7040
fax 843-566-0162 / direct 843-735-5141
ADCENGINEERING.COM

From: Jim Owens
Sent: Monday, September 22, 2014 6:46 AM
To: Chris Cook; Greg Jones
Subject: Personal Leave

Chris and Greg:

I'm not feeling very well this morning and think its best to stay home. I have a doctor's appointment scheduled for later today. As always, I am available by phone if needed. Thanks

Jim

Jim Owens
Construction Administrator
Site Services/Structural

1226 YEAMANS HALL ROAD
HANAHAN, SC 29410

office 843-735-5165 / cell 843-991-7049
fax 843-566-0162

ADCENGINEERING.COM

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EXHIBIT “W”

James C. Owens

v.

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio
and ADC Engineering, Incorporated
Civil Action No. 2014-CP-10-6265

2003 WL 23691107
United States District Court,
D. South Carolina, Columbia Division.

William F. VANDERHOFF, Plaintiff,

v.

JOHN DEERE CONSUMER
PRODUCTS, INC., Defendant.

No. C.A. 3:02-0685-22.

Filed March 1, 2002.

March 13, 2003.

Attorneys and Law Firms

Lourie Augustus Salley, III, Lexington, SC, for William F Vanderhoff, plaintiff.

Lemuel Gray Geddie, Jr., Ogletree Deakins Nash Smoak and Stewart, Greenville, SC, William H Floyd, III, Nexsen Pruet Jacobs and Pollard, Columbia, SC, for John Deere Consumer Products Corporation, defendant.

ORDER

MCGOWAN-CURRIE, J.

*1 This matter is before the court on motion of Defendant, John Deere Consumer Products, Inc., to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or, in the alternative, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure filed July 3, 2002. Plaintiff responded in opposition on July 24, 2002, to which Defendant replied on August 7, 2002.

With the elevation of Judge Dennis W. Shedd to the United States Court of Appeals for the Fourth Circuit, this case was transferred to the undersigned on December 6, 2002. For the reasons set forth below, Defendant's motion is granted.

RELEVANT FACTUAL BACKGROUND

In 2001, Plaintiff filed an employment discrimination complaint under Title VII of the Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000c *et seq.*, against Defendant.

Vanderhoff v. Ham, et al., C/A No. 01-0406, Docket No. 1 (D.S.C. Feb. 9, 2001). Plaintiff alleged that Defendant discriminated against him as a member of the "Confederate Southern American" ethnic group by refusing to permit him to display a confederate flag decal on his toolbox at work. Plaintiff also sought recovery under state law for wrongful discharge, alleging that his discharge was in violation of public policy set forth in section 16-17-560 of the South Carolina Code of Laws.

On motion, Judge Shedd granted summary judgment in favor of Defendant as to Plaintiff's Title VII claim, accepting the recommendation of the Magistrate Judge which concluded that a "Confederate Southern American" is not a member of a protected class under Title VII. Judge Shedd also dismissed without prejudice Plaintiff's state law wrongful discharge claim pursuant to 28 U.S.C. § 1367 and *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

Subsequently, Plaintiff filed another action in state court, alleging that he was wrongfully discharged in violation of (1) public policy provided in section 16-17-560 of the South Carolina Code of Laws, (2) the First Amendment of the United States Constitution, and (3) Article I, section 2, of the South Carolina Constitution. *See* Plaintiff's Complaint ¶¶ 7, 8, & 10. Defendant then removed this action to this court on March 1, 2002, pursuant to 28 U.S.C. §§ 1331 and 1332.

ANALYSIS

Because Defendant's summary judgment motion presents the dispositive argument in this case, the court will decline to address Defendant's argument in its motion to dismiss that Plaintiff's previous Title VII employment discrimination claim precludes Plaintiff's instant wrongful discharge claim.

(A) Summary Judgment

In deciding a summary judgment motion, the court must look beyond the pleadings and determine whether there is a genuine need for trial. *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-53 (1986). If the defendant carries its burden of showing there is an absence of evidence to support a claim, then

the plaintiff must demonstrate by affidavits, depositions, answers to interrogatories, and admissions on file, that there is a genuine issue of material fact for trial. *Celotex Corp v Catrett*, 477 U.S. 317, 324–25 (1986). An issue of fact is “genuine” if the evidence is such that a reasonable jury could return a verdict for the plaintiff. *Anderson*, 477 U.S. at 248. An issue of fact concerns “material” facts only if establishment of the fact might affect the outcome of the lawsuit under governing substantive law. *Id.* A complete failure of proof concerning an essential element of the plaintiff’s case necessarily renders all other facts immaterial. *Celotex*, 477 U.S. at 322–23. Moreover, a “mere scintilla of evidence” in support of an essential element will not forestall summary judgment. *Anderson*, 477 U.S. at 251.

(1) Defendant's Arguments

*2 Defendant argues that it is entitled to summary judgment because no genuine issue of material fact exists for trial as to an essential element of Plaintiff’s wrongful discharge claim. Defendant asserts that no evidence demonstrates it discharged or constructively discharged Plaintiff. Rather, Defendant claims the undisputed evidence shows that Plaintiff voluntarily resigned from his employment. In addition, even if a disputed issue of material fact exists as to whether Plaintiff was discharged, Defendant argues that no evidence shows Plaintiff was discharged in violation of public policy in violation of section 16–17–560 of the South Carolina Code of Laws

(2) Analysis

The court finds dispositive Defendant’s argument that no issue of material fact exists as to whether Plaintiff was discharged in violation of public policy under section 16–17–560. Section 16–17–560 states in relevant part:

“Whoever shall assault or intimidate any citizen because of political opinions or the exercise of political rights and privileges guaranteed to every citizen of the United States by the Constitution and laws thereof or by the Constitution and laws of this State or, for such reason, discharge such citizen from employment or occupation ... shall be guilty of a misdemeanor.”

S.C. CODE ANN. § 16–17–560 (Law.Co-op.1976). This court concludes that the display of a confederate flag decal is not a political opinion or the exercise of any political right or privilege as that phrase is intended by this criminal statute because such expression is not protected as a matter of clear public policy either as set forth in section 16–17–560 or otherwise. Section 16–17–560 expressly protects only “political” opinion and expression. The statute does not define what is meant by this phrase. However, because section 16–17–560 is a criminal statute, it must be construed narrowly. *See State v Prince*, 517 S.E.2d 229, 232 (S.C.Ct.App.1999) (“Criminal statutes must be strictly construed against the state and in favor of the defendant.”). Further, the available case law suggests the state court would not construe the phrase to extend to all opinion and expression which, if a matter of public concern, may be protected under the First Amendment of the United States Constitution or under Article I, section 2, of the Constitution of the State of South Carolina.¹ Rather, this court concludes that the political opinion and expression covered by section 16–17–560 extends only to matters directly related to the executive, legislative, and administrative branches of Government, such as political party affiliation, political campaign contributions, and the right to vote. *See Culler v Blue Ridge Elec. Coop. Inc.*, 422 S.E.2d 91, 92–93 (S.C.1992) (finding that if plaintiff was discharged “because he refused to contribute to a political action fund [supported by his employer], he would have a cause of action under *Ludwick* and ... [section] 16–17–560”).

*3 The numerous issues associated with the confederate flag are certainly concerns that sometimes play a role in public debate and, as a consequence, enter the political arena. An opinion or expression of a belief about the confederate flag, however, is not “political” within the meaning of section 16–17–560. To hold otherwise, the court would extend the application of section 16–17–560 to an infinite number of social issues that fall within the ambit of public debate and, as a consequence, at times become issues in the political arena. The court does not believe that section 16–17–560 contemplated such a broad exception to the employment-at-will doctrine, which has since *Shealy v Fowler*, 188 S.E. 499 (1946), allowed employers “to discharge an employee without incurring liability for good reason, no reason, or bad reason.” *Ludwick*, 337 S.E.2d at 214 (citing H.G. WOOD, MASTER AND SERVANT (1877)).

Plaintiff states that he placed the confederate flag decal on his toolbox “as a statement of [his] political beliefs about the

flag coming down off the state house," *see* Defendant's Ex. 8, at 43 (Transcript of Testimony before Timothy McDonald, Administrative Hearing Officer, South Carolina Employment Security Commission). Such expression or belief may be a matter of public concern generally protected under the United States and South Carolina Constitutions. It is not, however, a "political" opinion or the exercise of a political right or privilege within contemplation of section 16-17-560.

For the reasons set forth above, the court grants Defendant's motion for summary judgment.

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.2d, 2003 WL 23691107, 21 IER Cases 862

CONCLUSION

Footnotes

- 1 Here, because Defendant is not a state actor, Plaintiff's claim is not actionable under the First Amendment which applies to the States and state actors through Title 18, United States Code, Section 1983.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS

Plaintiff(s)

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC RADIO,
ADC ENGINEERING, INC., TYLER FLESCH,
AND RED DRUM CAPITAL GROUP, LLC.

Defendant(s)

IN THE COURT OF COMMON PLEAS

AMENDED

CIVIL ACTION COVERSHEET

2014-CP-10-6265

FILED
2015 JUN 19 PM 12:42
JULIE J. ARMSTRONG
CLERK OF COURT

Submitted By: John E. Parker
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Hampton, SC 29924

SC Bar #: 4442
Telephone #: (803) 943-2111
Fax #: (803) 942-2014
E-mail: jparker@pmped.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

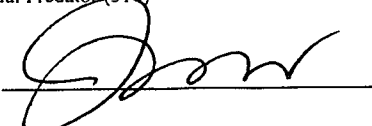
**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☒ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (\$10)		

Submitting Party Signature:



Date: June 18, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

APP: 0263

Page 1 of 2 ROA 262

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JAMES C. OWENS,)

Plaintiff,)

v.)

BRYAN CRABTREE, KIRKMAN)
BROADCASTING, INC. D/B/A WQSC)
RADIO, ADC ENGINEERING, INC., TYLER)
FLESCHE, AND RED DRUM CAPITAL)
GROUP, LLC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-6265

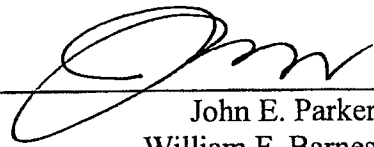
AMENDED SUMMONS
(Jury Trial Demanded)

FILED
2015 JUN 19 PM 12:42
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

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

BY: 

John E. Parker
William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

June 18, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS,

PLAINTIFF,

V.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO, ADC ENGINEERING, INC., TYLER
FLESCH, AND RED DRUM CAPITAL
GROUP, LLC.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-6265

AMENDED COMPLAINT

(Jury Trial Demanded)

FILED
2015 JUN 19 PM 12:42
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff alleges:

1. The defendant, Bryan Crabtree, is a resident and citizen of Charleston County and at all times mentioned below was an employee and agent of WQSC Radio acting within the scope of his agency or employment.

2. The defendant, Kirkman Broadcasting, Inc. ("Kirkman Broadcasting"), is a corporation existing under the laws of the State of South Carolina and maintains its principal place of business in Charleston County. Kirkman Broadcasting owns and operates WQSC Radio – AM 1340.

3. The defendant, ADC Engineering, Inc. ("ADC Engineering") is a corporation existing under the laws of the State of South Carolina and maintains its principal place of business in Berkeley County.

4. The defendant, Tyler Flesch ("Flesch"), is a resident of Charleston County and is a principal in Red Drum Capital Group, LLC, a limited liability company whose office is in Charleston County, South Carolina.

5. Venue of the case is proper in Charleston County.

6. The plaintiff, James C. Owens, is a resident of Charleston County, South Carolina, who until September 23, 2014 was employed by ADC Engineering. Mr. Owens at that time had been

employed by ADC Engineering for more than ten (10) years, and his job performance until he was terminated had always been praised by his supervisors.

7. On or about the middle of December, 2013, the plaintiff learned of a proposed high rise parking garage/office building to be built near Shem Creek in Mount Pleasant, South Carolina. He and numerous other citizens, by way of a petition, were concerned that the proposed parking facility/office building was out of character for the location where it was proposed to be built as well as being out of character with the Town's guidance documents protecting and preserving the area surrounding Shem Creek.

8. The plaintiff, along with other citizens of Mt. Pleasant, formed a Facebook group which called itself "Saving Shem Creek" to oppose the building of the parking facility/office building at the proposed location and to influence the Town of Mt. Pleasant to support a facility which would be more compatible with the surrounding area where the parking facility/office building was proposed to be built.

9. The plaintiff, in exercising his right to free speech guaranteed by the First Amendment of the United States Constitution and Article 1, § 2 of the South Carolina Constitution attended Mount Pleasant Town Council meetings, met with the Mayor, the Developer, Council Members and other administration officials, and voiced his and other citizens' opinions about the proposed parking facility/office building.

10. As plaintiff became more involved in voicing his opinion publicly about the Shem Creek parking facility/office building, he met with his superior at ADC Engineering to talk to him about his opposition to the project and his superior told him that it was permissible for him to be involved as long as he made it clear that his opposition was the plaintiff's personal opposition and as

long as he did not reference ADC Engineering. Plaintiff following the instructions from his superior and did not tell anyone that his opposition was anything other than his personal opinion.

FOR A FIRST CAUSE OF ACTION

**(Defamation as to Defendant Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio,
Tyler Flesch and Red Drum Capital Group, LLC)**

11. The allegations of paragraphs 1-10 are incorporated as if rewritten.

12. The defendant, Bryan Crabtree, has a weekday morning radio talk show on WQSC AM-1340 named The Bryan Crabtree Show that airs from 7:00 a.m. to 10:00 a.m. throughout the Charleston area.

13. Prior to September 23, 2014, Tyler Flesch, acting as an agent for Red Drum Capital Group, LLC contacted Bryan Crabtree in writing and falsely told Mr. Crabtree that plaintiff, James Owens, was a liar and a serious fraud. The statements defamed the plaintiff and damaged his reputation.

14. In addition to the radio program, defendant, Crabtree, also maintains a website entitled "The Bryan Crabtree Show." The website address is www.thebryancrabtreeshow.com. The material on the website is sometimes republished on the WQSC website.

15. After the defendant, Flesch, made the above false and defamatory statements about plaintiff to Mr. Crabtree, Mr. Crabtree falsely inferred on his radio talk show which was broadcast to the public that the plaintiff was a liar. Mr. Crabtree then further defamed the plaintiff by specifically calling plaintiff a liar in an article disseminated on the internet to the public.

16. The defendants, Flesch and Crabtree, falsely accused the plaintiff of knowing ADC Engineering, his employer, was working on the Shem Creek project while at the same time plaintiff was opposing the project. These statements were false and made recklessly and with malice. The plaintiff had no knowledge of any involvement by ADC in the Shem Creek project and had he known

of any involvement, he would not have participated in any opposition to the project. WQSC republished these false and defamatory statements about Mr. Owens on its website.

17. After the plaintiff advised the defendant, Crabtree, by social media, that he had no knowledge of ADC's involvement in the Shem Creek project, Crabtree published on the internet a piece on September 22, 2014, which was disseminated to others, and accused the plaintiff in bold headlines of being a liar. The headline reads "Mr. 'Saving Shem Creek' doubled down on his lie – now here's the proof!"

18. The defendant, Crabtree, further falsely held plaintiff up to public ridicule by publishing to others an image in which he includes a picture of plaintiff together with a picture of Pinocchio and by inference likens the plaintiff to Pinocchio. Pinocchio is a fictional character whose nose grows when he is lying. The defendant, Crabtree, also published an image along with Mr. Owens' photograph which by inference accuses him of being two-faced.

19. The statements made by the defendants, Flesch, Crabtree, and Kirkman Broadcasting, Inc. were false, defamatory, and injured the plaintiff's reputation.

20. As a result of the defamatory statements made by the defendants, Flesch and Crabtree, the plaintiff was terminated from his job with ADC on September 23, 2014.

FOR A SECOND CAUSE OF ACTION
(Wrongful Termination as to ADC Engineering)

21. The above allegations are incorporated as if repeated verbatim.

22. On September 23, 2014, the defendant, ADC Engineering, wrongfully terminated plaintiff's employment with ADC for his opposition to the Shem Creek project after he was specifically given permission by ADC to act as a private citizen in voicing his opposition to the Shem Creek parking facility/office building.

23. Unknown to plaintiff, on or about September 27, 2013, Stubbs, Muldrow, Herin Architects, Inc. apparently entered into an agreement for structural services with ADC Engineering for the Shem Creek parking facility/office building. On September 16, 2014, Stubbs, Muldrow, Herin Architects wrote ADC Engineering and advised ADC Engineering that Stubbs, Muldrow, Herin Architects was terminating the agreement it had with ADC Engineering for structural services on the project effective September 23, 2014. After receiving the correspondence from Stubbs, Muldrow, Herin Architects regarding the termination of the agreement, ADC Engineering wrongfully terminated plaintiff's employment in violation of South Carolina's public policy. Plaintiff had no knowledge of any involvement ADC Engineering had in the Shem Creek project until he saw a copy of the letter from Stubbs, Muldrow, and Herrin dated September 16, 2014 on the "Bryan Crabtree Show" website.

24. In terminating plaintiff, ADC Engineering violated the S.C. Code Ann. § 16-17-560, which provides, in part: "It is unlawful for a person to . . . discharge a citizen from employment or occupation . . . because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State."

25. The termination of plaintiff's employment by ADC Engineering violated the public policy of protecting an individual's right to free speech guaranteed by the United States Constitution and South Carolina Constitution. ADC Engineering's termination of plaintiff for his opposition to the Shem Creek parking facility/office building was in retaliation for plaintiff exercising his constitutional rights. Because of ADC Engineering's willful violation of plaintiff's constitutional rights as a citizen, he is entitled to punitive damages.

FOR A THIRD CAUSE OF ACTION

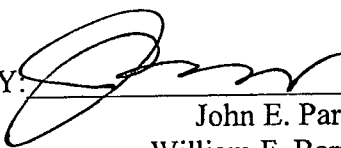
26. The above allegations are incorporated as if rewritten.

27. The defendants, Tyler Flesch and Red Drum Capitol, with knowledge of plaintiff's employment with ADC intentionally procured the breach of plaintiff's employment contract without justification and as a result, plaintiff suffered loss of income.

28. The plaintiff is entitled to actual and punitive damages.

WHEREFORE, plaintiff prays for judgment against the defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

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

BY: 

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William F. Barnes, III
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

June 18, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS

Plaintiff(s)

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC RADIO
AND ADC ENGINEERING, INCORPORATED

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-10-1205

Submitted By: John E. Parker

Address: P.O. Box 457

Hampton, SC 29924

SC Bar #: 4442

Telephone #: (803) 914-2004

Fax #: (803) 914-2014

Other:

E-mail: jparker@pmped.com

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DOCKETING INFORMATION (Check all that apply)

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☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
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NATURE OF ACTION (Check One Box Below)

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Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture—Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
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Submitting Party Signature: _____

Date: October 9, 2014

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FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS,

Plaintiff,

v.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING,
INCORPORATED,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10-6265

SUMMONS

(Jury Trial Requested)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT 10 PM 2:18

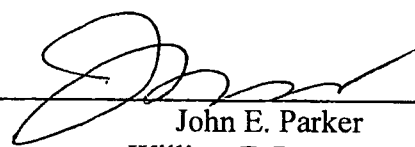
FILED

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at P.O. Box 457, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

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

BY:



John E. Parker

William F. Barnes, III
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Post Office Box 457
Hampton, SC 29924
(803) 943-2111
jparker@pmped.com
wbarnes@pmped.com

ATTORNEYS FOR PLAINTIFF

October 9, 2014
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES C. OWENS,

Plaintiff,

v.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO, AND ADC ENGINEERING,
INCORPORATED,

Defendants,

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2014-CP-10- 10265

COMPLAINT

(Jury Trial Demanded)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT 10 PM 2:18

FILED

The Plaintiff alleges:

1. The defendant, Bryan Crabtree, is a resident and citizen of Charleston County and at all times mentioned below was an employee or agent of WQSC Radio acting within the scope of his agency or employment.

2. The defendant, Kirkman Broadcasting, Inc. ("Kirkman Broadcasting"), is a corporation existing under the laws of the State of South Carolina and maintains its principal place of business is in Charleston County. Kirkman Broadcasting owns and operates WQSC Radio – AM 1340.

3. The defendant, ADC Engineering, Inc. ("ADC Engineering") is a corporation existing under the laws of the State of South Carolina and maintains its principal place of business in Berkeley County.

4. Venue of the case is proper in Charleston County.

5. The plaintiff, James C. Owens, is a resident of Charleston County, South Carolina, who until September 23, 2014 was employed by ADC Engineering, Inc. Mr. Owens

at that time had been employed by ADC Engineering for more than ten (10) years, and his job performance until he was terminated had always been praised by his supervisors.

6. On or about the middle of December, 2013, the plaintiff learned of a proposed high rise parking garage/office building to be built near Shem Creek in Mount Pleasant, South Carolina. He and numerous other citizens, by way of a petition, were concerned that the proposed parking facility/office building was out of character for the location where it was proposed to be built as well as being out of character with the Town's guidance documents protecting and preserving the area surrounding Shem Creek..

7. The plaintiff, along with other citizens of Mt. Pleasant, formed a Facebook group which called itself "Saving Shem Creek" to oppose the building of the parking facility/office building at the proposed location and to influence the Town of Mt. Pleasant to support a facility which would be more compatible with the surrounding area where the parking facility/office building was proposed to be built.

8. The plaintiff, in exercising his right to free speech guaranteed by the First Amendment of the United States Constitution and Article 1, § 2 of the South Carolina Constitution attended Mount Pleasant Town Council meetings, met with the Mayor, the Developer, Council Members and other administration officials, and voiced his and other citizens' opinions about the proposed parking facility/office building.

9. As plaintiff became more involved in voicing his opinion publicly about the Shem Creek parking facility/office building, he met with his superior at ADC Engineering to talk to him about his opposition to the project and his superior told him that it was permissible for him to be involved as long as he made it clear that his opposition was the plaintiff's personal opposition and as long as he did not reference ADC Engineering. Plaintiff following the

instructions from his superior did not tell anyone that his opposition was anything other than his personal opinion.

FOR A FIRST CAUSE OF ACTION
(Defamation as to Defendant Crabtree and Kirkman Broadcasting d/b/a WQSC)

10. The defendant, Bryan Crabtree, has a weekday morning radio talk show on WQSC AM-1340 named The Bryan Crabtree Show that airs from 7:00 a.m. to 10:00 a.m. throughout the Charleston area.

11. In addition to the radio program, defendant, Crabtree, also maintains a website entitled "The Bryan Crabtree Show." The website address is www.thebryancrabtreeshow.com. The material on the website is sometimes republished on the WQSC website.

12. Prior to September 23, 2014, the defendant, Bryan Crabtree, falsely inferred on his radio talk show which was broadcast to the public that the plaintiff was a liar. Mr. Crabtree further defamed the plaintiff by specifically calling plaintiff a liar in an article disseminated on the internet.

13. The defendant, Crabtree, in his radio talk show and in his internet pieces falsely accused the plaintiff of knowing ADC Engineering, his employer, was working on the Shem Creek project while at the same time plaintiff was opposing the project. These statements were false and made recklessly and with malice. The plaintiff had no knowledge of any involvement by ADC in the Shem Creek project and had he known of any involvement, he would not have participated in any opposition to the project. WQSC republished these false and defamatory statements on its website.

14. After the plaintiff advised the defendant, Crabtree, by social media, that he had no knowledge of the of ADC's involvement in the Shem Creek project, Crabtree published on the

internet a piece on September 22, 2014, which was disseminated to others, and accused the plaintiff in bold headlines of being a liar. The headline reads "Mr. 'Saving Shem Creek' doubled down on his lie -- now here's the proof!"

15. The defendant, Crabtree, further falsely held plaintiff up to public ridicule by publishing to others an image in which he includes a picture of plaintiff together with a picture of Pinocchio and by inference likens the plaintiff to Pinocchio. Pinocchio is a fictional character whose nose grows when he is lying. The defendant, Crabtree, also published an image along with Mr. Owens' photograph which by inference accuses him of being two-faced.

16. The statements made by the defendant, Crabtree, were false, defamatory, and injured the plaintiff's reputation.

17. As a result of the defamatory statements made by the defendant, Crabtree, plaintiff was terminated from his job with ADC on September 23, 2014.

FOR A SECOND CAUSE OF ACTION
(Wrongful Termination as to ADC Engineering)

18. The above allegations are incorporated as if repeated verbatim.

19. On September 23, 2014, the defendant, ADC Engineering, wrongfully terminated plaintiff's employment with ADC for his opposition to the Shem Creek project after he was specifically given permission by ADC to act as a private citizen in voicing his opposition to the Shem Creek parking facility/office building.

20. Unknown to plaintiff, on or about September 27, 2013, Stubbs Muldrow Herin Architects, Inc. apparently entered into an agreement for structural services with ADC Engineering for the Shem Creek parking facility/office building. On September 16, 2014, Stubbs Muldrow Herin Architects wrote ADC Engineering and advised ADC Engineering that Stubbs

Muldrow Herin Architects was terminating the agreement for structural services on the project effective September 23, 2014. After receiving the correspondence from Stubbs Muldrow Herin Architects regarding the termination of the agreement, ADC Engineering wrongfully terminated plaintiff's employment in violation of South Carolina's public policy. Plaintiff had no knowledge of any involvement ADC Engineering had in the Shem Creek project until he saw a copy of the letter from Stubbs, Muldrow, and Herrin dated September 16, 2014 on the "Bryan Crabtree Show" website.

21. In terminating plaintiff, ADC Engineering violated the S.C. Code Ann. § 16-17-560, which provides, in part: "It is unlawful for a person to . . . discharge a citizen from employment or occupation . . . because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State."

22. The termination of plaintiff's employment by ADC Engineering violated the public policy of protecting an individual's right to free speech guaranteed by the United States Constitution and South Carolina Constitution. ADC Engineering's termination of plaintiff for his opposition to the Shem Creek parking facility/office building was in retaliation for plaintiff exercising his constitutional rights. Because of ADC Engineering's willful violation of plaintiff's constitutional rights as a citizen, he is entitled to punitive damages.

WHEREFORE, plaintiff prays for judgment against the defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

[Signature Page to Follow]

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

BY:  _____

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ATTORNEYS FOR PLAINTIFF

6
Hampton, South Carolina
October 9, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JAMES C. OWENS,

Civil Action No. 2014-CP-10-6265

Plaintiff,

**ANSWER AND COUNTERCLAIM OF
DEFENDANT ADC ENGINEERING,
INCORPORATED TO AMENDED
COMPLAINT**

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING,
INCORPORATED, TYLER FLESCHE, AND
RED DRUM CAPITAL GROUP, LLC,

Defendants.

FILED
2015 JUL 14 PM 3:16
JULIE J. ARMSTRONG
CLERK OF COURT
EP

Defendant ADC Engineering, Incorporated ("Defendant ADC"), answers the Amended Complaint of Plaintiff James C. Owens ("Plaintiff") and counterclaims against Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Complaint not hereinafter admitted or modified, is denied and strict proof thereof is demanded.
2. The allegations of Paragraphs 1 and 2 do not pertain to Defendant ADC, and Defendant ADC lacks information sufficient to form a belief as to those allegations.
3. Defendant ADC admits the allegations of Paragraph 3.
4. Defendant ADC lacks sufficient information to form a belief as to the allegations of Paragraph 4.
5. The allegations of Paragraph 5 constitute conclusions of law to which no response is required.

6. Responding to the allegations of Paragraph 6, Defendant ADC admits, upon information and belief, that Plaintiff is a resident of Charleston County, South Carolina. Defendant ADC further admits only that Plaintiff was employed with ADC for approximately ten years until on or about September 23, 2014.

7. Defendant ADC lacks sufficient information to form a belief as to the allegations of Paragraph 7.

8. Responding to the allegations of Paragraph 8, Defendant ADC admits only, upon information and belief, that Plaintiff formed a Facebook group called "Saving Shem Creek" to oppose the building of a parking facility/office building at the proposed location on Shem Creek (the "Shem Creek Project").

9. Responding to the allegations of Paragraph 9, Defendant ADC lacks sufficient information to form a belief as to meetings Plaintiff may have attended or people with whom he may have met. The remaining allegations of Paragraph 9 constitute conclusions of law to which no response is required.

10. Responding to the allegations of Paragraph 10, Defendant ADC admits only that at some point Plaintiff approached his supervisors at ADC to inform them of his opposition to the Shem Creek Project and that his supervisors informed him that he was not to involve ADC in any way. Defendant ADC would further show that Plaintiff ignored the express instructions and directly involved ADC in the use of its time, equipment and property in his opposition to the Shem Creek Project.

AS TO THE FIRST CAUSE OF ACTION

(Defamation as to Defendant Crabtree, Kirkman Broadcasting d/b/a WQSC Radio, Tyler Flesh
and Red Drum Capital Group, LLC)

11. Responding to the allegations of Paragraph 11, Defendant ADC repeats and realleges as if stated verbatim herein the foregoing paragraphs.

12. Paragraphs 12, 13, 14, 15, 16, 17, 18, and 19 are not directed to Defendant ADC and, thus, require no response of Defendant ADC.

13. Defendant ADC denies the allegations of Paragraph 20.

AS TO THE SECOND CAUSE OF ACTION
(Wrongful Termination as to ADC Engineering)

14. Responding to the allegations of Paragraph 21, Defendant ADC repeats and realleges as if stated verbatim herein the foregoing paragraphs.

15. Defendant ADC denies the allegations of Paragraph 22.

16. Responding to the allegations of the first sentence of Paragraph 23, Defendant ADC admits only that it entered into an agreement for structural services with Stubs Muldrow Herin Architects, Inc. on or about September 27, 2013, for the Shem Creek project, which Stubs Muldrow Herin Architects subsequently canceled in September of 2014. As to the allegations of the second sentence of Paragraph 20, Defendant ADC admits only that Plaintiff's employment was terminated on or about September 23, 2014, and denies any and all allegations that Plaintiff's termination was wrongful or in violation of public policy. Defendant ADC lacks sufficient information to form a belief as to the allegations of the third sentence of Paragraph 23.

17. Defendant ADC denies the allegations of Paragraphs 24 and 25, the same being the final allegations of the Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION

18. Responding to the allegations of Paragraph 26, Defendant ADC repeats and realleges as if stated verbatim herein the foregoing paragraphs.

19. Paragraphs 27 and 28 are not directed to Defendant ADC and, thus, require no response of Defendant ADC.

FOR A SECOND DEFENSE

20. Plaintiff's Amended Complaint fails to state facts sufficient to constitute a cause of action against Defendant ADC and should, therefore, be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

21. Plaintiff has failed to mitigate his alleged damages.

FOR A FOURTH DEFENSE

22. Plaintiff's claim against Defendant ADC is barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

23. Defendant ADC acted at all times in good faith and in compliance with applicable laws, while Plaintiff's actions undermined the role and success of ADC, conflicted with his responsibilities as an employee and abused his position as an employee of ADC.

FOR A SIXTH DEFENSE

24. Plaintiff's claim against Defendant ADC is barred in whole or in part by the doctrine of after-acquired evidence, or alternatively, the doctrine of after-acquired evidence limits and reduces Plaintiff's alleged damages.

FOR A SEVENTH DEFENSE

25. To the extent the Plaintiff ignores the express prohibitions in ADC's Technology Policy and the explicit instructions from his supervisors and has otherwise pled allegations for improper purposes, Defendant ADC is entitled to the costs and reasonable attorney's fees incurred in defending this action.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

26. Defendant repeats and reiterates the above paragraphs as if set forth verbatim herein.

27. At all times during Plaintiff's employment with Defendant ADC, Plaintiff owed to Defendant ADC a duty of loyalty.

28. Plaintiff was informed and knew that while he was being paid by Defendant ADC, he was to spend his time on work for Defendant ADC.

29. Plaintiff was informed and knew of Defendant ADC's Technology Policy that prohibits employees from excessive or inappropriate use of any office technology for personal, non-business purposes.

30. Plaintiff was informed and knew of Defendant ADC's Technology Policy that prohibits employees from personal, non-business use of office technology where it results in expense or loss to the company.

31. Plaintiff was further informed and knew that he was not to involve ADC in any way pertaining to his personal endeavors in opposition to the Shem Creek Project.

32. Plaintiff violated his duty of loyalty to Defendant ADC by willfully, wantonly, and recklessly using ADC Engineering's equipment, technology and property while at work and

being paid to work for ADC Engineering, to advance a personal cause against the Shem Creek Project, a specific project on which ADC was working.

33. Plaintiff further violated his duty of loyalty to Defendant ADC by ignoring express instructions and directly involving ADC in his personal opposition to the Shem Creek Project through the use of ADC's time, equipment and property.

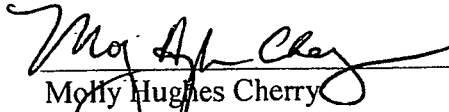
34. Moreover, Plaintiff violated his duty of loyalty by distracting a junior staff member from his work duties at ADC to prepare documents that Plaintiff used on his personal cause.

35. Plaintiff also violated his duty of loyalty to ADC by excessive personal text messages sent during working hours and time on the phone ADC issued to him as an employee.

36. As a result of Plaintiff's actions, Defendant ADC has been injured and damaged, including by the salary paid to Plaintiff while he was pursuing his personal endeavors, the salary paid to ADC's junior associate while he was being paid by ADC, and through the loss of the structural services agreement with Stubs Muldrow Herin Architects, Inc.

37. Defendant ADC is further entitled to an award of punitive damages for Plaintiff's willful, wanton and reckless actions.

WHEREFORE, having fully answered and counterclaimed to the Amended Complaint of Plaintiff herein, Defendant ADC prays that Plaintiff's claim against it be dismissed with prejudice and that Plaintiff have and recover nothing by reason of the Amended Complaint; that judgment be granted against Plaintiff on Defendant ADC's counterclaim for the actual and punitive damages requested herein; that the Court award Defendant ADC its reasonable costs and attorneys' fees incurred as a result of this action; and for such other and further relief as the Court may deem just and proper.



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Chase McNair
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, SC 29402
843.577.9440

ATTORNEYS FOR DEFENDANT
ADC ENGINEERING, INCORPORATED

July 14, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

14-CV-10-10265

This is to certify that a copy of the foregoing ANSWER AND COUNTERCLAIM OF DEFENDANT ADC ENGINEERING, INCORPORATED TO AMENDED COMPLAINT has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 14th day of July, 2015.

John E. Parker, Esquire
William F. Barnes, III
Peters, Murdaugh, Parker, Eltzroth &
Detrick, PA
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924

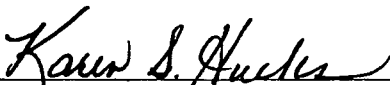
*ATTORNEYS FOR PLAINTIFF
JAMES C. OWENS*

William P. Early, Esquire
Pierce, Hems, Sloan & McLeod, LLC
P.O. Box 22437
Charleston, SC 29413

*ATTORNEYS FOR DEFENDANT
KIRKMAN BROADCASTING, INC.*

Ryan A. Earhart, Esquire
Nelson Mullins Riley & Scarborough,
LLP
P.O. Box 1806
Charleston, SC 29402-1806

*ATTORNEYS FOR DEFENDANT
BRYAN CRABTREE*


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FILED
2015 JUL 14 PM 3:16
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JAMES C. OWENS,

Civil Action No. 2014-CP-10-6265

Plaintiff,

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC. D/B/A WQSC
RADIO AND ADC ENGINEERING,
INCORPORATED,

Defendants.

ANSWER AND COUNTERCLAIM OF
DEFENDANT ADC ENGINEERING,
INCORPORATED

FILED
2014 NOV 12 PM 4:01
JULIE A. ARMSTRONG
CLERK OF COURT
BY

Defendant ADC Engineering, Incorporated ("Defendant ADC"), answers the Complaint of Plaintiff James C. Owens ("Plaintiff") and counterclaims against Plaintiff as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted or modified, is denied and strict proof thereof is demanded.
2. The allegations of Paragraphs 1 and 2 do not pertain to Defendant ADC, and Defendant ADC lacks information sufficient to form a belief as to those allegations.
3. Defendant ADC admits the allegations of Paragraph 3.
4. The allegations of Paragraph 4 constitute conclusions of law to which no response is required.
5. Responding to the allegations of Paragraph 5, Defendant ADC admits, upon information and belief, that Plaintiff is a resident of Charleston County, South Carolina. Defendant ADC further admits only that Plaintiff was employed with ADC for approximately ten years until on or about September 23, 2014.

6. Defendant lacks sufficient information to form a belief as to the allegations of Paragraph 6.

7. Responding to the allegations of Paragraph 7, Defendant ADC admits only, upon information and belief, that Plaintiff formed a Facebook group called "Saving Shem Creek" to oppose the building of a parking facility/office building at the proposed location on Shem Creek (the "Shem Creek Project").

8. Responding to the allegations of Paragraph 8, Defendant ADC lacks sufficient information to form a belief as to meetings Plaintiff may have attended or people with whom he may have met. The remaining allegations of Paragraph 8 constitute conclusions of law to which no response is required.

9. Responding to the allegations of Paragraph 9, Defendant ADC admits only that at some point Plaintiff approached his supervisors at ADC to inform them of his opposition to the Shem Creek Project and that his supervisors informed him that he was not to involve ADC in any way. Defendant ADC would further show that Plaintiff ignored the express instructions and directly involved ADC in the use of its time, equipment and property in his opposition to the Shem Creek Project.

AS TO THE FIRST CAUSE OF ACTION

(Defamation as to Defendant Crabtree and Kirkman Broadcasting d/b/a WQSC)

10. Paragraphs 10, 11, 12, 13, 14, 15, and 16 are not directed to Defendant ADC and, thus, require no response of Defendant ADC.

11. Defendant ADC denies the allegations of Paragraph 17.

AS TO THE SECOND CAUSE OF ACTION
(Wrongful Termination as to ADC Engineering)

12. Responding to the allegations of Paragraph 18, Defendant ADC repeats and realleges as if stated verbatim herein the foregoing paragraphs.

13. Defendant ADC denies the allegations of Paragraph 19.

14. Responding to the allegations of the first sentence of Paragraph 20, Defendant ADC admits only that it entered into an agreement for structural services with Stubs Muldrow Herin Architects, Inc. on or about September 27, 2013, for the Shem Creek project, which Stubs Muldrow Herin Architects subsequently canceled in September of 2014. As to the allegations of the second sentence of Paragraph 20, Defendant ADC admits only that Plaintiff's employment was terminated on or about September 23, 2014, and denies any and all allegations that Plaintiff's termination was wrongful or in violation of public policy. Defendant ADC lacks sufficient information to form a belief as to the allegations of the third sentence of Paragraph 20.

15. Defendant ADC denies the allegations of Paragraphs 21 and 22, the same being the final allegations of the Complaint.

FOR A SECOND DEFENSE

16. Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendant ADC and should, therefore, be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(6).

FOR A THIRD DEFENSE

17. Plaintiff has failed to mitigate his alleged damages.

FOR A FOURTH DEFENSE

18. Plaintiff's claim against Defendant ADC is barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

19. Defendant ADC acted at all times in good faith and in compliance with applicable laws, while Plaintiff's actions undermined the role and success of ADC, conflicted with his responsibilities as an employee and abused his position as an employee of ADC.

FOR A SIXTH DEFENSE

20. Plaintiff's claim against Defendant ADC is barred in whole or in part by the doctrine of after-acquired evidence, or alternatively, the doctrine of after-acquired evidence limits and reduces Plaintiff's alleged damages.

FOR A SEVENTH DEFENSE

21. To the extent the Plaintiff ignores the express prohibitions in ADC's Technology Policy and the explicit instructions from his supervisors and has otherwise pled allegations for improper purposes, Defendant ADC is entitled to the costs and reasonable attorney's fees incurred in defending this action.

FOR AN EIGHTTH DEFENSE AND BY WAY OF COUNTERCLAIM

22. Defendant repeats and reiterates the above paragraphs as if set forth verbatim herein.

23. At all times during Plaintiff's employment with Defendant ADC, Plaintiff owed to Defendant ADC a duty of loyalty.

24. Plaintiff was informed and knew that while he was being paid by Defendant ADC, he was to spend his time on work for Defendant ADC.

25. Plaintiff was informed and knew of Defendant ADC's Technology Policy that prohibits employees from excessive or inappropriate use of any office technology for personal, non-business purposes.

26. Plaintiff was informed and knew of Defendant ADC's Technology Policy that prohibits employees from personal, non-business use of office technology where it results in expense or loss to the company.

27. Plaintiff was further informed and knew that he was not to involve ADC in any way pertaining to his personal endeavors in opposition to the Shem Creek Project.

28. Plaintiff violated his duty of loyalty to Defendant ADC by willfully, wantonly, and recklessly using ADC Engineering's equipment, technology and property while at work and being paid to work for ADC Engineering, to advance a personal cause against the Shem Creek Project, a specific project on which ADC was working.

29. Plaintiff further violated his duty of loyalty to Defendant ADC by ignoring express instructions and directly involving ADC in his personal opposition to the Shem Creek Project through the use of ADC's time, equipment and property.

30. Moreover, Plaintiff violated his duty of loyalty by distracting a junior staff member from his work duties at ADC to prepare documents that Plaintiff used on his personal cause.

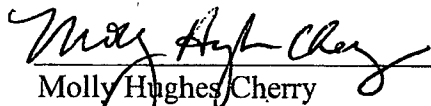
31. Plaintiff also violated his duty of loyalty to ADC by excessive personal text messages sent during working hours and time on the phone ADC issued to him as an employee.

32. As a result of Plaintiff's actions, Defendant ADC has been injured and damaged, including by the salary paid to Plaintiff while he was pursuing his personal endeavors, the salary

paid to ADC's junior associate while he was being paid by ADC, and through the loss of the structural services agreement with Stubs Muldrow Herin Architects, Inc.

33. Defendant ADC is further entitled to an award of punitive damages for Plaintiff's willful, wanton and reckless actions.

WHEREFORE, having fully answered and counterclaimed to the Complaint of Plaintiff herein, Defendant ADC prays that Plaintiff's claim against it be dismissed with prejudice and that Plaintiff have and recover nothing by reason of the Complaint; that judgment be granted against Plaintiff on Defendant ADC's counterclaim for the actual and punitive damages requested herein; that the Court award Defendant ADC its reasonable costs and attorneys' fees incurred as a result of this action; and for such other and further relief as the Court may deem just and proper.



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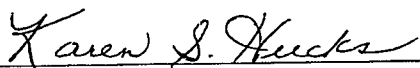
ATTORNEYS FOR DEFENDANT
ADC ENGINEERING, INCORPORATED

November 14, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing ANSWER AND COUNTERCLAIM OF DEFENDANT ADC ENGINEERING, INCORPORATED has been served upon the following counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 14th day of November, 2014.

John E. Parker, Esquire
William F. Barnes, III
Peters, Murdaugh, Parker, Eltzroth &
Detrick, PA
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924


Molly Hughes Cherry
NEXSEN PRUET, LLC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, South Carolina 29402
Telephone: 843.577.9440

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 NOV 14 PM 4:01

FILED

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
James C. Owens,	)	CASE NO. 2014-CP-10-06265
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
Bryan Crabtree, et al.,	)	
	)	
DEFENDANTS.	)	
	)	

May 16, 2016

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson

A P P E A R A N C E S:

For Plaintiff:

John E. Parker, Esquire
William F. Barnes, III, Esquire

For Defendants:

Andrew Steven Halio, Esquire - Tyler Flesch
George Hamlin O'Kelley, Esquire - Red Drum
Ryan A. Earhart, Esquire - Crabtree
Molly Hughes Cherry, Esquire - ADC Engineering

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I N D E X

EXHIBIT LIST -- 03

HEARING - MOTIONS -- 04

CERTIFICATION OF TRANSCRIPT -- 61

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1 THE CLERK: Owens versus Crabtree.

2 THE COURT: All right. What have we got, three summary
3 motion judgments by various defendants?

4 MR. EARHART: Yes, Your Honor.

5 MS. CHERRY: Yes, Your Honor.

6 THE COURT: All right. Who is repre- -- who is here
7 representing who?

8 MR. EARHART: Ryan Earhart here for defendant Bryan
9 Crabtree.

10 THE COURT: All right. Let me -- for Crabtree?

11 MR. EARHART: Yes, Your Honor.

12 THE COURT: Let me get a caption out of here.

13 All right. /

14 MS. CHERRY: Molly Cherry, Your Honor, for Defendant
15 ADC Engineering.

16 THE COURT: I'm sorry; for who, Ms. Cherry?

17 MS. CHERRY: ADC Engineering.

18 THE COURT: ABC (sic) Engineering.

19 MS. CHERRY: Yes, sir.

20 THE COURT: Okay.

21 MR. WILSON: Joe Wilson here for Defendant Kirkman.

22 And if I could, Your Honor, we had a motion for summary
23 judgment as well that seems to have not made it onto the
24 roster. So I guess it is going to be up to the plaintiffs
25 whether that one gets heard.

1 I talked with Don about it.

2 THE COURT: Okay. All right.

3 MR. HALIO: Andy Hadio for Defendant Tyler Flesch.

4 THE COURT: Tyler Flesch. Okay.

5 MR. O'KELLEY: And, Your Honor, Hamlin O'Kelley for Red
6 Drum Capital Group, LLC.

7 THE COURT: Red Drum, huh?

8 MR. O'KELLEY: Yes, sir.

9 THE COURT: Is that the fish, or what is that?

10 MR. O'KELLEY: Well, it is named for the fish, but it
11 was ---

12 THE COURT: It was named for the fish?

13 MR. O'KELLEY: Yes, sir.

14 THE COURT: Okay. Any fishing involved in this?

15 MR. O'KELLEY: We wish.

16 MR. HALIO: We think the plaintiff is fishing, Your
17 Honor, but ---

18 THE COURT: You think the plaintiffs are fishing?

19 MR. HALIO: Yes, sir.

20 THE COURT: Okay.

21 Mr. Parker represents the plaintiff, right?

22 MR. PARKER: Yes, Your Honor. And we caught some fish
23 yesterday.

24 THE COURT: You did. Did you catch any drum?

25 MR. PARKER: We did.

1 THE COURT: Well, good.

2 MR. PARKER: But there is nothing fishy about this
3 case.

4 THE COURT: Huh? You what?

5 MR. PARKER: We think the defense is fishy.

6 THE COURT: Okay.

7 MR. PARKER: And we do object to hearing Kirkman's
8 motion for summary judgment because an issue was brought up
9 and we haven't had time to deal with. We got a memo this
10 morning.

11 THE COURT: Does that answer your question?

12 MR. KIRKMAN: I suppose it does, Your Honor.

13 THE COURT: Okay. All right. Who wants to go first?

14 MR. EARHART: Judge, I am more than willing to go
15 first. So, Your Honor, this one is a little bit unusual.
16 This is a defamation case against a media defendant.

17 The plaintiff is now currently on the Mt. Pleasant City
18 Council. My client Bryan Crabtree is a talk radio host. He
19 did the early morning political talk show host on 1340 a.m.
20 which is Kirkman Broadcasting.

21 In a defamation case against a media defendant the
22 burden of proof is actually switched at the summary judgment
23 stage. And that case is George versus Fabri. And what it
24 says, that the public official has to prove by clear and
25 convincing evidence actual constitutional actual malice by

1 clear and convincing evidence at the summary judgment stage.

2 So what that means is that the plaintiff has to show
3 that the media defendant knew what he was broadcasting was
4 false or was in a reckless disregard.

5 What -- Your Honor, this is a spin-off of one of these
6 Save Shem Creek cases. The plaintiff ironically actually
7 worked for one of the engineers that was developing the
8 project that he was protesting against.

9 The developer contacted Mr. Crabtree, a morning radio
10 show host, sent him an email and basically said Mr. Owens is
11 working for my structural engineer, call him out, he is a
12 fraud. And he gave him some information and it included a
13 LinkedIn profile that showed that the plaintiff did in fact
14 work at ADC Engineering.

15 Mr. Crabtree published an article in which he
16 called the plaintiff a hypocrite for protesting against a
17 company -- or a building that his company was actually
18 developing.

19 The -- there are some emails and letters go back and
20 forth. There were some meetings. But the plaintiff then
21 went on Mr. Crabtree's website and published a piece in
22 which he said Mr. Crabtree needed to check his facts and
23 that if ADC Engineering was involved in the project then he
24 wouldn't have any involvement in the case.

25 The developer then contacted Mr. Crabtree, informed him

1 that what the plaintiff said was false. And Mr. Crabtree
2 published a second article in which he proved by introducing
3 the termination letter from ADC that in fact the plaintiff
4 was protesting against an ADC project.

5 So what the plaintiff is required to prove at the
6 summary judgment stage is that when Mr. Crabtree published
7 the article he knew that the representations in it were
8 false.

9 And the plaintiff acknowledges his statement was in
10 fact false. And Mr. Crabtree called him a liar. So I mean
11 we would be happy to defend the truth, but it is up to Mr.
12 Parker to offer clear and convincing evidence that Mr.
13 Crabtree knew what he was saying was wrong when he said it.

14 THE COURT: Well, you have got to throw in that
15 reckless disregard, right?

16 MR. EARHART: Yes, Your Honor. Or that.

17 THE COURT: Okay.

18 Mr. Parker.

19 MR. PARKER: Do you want to hear from me next, Your
20 Honor?

21 THE COURT: Yes, sir.

22 MR. PARKER: Thank you.

23 THE COURT: Only as to I guess Crabtree.

24 MR. PARKER: I am going -- we have got -- we received
25 these late last week, their memo; so we ---

1 THE COURT: Well, let me ask the other defendants. Are
2 y'all the same type of argument, or is it different?

3 MS. CHERRY: Your Honor, mine for ADC Engineering is
4 different from the other defendant.

5 THE COURT: All right. Well, let me hear him on
6 Crabtree. And we will take each defendant separately.

7 MS. CHERRY: I think the other defendants, Your Honor,
8 may be somewhat related ---

9 THE COURT: Mr. O'Kelley, are you the same?

10 MR. O'KELLEY: I am going ---

11 THE COURT: You are not going to have your hearing
12 (motioning to Mr. Wilson); so you can have a seat and quit
13 shaking your head, okay.

14 MR. O'KELLEY: Your Honor, mine is the same. I
15 represent Red Drum Capital Group. I am a little bit
16 different in that Red Drum Capital Group was the only tie to
17 this case is that there was an email signature where Mr.
18 Halio's client Mr. Flesch sent an email to Mr. Crabtree
19 where it dissolved the LLC that was dissolved before they
20 were involved in this case.

21 But it's -- we have got the defamation arguments, Your
22 Honor; but we are a little bit different. So I hope that
23 answers the court's question.

24 THE COURT: All right. We will do yours.

25 MR. PARKER: Are you ready for us, Your Honor?

1 THE COURT: Yes, sir.

2 MR. PARKER: Thank you. In your notebook that I handed
3 up to you I would like for you to turn to the section that
4 says Owens' image.

5 THE COURT: Say what now?

6 MR. PARKER: There is a section that ---

7 THE COURT: Owens?

8 MR. PARKER: Owens' image is what ---

9 THE COURT: Okay. Owens' image.

10 MR. PARKER: And in there there is a picture. This is
11 what Mr. Crabtree published about Mr. Owens. Mr. Owens was
12 an employee of ADC Engineering, and he was a construction
13 administrator. He had nothing to do with this Shem Creek
14 project that we are talking about.

15 Mr. Flesch, Red Drum Capital, were developing an office
16 parking lot complex near Shem Creek. It was called the Shem
17 Creek Project. And Mr. Owens had various objections to it
18 as a citizen of Mount Pleasant.

19 Mr. Owens was unaware that ADC Engineering had anything
20 to do with this project or he wouldn't have been involved in
21 it. But he spoke out about this project because he thought
22 that it was bad for the City of Mount Pleasant and he
23 thought that it was ---

24 THE COURT: Which project did he speak out about?

25 MR. PARKER: The Shem Creek parking garage complex that

1 we are here -- this is the center of the ---

2 THE COURT: Is that the one ---

3 MR. PARKER: --- controversy.

4 THE COURT: --- they have got a lawsuit over?

5 MR. PARKER: There was a lawsuit.

6 THE COURT: A separate lawsuit? Okay.

7 MR. PARKER: There was a lawsuit over it.

8 THE COURT: All right.

9 MR. PARKER: And I think it was settled or it was
10 disposed of in some manner. I was not involved in that.

11 THE COURT: Okay.

12 MR. PARKER: But in any event, Mr. Owens was not aware-
13 that his company that employed him as a construction
14 administrator had anything to do with this job and so he
15 undertook to oppose it because he thought it was bad for
16 the public and bad for the City of Mt. Pleasant. And he
17 went to meetings and did things of that nature at least
18 prior to the -- this coming out and Mr. Crabtree branding
19 Mr. Owens as Pinocchio in this one.

20 THE COURT: Well, Mr. -- is Mr. Owens on Mt. Pleasant
21 City Council?

22 MR. PARKER: He was not at this time.

23 THE COURT: At this time ---

24 MR. PARKER: He had nothing ---

25 THE COURT: --- he wasn't.

1 MR. PARKER: --- to do with this case. He was ---

2 THE COURT: But you would ---

3 MR. PARKER: --- elected afterwards.

4 THE COURT: Will you concede he is a public official?

5 MR. PARKER: I do not.

6 THE COURT: Okay. All right.

7 MR. PARKER: He is clearly not a public official. Was
8 not at the time of the defamation.

9 THE COURT: Okay.

10 MR. PARKER: We will talk about whether or not he is a
11 limited public figure that may have the same standard of
12 proof.

13 THE COURT: Okay. All right.

14 MR. PARKER: But he was clearly not a public official.

15 THE COURT: Was he running for office during this time
16 period?

17 MR. PARKER: He was not.

18 THE COURT: Okay. All right. Go ahead.

19 MR. PARKER: But in any event what transpired is he
20 went to ADC Engineering, his bosses, in June of 2014 and
21 told them about -- because something was going to come out
22 in the paper that may have his name in it about his
23 opposition to the project.

24 And he went and he talked with his two bosses who are
25 partners in ADC Engineering, told them about what was going

1 on that he was opposed to the project and that he was
2 speaking out. And they gave him permission to do what he
3 was doing. They said that is okay as long as you don't
4 involve ADC Engineering.

5 So Mr. Owens proceeded to do what he was doing, and
6 that is oppose this project which is a political action that
7 he was undertaking as a citizen and is our right to free
8 speak. So he spoke out against the project. He went to a
9 meeting and he said it is bad for Mount Pleasant.

10 Of course this offended the developers of the project,
11 one of which was Mr. Flesch. Mr. Flesch became very
12 offended that Mr. Owens was in fact opposing this project.

13 So what Mr. Flesch then did is he eventually learned
14 that Jim Owens was an employee of ADC Engineering. And Mr.
15 Flesch knew contrary to Mr. Owens that ADC Engineering,
16 another section, not Mr. Owen's section but some other
17 section of the company, was involved in the design of the
18 project, some of the engineering work.

19 So what Mr. Flesch then does is contact Mr. Crabtree
20 who has a radio show and he says that -- and tells Mr.
21 Flesch that Jim Owens is a serious fraud, that he is lying.

22 THE COURT: A serious what?

23 MR. PARKER: Fraud.

24 THE COURT: Okay.

25 MR. PARKER: That he is lying. That he has in fact

1 lied because he is an employee of ADC Engineering who is the
2 engineer on the project.

3 Well, Mr. Owens was unaware of that. And of course Mr.
4 Flesch defamed him to Mr. Crabtree by saying that he was a
5 serious fraud and a liar. And clearly that is defamation.
6 Clearly he injured his reputation.

7 Mr. Crabtree (sic) then takes this and says to Mr.
8 Crabtree that call him out hard on this, call Mr. Owens out
9 hard because he is a liar and a serious fraud.

10 And Mr. Crabtree calls him out hard. What does he do?
11 He on his radio show calls him a hypocrite and says he is a
12 liar. And then he publishes on his website these images
13 that likens Mr. Owens to Pinocchio. Got a picture of
14 Pinocchio with his nose growing quite rapidly I would say.
15 (WHEREUPON, image displayed.)

16 THE COURT: It looks like it has already grown.

17 MR. PARKER: He has told a lot of lies. And so he is
18 likening Mr. Owens to someone who has told a lot of lies and
19 of course is a serious fraud because his is two-faced. And
20 he publishes an image of Mr. Owens as a two-faced person, as
21 you can see there.

22 And that is the image that -- and I would have to say
23 that the image that is behind the mask is not very
24 favorable. I would say it is some devilish type person that
25 he likens Mr. Owens to. If you will look at that image it

1 is certainly defamatory.

2 So there is no question in this case, and I don't think
3 the defendants even contend, that the content here is not
4 defamatory. Because I think it is.

5 The questions are, one, for purposes of summary
6 judgment is he a limited public figure, Mr. Owens, by
7 speaking out.

8 THE COURT: Who is this picture of on this -- on your
9 picture here?

10 MR. PARKER: Say again.

11 THE COURT: To the left of Pinocchio who is that?

12 MR. PARKER: That is a two-faced person.

13 THE COURT: No, I am talking about on the ---

14 MR. PARKER: Oh, that is Mr. Owens.

15 THE COURT: Oh, that is Mr. Owens. Okay.

16 MR. PARKER: Oh, absolutely.

17 THE COURT: Okay.

18 MR. PARKER: I'm sorry. But that is Mr. Owens that he
19 is likening -- he is saying is similar to these figures, the
20 worst liar in history and a devilish jackal type person that
21 is two-faced.

22 So clearly -- and I don't think they contend it is not
23 defamation. But the issue is is he a limited public
24 official for purposes of a summary judgment motion. The
25 evidence before the court does not establish that.

1 You can become a limited public figure by injecting
2 yourself into controversies. And we have put a case in the
3 notebook there. It is the Erickson case that tells what
4 they have to -- what has to be established to make you a
5 limited public figure. And those are not present in this
6 case.

7 It may be that at some later time that that will be an
8 issue for the court to decide, but at this point in time
9 they cannot -- we do not think they can establish that
10 criteria.

11 And the Erickson case is a case that we cite -- that
12 they cite. And I think everybody would agree that lists the
13 criteria for that.

14 THE COURT: The Erickson case?

15 MR. PARKER: And those -- there are five criteria for
16 that. And the first is the plaintiff had access to his
17 channels of effective communication. There has been no
18 proof in the record that he had access to -- even though he
19 did have an interview with the Post and Courier ---

20 THE COURT: I understand your argument on limited. I
21 am familiar with Erickson.

22 MR. PARKER: Okay.

23 THE COURT: Let me ask you a question. Assuming he is
24 a limited public official what do you have to prove malice
25 or reckless disregard?

1 MR. PARKER: We have much evidence, Your Honor. In
2 fact out of the mouths of the -- Mr. Flesch and Mr.
3 Crabtree. Because in the documents that have been produced
4 in the case Mr. Flesch says call this guy out hard.

5 If you were -- number one, he is telling an untruth
6 about Mr. Owens because he is saying that he is a liar and
7 he is a serious fraud, which are untrue.

8 And not only does he want Mr. Crabtree to call him out
9 but call him out hard. If you are going to call somebody
10 out hard then that indicates you have in asking somebody to
11 do that it indicates an intent to harm, an intent to in fact
12 cause harm by these defamatory statements.

13 And by saying this guy is a serious fraud without any
14 evidence of it then that shows in itself a reckless
15 disregard and malice.

16 So what we have here is that Mr. Flesch did nothing to
17 verify whatsoever that in fact what he was saying was true.

18 THE COURT: Well, what about Crabtree?

19 MR. PARKER: And Crabtree did zero. Either one of them
20 to verify what they said was true.

21 Mr. Crabtree said the only thing he did was go to
22 Mr. -- to ADC Engineering's website and saw that he was
23 employed there.

24 But the fact that he was employed there does not mean
25 that he was lying about anything. And he wasn't lying about

1 anything. And he did not.

2 Now the other thing Mr. Earhart brought up -- brought
3 up was that in fact that Mr. Owens at some later date
4 after he received an evidence preservation letter said
5 that in fact he didn't know about ADC Engineering
6 involvement.

7 That is not true. He sent Mr. Crabtree an email in
8 which he sent him a copy of the plans which did not show ADC
9 Engineering on it.

10 But that does not mean that that statement and what he
11 said was not true. It simply means that what he was doing
12 was showing them that he did not know ADC Engineering was
13 involved. Which was absolute truth.

14 And he did -- in this case Mr. Owens did absolutely
15 nothing inappropriate. And he was defamed by these
16 defendants as we state.

17 And we have much evidence of a reckless disregard which
18 as I stand -- and certainly not at this stage of a summary
19 judgment. We have more -- I think frankly we have much
20 evidence to win this case because I think that Mr. Owens has
21 been defamed in a very very serious way publicly and held up
22 to public ridicule when all he did was exercise his
23 constitutional right to speak out against a project that he
24 thought was harmful to the City of Mount Pleasant.

25 THE COURT: Okay. Thank you.

1 Mr. Earhart.

2 MR. EARHART: Your Honor, I think you hit the nail
3 right on the head.

4 THE COURT: I'm sorry?

5 MR. EARHART: You hit the nail square on the head.

6 This is protected political speech. What Mr. Crabtree was
7 talking about was a matter of public interest. He was
8 contacted by a developer. And what he called him was, one,
9 a hypocrite.

10 Mr. Owens in his deposition testified that he had a
11 conflict of interest. Whether someone has a conflict of
12 interest or whether they are a hypocrite is protected
13 hyperbole.

14 The plaintiff acknowledges that there was a problem
15 working for a company that was designing the building, and
16 he said that he would have to back off from his public
17 persona.

18 So, Your Honor, I am going to go over the list of the
19 things that Mr. Owens did prior to the defamatory conduct,
20 prior to getting on Mt. Pleasant City Council.

21 And you may recollect from the Post and Courier that
22 three other Save Shem Creek people also got elected. And
23 Mr. Owens used this as his political power base.

24 So there is a case up in the District of South
25 Carolina. It is a doctor who wrote an article about

1 homosexuality. She called in to two radio talk show hosts
2 and wrote one letter to the state newspaper. And the
3 federal court held that was enough to make you a limited
4 purpose public figure.

5 Mr. Owens on the other hand was named in a Post and
6 Courier article in June of 2014 and was interviewed by the
7 City Paper. He wrote an article for the Moultrie News. He
8 sent an email to the Post and Courier. Plaintiff's letters
9 were published in the local media.

10 He also used social media to express his platforms. He
11 created a Facebook group, which has thousands of people,
12 called Save Shem Creek. He started a corporation know as
13 Save Shem Creek. He is on the board of Save Shem Creek. He
14 sent a petition to Town Council that had several thousand
15 signatures on it to stop this development.

16 But what is the most important thing, Your Honor, is
17 that the plaintiff injected himself. This wasn't a
18 situation where someone was singled out and called out. He
19 made himself the public figure.

20 What he was doing and why he was causing problems is
21 because he was in an argument with Linda Page, the mayor of
22 Mt. Pleasant. He is still in a feud with Linda Page
23 according to the Post and Courier. Okay. So he is going to
24 all these ---

25 THE COURT: You don't believe everything you read, do

1 you?

2 MR. EARHART: I believe about 40 percent of it, Your
3 Honor.

4 THE COURT: Pardon?

5 MR. EARHART: I believe 40 percent.

6 THE COURT: Oh, okay, 40 percent.

7 MR. EARHART: The paper never gets the good part right.

8 THE COURT: Okay.

9 MR. EARHART: But so he is going to these meetings. He
10 is speaking out publicly. He has made himself a self
11 professed Mr. Saving Shem Creek. That is his cause. That
12 is what he was doing.

13 The law is very very clear that he is a limited purpose
14 public figure. The factors that we are looking at are the
15 plaintiff had access to effective communication ---

16 THE COURT: Well, let's assume he is a limited public
17 figure for the purpose of my question; isn't it a factual
18 question as to the malice by the jury determination, or is
19 that for the court to decide?

20 MR. EARHART: The ---

21 THE COURT: I understand at some point in time some
22 court is going to have to decide whether he is limited
23 public official to go to the jury and the charge, etc.,
24 etc., etc.; but ---

25 MR. EARHART: If a ---

1 THE COURT: --- for my question assume he is.

2 MR. EARHART: Assume he is a public figure; yes, Your
3 Honor.

4 THE COURT: All right. And then from what Mr. Parker
5 has said, why doesn't that present a factual question for
6 the jury to determine whether there was actual malice or
7 reckless disregard?

8 MR. EARHART: Okay, because what the court established
9 in Fabri is that these types of cases if he is a limited
10 purpose public figure are not favored. The first amendment
11 protection says that unless there is clear and convincing
12 evidence at the summary judgment stage it should be
13 dismissed.

14 The fact that ---

15 THE COURT: Well ---

16 MR. EARHART: --- the plaintiff claims not to have
17 known something, the statement that he -- my co-counsel
18 points out whether the plaintiff has presented sufficient
19 evidence of actual malice is in the first instance a
20 questionable law for the court, citing Anderson versus
21 Augusta Chronicle, 585 S.E. 2nd 506, Court of Appeals
22 2003.

23 So what the -- and the plaintiff has a very difficult
24 if not impossible burden of prove if he is a limited purpose
25 public figure. What he has to prove is that the journalist

1 knew what he was saying was false when he said it.

2 If there is a source that supports that, even if that
3 source is biased, then that is still enough cover. So what
4 he had was information from the developer that Mr. Owens was
5 employed there.

6 You know, there is no dispute that he was. And he also
7 had evidence that ADC was designing the building. There is
8 no dispute that they were. ADC was terminated over this
9 exact issue. He attended meetings with his employer where
10 this was discussed.

11 But what the plaintiff thinks is actually irrelevant.
12 What he has to prove is that Mr. Crabtree knew what he was
13 saying was false where there was reckless disregard for the
14 truth.

15 A statement where he called him a liar, he had gone
16 onto Mr. Crabtree's website and said ADC had no involvement
17 in the Shem Creek project. He acknowledges that statement
18 was false.

19 What Mr. Parker is saying, that he didn't know he was
20 wrong when he said it. If you say something that is wrong
21 and someone calls you a liar, Your Honor, we submit that you
22 are lying. The fact that you claim to somehow be mistaken
23 about the truth is not a defense.

24 He went out there, made a false statement on Mr.
25 Crabtree's website; and Mr. Crabtree called him out. It is

1 protected political speech. He injected himself into the
2 controversy.

3 THE COURT: Okay. Thank you very much.

4 MR. HALIO: May it please the court. If you don't
5 mind, Judge, so you don't have to crook your neck.

6 THE COURT: I don't mind.

7 MR. HALIO: Andy Halio for Tyler Flesch who was the
8 developer for the project. All of this, as Your Honor
9 knows, goes back to New York Times versus Sullivan where
10 the Supreme Court stated a debate on public issues should
11 be uninhibited, robust, and wide-open, that a free
12 self-governing people must have access to all information
13 both laudatory and critical when choosing a course of public
14 policy.

15 And in that case the court established the standard of
16 constitutional actual malice that applies in defamation
17 cases involving public officials.

18 Now that standard was extended to public figures in
19 Gertz versus Robert Welch, Inc. In the first ruling that we
20 have asked the court to make in this case is that Mr. Owens
21 was a limited purpose public official.

22 Now Mr. Earhart gave you some of the factors that go
23 into some of the facts in this case that satisfy the factors
24 that have been set forth in the Erickson case establishing
25 someone as a limited purpose, public official -- public

1 figure.

2 And we filed a memo, and we set forth the five factors
3 in Erickson and set forth the facts that support the five
4 Erickson factors.

5 And I don't want to go back over what Mr. Earhart said,
6 but he did stop at number two. Number three says the
7 plaintiff sought to influence the resolution or outcome of
8 the controversy and in addition to founding Save Shem Creek
9 Corporation, creating a Facebook group and circulating a
10 petition, plaintiff contacted and met with the mayor and
11 council members on numerous occasions. He raised money for
12 the cause. He helped create a bumper sticker called Save
13 Shem Creek. He frequently attended council meetings. And
14 he gave interviews to the Moultrie News.

15 So there is no question about the fact that he sought
16 to influence the resolution or outcome of the controversy,
17 which is factor number three.

18 And number four, the controversy existed prior to the
19 publication of the defamatory statements. All of this
20 began -- plaintiff began advocating his cause back in March
21 or April 2014, and the statements at issue in this case were
22 made well after that in August and September 2014.

23 And the fifth factor is the plaintiff retained public
24 figure status at the time of the alleged defamation. And
25 the facts show that the plaintiff continued to advocate his

1 position throughout 2014 and beyond, eventually using it as
2 a springboard to his election to Town Council.

3 As plaintiff testified at Page 188 in his deposition,
4 he voluntarily injected himself into this controversy.

5 He was asked: And nobody forced you into this
6 controversy; you did so on your own accord willfully?

7 And his answer was: I did.

8 So we don't -- we believe that it is clear, Your Honor,
9 that the plaintiff is a limited purpose, public official for
10 the purpose of this case.

11 He is a person who assumed special prominence in the
12 resolution of a public question. This project has been and
13 continues to be a huge public issue in the Town of Mt.
14 Pleasant, and the plaintiff is the leader of the opposition
15 of the project.

16 He has attempted to influence government policy, and he
17 has used the media to advance his platform and eventually
18 used his position to win election on Town Council.

19 There is no doubt ---

20 THE COURT: Yeah, but I don't -- I don't think you can
21 use that on the limited public official that he subsequent
22 to all of this was elected to Town Council.

23 MR. HALIO: I would agree, but ---

24 THE COURT: I don't think you can do that. You have to
25 look at the time it occurred, okay.

1 MR. HALIO: Yes, sir.

2 THE COURT: Was he a limited public official at that
3 time. What happened subsequent to that is immaterial.

4 MR. HALIO: Right, so we will.---

5 THE COURT: Okay?

6 MR. HALIO: --- leave out the part about him being
7 elected to Town Council. But everything else ---

8 THE COURT: I understand.

9 MR. HALIO: --- said prior.

10 THE COURT: But everything else happened after ---

11 MR. HALIO: No, no, everything else happened before
12 that.

13 THE COURT: --- is immaterial as far as determination.

14 MR. HALIO: Yes. And everything I mentioned except for
15 the election occurred before ---

16 THE COURT: Okay.

17 MR. HALIO: Before the alleged defamatory statements
18 were made. And we -- we believe it is clear that he is a
19 limited -- he is the leader of Save Shem Creek.

20 He stuck himself in the middle of this controversy. He
21 used the media to move his platform forward. He went to
22 Town Council. He contacted Town Council. He attempted to
23 influence this matter of important public interest.

24 So assuming that the court agrees with us that the
25 plaintiff is in fact a limited public figure for the purpose

1 of this case, that standard is actual malice or
2 constitutional actual malice.

3 Now this is different than malice in a private versus
4 private party case. This standard tests the defendant's
5 good faith belief in the truth of his statement and the
6 burden is on the plaintiff to prove by a clear and
7 convincing evidence that the defendant made the statement
8 with a high degree of awareness of probable falsity or that
9 he entertained serious doubts as to the truth of this
10 publication.

11 The focus is on what the defendant -- whether the
12 defendant believed what he was saying is true. And the
13 appellate courts have indicated that it is this court's job
14 to determine if the evidence in the record could support a
15 reasonable jury finding that the plaintiff has shown actual
16 malice by clear and convincing evidence.

17 Now you have heard a lot about the George versus Fabri
18 case, Judge. In that case the Supreme Court took a hard
19 look at the defendant's deposition testimony to determine
20 what it was that she believed.

21 And what the court said was that: Actual malice is
22 governed by an objective standard which tests the
23 defendant's good faith belief in the truth of her
24 statements. There must be sufficient evidence to conclude
25 either that the defendant made the statements with a high

1 degree of awareness of probably falsity or that the
2 defendant in fact entertained serious doubts as to the truth
3 of his publication. The actual malice standard is premised
4 on our profound national commitment to the principle that
5 debate on public issues should be uninhibited, robust, and
6 wide-open and it may well include vehement, caustic and
7 sometimes unpleasantly sharp attacks on government and
8 public officials.

9 And the first thing the Supreme Court did was to take a
10 look at Ms. Fabri's deposition testimony, and they focused
11 on the fact that she said she believed what she was saying
12 was true.

13 Now in this case, Judge, the plaintiff has taken the
14 deposition of Mr. Flesch. And what we are dealing with here
15 is two allegations of defamation; one, that he called the
16 plaintiff a liar, and two, that he called him a serious
17 fraud.

18 The first statement in regard to being a liar was
19 examined at Page 18 -- it was explored at Page 18 of Mr.
20 Flesch's deposition. Mr. Flesch told counsel the parts
21 of -- the things that Mr. Owens was saying that he
22 considered to be untrue.

23 And counsel asked him: And you found that to be
24 offensive?

25 And the answer was: I didn't find it anything. I

1 believe it to be untrue.

2 Then he asked him again at Page 28: And so you said
3 you didn't take any offense to the opposition by Mr. Owens;
4 but you must have taken some offense to him to be calling
5 him a liar?

6 And his answer was: No, it is a statement of fact.

7 So clearly when he was saying that when he told Mr.
8 Crabtree that Mr. Owens was a liar it was something that he
9 believed. And that is something that the court, the Supreme
10 Court of South Carolina, latched onto in the George versus
11 Fabri case, what did the defendant believe.

12 Now as to the second statement that he calls him a
13 serious fraud, this was explored at Page 61 to 63 of Mr.
14 Flesch's deposition.

15 And the question was: You state that this guy is a
16 serious fraud in speaking about Mr. Owens; is that correct?

17 Answer: That it what it says, yes.

18 Question: What is he a fraud about?

19 Answer: The ongoing misstatements about my project
20 over the course of the last year to eighteen months.

21 Question: You still believe Mr. Owens is a serious
22 fraud?

23 Answer: I believe Mr. Owens made misstatements about
24 my project. I believe he fundraised off of those
25 statements. I believe he advocated for change in towns

1 ordin- -- town ordinance off of those statements. And I
2 believe he used it to run for Town Council. I do believe it
3 is disingenuous. Yes, sir.

4 Question: Disingenuous and serious fraud aren't the
5 same, are they?

6 Answer: That's -- I didn't say -- I didn't say that.

7 Question: That's what you're saying, right?

8 Answer: I do believe disingenuous and serious fraud
9 are synonymous. I do believe that.

10 Question: You do believe that; you still believe that
11 today?

12 Answer: Yes.

13 Then on Page 63: I said to Mr. Owens over the course
14 of a period of time has misspoken repeatedly about the
15 project. We have gone through those examples and it is an
16 ongoing force of misstatements. Mr. Owens took those
17 statements, fundraised off of those statements, gathered
18 support for opposition to my project off of those
19 statements, tried to change Town ordinance with the group he
20 has off of those statements. I believe that you take
21 misstatements and use them to get a goal, that is fraud.

22 So looking at Mr. Flesch's testimony it is clear that
23 he believes that what he said was true. And that is a very
24 important factor under George versus Fabri.

25 And that makes it, as Mr. Earhart said, it is a

1 difficult burden, Judge, for the plaintiff to bring in
2 evidence to show that Mr. Flesch didn't actually believe
3 what he was saying. But that is what -- the kind of
4 protection you get in a case involving the First Amendment
5 and a public figure.

6 And it is our position that the only evidence in the
7 record is that Mr. Flesch believed in his statements and as
8 such did not make them with constitutional actual malice.

9 And we would urge the court to grant - to, number one,
10 declare Mr. Owens to be a public figure for purpose of this
11 case, a limited public figure; and two, find that Mr.
12 Flesch's statements were not made with constitutional actual
13 malice.

14 Thank you, Your Honor. Unless you have any questions I
15 will sit down.

16 THE COURT: No, thank you.

17 Mr. Parker.

18 MR. PARKER: Your Honor, I think that counsel has
19 proven our case. Because Mr. Flesch testified that he was
20 telling the truth when he said that disingenuous and serious
21 fraud are the same thing. And clearly that is not the case.

22 If he had said that our client, Mr. Owens, was
23 disingenuous we wouldn't be here. He didn't say that. He
24 said he is an outright liar and in fact is a serious fraud.
25 And those things are not synonymous; so I would call Mr.

1 Flesch's testimony all of it into doubt.

2 If all you had to do was testify that I believed what I
3 said and you get a walk, everybody would walk because
4 everybody would say that. Just as Mr. Flesch said that.
5 But that is not the standard.

6 The evidence in this case shows that in fact he did not
7 think that he was calling Mr. Owens disingenuous. He called
8 him what he meant to, an outright liar and a serious fraud.

9 Our case -- our Supreme Court in Anderson versus
10 Augusta Chronicle decided a very similar case in which a guy
11 who was in the National Guard but had went off to in- -- not
12 investigate but to adjust claims for an insurance company
13 and the Augusta Chronicle called him a liar because he in
14 fact they claimed he said that he was out serving his
15 country in the National Guard and he was a -- running for
16 public office for the House I believe, and they said that he
17 was a liar by what he said.

18 He said I did not say that; I said I was in North
19 Carolina investigate -- not -- adjusting insurance claims.
20 And they totally misstated that, as is misstated here.

21 And our Court of Appeals and Supreme Court stated that
22 that stated a cause of action against the Augusta Chronicle,
23 both courts ruling that way.

24 That case is extremely similar to this case and we
25 believe would prevent any grant of summary judgment under

1 the holding in that case.

2 THE COURT: Okay.

3 Mr. Parker: Thank you.

4 THE COURT: Thank you very much.

5 Let me see. Ms. Cherry.

6 MR. O'KELLEY: Your Honor, just briefly, we -- Mr.
7 Halio and I submitted a memorandum in support of our motion
8 for partial summary judgment. I think the court probably
9 has it, but I have got another copy. And then the George
10 versus Fabri case, Your Honor. But just by way of -- oh,
11 sorry, Your Honor (gate slams).

12 THE COURT: Mr. Parker, have you got the Anderson case,
13 a copy of that?

14 MR. PARKER: Yes, it is in your notebook.

15 THE COURT: Okay. Thank you.

16 MR. O'KELLEY: Your Honor, by way of background -- and
17 Your Honor asked a very astute question early on. Your
18 Honor will remember that last November I was before you
19 arguing a motion to dismiss in a case entitled Save Shem
20 Creek versus the Town of Mt. Pleasant and ---

21 THE COURT: You were representing the contractor?

22 MR. O'KELLEY: I --- no, sir, I represented the
23 developer which was Shem ---

24 THE COURT: Which one?

25 MR. O'KELLEY: The developer, Shem Creek Development

1 Group.

2 THE COURT: Okay.

3 MR. O'KELLEY: And Tyler Flesch is actually a member of
4 that LLC.

5 THE COURT: Okay.

6 MR. O'KELLEY: And he is a member of the LLC I am here
7 about today which is Red Drum Capital Group, LLC. And Your
8 Honor will remember you dismissed that client from that case
9 on the day before a summary judgment hearing was to be heard
10 before Your Honor. In that case the Save Shem Creek crowd
11 decided to pitch their tents and go home.

12 And it is important I bring that up, Your Honor,
13 because Mr. Owens has been involved with the Save Shem Creek
14 crowd. And not to beat a dead horse, but he has certainly
15 been in the public eye. He has done Power Point
16 presentations to Town Council. He admitted in his
17 deposition he was the administrator and creator of a
18 Facebook page that has thousands of members.

19 He himself organized a petition through a website
20 called change.org getting thousands of people to sign a
21 petition against my client's project and my client -- excuse
22 me, my client's LLC's project.

23 Red Drum Capital Group, Your Honor, is in this case for
24 one reason only. They are listed as a signature on an
25 email. There has been no statements that anyone acting in

1 his capacity as Red Drum Capital Group, LLC, made any
2 statements about Mr. Owens.

3 There may be allegations that Mr. Flesch made them, Mr.
4 Crabtree made them; but no one has said Red Drum Capital
5 Group, LLC, was acting to somehow harm Mr. Owens.

6 But even if they were, Your Honor, Mr. Flesch was a
7 former member of that LLC. It was dissolved last May prior
8 to them being added to the -- excuse me, involved --
9 dissolved in December ---

10 THE COURT: Well, was he a member when all of this
11 occurred?

12 MR. O'KELLEY: He was, Your Honor. But that being
13 said, Your Honor, I think that the key is again what did Mr.
14 Flesch believe at the time he made the statements.

15 And if Your Honor looks at our memo, we set forth on
16 Mr. -- in Mr. Flesch's deposition he believed that Mr. Owens
17 was making false statements about the project.

18 In fact what he said is -- Mr. Parker actually asked
19 him can you tell me kind of what the false statements were.
20 And Mr. Flesch summarized the misstatements as follows, and
21 this is a quote from Pages 28 to 29 of his deposition:

22 We will start again from the top. Mr. Owens referring
23 to the project as a 55-foot parking garage. Mr. Owens
24 referring to my project being on Shem Creek. Mr. Owens
25 publicly stating and in writing that all guidance of

1 documents of the Town of Mt. Pleasant have been ignored
2 including the crab report. Mr. Owens referring to the rent
3 payment by the Town of Mt. Pleasant and the parking license
4 agreement as a subsidy.

5 This is on Page seven of our memo, Your Honor: We have
6 an entire list of things that Mr. Flesch as a member of Red
7 Drum Capital Group at the time believed Mr. Owens was saying
8 was false and misstatements and basically lies about the
9 project.

10 And, Your Honor, again, by clear and convincing
11 evidence the plaintiff has to show that somehow my client
12 didn't believe that or that my client was acting with
13 reckless disregard of what he believed. And at the time he
14 didn't.

15 And, yes, he sent an email to Mr. Crabtree and said you
16 need to call this guy out and call him out hard; but Mr.
17 Owens had injected himself into the debate.

18 Your Honor, not only was Mr. Owens contacting Town
19 Council; he was contacting the media. He was all over
20 social media. And we frankly don't think he can qualify to
21 get past this stage under Fabri or even under the Anderson
22 Chronicle case.

23 And Your Honor asked Mr. Earhart why is this before the
24 court. And it is before the court because the Anderson case
25 tells us that at this stage of the game it is for Your Honor

1 to decide whether he qualifies. And we don't think he does,
2 Your Honor.

3 THE COURT: Okay. Thank you very much.

4 MR. O'KELLEY: Yes, sir. Thank you.

5 THE COURT: Yes, ma'am.

6 MS. CHERRY: Your Honor, may it please the court.

7 THE COURT: Yes, ma'am.

8 MS. CHERRY: I will move to the podium, Your Honor.

9 THE COURT: Mr. Parker, you can address the last two
10 when she finishes if that is okay.

11 MR. PARKER: That will be fine, Your Honor.

12 THE COURT: Will that be all right with you?

13 MR. PARKER: That will be perfectly fine.

14 THE COURT: All right. Ms. Cherry, be glad to hear
15 you.

16 MS. CHERRY: Thank you, Your Honor. And if I may, Your
17 Honor, I have a memorandum that I put in a notebook that was
18 previously provided to the court. But that might make
19 things a little easier.

20 And, Your Honor, for a point of clarification, the
21 court asked earlier about the defamation issues. That ---

22 THE COURT: I'm sorry, what?

23 MS. CHERRY: The defamation cause of action has not
24 been asserted against my client, ADC Engineering, Your
25 Honor.

1 THE COURT: Okay.

2 MS. CHERRY: Mr. Owens' lawsuit against my client, ADC
3 Engineering, arises out of the plaintiff's termination of
4 employment from ADC on September 23rd of 2014 for misuse of
5 company resources on company time.

6 Your Honor, I think the court has gathered from the
7 arguments previously that Mr. Owens was employed by ADC
8 Engineering.

9 THE COURT: Was he a consultant or a full-time
10 employee?

11 MS. CHERRY: He was a full-time employee, Your Honor.

12 THE COURT: Okay. All right.

13 MS. CHERRY: He was a construction administrator at
14 ADC.

15 THE COURT: Okay.

16 MS. CHERRY: ADC Engineering is a full-service
17 engineering firm. They predominantly work on commercial
18 projects in all aspects of engineering; civil engineering,
19 structural engineering, envelope, the ceiling, sealants,
20 exterior walls, landscape architecture. They do all of it.

21 Mr. Owens had been employed with the company for
22 approximately ten years. When he was hired he was given an
23 employment agreement that outlined working hours 8:00 a.m.
24 to 5:30 p.m. Monday through Thursday, 8:00 a.m. to 12:00
25 p.m. on Fridays.

1 He was also given a copy of the employee handbook that
2 had a company technology policy. Your Honor, the employment
3 agreement is Exhibit Tab "B" in the notebook. And the
4 technology policy, Your Honor, is behind Tab "C" at Pages 11
5 and 12.

6 THE COURT: Okay.

7 MS. CHERRY: Your Honor, to summarize; the technology
8 policy says that the company's technology is for the purpose
9 of facilitating company business.

10 It does acknowledge that brief or incidental use of
11 company equipment for personal or non business purposes is
12 acceptable as long as it is not excessive or inappropriate
13 and does not result in expense or loss to the company.

14 THE COURT: Where is that in -- on Page 11 and 12 you
15 were reading -- talking about?

16 MS. CHERRY: Your Honor, it is in the middle of the
17 technology policy.

18 THE COURT: Okay.

19 MS. CHERRY: Where it says use for calls during
20 business hours should be brief and incidental.

21 THE COURT: Okay.

22 MS. CHERRY: And Page 11 references that employees can
23 use it as long as it is not excessive or inappropriate and
24 does not result in expense or loss to the company.

25 Note, Your Honor, Mr. Owens was provided with a

1 company-issued cell phone and he was provided with a laptop
2 computer at the office that had a docking station to it.

3 During the last year of Mr. Owens' employment in 2014
4 Mr. Owens became actively and intimately involved in
5 opposing the Shem Creek parking garage structure, Your
6 Honor.

7 And as the court has heard, ADC Engineering was in fact
8 the structural engineer on that project. ADC Engineering
9 had been hired by the architect Stubbs Muldrow. So Stubbs
10 Muldrow hired AD Engin- -- ADC Engineering to do the
11 structural engineering on the project.

12 Mr. Owens claims that he did not know that ADC was the
13 engineer on the project. For purposes of my argument, Your
14 Honor, I think that is of no moment. But I do highlight
15 that. Because Mr. Owens nevertheless as a courtesy to ADC
16 Engineering notifies ADC that he is opposing the parking
17 garage structure. And as Mr. Barnes noted earlier, ADC
18 Engineering said whatever you do on your personal time fine,
19 do not involve ADC Engineering; do not involve us.

20 Mr. Owens was extensively involved in opposing the
21 project. Your Honor has heard he created a Facebook page.
22 He was the administrator for that.

23 He indicated that he is not sure -- or he is sure that
24 he read posts on the Facebook page either at home or at the
25 office. He is not sure if he made copies pertaining to the

1 parking garage opposition at the office but he could have.

2 He did acknowledge in his deposition testimony, Your
3 Honor, however, to having sent numerous emails concerning
4 the Shem Creek parking garage either while he was at work,
5 worked on something from at work, and then sent it from his
6 work email address to his personal email address.

7 And, Your Honor, we have attached -- we referenced
8 these on Page 4, and our memorandum in Tabs "E" through "M"
9 are indicative of those emails that Mr. Owens admitted to
10 having sent.

11 Mr. Owens admitted to having assistance from another
12 ADC employee with a PowerPoint presentation that he was
13 putting together opposing the parking garage project.

14 And, Your Honor, there are enumerable text messages
15 that Mr. Owens sent from the cell phone that ADC Engineering
16 issued to him pertaining to this personal opposition to the
17 Shem Creek parking garage during working hours while he was
18 being paid by ADC Engineering.

19 Your Honor, we have attached as Tabs "N" and "O" to our
20 memorandum the answers to interrogatories and requests to
21 admit that showed the text messages; but we redacted the
22 telephone numbers for the individuals who were contacted out
23 of concern that it might fall under the restrictions from
24 filing private information. So I have unredacted copies to
25 hand up to the court. And all counsel of record has

1 unredacted copies that were produced as part of the
2 litigation.

3 THE COURT: I mean do I really need the unredacted
4 copies? It is immaterial to me who they were sent to. It
5 is a question of time of when -- when it was sent.

6 MS. CHERRY: I don't think -- the timing stamps are
7 on -- have not been redacted, Your Honor. I don't ---

8 THE COURT: It would be a timing issue regardless of
9 where they sent it to.

10 MS. CHERRY: I don't think that the court needs the
11 unredacted copies, but I have them in case ---

12 THE COURT: I will be glad to look at them, but I don't
13 know of any reason I would need unredacted copies. I don't
14 care whether he sent them to Obama or Hillary Clinton or
15 who.

16 MS. CHERRY: Okay. Thank you, Your Honor.

17 THE COURT: You know.

18 MS. CHERRY: Then I will let the redacted copies stand
19 that have been filed, Your Honor.

20 THE COURT: Okay.

21 MS. CHERRY: So, Your Honor, one other point that I do
22 want to note that Mr. Owens testified that had he known ADC
23 Engineering was the engineer on the project he would have
24 backed off because it would have presented a conflict of
25 interest for him opposing a project that his employer is

1 working on. And at the end of the day, Your Honor, I think
2 that is going to be a key point in the one cause of action
3 for wrongful termination that Mr. Owens has brought.

4 But to round out the facts, Your Honor, on September
5 16th the architecture firm Stubbs Muldrow and Tyler Flesch
6 requested a meeting with ADC Engineering. ADC Engineering
7 was told that they would be fired from the project if they
8 did not terminate Mr. Owens.

9 ADC Engineering was also threatened with a lawsuit.
10 ADC Engineering informed the architect and Mr. Flesch that
11 they were not going to terminate Mr. Owens. And in fact on
12 September 18th Stubbs Muldrow terminated ADC Engineering
13 from the project.

14 On September 18th Mr. Hamlin sent an evidence
15 preservation letter on behalf of the developer for the
16 project to ADC Engineering. On September 18th they sent one
17 to Mr. Owens as well.

18 Mr. Owens requested a meeting with two of the partners
19 at ADC Engineering. The firm is owned by four partners. In
20 that meeting when the partners are trying to gather more
21 information they ask Mr. Owens if he had involved ADC
22 Engineering, had he used ADC Engineering's emails, anything
23 along those lines. And at that point he admitted to having
24 used ADC's equipment.

25 On Friday, September 19th the four partners get

1 together to discuss the discovery that ADC Engineering
2 was -- had been brought into the mix and made the decision
3 that they were going to terminate Mr. Owens. Keeping in
4 mind they had already been terminated from the project.

5 They were going to meet with Mr. Owens on Monday the
6 23rd. He called in sick. So they met with him when he came
7 back to the office on the 24th and terminated his
8 employment.

9 And in response Mr. Owens sued ADC Engineering and has
10 claimed that he was wrongfully terminated in violation of
11 public policy. And the public policy that he relies on in
12 the State of South Carolina is a statute, Your Honor,
13 16-7-560. And, Your Honor, that statute says that it is
14 unlawful to discharge a citizen from employment because of
15 political opinions or the exercise of political rights and
16 privileges guaranteed by the U.S. or South Carolina
17 Constitution or laws.

18 That is the sum and substance of Mr. Owens's wrongful
19 termination claim, that his termination was in violation of
20 South Carolina public policy as set forth in that statute,
21 Your Honor.

22 Mr. Owens is wrong as a matter of law and a matter of
23 fact. He was terminated for misuse of company property on
24 company time when he was being paid by ADC Engineering, Your
25 Honor. He admits that.

1 I think Mr. Owens seems to suggest well incidental use
2 is permitted and do you have any examples of terminating
3 anybody else and you use your phone call to call your wife,
4 to call your spouse.

5 What he wholly ignores is his using our equipment and
6 we get fired. We get fired because our client who hired us
7 to work on the project knows that he is using our equipment
8 as an employee to oppose the project.

9 And, Your Honor, if you think about it ---

10 THE COURT: Do you think they knew he was using it, or
11 they just didn't like his position for the project?

12 MS. CHERRY: Your Honor ---

13 THE COURT: I am talking about your client.

14 MS. CHERRY: My client -- Mr. Owens had been given
15 permission to undertake those activities as a private
16 citizen.

17 THE COURT: Okay.

18 MS. CHERRY: And in fact, Your Honor, Mr. Owens even
19 admitted ADC Engineering had allowed him to oppose projects
20 where -- that involved ADC clients before. We cite it in
21 our summary judgment memo.

22 THE COURT: Okay.

23 MS. CHERRY: He opposed an issue with Charleston County
24 School District. Charleston County School District is a
25 client of ADC Engineering. There were no issues then.

1 So the issue is using our equipment while you are doing
2 this, number one. But number two, Your Honor, this is where
3 I get to the more important point is Mr. Owens suggests that
4 that's not the real reason, the real reason is because I was
5 opposing the parking garage project, that is the real reason
6 you terminated me and that is a wrongful termination and
7 violation of public policy.

8 That is not a violation of this statute, Your Honor.
9 Opposing a parking garage project is not an exercise of a
10 political right envisioned by the statute.

11 The statute doesn't define political right, political
12 opinion. And, Your Honor, I have behind Tab "T" ---

13 THE COURT: Behind tab which?

14 MS. CHERRY: Tab "T". Actually, Your Honor, that was
15 the ---

16 THE COURT: Okay.

17 MS. CHERRY: --- wrong tab. I have cited to you a
18 case. It is the Vanderhort (ph) case, Your Honor. Let me
19 give you the tab. My apologies. It is not "T". It is "W".

20 THE COURT: "W", okay.

21 MS. CHERRY: Yes, Your Honor.

22 THE COURT: That is a long ways from "T". All right.

23 MS. CHERRY: And, Your Honor ---

24 THE COURT: Are you talking about the Vanderhort case?

25 MS. CHERRY: Yes, Your Honor, Vanderhort versus John

1 Deere. In that particular case an employee had posted a
2 bumper sticker supporting the confederate flag evidencing
3 his opposition to the confederate flag coming down off of
4 the State House. And when he got terminated ---

5 THE COURT: This -- was this case, this federal case
6 involving the state statute or ---

7 MS. CHERRY: Yes, Your Honor.

8 THE COURT: It was? Okay.

9 MS. CHERRY: Same statute. Similar issue. Private
10 employers. We are not talking about a State actor. This is
11 not a public employment. Private employer.

12 THE COURT: Okay.

13 MS. CHERRY: So we have got a private employer who
14 terminates an employee. We have got a bumper sticker
15 displaying his opposition.

16 THE COURT: All right, how do they define public -- I
17 mean political action in this case?

18 MS. CHERRY: The court narrowed. Said the statute
19 should be construed very narrowly. And the court notes,
20 Your Honor -- and this is on Page 2. It is the second page
21 of the opinion on the right-hand column at the top, about
22 seven lines are down.

23 The court specifically says the statute does not define
24 what is meant by this phrase; meaning the, quote, political
25 opinion and expression; however, because 16-17-560 is a

1 criminal statute it must be construed narrowly.

2 Further, the available case law suggests the state
3 court would not construe the phrase to extend to all opinion
4 and expression which if a matter of public concern may be
5 protected under the First Amendment of the United States
6 Constitution or under Article 1, Section 2 of the
7 Constitution of the State of South Carolina.

8 Your Honor, I will note in the footnote the court
9 acknowledges the defendant is not a state actor, so the
10 plaintiff's claim isn't actionable generally under the First
11 Amendment.

12 The same thing here. ADC Engineering is a private
13 employer. The court goes on to say rather this court
14 concludes that the political opinion and expression
15 covered by Section 16-17-560 extends only to matters
16 directly related to the executive, legislative, and
17 administrative branches of government such as political
18 party affiliation, political campaign contributions, and the
19 right to vote.

20 And importantly, Your Honor, I think the court sums up
21 the very issue here in the next paragraph: The numerous
22 issues associated with the confederate flag are certainly
23 concerns that sometimes play a role in public debate and as
24 a consequence enter the political arena. An opinion or
25 expression of a belief about the Confederate flag, however,

1 is not, quote, political within the meaning of Section
2 16-17-560. To hold otherwise the court would extend the
3 application of the statute to an infinite number of social
4 issues that fall within the ambit of public debate and as a
5 consequence at times become issues in the political arena.

6 THE COURT: And the South Carolina Supreme Court
7 interpreted 16-17-560 in the same light as this district
8 court case?

9 MS. CHERRY: We have got no South Carolina Supreme
10 Court opinions, Your Honor.

11 THE COURT: Okay. So it is silent as to
12 interpretation?

13 MS. CHERRY: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. CHERRY: Other than would agree with narrow
16 interpretations of criminal statutes and narrow interpre- --

17 THE COURT: I understand. But I was just saying
18 16-17-560 the State has not stated their interpretation of
19 political expression or opinion?

20 MS. CHERRY: Yes, Your Honor.

21 THE COURT: Okay.

22 MS. CHERRY: So the South Carolina Supreme Court has
23 spoken in terms of the wrongful termination in violation of
24 public policy cause of action being construed narrowly and
25 that criminal statutes are construed narrowly.

1 THE COURT: Okay.

2 MS. CHERRY: But -- but the specifics on definition of
3 political, no, Your Honor.

4 So, Your Honor, notwithstanding that Mr. Owens
5 termination was because of his use of ADC's equipment and
6 time -- and, Your Honor, I do think that is important.

7 Even if there were protected speech, that is as a
8 personal endeavor. If he is doing things on company time,
9 using company equipment, being paid by the company, that is
10 ADC's time; and there is a distinction.

11 And there is no question that Mr. Owens admitted -- he
12 doesn't deny, that there were activities that he undertook in
13 opposition to this project while on company time being paid
14 by the company.

15 And, Your Honor, to the conflict of interest if you
16 think about it this way, Stubbs Muldrow was a client of ADC
17 Engineering. On ADC Engineering's computer system they have
18 got files and information regarding the very project that
19 another one of their employees who has the same access to
20 the computer system is opposing. That is a very simple
21 example of a conflict of interest.

22 And Mr. Owens indicated his inability to keep the two
23 separate. There is even evidence of him having gone to a
24 Town Council presentation meeting during the middle of the
25 workday, Your Honor.

1 It is wholly illogical to suggest that Mr. Owens could
2 not be terminated under this statute when he is opposing the
3 very project that his employer is working on.

4 Opposition to a parking garage structure, Your Honor,
5 is not the political opinion or expression envisioned by the
6 statute; nor should it be. I mean otherwise ADC Engineering
7 could never terminate Mr. Owens.

8 So, again, he was terminated because of his involvement
9 of ADC, Your Honor. And notwithstanding that, the statute
10 upon which he relies does not as a matter of law give rise
11 to a cause of action for wrongful termination.

12 And otherwise his employment was at will that could be
13 terminated for any reason or no reason, Your Honor. For
14 those reasons ADC Engineering respectfully requests summary
15 judgment be granted.

16 THE COURT: Thank you, Ms. Cherry.

17 Mr. Parker.

18 MR. PARKER: Thank you, Your Honor. To your question
19 as to whether or not any case in South Carolina deals with
20 the statute under these circumstances, the case of Moshtaghi
21 versus the Citadel is in your notebook. It specifically
22 deals with that.

23 THE COURT: I'm sorry, what?

24 MR. PARKER: Moshtaghi, M-O-S-H-T-A-G-H-I. And it is
25 in your notebook. And I am sure I have mispronounced that.

1 But it is a case against the Citadel in which that was an
2 issue.

3 And we of course have adopted the position in this
4 state that if you fire somebody for exercising their
5 constitutional rights that for something required by
6 law then you have a cause of action for a wrongful
7 termination ---

8 THE COURT: Assuming you are correct does that give him
9 the right to use company assets to do it?

10 MR. PARKER: The company gave him the right.

11 THE COURT: Well, the company said from what I
12 understand the company told him not to do it on his -- on
13 their time.

14 MR. PARKER: No, the company told him that he could do
15 the stuff at work ---

16 THE COURT: But not do it on their time is what I
17 understood.

18 MR. PARKER: No, that's not true.

19 THE COURT: Well, they said he could do it during
20 working hours?

21 MR. PARKER: It says that you can use the company's
22 equipment for personal matters while you are on the job as
23 long as you don't do it excessively.

24 Now the question is what is excessively. And
25 interestingly enough the only person who has ever done it

1 excessively at ADC was Mr. Owens. And all of the people
2 that we deposed admitted that they did the exact same thing.

3 So it is a question as to whether or not he did it
4 excessively or not. That will be a question for the jury as
5 to whether or not he exceeded that policy. But what they
6 have done is they have used that as a pretext to fire him
7 for his opposition because they ---

8 THE COURT: How can you reach that conclusion when ADC
9 just told the architect or whoever is wanting to fire him
10 they are not going to fire him. Prior to all of this ---

11 MR. PARKER: No.

12 THE COURT: --- but prior to the termination. That
13 just doesn't jive.

14 MR. PARKER: It does jive.

15 THE COURT: How?

16 MR. PARKER: This is how it jives. They decided ---

17 THE COURT: Did ADC get rehired?

18 MR. PARKER: I am not sure. They may have. They
19 were -- let me tell you what the record shows. The record
20 shows that in fact out of eight million dollars in business
21 that ADC does a year three million of it is with Stubbs
22 Muldrow.

23 They did not -- when they decided not to fire Mr.
24 Owens, Stubbs Muldrow had not terminated them. Then once
25 they terminated them and they saw the risk to their business

1 they terminated him and fired him. And that is what the
2 fact shows. That is what is in the record.

3 So the change of firing him or not firing him, they
4 recognized that he had a right to free speech and that he
5 was exercising it; and they had given him permission to do
6 it.

7 But then once they found out that this three million
8 dollar a year business was jeopardized they changed their
9 mind and fired him. That is what the record shows. That is
10 what the clear inference is from the record. If that in
11 fact and we prove that and the jury believes that ---

12 THE COURT: Well, I mean ---

13 MR. PARKER: --- then we'll be entitled to a verdict.

14 THE COURT: The two partners when they met with him
15 prior to meeting with the four partners when the decision
16 was made to terminate him they didn't know about the amount
17 of business that the architect gave to them?

18 MR. PARKER: They didn't know the architect was going
19 to terminate them.

20 THE COURT: I thought the architect terminated them
21 before.

22 MR. PARKER: No, the architect terminated them after
23 these first meetings.

24 THE COURT: Tell me, Ms. Cherry. I may have
25 misunderstood.

1 MS. CHERRY: Yes, Your Honor.

2 THE COURT: I thought ---

3 MS. CHERRY: So ---

4 THE COURT: --- they had already been terminated before
5 the four partners met.

6 MS. CHERRY: They had. They met with Stubb Muldrow on
7 9/16, so ---

8 MR. PARKER: They did not get terminated then.

9 MS. CHERRY: They got terminated on 9/18. And they got
10 the evidence preservation letter on 9/18.

11 THE COURT: Okay.

12 MS. CHERRY: And Mr. Owens got the evidence
13 preservation letter on 9/18.

14 THE COURT: Okay. All right.

15 MS. CHERRY: And Mr. Owens met with two of the partners
16 on 9/18.

17 THE COURT: And was terminated ...?

18 MS. CHERRY: The following ---

19 THE COURT: The following Monday ---

20 MS. CHERRY: --- Tuesday ---

21 THE COURT: --- or Tuesday.

22 MS. CHERRY: Mon- -- the following Tuesday.

23 THE COURT: Right.

24 MS. CHERRY: He was out that Monday.

25 MR. PARKER: On the second. But they -- they at the

1 time they didn't know that -- they met with him and told him
2 he was not terminated. And they weren't -- and they were
3 going to resist it. They said we are not going to fire him.
4 And they knew that they had given him permission to do this.

5 And then once they, the architects, decided that they
6 were going to terminate him and they saw the risk to their
7 business, they then terminated him.

8 And he told them at this meeting before all of this
9 about what he had done in using the computer and just like
10 everybody else did.

11 I asked a question: Who else has ever been terminated
12 for that?

13 Nobody.

14 Who else has ever been investigated for that?

15 Nobody.

16 Do y'all check on the use of the computers and cell
17 phones for personal business on anybody else?

18 They said no.

19 Clearly under these facts it is a jury question as to
20 whether or not they fired him for number one for speaking
21 out. And that's what he got fired for. And he got fired --
22 if they hadn't terminated him, the architect, he wouldn't
23 have gotten fired.

24 And not only did they fire him but they have filed a
25 counter claim, ADC, against Mr. Owens, for disloyalty when

1 he was doing what they gave him permission to do.

2 And we think that in this case clearly there is
3 evidence -- and the court speaking to the legal issue that
4 we just mentioned, the court contrary to what was argued,
5 stated we believe the Ludwich (ph) prohibition of
6 retaliatory discharge in violation of clear mandate of
7 public policy of this state extends at least to the
8 legislatively defined crimes against public policy. That is
9 the crimes against public policy, Section 16-17-560, is
10 entitled, Chapter 17, offenses against public policy. This
11 is exactly what they are talking about.

12 They went on to say it is undisputed the South Carolina
13 Constitution provides for freedom of speech and assembly and
14 the right to petition the government for redress of those
15 grievances. Those are the same protections guaranteed by
16 the United States Constitution. And that ---

17 THE COURT: Thank you very much.

18 As far as Mr. O'Kelley it is the same argument you made
19 before?

20 MR. PARKER: Right.

21 THE COURT: Anything you want to add as far as Mr.
22 O'Kelley's argument is concerned?

23 MR. PARKER: No, Your Honor, I don't think so. Let me
24 look just a second. That is all.

25 THE COURT: All right. Thank y'all very much. Give me

1 a chance to read some of this.

2 MR. HALIO: Your Honor ---

3 THE COURT: Appreciate it very much. Thank y'all.

4 MR. HALIO: I quoted from the deposition. Can I just
5 hand that up the few pages that I quoted so you will have it
6 in the record?

7 THE COURT: That will be fine.

8 MR. HALIO: Thank you, Judge.

9 MR. PARKER: Your Honor, one -- I wanted to make sure
10 for the record that the notebook we passed up will become
11 part of the record to you because it is all about ---

12 THE COURT: I will mark them all ---

13 MR. PARKER: --- deposition testimony.

14 THE COURT: --- court's exhibit if you want me to.

15 MR. PARKER: I would like for those to be part of that.

16 THE COURT: How about mark them as one, two, three,
17 four. Court's Exhibits one, two, three four)

18 (WHEREUPON, Court's Exhibit Number 1, Motions Binder, was
19 marked for identification.)

20 (WHEREUPON, Court's Exhibit Number 2, ADC Engineering
21 Memorandum in Support, was marked for identification.)

22 (WHEREUPON, Court's Exhibit Number 3, Court of Common Pleas
23 Documents, was marked for identification.)

24 (WHEREUPON, Court's Exhibit Number 4, George v Fabri
25 345 S. C. 440, was marked for identification.)

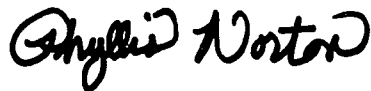
1 (WHEREUPON, Court's Exhibit Number 5, 5-page deposition, was
2 marked for identification.)
3 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on May 16, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



PHYLLIS NORTON, CVR

Date: September 9, 2016

Certified Transcript Provided For: William F. Barnes
Certification Reference #090916 Original

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No exhibits were introduced

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PROCEEDINGS

THE COURT: We've got Owens v Crabtree. I believe this is a motion to reconsider the ruling on dismissal of -- quite frankly I forget the name of the employer that I dismissed.

MR. PARKER: ADC Engineering.

THE COURT: What?

MS. CHERRY: ADC Engineering, Your Honor.

THE COURT: ADC Engineering?

MS. CHERRY: Yes, Your Honor.

THE COURT: Okay. He was an employee and I think the cause of action wasn't it unlawful termination?

MR. PARKER: Yes, Your Honor.

THE COURT: And I granted a summary judgment motion at the hearing and you filed a motion to reconsider and that's what we're here for this afternoon.

MR. PARKER: That's correct, Your Honor.

THE COURT: I'll be glad to hear you.

MR. PARKER: Thank you, Your Honor. This case Mr. Owens worked for ADC Engineering. Unbeknownst to Mr. Owens his employer ADC had a contract, not his section but some other section of the company, had a contract to do some work on the Shem Creek parking garage. They hadn't done anything but they had a contract. Mr. Owens, a citizen of Mount Pleasant opposed the Shem Creek

1 parking garage because of its location and height and
2 things that he and thousands of other Mount Pleasant
3 citizens didn't think it was appropriate at that
4 location. The matter was pending before the City Council
5 in Mount Pleasant and they all oppose this publically and
6 started a group called Saving Shem Creek and spoke out ,
7 publically. There was controversy, public controversy
8 over it ---

9 THE COURT: --- I remember all of that. Let me
10 sort of steer you where I came from and you can address
11 that. And I'll hear anything else you want to say. If I
12 remember correctly a year or so prior to this occurrence
13 he was involved in another situation where the company
14 said it's okay for you to express your opinions but don't
15 use our equipment and so forth when you're doing it and
16 during working hours.

17 MR. PARKER: That's not correct.

18 THE COURT: That was sometime prior to this issue
19 with the parking garage is that correct?

20 MR. PARKER: That's incorrect. They did say --
21 part of it is correct; one part is correct. They told
22 him it was okay for him to ---

23 THE COURT: --- because I'm going by memory and
24 it's been a while.

25 MR. PARKER: Sure. They said it was okay for him

1 to work on it. There was nothing said about during
2 working hours or anything else. In fact the policy of
3 the company was he could use their electronic equipment
4 for private use as long as it was ---

5 THE COURT: --- that was a separate issue. It
6 wasn't the parking garage and then the parking garage
7 issue came up.

8 MR. PARKER: Well, there was no issue about the
9 first thing. It was not an issue; it was just an event
10 that happened. There never became any issue about that.

11 THE COURT: And then there was a meeting with his
12 employers and I don't remember what transpired at that
13 meeting.

14 MR. PARKER: There was a meeting with his employer,
15 the developer a guy named Tyler Flesch that represented
16 the parking garage and they told him that -- Flesch told
17 Mr. Dillon that they had to fire him and if they didn't
18 fire him they were going to get sued ---

19 THE COURT: --- wasn't there a meeting before that
20 occurred with his employer?

21 MR. PARKER: There was. There was a meeting which
22 he informed them ---

23 THE COURT: --- there was a meeting where he sat
24 down and discussed his activities concerning the parking
25 garage.

1 MR. PARKER: He brought it to their attention
2 because he wanted them to know about it.

3 THE COURT: And at that time they didn't have any
4 objection to it.

5 MR. PARKER: They said they had no objection to it
6 as long as ---

7 THE COURT: --- and then ---

8 MR. PARKER: --- they weren't involved in it.

9 THE COURT: And then someone came up and I don't
10 remember who and said hey, he's doing this or doing that;
11 we want you to fire him.

12 MR. PARKER: The guy that was the developer of the
13 Shem Creek parking garage did that and told him that they
14 were going to be terminated from the job if they didn't
15 fire him.

16 THE COURT: Okay. And then after that he was
17 terminated?

18 MR. PARKER: After that he was terminated.

19 THE COURT: Okay. So my question to you is this
20 under the as commonly referred to as the right to work
21 law in this state; they should call it right to fire law
22 but they don't, okay.

23 MR. PARKER: I agree with that.

24 THE COURT: But everybody comments it's a misnomer
25 where they said right to work; its right to fire. So

1 what? They fired him. What's wrong with that? Why is
2 that wrongful termination? That's my question to you.

3 MR. PARKER: Because they fired him for speaking
4 out on a political issue that is protected under the
5 first amendment to the Constitution.

6 THE COURT: Well but it was part of his company
7 that he was hurting. Why doesn't the company have the
8 right to fire him? They weren't inhibiting his free
9 speech. They were saying hey, your activity is harming
10 this company financially. Why don't they have the right
11 to fire because of that in this state? I'm not trying to
12 sit here and say it's a good deal and the way it should
13 be but that's the way it is in South Carolina.

14 MR. PARKER: For two reasons. Number one they told
15 him he could do this and two because we have a statute
16 that is 16-17-560 that prohibits ---

17 THE COURT: --- 16 what?

18 MR. PARKER: 17-560.

19 THE COURT: Okay.

20 MR. PARKER: That prohibits an employer from
21 terminating someone for exercising their right to free
22 speech, which he was doing. Not only his right to free
23 speech but did it with their consent. Unfortunately, he
24 did not know ADC Engineering had anything to do with this
25 project. But he found out after the fact. Initially the

1 evidence is that they said they were not going to ---

2 THE COURT: --- I thought he knew about it.

3 MR. PARKER: No. He did not know ADC Engineering
4 had anything to do with this until it became a public
5 controversy about that, but he didn't know it. He found
6 out about it shortly before he was terminated. Some of
7 the other people in the company knew that but he didn't
8 know it. He spoke out on this because of exercising his
9 right to free speech.

10 THE COURT: What do you have to say that the
11 company fired him for free speech other than he was
12 involved in this political movement of I think Save Shem
13 Creek or something about Shem Creek.

14 MR. PARKER: For purposes of summary judgment and
15 viewing the facts most favorable to him they told him to
16 do this, that he could do it and gave him permission to
17 do it. He acted on that and then they came to him and
18 first said they were not going to terminate him.

19 And then after the pressure came on them and they
20 received a letter from the architect saying they were
21 being terminated from the job, that ADC Engineering was,
22 and after they had been threatened that they were going
23 to be terminated unless they fired him then they turned
24 around their decision. They had initially decided they
25 wouldn't fire him. Then after the pressure came on them

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1 they decided they would fire him and they did fire him.

2 THE COURT: At that time had they already been
3 terminated from the parking garage job?

4 MR. PARKER: They had received a letter and I don't
5 know to date whether they were terminated or not. They
6 probably got the job back would be my guess because they
7 had -- the evidence in the record is that the
8 architectural firm was one of their top five -- one fifth
9 of their business came from this architectural firm. So
10 when this architectural firm put the pressure on him then
11 they fired him.

12 THE COURT: Well, did they keep the job or did they
13 not keep it?

14 MR. PARKER: I don't know the answer to that. Ms.
15 Cherry, of course, can tell us that. Again, I'm -- it's
16 not in the record ---

17 THE COURT: --- that's probably immaterial as far
18 as ---

19 MR. PARKER: --- well, it's not in the record ---

20 THE COURT: --- it's irrelevant as far as what I've
21 got to decide.

22 MR. PARKER: I agree with that. But in any event
23 the evidence is he was an exemplary employee. No
24 problems; nothing on his record other than good things
25 about him and doing a good job.

1 THE COURT: Who actually threatened them; the
2 architectural firm?

3 MR. PARKER: Well, no this guy that was the
4 developer Tyler Flesch ---

5 THE COURT: --- so the developer?

6 MR. PARKER: I'm sure he threatened them and the
7 architects ---

8 THE COURT: --- but the developer didn't sign the
9 contract -- he was a sub for a general contractor right?

10 MR. PARKER: No. The developer was the one who
11 developed the building that had the contract with the
12 architect.

13 THE COURT: And the architect hired ADC ---

14 MR. PARKER: --- ADC, right. And then when they
15 got the pressure put on them then he was terminated. So
16 under those facts even though they say and I promise you
17 in no case did they ever say that the reason they fired
18 him was for exercising your rights to free speech in none
19 of these cases but ---

20 THE COURT: --- what was he actually saying as far
21 as exercising free speech?

22 MR. PARKER: He was saying that the Shem Creek
23 parking garage project was inappropriate at that location
24 on Shem Creek because this has historically been related
25 to the restaurants and the park and those kinds of things

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1 and a high rise parking garage there was inappropriate.
2 It was a matter of public controversy and became much one
3 and they in the order it's stated that because this
4 wasn't a legislative or judicial branch that there is not
5 a cause of action. But this was -- or administrative --
6 this wasn't before the City Council ---

7 THE COURT: --- if I remember that group actually
8 filed a lawsuit.

9 MR. PARKER: Of what?

10 THE COURT: Against the city and the developer.

11 THE COURT: No. The developer Shem Creek -- the
12 developer didn't. Of course there was lawsuit brought by
13 citizens against ---

14 THE COURT: --- that's what I said the Shem Creek
15 group sued the city and the contractor or whoever.

16 MR. PARKER: I don't know who all was a party ---

17 THE COURT: --- I think they ultimately dropped --
18 the lawsuit was ultimately dropped.

19 MR. PARKER: There was a lawsuit that was brought
20 by a group of citizens to try to stop the development.

21 THE COURT: And it was ultimately withdrawn.

22 MR. PARKER: It was as I understand it. I had
23 nothing to do with that and have very little knowledge of
24 it. But a couple of things in the order that I ---

25 THE COURT: --- you've answered my question. Go

1 ahead and tell me what you think is important.

2 MR. PARKER: I think in the order it states that
3 section 16-17-560 does not provide a private cause of
4 action but it does the court in Culler v Blue Ridge said
5 it does. And so that's incorrect. And the order
6 additionally states that any activity by which opposing
7 Shem Creek parking garage project does not amount to
8 protected political speech under this statute, which we
9 vehemently disagree with because clearly this is all what
10 this was was political speech ---

11 THE COURT: --- what case does say you have a
12 private cause of action?

13 MR. PARKER: The case of Culler v Blue Ridge and I
14 brought a copy of it, Your Honor.

15 THE COURT: Would you mind handing it up?

16 MR. PARKER: I'll pass up to you several cases.

17 [Whereupon, Mr. Parker provides documents to the
18 court]

19 THE COURT: Thank you, sir. Lewart v Minnich of
20 Carolina [phonetic], Culler Blue Ridge, and Vanderhorst v
21 John Deere [phonetic].

22 MR. PARKER: That's correct.

23 THE COURT: And Conley v Wometco [phonetic]?

24 MR. PARKER: Yes, sir.

25 THE COURT: Okay.

1 MR. PARKER: And so we believe that the order
2 heavily relies on Vanderhorst v John Deere Consumer
3 Products [phonetic], a U.S. District court case. But
4 some of the holdings in it are contrary to the Culler
5 [phonetic] case and other statements by the court on this
6 issue. So we believe at this stage of summary judgment
7 that we should be allowed to go forward. Now one of the
8 holdings that you upheld was that we didn't prove that
9 the speech was why they fired him. But you never can
10 prove that why they did it was because it violated
11 someone's rights because they're going to say that ---

12 THE COURT: --- well, you're going to have to use
13 circumstantial evidence.

14 MR. PARKER: That's correct.

15 THE COURT: Or your conclusion otherwise ---

16 MR. PARKER: --- you can't ---

17 THE COURT: --- very seldom you're going to get
18 direct evidence.

19 MR. PARKER: Right. And the indirect evidence and
20 the evidence that we put in the case the Conley v Wometco
21 [phonetic] which is a similar case and they held yes they
22 said they didn't fire him for exercising his rights but
23 he was an exemplary employee, hadn't done anything wrong,
24 hadn't been written up; all the same things we have here.
25 And they said that under those circumstances the reason

1 given by the employer was pretextual and that you did --
2 there was sufficient -- there was a verdict for the
3 plaintiff in that case and the court affirmed the verdict
4 on appeal on that basis. But the reason given by the
5 employer at the time was pretextual and that's what we
6 think we have here. They fired Mr. Owens because it got
7 too hot for them and they fired him because of what he
8 said about what he said about opposing this garage. And
9 unfortunately for Mr. Owens as he testified if he had
10 known ADC Engineering was involved in it he wouldn't have
11 been involved in it.

12 THE COURT: Enlighten me a little bit because I
13 don't remember. When did Mr. Owens finally find out that
14 his employer was involved in the design -- what were they
15 doing for the parking garage?

16 MR. PARKER: They had -- to my knowledge they had
17 done nothing yet because the parking garage hasn't been
18 started ---

19 THE COURT: --- what were they hired to do?

20 MR. PARKER: They were going to be the civil
21 engineers and structural engineers.

22 THE COURT: Okay. So they were going to be the
23 structural engineering and do the structural engineering
24 portion?

25 MR. PARKER: That's correct.

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1 THE COURT: All right. And when did he find out
2 that the architectural firm that had hired them was the
3 structural engineer as a sub?

4 MR. PARKER: He found out that they were involved
5 with the Shem Creek building after the developer wrote to
6 his employer about it. His involvement became a
7 controversy because it got on a radio show called the
8 Bryan Crabtree show. He -- I can't remember the exact
9 precise time but this was essentially a few days before
10 he was terminated he found about it.

11 THE COURT: He found out that his employer had the
12 contract ---

13 MR. PARKER: --- he really found out when they got
14 a letter, an evidence preservation letter telling him and
15 his employer to preserve all the evidence concerning his
16 involvement with Shem Creek.

17 THE COURT: Okay.

18 MR. PARKER: But overall the evidence here and in
19 the order we believe the facts are construed most
20 favorably toward ADC and the facts should be construed
21 most favorably to Mr. Owens because the facts show that
22 he in fact didn't know about this. And he was doing
23 something that is a political issue and he was
24 terminated, he was speaking out and he was terminated
25 because he did speak out. And under those facts if the

1 jury believes those facts there is certainly evidence to
2 support it. There is no cause for summary judgment. We
3 believe that -- I don't ever think the court makes an
4 error but in this instance it may have overlooked
5 something so. Thank you.

6 THE COURT: Thank you. Ms. Cherry?

7 MS. CHERRY: Yes, Your Honor. May it please the
8 court?

9 THE COURT: Yes, ma'am.

10 MS. CHERRY: Molly Cherry here on behalf of ADC
11 Engineering, Your Honor. And to address the issues
12 raised by Mr. Owens with regard to the motion to alter or
13 amend Your Honor the court hit the nail on the head with
14 the issue at play. You have an employee who was opposing
15 the very project that his employer was working on.

16 THE COURT: Well, my question to you if, in fact,
17 Mr. Owens did not know his employer was involved in that
18 project until after he got involved with the Shem Creek
19 group, I don't know what they call themselves. I know
20 there is an organization Save Shem Creek or whatever it
21 is; I'm not sure what the name is, involved in that
22 effort to stop the building of the parking garage and all
23 those statements were made prior to his knowledge that
24 his employer had been hired to do the engineering work
25 how does that affect your argument or does it?

James C. Owens v Bryan Crabtree, et al
Motion to Alter/Amend Judgment
July 19, 2016

1 MS. CHERRY: Your Honor, it does not.

2 THE COURT: Why not?

3 MS. CHERRY: It's of no moment because the cause of
4 action, Your Honor is called wrongful termination in
5 violation of a clear mandate of public policy.

6 THE COURT: Of what?

7 MS. CHERRY: Of public policy; clear mandate of
8 public policy. So if I may, Your Honor, to that point
9 address the comment that Mr. Parker made that the
10 criminal statute section 16-17-560 the court order states
11 that the criminal statute does not provide for a private
12 cause of action. And, Your Honor, that is correct. That
13 is a criminal statute and it does not afford a plaintiff
14 a private cause of action.

15 THE COURT: Okay. Go ahead.

16 MS. CHERRY: What our Supreme ---

17 THE COURT: --- you still haven't answered my
18 question about the knowledge of Mr. Owens.

19 MS. CHERRY: And Your Honor the reason ---

20 THE COURT: --- if it -- you haven't answered that
21 question yet.

22 MS. CHERRY: The reason why his knowledge doesn't
23 matter is because for him to prove his claim he has to
24 show that his termination violated his right to political
25 speech; political speech. So it doesn't matter what he

1 knew or didn't know. And so Your Honor here's why this
2 is important ---

3 THE COURT: --- well, it does. I think it does.

4 MS. CHERRY: Sure. Your Honor the reality ---

5 THE COURT: --- I mean it does from a standpoint of
6 I guess the circumstantial evidence on why you fired him.

7 MS. CHERRY: But Your Honor, the ---

8 THE COURT: --- if in fact -- I was under the
9 impression prior to that he was told sometime prior and I
10 don't remember the timeframe that he could do this.

11 MS. CHERRY: Yes, Your Honor.

12 THE COURT: Okay. So he was told he could do it
13 and he goes out and does it and all of a sudden he finds
14 out the project he is fighting politically is his
15 company. And then he gets fired. Why doesn't that make
16 an effect as far as how you're going to view the
17 circumstantial evidence most favorable to the plaintiff?

18 MS. CHERRY: Sure. Your Honor, if I may make two
19 points ---

20 THE COURT: --- yes, ma'am ---

21 MS. CHERRY: --- to answer the knowledge question.

22 THE COURT: Right.

23 MS. CHERRY: The record is clear that Mr. Owens
24 testified that he told his employer as a courtesy that he
25 says he didn't know that his employer was involved but he

1 told him employer as a courtesy and that his employer
2 said fine as long as you don't involve ADC. That is Mr.
3 Owens testimony. And Your Honor, after Mr. Owens ---

4 THE COURT: --- what does that mean involve ADC?

5 MS. CHERRY: And Your Honor this is the issue ---

6 THE COURT: --- does that mean using their
7 equipment or getting involved at all on a project that
8 they have been hired to work on?

9 MS. CHERRY: And Your Honor the statement is
10 general and there is a policy prohibiting him from using
11 the company's equipment. And there is no question he
12 does not deny that he used the company email, that he
13 used the company issued phone, that he sent texts, that
14 he worked on emails during the workplace, that he engaged
15 another ADC engineering employee to help him with a
16 PowerPoint presentation. So he doesn't deny that in his
17 testimony. But Your Honor if I may the issue is a little
18 simpler than that.

19 THE COURT: Okay. Simplify it for me.

20 MS. CHERRY: I will. The cause of action and our
21 South Carolina Supreme Court issued a decision in January
22 of 2015 that Your Honor cited in the summary judgment
23 memo and that I will hand up to the court. It's the
24 Taghivand v Rite Aid case. Your Honor, that was a
25 certified question to our South Carolina Supreme Court on

1 this cause of action wrongful termination in violation of
2 public policy. And Justice Hearn specifically recognizes
3 that the public policy of this state is at will
4 employment and that our courts exercise restraint when
5 undertaking the inquiry of what constitutes public
6 policy. Judge Gergel in federal court certified the
7 question to the South Carolina Supreme Court.

8 The South Carolina Supreme Court has made that
9 pronouncement -- the one case anywhere in South Carolina
10 it's a federal case but the district court in South
11 Carolina was faced with addressing clear mandated public
12 policy; what do we do with this cause of action. And
13 that case that Your Honor cited in your order, the
14 Vanderhorst [phonetic] case specifically addresses
15 statute 16-17-560.

16 And I think that's important, Your Honor because
17 what the court says in that case the employee was
18 exercising speech related to the confederate flag. And
19 the court said that is not political speech covered by
20 the statute; that does not give rise to a cause of action
21 for wrongful termination in violation of public policy.
22 What the court specifically said the numerous issues
23 associated with the confederate flag are certainly
24 concerns that sometimes play a role in the public debate
25 and as a consequence enter the political arena. And

1 that's what Mr. Parker says. He says that this speech by
2 Mr. Owens has to be political speech covered by the
3 statute because speaking out in opposition to a project
4 regardless of who is working on it speaking out in
5 opposition to a project that involves considerable public
6 interest must be political speech governed by this
7 statute.

8 And the Vanderhorst [phonetic] court specifically
9 said no, it does not. Our South Carolina Supreme Court
10 in January of 2015 said our public policy is employment
11 at will. Courts in our state should exercise restraint
12 in expanding what constitutes a clear mandate of public
13 policy. And Your Honor it is a question of law for the
14 court. The Barron v Labor Finders which is a 2011 South
15 Carolina Supreme Court case says what constitutes public
16 policy is a question of law for the court.

17 So Your Honor there is no factual question. The
18 premise, the initial inquiry is whether there is even a
19 clear mandate of public policy. That is a question of
20 law for the court. And Your Honor the Barron v Labor
21 Finders citation is 713 S.E.2d 634 at page 637. And that
22 is an opinion from the South Carolina Supreme Court. So
23 the first instance the court has to decide regardless of
24 what Mr. Owens knew taking the premise that Mr. Owens
25 disagreeing with a parking garage that is being built on

1 Shem Creek that is a matter of public interest whether
2 that qualifies as political speech -- and the court in
3 Vanderhorst [phonetic] says section 16-7-560 is a
4 criminal statute that must be construed narrowly. We've
5 got recognition from the federal courts in South
6 Carolina, we have recognition most recently from the
7 South Carolina Supreme Court in the Taghivand case in
8 January of 2015 that the statutes are construed narrowly,
9 that this exception to the at-will employment doctrine is
10 construed narrowly.

11 And the only case that has endeavored anywhere that
12 I've been able to find to define political speech
13 specifically says that commenting on an issue of public
14 concern isn't the political speech covered under the
15 statute. And it specifically talks about what is covered
16 and says it extends only to matters directly related to
17 executive, legislative, and administrative branches of
18 government such as political party affiliation, political
19 campaign contributions, and the right to vote.

20 And the Vanderhorst [phonetic] case cites to the
21 Color [phonetic] case from 1992 that Mr. Owens counsel
22 handed up. Your Honor, the summary judgment order cites
23 to the Vanderhorst [phonetic] case, it cites to the
24 Taghivand case, it recognizes the narrow construction for
25 this criminal statute, which the statute itself does not

1 give rise to a private cause of action. And so Your
2 Honor ADC's position is the court was correct in granting
3 summary judgment. It is a question of law for the court
4 to decide in the first instance, there isn't even a
5 factual issue at play. And that Mr. Owens hasn't shown
6 the standard for a motion to alter or amend that the
7 court misunderstood, failed to fully consider, or failed
8 to rule on an issue.

9 And I understand that that's for purposes of appeal.
10 Our appellate courts want to make sure that the court
11 understood the arguments and fully considered and ruled
12 on them and Your Honor has and Your Honor has done so
13 appropriately. For those reasons Your Honor the decision
14 is a question of law for the court, the grant of summary
15 judgment was correct, and there is no basis to alter or
16 amend the court's judgment.

17 THE COURT: So your basic position is that in his
18 involvement, whatever that involvement may be; I can't
19 quote exactly what the involvement was but his
20 involvement was the Shem Creek Group that was opposing
21 the parking garage was not political other than public
22 policy?

23 MS. CHERRY: Yes, Your Honor.

24 THE COURT: The definition was political?

25 MS. CHERRY: Yes. And Your Honor the reality is if

1 the statute is expanded as broadly as Mr. Owens would
2 have it be expanded think about the consequences. How
3 would anybody be able to terminate ---

4 THE COURT: --- does 16-17-560 give any type of
5 definition of political speech?

6 MS. CHERRY: No. But Your Honor it is limited to
7 political. I believe counsel ---

8 THE COURT: --- do they give any definition of what
9 is political and what's not?

10 MS. CHERRY: No, Your Honor. That's what our court
11 in -- well the federal court or district court did in
12 Vanderhorst [phonetic] to give those definitions. And
13 that's also our court in the Taghivand case that I handed
14 up to the court from the South Carolina Supreme Court in
15 January of last year it is not addressing this statute
16 specifically but it is talking about the narrow
17 circumstances.

18 The only case, Your Honor, that endeavors to define
19 what is covered under 16-17-560 is the Vanderhorst
20 [phonetic] case. And I understand that Mr. Owens takes
21 the position it's not controlling on this court but it
22 certainly is persuasive and the court in that case cites
23 extensively to our South Carolina state court cases in
24 making the decision. And I think the practical
25 implications, Your Honor if it is expanded that broadly

1 you are undermining you, Your Honor, I mean being the
2 court, is undermining the at will employment doctrine.
3 This is a classic case of the employer is in business and
4 can only pay employees when the employer makes money.
5 And if I might add the only evidence in the record is
6 that my client lost the contract and they haven't gotten
7 it back.

8 THE COURT: Well, I see -- I think that was a
9 legitimate reason to terminate him, okay.

10 MS. CHERRY: I do too, it's not ---

11 THE COURT: --- and I don't have any question about
12 that. The question I have in my mind is there sufficient
13 evidence to show that possibly they did fire him for free
14 speech; for exercising his right to free speech, okay at
15 a summary judgment level. That's where we're talking
16 about; is there a scintilla. Can somebody reach a
17 logical conclusion with a scintilla of evidence that they
18 fired him for that reason, okay.

19 Now I know your argument is its not political speech
20 and you're trying to close that in legal language and not
21 factual language. You may be right and may not be; I
22 don't know. But that's an issue and quite frankly I
23 thought that Mr. Owens was aware that the company was
24 involved in the Shem Creek business.

25 MS. CHERRY: He was prior to his termination. The

1 question is ---

2 THE COURT: --- I under prior to termination ---

3 MS. CHERRY: --- how much prior to he was ---

4 THE COURT: --- but when he was involved in
5 opposing the parking garage he had no knowledge of that.
6 The question in my mind does that change the conclusion
7 you could reach from the circumstantial evidence that the
8 plaintiff has taking the evidence most favorable to the
9 non-moving party okay. That's my standard I have to go
10 by and quite frankly the Supreme Court says a scintilla.
11 I'm still trying to figure out what is a scintilla. The
12 rules say a material factual dispute. There is a lot of
13 difference I assume between scintilla and material fact.

14 MS. CHERRY: Sure. But Your Honor to get to that
15 point you have to first decide whether the speech at
16 issue -- it's not free speech but whether it's political
17 speech so before you ---

18 THE COURT: --- political speech, free speech;
19 whatever, however you want to call it okay.

20 MS. CHERRY: Sure. But before you get to ---

21 THE COURT: --- I mean the political speech is
22 there for the first amendment right for free speech.
23 That's the reason they passed the statute. Whether it's
24 criminal or civil it's still persuasive.

25 MS. CHERRY: Sure. But Your Honor the point being

1 before you even get to the reasons why he was fired or
2 wasn't fired you necessarily first have to make the
3 decision as a matter of law -- even assuming that let's
4 assume that was the reason he was terminated; let's
5 assume that.

6 THE COURT: Okay.

7 MS. CHERRY: The legal issue before the court at
8 the motion stage and that the court addressed in the
9 order the court's order says that is not political speech
10 governed by the statute. And if it's not you don't have
11 a cause of action for wrongful termination. And it's
12 appropriate to be addressed at the motion stage, Your
13 Honor. In fact the certified question to the Supreme
14 Court was on a motion to dismiss.

15 THE COURT: Okay. Thank you very much. I
16 appreciate it. All right Mr. Parker, talk to me about
17 political speech.

18 MR. PARKER: I will do so, Your Honor. I don't
19 know anything much more political that has happened in
20 Mount Pleasant than this issue ---

21 THE COURT: --- than what?

22 MR. PARKER: Much more that has happened more
23 political. If in fact the federal ---

24 THE COURT: --- where do you draw the line?

25 MR. PARKER: I think ---

1 THE COURT: --- I mean where do you draw the line?

2 MR. PARKER: The court in Vanderhorst [phonetic]
3 said that if there is an issue involving anything that is
4 dealt with government, administratively, executively, or
5 judicially that you look to that. And I think that is
6 mighty narrow but that's what they said. But here we've
7 got that. This matter was before the Mount Pleasant City
8 Council. It was debated before them. Mr. Owens appeared
9 before them a number of times on this issue opposing it.
10 There was much -- I don't know according I guess their
11 argument is it has to be before the legislature rather
12 than City Council but I don't believe it's that narrow.
13 The statute certainly doesn't say that.

14 She says that the statute doesn't apply. But the
15 Supreme Court has said the direct opposite in Color
16 [phonetic]. It says chapter 17 of title 16 finds crimes
17 against public policy. It makes it a crime against
18 public policy to fire any person in this state because of
19 their political beliefs. And we believe that the Ludwig
20 Prohibition of Retaliatory discharge in violation of the
21 clear mandate of public policy of this state extensively
22 to the legislatively define crimes against public policy.

23 THE COURT: We're sort of playing with words. I
24 agree it doesn't create a private cause of action.
25 However, I do think it gives persuasive argument on what

1 is political speech and what is prohibited and what the
2 statute protects. And I think you can carry that over to
3 your political speech argument for public policy.

4 MR. PARKER: Now the court specifically says that
5 it does create a cause of action. They went on to say
6 Dustin Color [phonetic] was discharged because he refused
7 to contribute to a political action. Then he would have
8 a cause of action under section 16-17-560.

9 THE COURT: What's the cause of action?

10 MR. PARKER: The cause of action is for violation
11 of a section ---

12 THE COURT: --- I understand but I thought the
13 penalty was criminal under the statute ---

14 MR. PARKER: --- it is but it's also ---

15 THE COURT: --- you cause of action for a crime and
16 not a civil cause of action is my point I'm trying to
17 make ---

18 MR. PARKER: --- you have a civil ---

19 THE COURT: --- and I don't think the case
20 addresses -- makes a distinction between civil and
21 criminal does it?

22 MR. PARKER: It doesn't. But it says that he's got
23 a cause of action for wrongful discharge under Ludwig for
24 violation of that statute.

25 THE COURT: I'll agree with you but I think that's

1 a criminal cause of action to be brought by the state.
2 Maybe I'm wrong.

3 MR. PARKER: That's not what the court holds.

4 THE COURT: I understand but that's not real clear
5 in the case; let's put it that way okay.

6 MR. PARKER: It says that the trial judge however
7 found that Color [phonetic] was not terminated for
8 refusing to contribute to ---

9 THE COURT: --- that's beside the point whether it
10 gives you a private action or not I don't think it is
11 important for my purposes, okay. I do think it is very
12 persuasive. They have protected political speech by the
13 statute whether it's criminal or civil is immaterial for
14 what my purpose is, okay. My purpose is to determine
15 whether this is political speech and do you have enough
16 sufficient evidence to survive summary judgment on that
17 issue.

18 MR. PARKER: This is the hottest political issue
19 that has been in Mount Pleasant and the city of
20 Charleston over the last good while. And it involved
21 literally thousands of people involved in it ---

22 THE COURT: --- the newspaper is always stirring up
23 some political issue, okay. If it's not an issue they
24 will create one and make everybody believe it's the
25 hottest thing on the planet okay.

1 MR. PARKER: Well, this was one and it was very
2 political and it involved the City Council and political
3 people trying to get them to go one way or the other. I
4 can't imagine how this could not be a political issue.
5 Truthfully what kind of issue is it if it wasn't
6 political if you're trying to get the City Council to
7 change what they've done or to go one way or the other?
8 That is the very definition of political. This was
9 clearly a political issue.

10 And clearly that was the purpose of what Saving Shem
11 Creek was trying to put political pressure on the City
12 Council to not allow this project. Of course the other
13 side was putting political pressure trying to get them to
14 allow it. I mean this is the hallmark of our political
15 process and how it works and these people were involved
16 in it in this case. And so truthfully the case, the
17 Supreme Court case has absolutely nothing to do that I
18 can find with this case and the issue before the court
19 but I'll leave that to the court. But I'd be happy to
20 answer any questions you may have of me.

21 THE COURT: I appreciate it. I appreciate y'all
22 coming back and making your arguments. I normally don't
23 give oral arguments on motions to reconsider but I had
24 some questions in my mind about this when I did it and
25 I've still got some questions. So I appreciate y'alls

1 argument and your preparation and your presentations.
2 Give me a chance to revisit and read some of these cases
3 and I'll see if I think I made an error and if I do I'll
4 correct it. If I don't I won't okay?

5 MR. PARKER: Thank you, Your Honor.

6 THE COURT: Thank you so very much.

7 MS. CHERRY: Thank you, Your Honor.

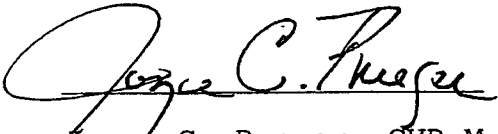
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 19th day of July, 2016.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

September 10, 2016


Joyce C. Rueger, CVR-M
Court Reporter

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 JAMES C. OWENS,

4 Plaintiff,

5 vs.

CASE NO. 2014-CP-10

6 BRYAN CRABTREE, KIRKMAN BROADCASTING, INC., DBA
7 WQSC RADIO, AND ADC ENGINEERING, INCORPORATED,

8 Defendants.

9 DEPOSITION OF: CHRISTOPHER COOK

10 DATE: May 21, 2015

11 TIME: 10:00 a.m.

12 LOCATION: NEXSEN PRUET
13 205 King Street
Suite 400
Charleston, SC

14 TAKEN BY: Counsel for the Plaintiff

15 REPORTED BY: CHRISTINE EDDY, RPR

16
17 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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(INDEX AT REAR OF TRANSCRIPT)

CHRISTOPHER COOK

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PARKER:

Q. Please state your full name.

A. Christopher Brian Cook.

Q. What is your address?

A. 120 Hidden Fawn Circle, Goose Creek,
South Carolina.

Q. Where did you grow up?

A. Since high school, I have been in
Charleston. I'm an Air Force brat.

Q. Are your parents from South Carolina?

A. They have retired here, yes.

Q. But originally?

A. Originally, my mother is from Savannah.
My father's from Boston.

Q. And you -- went to school where?

A. High school at Stall in North
Charleston and then to the Citadel.

Q. You and your partners, y'all are
Citadel people. Did y'all know each other at the
Citadel?

A. Since one of them was my brother, I
knew him pretty well.

1 Q. So I guess y'all --

2 A. Three of us went to the same high
3 school, so we have known each other quite a while.

4 Q. Pretty tight group, I guess you would
5 say. Tell me about Jim Owens and your relationship
6 with him.

7 A. Jim is a good hard worker; somebody
8 that's been with ADC almost ten years. Yeah.

9 Q. An excellent employee?

10 A. He was a very good employee.

11 Q. I saw some of the evaluations that you
12 signed and Mr. Jones signed, and they seemed to say
13 he was an excellent employee and did what was asked
14 of him.

15 A. Up till -- that's correct. All of the
16 employee evaluations reflected very well on Jim.

17 Q. Until the complaint that was made
18 against him by Tyler Flesch, was there anything
19 negative about Jim that you knew?

20 A. Nothing noteworthy. You know, I
21 wouldn't say Jim was perfect. But, no, I can't
22 think of anything negative.

23 Q. Who among us are?

24 A. That's right.

25 Q. But a good guy; good, hard working, did

1 what you asked him and was a good employee?

2 A. Yes, sir.

3 Q. And what is the first indication that
4 you had that something was going wrong and was awry
5 about the Shem Creek Project?

6 MS. CHERRY: Objection to the form.
7 You can answer if you can.

8 BY MR. PARKER:

9 Q. Go ahead.

10 A. Well, the first knowledge about the
11 Shem Creek Project and Jim's opposition to it was
12 probably -- I don't remember the exact date, but it
13 was probably about three months earlier than when
14 we got the evidence preservation letters, probably
15 about three months before that.

16 Q. And he came to you and told you what?

17 MS. CHERRY: Objection to the form.

18 BY MR. PARKER:

19 Q. If he did.

20 A. Actually, we had gotten word from
21 clients and others that there was opposition that
22 had been voiced. Jim came and spoke to me
23 specifically about that.

24 Q. And what did he ask you, and what did
25 you tell him?

1 A. Jim came and indicated that he
2 was -- he had been involved in the opposition group
3 and that he was opposed to the project and that his
4 brother -- specifically, he said that his brother
5 was very involved and at times maybe being a little
6 extreme in some of his opinions. And Jim indicated
7 that he was going to remove himself from any
8 leadership or voice in that group.

9 Q. Now, when did he tell you that?

10 A. I don't have the exact date, but it was
11 about three months prior to the evidence
12 preservation letter.

13 Q. Did you make any notes of that?

14 A. I did not at that time.

15 Q. What was the reason he came to tell you
16 that?

17 A. I don't know.

18 Q. And who was present?

19 A. It was just Jim and myself.

20 Q. And did you tell him that he could stay
21 as long as he didn't mention ADC?

22 A. I told him, as long as it did not
23 impact ADC in any or that -- didn't mention ADC,
24 but just didn't impact ADC, his personal opinions,
25 he could express those opinions.

1 Q. Did you know at that point in time that ⁷
2 ADC had any involvement with the project?

3 A. Did I know?

4 Q. Yes.

5 A. Yes, I did.

6 Q. Did you tell Jim that?

7 A. I don't remember that we specifically
8 talked about our involvement in the project..

9 Q. What did you know about your
10 involvement in the project at that time?

11 A. I knew that we were doing the
12 structural engineering on the project.

13 Q. How did you learn that?

14 A. Just in conversations with my partner
15 and Mark Dillon.

16 Q. Did you learn whether or not you had
17 undertaken any work at that point in time when you
18 talked with Jim the first time about it?

19 A. I'm sorry. I don't understand the
20 question.

21 Q. When you first talked with Jim about
22 his involvement with Save Shem Creek, did -- do you
23 know whether or not there had been any work done by
24 ADC on the -- project?

25 A. I don't know definitively. I think

1 some work had been done at that time, but I'm not
2 certain.

3 Q. Did you discuss whether or not any work
4 had been done with anybody?

5 A. With anybody?

6 Q. At that point in time, with Mark Dillon
7 or any partners about what they were doing, or do
8 you recall?

9 A. I just know that they were working on
10 the project. I don't know to what extent they had
11 completed any work. I'm not certain.

12 Q. How often do the partners meet to
13 discuss business? Do y'all have regular meetings?

14 A. Generally weekly.

15 Q. Do you keep minutes at those meetings?

16 A. Not always. Sometimes we do, sometimes
17 we don't. Some of those are informal.

18 Q. Sure. And some of them are more
19 formal?

20 A. Right.

21 Q. And have you reviewed the meeting
22 minutes to see whether there is any discussion
23 about Jim's involvement with Saving Shem Creek in
24 the minutes?

25 A. I have not.

1 Q. After y'all had that discussion about
2 the project, tell me about what your involvement
3 was with Jim knowing about what he was doing and
4 talking to him about whether he was doing anything
5 incorrect or anything along those lines?

6 MS. CHERRY: Object to the form.

7 BY MR. PARKER:

8 Q. You can go ahead.

9 A. We didn't discuss the project anymore,
10 so my interaction with him was purely work related
11 on other projects.

12 Q. What did you know about what was going
13 on with his opposition to the Shem Creek Project?

14 A. Honestly, I really did not follow
15 specifically what Jim's involvement was. I mean, I
16 knew there was opposition in general in the
17 newspaper and some things like that, but I really
18 didn't follow or communicate with Jim about his
19 opposition.

20 Q. And so as far as you knew until you
21 received the evidence preservation letter, did you
22 know anything was awry?

23 A. No.

24 MS. CHERRY: Object on the form.
25

1 BY MR. PARKER:

2 Q. Was there any discussion with anybody,
3 with any of your partners, well, we have a problem
4 with this Saving Shem Creek effort by Jim prior to
5 the evidence preservation letter?

6 A. I think, actually, the timing, I think
7 we had some discussion maybe a couple of days
8 leading up to, because there were some phone calls,
9 and there was some email that had come in to Mark
10 Dillon, and so we did have some discussion about
11 those things.

12 Q. And this is from the gentleman named
13 Tyler Flesch?

14 A. I think that's correct.

15 Q. Do you know him?

16 A. I personally do not.

17 Q. Do you know who Red Drum Capital is?

18 A. I do not.

19 Q. No knowledge of him whatsoever?

20 A. I do not.

21 Q. How about Tex Smalls, do you know who
22 he is?

23 A. I know who he is.

24 Q. And who is he?

25 A. Developers, done development work in

1 the Charleston area.

2 Q. What do you know he has done?

3 A. I think -- I don't know any specific
4 projects.

5 Q. How about Oakland?

6 A. Oakland and Mount Pleasant, right.

7 Q. Anything else?

8 A. Not really. Not specifically off the
9 top of my head. I know I have seen his name
10 associated with quite a few projects.

11 Q. And who is ADC's biggest client?

12 A. Who is our biggest client?

13 Q. Largest client?

14 A. Our largest client is LS3P.

15 Q. Who are they?

16 A. A local architecture firm.

17 Q. And how about Stubbs, Muldrow and
18 Herin?

19 A. They are one of our good clients. I
20 don't know where -- yeah.

21 Q. Mark said yesterday they would be in
22 the top two.

23 A. That's possible. I don't know
24 specifically. I have not looked at the numbers in
25 quite a while. But they are a good repeat client

1 for us.

2 Q. How much would y'all do a year with the
3 top architectural firm that you just mentioned?

4 A. How much would we do with LS3P?

5 Q. Yes.

6 A. You know, again, I don't recollect the
7 numbers off the top of my head.

8 Q. Approximately.

9 A. Approximately \$3 million.

10 Q. A year?

11 A. Uh-huh.

12 Q. And do you know where below that that
13 Stubbs, Muldrow and Herin would come?

14 A. I really don't. I don't know the
15 number.

16 Q. But would they be a substantial client?

17 A. Oh, sure.

18 Q. How many projects are you working with
19 them at present?

20 A. Me, specifically? I can't really speak
21 for the company.

22 Q. I'm talking about the firm.

23 A. The firm, I don't know the number. But
24 I would estimate a number between probably 6 and
25 10.

1 Q. And they would all be in the Charleston
2 area?

3 A. Most likely.

4 Q. After the events of September,
5 October 14th was the next project that y'all were
6 involved in with Stubbs, Muldrow and Herin?

7 A. When was the next newly-started
8 project?

9 Q. Newly-awarded project after they
10 terminated the -- your involvement with the Shem
11 Creek Project.

12 A. Honestly, I can't recollect right now
13 if there is something that has started since then.
14 And, again, there could be in one of the other
15 departments -- structurally, there could be
16 something.

17 But on my work, I can't think of
18 anything new that has started since. There are
19 some ongoing projects, but I can't think of
20 anything new.

21 Q. Now, if you will, tell me some of the
22 structure of ADC, how your business is structured
23 as far as the different divisions.

24 A. There are three departments. There is
25 a structural department. There is -- that is

1 headed by Mark Dillon, one of the partners. There
2 is a site services group headed by myself and Greg
3 Jones. And there is a building envelope group that
4 is headed by Rick Cook.

5 Q. In so far as how those departments are
6 coordinated, are they coordinated in some way?

7 A. They are, to some degree, as necessary.
8 But there are a lot of projects where one
9 discipline will be working on those, so there is
10 not any coordination need.

11 Q. In the site survey section or
12 department that you mentioned, who all was in that
13 department other than yourself?

14 A. In the site services department?

15 Q. Correct.

16 A. It's 20-something people.

17 Q. You don't need to name them, but sort
18 of give me an idea of those positions and the type
19 of people you employed.

20 A. Well, we have a couple of senior
21 project managers; we probably have about four
22 project managers; a lot of civil engineers; several
23 landscape architects; several administrators.

24 Q. What was Jim's position?

25 A. Jim was a construction administrator.

1 Q. And how many construction
2 administrators did you have at that time?

3 A. Three.

4 Q. When did you first learn of some
5 problem with Jim's involvement with Save Shem
6 Creek? When did you first become aware that there
7 was some issue about it?

8 MS. CHERRY: Object to the form.

9 THE WITNESS: As I said earlier, it was
10 about three months prior to the evidence
11 preservation letter.

12 BY MR. PARKER:

13 Q. How about after that? When did you
14 learn that there was some further issue involved
15 with Mr. Owens?

16 A. I'm not sure I understand the question.

17 Q. Did you know anything -- I asked you,
18 and you said you heard nothing about it after that
19 and everything was going along smoothly, I guess,
20 until some event happened to trigger what
21 eventually did happen, I assume. And what was
22 that? What was the triggering event?

23 A. Well, I think, again, we referred to it
24 earlier; it was a phone call and email from the
25 developer.

1 Q. And that's Tyler Flesch?

2 A. Correct.

3 Q. And who did he make the phone call to?

4 A. I'm not certain. I think it was to
5 Mark Dillon.

6 Q. Did you talk with Tyler Flesch?

7 A. I did not.

8 Q. But you learned that he had called?

9 A. Yes.

10 Q. And after that call, what do you know
11 about what happened?

12 A. Relative to what?

13 Q. About Jim Owens -- following that.

14 A. Well, that is -- I'm not sure, maybe,
15 exactly what you are asking.

16 Q. After that, what is the next event that
17 happened? You got a call that was complaining that
18 Jim Owens was involved with Saving Shem Creek,
19 right?

20 A. Right. I don't know if it was the next
21 event. I know that we informally got together,
22 several of us. I don't know that the four partners
23 initially got together, but we got together and
24 discussed the issue.

25 Q. And what did you decide?

1 A. We decided at that time not to take any
2 action.

3 Q. You decided that -- that Jim was --
4 what he did was -- even though I'm sure y'all
5 didn't like the fact that it was occurring, was
6 that y'all were okay with it as far as Jim was
7 concerned and weren't going to take any action
8 against him because of what Mr. Flesch had told
9 you; is that correct?

10 A. It is correct. Yeah. We decided not
11 to take any action. That's correct.

12 Q. And at some point in time -- how long
13 did that -- did you not take any action for how
14 many days?

15 A. You know, I don't remember exactly. I
16 would say several days.

17 Q. And what changed your mind about taking
18 action? What caused y'all to change your position?

19 A. The receipt of the evidence
20 preservation letter.

21 Q. And why would that cause you to change
22 your position?

23 A. Well, it was when we received that
24 letter that we did what we were required to do by
25 that letter and started accumulating all of the

1 electronic data. That is when we found out that
2 there was a significant amount of work and time
3 being spent on the office or office equipment with
4 that opposition group.

5 Q. Had you learned that Jim was doing some
6 things at the office previous to that?

7 A. No, I did not.

8 Q. You didn't know that he had used office
9 equipment?

10 A. No.

11 Q. And the first time you learned it was
12 after the evidence preservation letter?

13 A. Correct.

14 Q. After you received the evidence
15 preservation letter, when were the documents
16 preserved, what date?

17 A. I don't remember the exact date.

18 Q. Approximately how long did it take?

19 A. I would say approximately a couple of
20 days. If I remember vaguely that Michael was not
21 in -- Michael is our IT person, and I don't think
22 that he was in the day that we received the letter.

23 Q. And you think it would have probably
24 been a couple of days later that he accumulated the
25 evidence?

1 A. It's possible. One or two days later.
2 It was as soon as he got back to the office.

3 Q. Well, if the preservation letter was
4 received on September the 18th, it would have been
5 the 20th or after?

6 MS. CHERRY: Object to the form.

7 THE WITNESS: I'm not certain. It
8 could have been the 19th. I'm not certain. It was
9 sometime after that.

10 BY MR. PARKER:

11 Q. Well, on the 18th, you were present,
12 were you not, when Mr. Owens explained that he had
13 done certain things at work?

14 A. That is correct, yes.

15 Q. In fact, he told you that he had done
16 various things at work and had used the computer
17 and done some other things?

18 A. You know, I don't remember exactly. I
19 know he indicated that he had done some things on
20 the computers or maybe on his phone or something
21 like that.

22 Q. And did he tell you he had done nothing
23 wrong?

24 A. I don't remember that exactly.

25 Q. And did he tell you that he did not

1 realize that ADC was a client?

2 A. You know, I don't remember specifically
3 that either right now. I don't remember if he
4 specifically talked about whether or not he
5 was -- had indicated that we were -- that they were
6 a client of ours.

7 (All exhibits referenced in this
8 deposition were previously marked in a deposition
9 previously taken at an earlier date.)

10 BY MR. PARKER:

11 Q. I'm going to hand you Defendant's
12 Exhibit 20.

13 A. Uh-huh.

14 Q. And are those your handwritten notes?

15 A. Yes.

16 Q. Did you try to be accurate with those?

17 A. Did I try to be accurate with these?

18 Q. Correct.

19 A. I did.

20 Q. And in those notes, Jim talks with you
21 about your conversation with him earlier?

22 A. Correct.

23 Q. And what did he say about it?

24 A. I will refer to -- he remembered that I
25 asked him to keep ADC out of any discussions or

1 anything that would reflect on ADC.

2 (DFT. EXH. 20, handwritten notes of
3 Christopher Cook, was identified for the record.)

4 BY MR. PARKER:

5 Q. And he said he had done that, correct?

6 A. Well, he said that was his goal.

7 Q. How did he involve ADC in any way?

8 A. By using our equipment, doing it on our
9 time.

10 Q. Well, he -- and he told you that on the
11 18th that he had used the equipment, correct?

12 A. If I could -- could I see those again?

13 Q. You can look down at about the fourth
14 paragraph there on the front page.

15 A. These are -- the front pages are not my
16 notes. Mine are the handwritten notes.

17 Q. Who made the front page notes?

18 A. I think these are Greg Jones's notes.

19 Q. Okay. Well, do you have any -- look at
20 the paragraph that he -- just about four paragraphs
21 down, I think, where he talks about Jim telling you
22 what he had done about utilizing the equipment.

23 A. Says, stated that he had utilized ADC
24 time and equipment.

25 Q. So on the 18th, y'all knew that?

1 A. Yes.

2 Q. You didn't have to wait for Michael
3 Graham to get the records and search the computers
4 to do that, did you?

5 MS. CHERRY: Object to the form.

6 THE WITNESS: You're asking if we had
7 to wait?

8 BY MR. PARKER:

9 Q. Well, you had the information he had
10 given to you, correct?

11 A. He had indicated that was the case. I
12 don't know that we knew that definitively at that
13 point.

14 Q. You have no reason to doubt what -- I
15 mean, people don't say things that may be against
16 their interest unless they are normally true, do
17 they?

18 MS. CHERRY: Object to the form.

19 THE WITNESS: I don't know.

20 BY MR. PARKER:

21 Q. But you had no reason to doubt what he
22 said about what he said he'd used, did you, about
23 the equipment and time at work and what he talked
24 about? What did he tell you about what he'd used,
25 what he had done?

1 A. He did not go into much detail about
2 it.

3 Q. Did y'all ask him about it?

4 A. We did not ask him. We did not ask for
5 details, and he did not offer any.

6 Q. And you were satisfied with his
7 explanation for what he had done?

8 MS. CHERRY: Object to the form.

9 THE WITNESS: I'm not sure I understand
10 the question.

11 BY MR. PARKER:

12 Q. What don't you understand?

13 A. If you are asking, was I satisfied?
14 Was I happy with it? No.

15 Q. I don't think they mean the same thing.

16 MS. CHERRY: Well --

17 BY MR. PARKER:

18 Q. Were you satisfied and happy?
19 Semantically, do you understand the meaning of
20 satisfied?

21 MS. CHERRY: Object to the form. The
22 witness is permitted to ask for clarification of
23 your question, and he did.

24 MR. PARKER: Appreciate it.
25

1 BY MR. PARKER:

2 Q. But I'm sure that you do know what
3 satisfied means.

4 MS. CHERRY: Same objection.

5 BY MR. PARKER:

6 Q. Or do you?

7 A. I do understand what the word means.

8 Q. And that's what I asked. Were you and
9 Mr. Jones satisfied with Mr. Owens' explanation of
10 what he had done about that?

11 MS. CHERRY: Object to the form.

12 THE WITNESS: I will say that Jim asked
13 to come meet with us, so I don't know that I had
14 something that needed to be satisfied. I was not
15 looking for that meeting. Jim asked to come meet
16 with us.

17 BY MR. PARKER:

18 Q. And that was an appropriate thing for
19 him to do, wasn't it?

20 MS. CHERRY: Object to the form.

21 THE WITNESS: I guess so.

22 BY MR. PARKER:

23 Q. And after y'all met on the 18th, you
24 and Mr. Jones, did you meet that same day with your
25 other partners, your brother and Mr. Dillon?

1 A. No, it didn't.

2 Q. And you didn't consider the fact that
3 you were going to lose this business of your second
4 biggest client?

5 MS. CHERRY: Object to the form.

6 THE WITNESS: Did it -- did we consider
7 it? Yes. Was it our reason? No.

8 BY MR. PARKER:

9 Q. It was a consideration?

10 A. Sure. It was considered.

11 Q. Y'all discussed it?

12 A. Yes.

13 Q. You said, what's going to be the impact
14 of losing our second biggest client to the firm?

15 A. No. I don't think we had that loss of
16 a -- I don't know that we discussed specifically
17 losing a client forever.

18 Q. Did y'all analyze the results of losing
19 a client?

20 A. No.

21 Q. Did y'all look back to see how much
22 business y'all had with them at that time?

23 A. No.

24 Q. Were you scared that you would lose
25 existing business?

1 A. Yes.

2 Q. Did you have discussions about that?

3 A. Yes, we did.

4 Q. And what did y'all conclude about that?

5 A. We concluded that we were not going to
6 make a decision based on the financial impacts.

7 Q. What were you going to make it on?

8 A. Well, when we made the decision not to
9 terminate Jim, we knew that this was -- that there
10 were -- a lot of the impacts that you referred to
11 were already possible and likely. It wasn't until
12 we found out that Jim had done a lot of this on
13 company time and company computers.

14 Q. I'm going to hand you what has been
15 marked as Exhibits 6, 7, 8, 9, 11, 12, and 13. Is
16 this the work you are contending that Jim did on
17 ADC's computers?

18 MR. EARLY: Johnny, is this from your
19 deposition yesterday?

20 MR. PARKER: Yes. Defendant's
21 Exhibits.

22 MR. EARLY: Defendant's Exhibits.
23 Okay.

24 THE WITNESS: I would say, in looking
25 at this, that these are some of the items. I don't

1 remember specifically looking at each one of
2 everything that was discovered.

3 BY MR. PARKER:

4 Q. Do you remember any documents other
5 than what we have presented there?

6 A. Not that I can think of right now. I
7 don't know that these are all of them. Is that
8 what you are asking?

9 Q. That is what I'm asking.

10 A. I'm not certain that these are all of
11 them.

12 Q. But you don't remember any of those?

13 A. Not that I can think of right now, no.

14 Q. And your contention is the fact that
15 you discovered these few documents changed your
16 mind about whether or not to terminate Mr. Owens?

17 MS. CHERRY: Object to the form.

18 THE WITNESS: I'm sorry. Repeat that
19 again.

20 BY MR. PARKER:

21 Q. You are saying that, because you saw
22 these documents and whatever else you discovered at
23 that point in time, that caused y'all to change
24 your position about the termination of Mr. Owens?

25 A. Yes.

1 Q. Now what about -- if you would, you've
2 got the documents before you, tell me what about
3 those caused you to change?

4 A. I don't have to look at those
5 specifically. In general, what we found was that
6 there was work being done at our office on the
7 computers, and it was being transmitted from our
8 computers to -- at the point that we realized a
9 significant amount of time was being spent while at
10 work working on this issue.

11 Q. Tell me how much time.

12 A. I don't know the amount of time.

13 Q. Well, you said significant, so let's
14 put some hours on it. How many hours?

15 A. I wouldn't even guess. I would not put
16 a number on the number of hours.

17 Q. What is significant? What is a
18 significant amount of hours at work that would
19 cause ADC to terminate someone that they did
20 something outside of a job?

21 A. Well, I don't know that we have
22 required -- that our employee manual puts a
23 definition of a number on what that is.

24 Q. Well, don't you have to have some
25 guidelines to go by about what is significant?

1 MS. CHERRY: Object to the form.

2 THE WITNESS: You know, I would say we
3 used our judgment.

4 BY MR. PARKER:

5 Q. And what I'm asking you, in your
6 judgment, how much time is too much time?

7 A. Again, I -- I don't know that I could
8 put a definitive number on it. Each situation is
9 different, I think it depends on the circumstances
10 and the situation.

11 Q. We know the circumstances here; how
12 much is too much time in this case?

13 A. I know that we -- found roughly 20
14 emails that indicated that there was data being
15 worked on at the office and sent back to a personal
16 email. So I would say if that was at least an
17 hour, I would say that's at least 20 hours.

18 Q. Over what period of time?

19 A. I don't recollect over what period of
20 time.

21 Q. Do you use your computer at work for
22 personal things?

23 A. I do.

24 Q. Frequently?

25 A. Yes.

1 Q. Do other employees use their computers
2 at work for personal items?

3 A. They might, yes.

4 Q. Has there been a check on any other
5 employees other than Jim Owens about the use of the
6 computer for personal things?

7 A. No. And there was -- no. There was
8 none.

9 Q. Have y'all fired anybody other than Jim
10 Owens for using their computer or telephones for
11 personal items?

12 A. Not that I am aware of.

13 Q. Have you monitored that in any way?

14 A. We do not monitor.

15 Q. Mr. Graham has the ability to monitor
16 it?

17 A. He could, yes. I'm sure he could.

18 Q. Are you aware of other employees
19 that -- have you warned any employees that they are
20 using the computer for personal things too often?

21 A. I have not.

22 Q. Has any employees used the personal
23 computer to go on any forbidden websites?

24 A. I think there was a circumstance, and I
25 can't remember exactly how long ago, eight to ten

1 years ago, that there was someone using a computer
2 inappropriately -- for -- and they were let go for
3 that reason.

4 Q. Who was that?

5 A. I don't even remember the guy's name.

6 Q. Was he going to adult websites?

7 A. Yes.

8 Q. And how did you discover that?

9 A. I think someone walked by his office
10 and saw it.

11 Q. Do you know who that was that saw it?

12 A. I do not.

13 Q. And you terminated that employee for
14 that?

15 A. Correct.

16 Q. Was he -- did y'all monitor how many
17 hours he had spent looking at those websites?

18 A. We did not.

19 Q. When y'all were doing this search of
20 Mr. Owen's emails, did you look at any other
21 employees to sort of look to see how Jim compared
22 with other employees?

23 A. We did not.

24 Q. Wouldn't that have been a relevant
25 thing to do to know whether he was distinguished in

1 some way from other employees?

2 MS. CHERRY: Object to the form.

3 THE WITNESS: We didn't see any need to
4 check other employees.

5 BY MR. PARKER:

6 Q. And why was that?

7 A. We only went and checked Jim's because
8 we were required to by the evidence preservation
9 letter. That is the only reason we went into the
10 electronic data.

11 Q. But you were making a decision other
12 than the evidence preservation letter. You were
13 changing your mind about termination of an
14 employee, correct?

15 A. Yes.

16 Q. And doesn't it become relevant, then,
17 how he compares to other employees?

18 MS. CHERRY: Object to the form.

19 THE WITNESS: No.

20 BY MR. PARKER:

21 Q. It's not relevant whether he is less or
22 more than other employees in his use of the
23 personal email or phones?

24 A. No.

25 Q. Did y'all check his phone records?

1 A. I think he did. I think Michael did do
2 that, yes. I think that was also required.

3 Q. And what was the result of that?

4 A. You know, I don't remember
5 specifically.

6 Q. That was not part of the reason for
7 termination. It was the emails?

8 MS. CHERRY: Object to the form.

9 THE WITNESS: Yeah. At this time I
10 don't know that I could say exclusively that it was
11 not part of it. I know that in everything as a
12 whole that we discussed, that was the reason. And
13 I don't remember specifically if there was
14 something with the cell phone that was or was not
15 part of that.

16 BY MR. PARKER:

17 Q. What do you recall being discussed
18 other than the emails?

19 A. Emails, Facebook posts, and I think
20 there was discussion of cell phone, but I don't
21 remember the conclusions of that.

22 Q. Were the minutes kept of any of those
23 meetings that you had about Jim?

24 A. I don't think so.

25 Q. Did you receive any calls about Mr.

1 Owens and the Save Shem Creek -- the opposition to
2 the Shem Creek Project from anyone outside of ADC?

3 A. I did not.

4 Q. Have you had a chance to review Mr.
5 Dillon's notes concerning his meeting with Tyler
6 Flesch on September 16th?

7 A. I have not.

8 Q. What did you find that violated his
9 duty to ADC from post book posts -- from Facebook
10 posts? Excuse me.

11 A. What did we find? If I recollect, it
12 was posting of those during office hours while he
13 was working.

14 Q. Do you know how many there were, how
15 many posts?

16 A. I do not. I don't remember.

17 Q. Did you attend a meeting where it was
18 stated that Jim had made comments about counsel
19 taking bribes?

20 A. I don't remember that specifically.

21 Q. I'm going to hand you what's been
22 marked as Plaintiff's Exhibit 4. Whose handwriting
23 is that?

24 A. I don't know. I'm not sure whose
25 handwriting it is, honestly.

1 Q. It's been produced in this case, as
2 records of ADC. Do you remember the contents of
3 that document, Exhibit 4?

4 A. I really don't. I don't know whose
5 handwriting it is and I don't remember specifically
6 those discussions. I mean, it indicates I was
7 there. I assume that I was.

8 (PLF. EXH. 4, handwritten
9 correspondence from Mark Dillon, was identified for
10 the record.)

11 BY MR. PARKER:

12 Q. And the document seems to say that Mark
13 is the one who has written this up and says this.
14 Do you recognize his handwriting?

15 A. I do not. I really don't.

16 Q. But y'all had discussions -- Exhibit 4
17 says that you had discussions about Jim sending
18 emails during the work hours, correct?

19 A. Yes.

20 Q. And this is on 9/16?

21 A. Okay.

22 Q. And y'all knew he had been sending
23 emails during work hours on 9/16?

24 MS. CHERRY: Object to the form.
25

1 BY MR. PARKER:

2 Q. Is that correct?

3 A. I don't remember the exact dates. I'm
4 not certain.

5 Q. This is what the document says.

6 MS. CHERRY: Object to the form. I
7 don't think that is what the document says.

8 THE WITNESS: I don't know.

9 MR. PARKER: I will read it to be sure.
10 Facebook posts and email sent during work hours.

11 MS. CHERRY: Your question, counselor,
12 for the record, was that that makes an assumption
13 about what Jim had or hadn't done. You read the
14 statement correctly on the memo. I don't agree
15 with the conclusion you drew from it.

16 MR. PARKER: Well, I'm not drawing any
17 conclusions.

18 BY MR. PARKER:

19 Q. But my question is, didn't you learn on
20 9/16 that Jim had sent Facebook posts and emails
21 during work hours?

22 MS. CHERRY: Object to the form.

23 THE WITNESS: I can't say definitively.
24 I don't remember exactly.

25 BY MR. PARKER:

1 Q. And you had another meeting on 9/18 of
2 2014 that you made notes of?

3 A. If I can see that. Oh, yes. Yes.

4 Q. And on 9/18, Jim said and you wrote,
5 and I'm going to quote, he said, he never sent an
6 email out to anyone from ADC. He would send some
7 things here at work, edit them, and send back to
8 his personal email; is that correct?

9 A. That is what he stated, yes.

10 Q. That's what you wrote down on
11 Plaintiff's Exhibit 5?

12 A. Correct.

13 (PLF. EXH. 5, handwritten
14 correspondence with Christopher Cook, was
15 identified for the record.)

16 BY MR. PARKER:

17 Q. So you knew at that time that he was
18 using the email at work as described?

19 A. I know that is what he indicated.
20 That's correct.

21 Q. And that's what you later found out
22 when you got Mr. Graham to search the -- his
23 emails, correct?

24 A. Correct.

25 Q. So you knew that on the 18th?

1 A. On the 18th, Jim told us that.

2 Q. Right. So you knew it?

3 A. I wouldn't say that I -- I would say
4 that's when Jim told us that.

5 Q. And after y'all knew that, y'all made a
6 decision not to terminate him; is that correct?

7 MS. CHERRY: Object to the form.

8 THE WITNESS: Again, we did not make a
9 decision not to.

10 BY MR. PARKER:

11 Q. What decision did you make?

12 A. I don't know that we made a decision.

13 Q. What was the status of -- Jim's status
14 at that point in terms -- as far as being an
15 employee?

16 A. He was still an employee. That was his
17 status at that time.

18 Q. I'm going to hand you next Exhibit 10,
19 which is an email to you. This is Plaintiff's
20 Exhibit 10. And if you would tell me what this is
21 all about.

22 A. This is Rick's -- after the initial
23 meeting that we had, this was him saying that if,
24 in fact, Jim was doing these on an office computer
25 during office time, that his opinion would change.

1 (PLF. EXH. 10, an email correspondence
2 with Rick Cook, was identified for the record.)

3 BY MR. PARKER:

4 Q. Doing what?

5 A. As to Jim's -- whether or not he would
6 be terminated or --

7 Q. No. But what I'm asking you, if he was
8 doing what during office hours?

9 A. Well, to be honest with you, I would
10 have to see the remainder of that email to --

11 Q. It says if he is sending these from an
12 office computer -- well, it says compute -- but
13 computer and during office time, my opinion would
14 likely change. That is involving ADC -- and
15 promptly. Do you know what that is referring to?

16 A. Honestly, I think it is referring to
17 the email down here that is not quite complete.
18 But whatever that email was referencing, I think
19 that is the "these" that he is referring to.

20 Q. Do you know what that was?

21 A. I don't recollect.

22 Q. And the only thing you know that
23 changed the decision was the documents that we
24 discussed earlier and any other documents that were
25 collected at that time that were generated by Mr.

1 Owens on his office computer?

2 A. I would say it was the information that
3 we found, whether it was those documents or more,
4 or it is just that we found information that was
5 different than what we had known previously.

6 Q. The top seems to say, Exhibit 10,
7 Plaintiff's Exhibit 10, that at least Rick Cook
8 thought that he had sent things that involved ADC;
9 is that correct?

10 MS. CHERRY: Object to the form.

11 BY MR. PARKER:

12 Q. You can read Exhibit 10.

13 A. What was the question?

14 Q. The question is that it seems to say
15 that Rick Cook, in emailing you, thought that Jim
16 may have done some things to involve ADC in his
17 opposition to the Shem Creek Project. Is that your
18 reading of that?

19 A. Again, when it says "these" I don't
20 have that email from Jim on the 18th. And I don't
21 recollect exactly what was in that email. But I
22 think that's what it is referring to.

23 Q. Well, I understand that. But it seems
24 to say that whatever that was was improperly
25 involving ADC in the controversy. Is that your

1 reading of that?

2 MS. CHERRY: Object to the form.

3 THE WITNESS: Well, his email is saying
4 that it involves ADC improperly. That's what it
5 says.

6 BY MR. PARKER:

7 Q. And my question to you is, what do you
8 know that Jim did that involved ADC in his
9 opposition to Save -- his opposition to the Shem
10 Creek Project?

11 A. The work that he did on an ADC computer
12 and during work hours that he was supposed to be at
13 ADC.

14 Q. How did that involve ADC?

15 A. It's our equipment; it's our time. He
16 is working during the day.

17 Q. My question is, how did that involve
18 ADC in his opposition to the Shem Creek Project?

19 MS. CHERRY: Object to the form. Asked
20 and answered.

21 BY MR. PARKER:

22 Q. Go ahead.

23 A. Again, it was done on ADC equipment
24 during the ADC office hours.

25 Q. But y'all had known that previously and

1 decided not to terminate him, right?

2 MS. CHERRY: Object to the form.

3 THE WITNESS: I would not say we knew
4 that definitively.

5 BY MR. PARKER:

6 Q. And why is that?

7 A. Because at that point we were just told
8 that that was what it was.

9 Q. Well, did you not believe Mr. Owens as
10 to what he said?

11 MS. CHERRY: Object to the form.

12 THE WITNESS: No. I believed Jim.

13 BY MR. PARKER:

14 Q. All right. And so there was nothing
15 new learned when y'all accumulated the emails?

16 MS. CHERRY: Object to the form.

17 THE WITNESS: No. I wouldn't say that.

18 BY MR. PARKER:

19 Q. What new was learned?

20 A. The same things that we referred to
21 earlier that there was email information that was
22 in our server on our computers.

23 Q. He had already told you that, hadn't
24 he?

25 A. Yes.

1 Q. My question is, what new did you learn
2 from Mr. Graham getting the emails?

3 A. I would say what I -- what was newly
4 learned was the confirmation that there were emails
5 sent from our computers during the day.

6 Q. And Mr. Owens had already told you
7 that?

8 A. Yes.

9 Q. Do you know of any other meetings that
10 anyone with ADC had with anyone involved with the
11 Shem Creek Project?

12 A. I'm not aware of any.

13 Q. When did Mr. Dillon first discuss with
14 you his meeting with Tyler Flesch?

15 A. Again, I don't remember the exact date
16 or time.

17 Q. Where were y'all when y'all discussed
18 that?

19 A. We were probably at the office.

20 Q. Did you have a conference room or
21 something? Did y'all meet there?

22 A. You know, I don't remember exactly.
23 Could have been a conference room or an office.

24 MR. PARKER: Let's take a break a
25 minute, and we will try to wrap it up.

1 MS. CHERRY: None of us can talk to you
2 about your testimony while you are under oath, so
3 we are not ignoring you.

4 (A recess transpired.)

5 BY MR. PARKER:

6 Q. I'm going to hand you Plaintiff's
7 Exhibit 8. And it says -- it's from Steven
8 Truschka to you and others, and it states: Wanted
9 to get your thoughts on this meeting today at noon
10 so we can discuss.

11 That is dated September the 22nd.

12 A. Okay.

13 (PLF. EXH. 8, an email from Steven
14 Truschka, was identified for the record.)

15 BY MR. PARKER:

16 Q. Was that meeting on September the 22nd
17 when you decided to terminate Mr. Owens?

18 A. You know, I'm not certain. I don't
19 remember exactly.

20 Q. If he was terminated on the 23rd, would
21 that refresh your memory?

22 A. It really doesn't. I don't remember
23 exactly the time or the time frame from when -- you
24 know, when that was done.

25 Q. Do you recall what you were meeting

1 about on the 22nd?

2 A. No.

3 Q. Is there anything in the exhibit there,
4 Exhibit 8, that would indicate what you were
5 meeting about?

6 A. No. I really don't -- I don't remember
7 exactly what that meeting was about. I mean,
8 obviously this email is referring to another item
9 to discuss, but I don't remember what was discussed
10 in that meeting.

11 Q. Can I see that?

12 A. Sure. And at the bottom of it is an
13 email from Mark Dillon to the rest of the partners,
14 and it says: One thing we should consider is to
15 bring Warren in on the general, parentheses, not
16 specific, issue with Mount Pleasant town officials
17 to see what he has heard.

18 Who is Warren?

19 A. Warren is the landscape architect in
20 our office.

21 Q. And it says: And which council member
22 he is close to, and maybe we can talk and begin to
23 restore our reputation.

24 What is that about?

25 A. Well, I don't know that -- I don't

1 think we did that. I don't think we brought Warren
2 in. I'm not sure exactly. Warren lives in Mount
3 Pleasant, and we have done some projects over
4 there, and I think it is alluding to that.

5 Q. What other personnel issue did you have
6 other than Jim Owens on September the 22nd, 2014?

7 A. I don't recollect if there were any
8 others at that time. I don't remember any.

9 Q. Did y'all collect texts of Jim Owens,
10 any texts he made on his phone?

11 A. I don't know. I don't remember
12 exactly.

13 Q. Did y'all text each other about the
14 meetings with Jim?

15 A. Actually, I don't think we did. We
16 don't communicate a lot by text message.

17 Q. Did anyone search the text messages for
18 relevant documents in this case?

19 A. I don't think so.

20 MR. PARKER: I don't have anything else
21 for you. Thank you.

22 EXAMINATION

23 BY MR. EARLY

24 Q. My name is Will Early. We met off the
25 record. I represent another entity being sued in

1 this case. You were in the meeting with Mr. Owens
2 as well as Mr. Jones on the afternoon of
3 September 18th, correct?

4 A. Correct.

5 Q. You have got handwritten notes from
6 that meeting in front of you?

7 A. Yes.

8 Q. Remind me what exhibit number that is
9 so I put it on the record, what the front of that
10 says.

11 A. Defendant's Exhibit 20.

12 Q. All right. In that meeting, according
13 to your -- this is your handwriting?

14 A. Yes. On the second and third page.

15 Q. Right. And you made these notes
16 contemporaneously with that meeting? In other
17 words, at that time or shortly thereafter?

18 A. Correct.

19 Q. And flip to the second page of your
20 notes, if you would. When you say he has nothing
21 to hide there, you have it in quotes. Is that
22 something Jim Owens was telling you?

23 A. Correct.

24 Q. All right. And then the next line
25 says, he didn't realize that they were a

1 client. Is that something Jim Owens was telling
2 you?

3 A. Correct.

4 Q. And is there -- who was -- who was the
5 client?

6 A. Realize they were a client. I'm going
7 to have to assume that that was the developer.

8 Q. All right. And are we talking about
9 any other project than the Save Shem Creek Project
10 in this meeting?

11 A. No, we weren't.

12 Q. Thank you.

13 MR. EARLY: That's all I have.

14 MR. PARKER: All right. That's it.

15 MS. CHERRY: You're done.

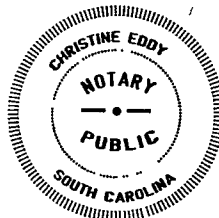
16 (The deposition was concluded at 11:12 a.m.)
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CERTIFICATE OF REPORTER

I, Christine Eddy, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 26th day of May,
2015, at Bluffton, Beaufort County, South Carolina.



A handwritten signature in black ink, appearing to read "Christine Eddy", written over a horizontal line.

Christine Eddy, RPR
Court Reporter
My Commission expires
April 9, 2025

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JAMES C. OWENS,

Plaintiff,

vs.

BRYAN CRABTREE, KIRKMAN
BROADCASTING, INC., d/b/a
WQSC RADIO, ADC
ENGINEERING, INC., TYLER
FLESCH, and RED DRUM
CAPITAL GROUP, LLC,

Defendants.

CIVIL ACTION FILE

NO. 2014-CP-10-6265

DEPOSITION OF

BRYAN CRABTREE

10:00 a.m.

November 16, 2015

201 17th Street, NW
Suite 1700
Atlanta, Georgia

Regina W. Hollis, CCR-B-2306

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(Original Exhibits 1 through 7 have been attached to the original transcript.)

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(Reporter disclosure made pursuant
to Article 10.B. of the Rules and
Regulations of the Board of Court
Reporting, Judicial Council of Georgia.)

BRYAN CRABTREE,
having been first duly sworn, was examined and
testified as follows:

EXAMINATION

BY MR. PARKER:

Q. Please state your full name.

A. Bryan Kelby Crabtree.

Q. And your address?

A. 3348 Peachtree Road, Northeast, Atlanta,
Georgia, 30326.

Q. And how long have you lived there?

A. That's my business address. My
residence address is 3338 Peachtree Road, and I've
lived there since February officially.

Q. And previous to that you were in
Charleston, the Charleston area?

A. That's correct.

Q. And what was your address in Mount
Pleasant or Charleston or wherever it was you lived?

A. The address I commonly used is 1000
Johnnie Dodds Boulevard, Suite 103-330, Mount

1 Pleasant 29464.

2 Q. And that was your business address?

3 A. That's correct.

4 Q. And what type business were you in, in
5 Mount Pleasant?

6 A. For that address I ran a real estate
7 brokerage.

8 Q. And who worked for you other than
9 yourself?

10 A. I have -- I had licensed agents and a
11 single employee.

12 Q. You are talking about agents that worked
13 with you but didn't -- weren't employed by you?

14 A. Correct. Independent contractors.

15 Q. All right. And you had one employee?

16 A. That's correct.

17 Q. And who was that?

18 A. Her name is Karrie Soto.

19 Q. And she lives in Mount Pleasant?

20 A. That's correct.

21 Q. You had a real estate brokerage firm?

22 A. That's correct.

23 Q. And if you would, tell me about your
24 background, where you grew up and so forth'.

25 A. Grew up in Nashville, Tennessee, and

1 been in radio broadcasting since 1994, and began
2 running a real estate company in 2000, 2001, and
3 have been doing both in some form since.

4 Q. What is your educational background?

5 A. I went to the University of Memphis and
6 Austin Peay State University in Tennessee.

7 Q. Did you get degrees from either of those
8 institutions?

9 A. I did not.

10 Q. And what was your major?

11 A. Mass communications, marketing in minor.

12 Q. And when you went to work in Charleston
13 in the broadcasting business, who did you first work
14 for?

15 A. It was called Wilks Broadcast Group,
16 which later became Citadel Broadcasting, now
17 Cumulus.

18 Q. Which radio station did they operate?

19 A. That I was directly involved with, 95SX,
20 WTMA Talk Radio, CAT Country 107.5, which is now in
21 Columbia. It's a sports station, and at the time
22 Sunny 96.9, which is now a country station.

23 Q. Did you have a talk show on all of those
24 stations?

25 A. No. I was the assistant program

1 director for the country station, and I did
2 afternoons and I did production, commercials for all
3 those stations, and I later, not as an employee, did
4 a talk show on WTMA as an advertiser.

5 Q. And when did you start the Bryan
6 Crabtree show on -- with Kirkman Broadcasting?

7 A. That began -- if I'm not mistaken, it
8 was in the month of May 2013 when that started as a
9 mainstream talk show.

10 Q. Did you continue on the other stations
11 at the same time?

12 A. Not at that point, no. I was
13 exclusively on the Kirkman stations. Well, I was
14 doing some advertising I think on WTMA, but it was
15 unrelated to actual radio work. It was more for the
16 real estate brokerage.

17 Q. When did you terminate your employment
18 relationship with Citadel Broadcasting?

19 A. That was in September or October of the
20 year 2000.

21 Q. 2000?

22 A. Uh-huh, that's correct.

23 Q. And why did you terminate your
24 relationship with Citadel Broadcasting?

25 A. Because of consolidation in the

1 industry, and I didn't want to leave Charleston at
2 that time. So, I got into real estate brokerage.

3 Q. Did you work for someone before setting
4 up your own brokerage?

5 A. I did. I started with Coldwell Banker
6 in Summerville, which is no longer -- that
7 particular company's no longer in business.

8 Q. Who in particular hired you?

9 A. Taylor Meeks.

10 Q. And how long did you work for Mr. Meeks?

11 A. I'm guessing it might have been about
12 18 months, a year to 18 months.

13 Q. And after that you opened your own
14 brokerage?

15 A. No. I had a brief stint at AgentOwned
16 Realty in Charleston, and then I opened my own
17 brokerage shortly thereafter.

18 Q. Who did you work for at AgentOwned
19 Realty?

20 A. Liz Loadholt.

21 Q. And where is she located?

22 A. In Mount Pleasant.

23 Q. How many agents in that agency?

24 A. I would be guessing at this point
25 because I'm not in the city any longer. I don't

1 know.

2 Q. When did you first meet Tyler Flesch?

3 A. I don't remember the date, but it was
4 sometime in the summertime range of 2014 when he
5 came to the studio to do an interview on the radio
6 which was aired live.

7 Q. And how did that come about that he was
8 going to do an interview on the radio?

9 A. I think he had reached out to me at some
10 point about the subject matter that I was discussing
11 on the radio, and I realized he was willing to
12 discuss it. And I invited him in because I wanted
13 him to share with me the facts so that nothing I was
14 taking from the local media was inaccurate, and so
15 that way I would have his side of the story.

16 Q. You were interested in the Shem Creek
17 Project?

18 A. I would say that I wasn't specifically
19 interested in that project, but at that time I was
20 covering a series of developments that were being
21 publicly opposed by people in the community for
22 various reasons, many of which I found to be
23 inaccurate as I researched them. So, my initial
24 coverage of this was not about specifically Shem
25 Creek, but it did morph into that over time because

1 this was the subject matter that was the most
2 covered in all of the media in Charleston.

3 Q. Which other projects were you interested
4 in?

5 A. There was also a motel in -- not a
6 motel, but a redevelopment in Summerville on Main
7 Street. There were some projects in north Mount
8 Pleasant that were residential. There was a
9 conversion of a shopping center from what used to be
10 a Food Lion to a massive gym and redevelopment, and
11 I'm not sure if of Sergeant Jasper postdated or
12 predated, but the beach company's development in
13 downtown Charleston was also in the conversation
14 where they wanted to tear down that multistory
15 building and put up a new taller highrise, all of
16 which were getting a lot of attention.

17 Q. Let's start with the project in
18 Summerville. What was the name of that project?

19 A. I don't recall because it was never
20 really finalized. That particular project was in
21 proposed and planning stage, so I don't know that it
22 was ever attached as a name. I just called it the
23 hotel on Main Street. And that was one that was
24 still up for public comment. So, it was not an
25 approved project like the parking garage was.

1 Q. All right. Do you know the names of any
2 of the other projects, other than the Jasper Arms
3 project?

4 A. Well, there was a project that the old
5 TV station on Coleman, which never had a name, as I
6 could tell. It was for an apartment building.
7 There was the development of Oyster Point, which is
8 well under way in Mount Pleasant, and several
9 infield developments in north Mount Pleasant that
10 were part of the conversation, but they were more
11 representative in nature than they were specific.
12 They weren't being as publicly opposed, but they
13 were -- they were being opposed to some extent, and
14 they were misunderstood by the general coverage and
15 comments and mostly social media for those.

16 Q. Have you reviewed any documents in
17 preparation for your deposition?

18 A. I only reviewed, of any magnitude, Jim
19 Owens' deposition.

20 Q. Nothing else, any documents that you
21 generated?

22 A. Nothing that you haven't been given. I
23 mean, generally I've reviewed some of the Facebook
24 posts and things of that nature, but nothing -- you
25 know, nothing of any length or depth.

1 Q. In reading Mr. Owens' deposition, did
2 you take issue with any of his statements?

3 A. Well, I think there's a number of things
4 in the deposition that either I disagree with or
5 that are not a complete representation as I see it,
6 but nothing that I found as a surprise.

7 Q. Well, what things did you disagree with?

8 A. Well, I think -- I think disagree is a
9 loose term. Let me recategorize that a little bit.
10 What I saw in the deposition that was the first that
11 I had seen in his own admission, but I already
12 suspected it in my coverage, is really the linchpin
13 and why we're sitting here today is that he and I
14 got into a battle back and forth on Facebook about
15 the very specific project of the Shem Creek parking
16 garage. And when I challenged his assertions about
17 it, he posted in response to my Facebook post an
18 architectural design stamped with Stubbs Muldrow.

19 And in his deposition he admitted that
20 he knew that engineering firms frequently
21 subcontract out their work to other engineering
22 firms, but publicly he tried to represent that
23 Stubbs Muldrow was the only firm associated with
24 this project, as if though to deny that his employer
25 was involved with this project.

1 So, I take issue with that because it to
2 me seems convenient not to know that but to readily
3 admit in a deposition that, yeah, all these firms
4 work together. And so if that's the linchpin of
5 this where he and I got into a spat with our facts,
6 I don't understand how he knows it for the
7 deposition but he doesn't know it for the project
8 and for his own employer. So, that -- that's the
9 one issue that really stuck out at me.

10 Q. All right. Do you have any evidence
11 that, in fact, Mr. Owens did know that ADC, his
12 employer, was involved in the project when he made
13 that statement?

14 A. Yeah, I think the evidence is that he
15 was given a preservation of evidence letter that he
16 signed for certified mail on September 18th, and
17 this was prior to most of the Facebook chatter that
18 we are here to talk about. So, I don't know how in
19 the world you would have gotten a preservation
20 letter about a parking garage for your employer, at
21 your employer, in regards to your employer and then
22 at that point, even with the fact I just gave, not
23 question why am I getting this letter and go to your
24 employer and your employer clearly would have had to
25 told you that some level of involvement is going on

1 here. So, the evidence is the preservation letter.

2 Q. So, that is your evidence of you say
3 that Mr. Owens knew about his ADC being involved in
4 the project; is that correct?

5 A. Well, that is the evidence that clearly
6 points to his knowledge of this developer and his
7 employer having some association predates the
8 significant portion of my coverage. That is the
9 evidence.

10 There's other evidence that clearly
11 points out that his level of attention to detail is
12 pretty profound. I mean, he opposed a project for
13 something right next to his house a few years ago
14 that I read in his deposition where he clearly knew
15 the laws. He was quoting them in his deposition.
16 Intimate, very, very impressive detail on that. And
17 then the same has occurred -- he did an entire
18 project with his son or with someone where he took
19 the overlays of the Coleman District and put
20 buildings as if they were at max height. To do that
21 you have to have very intimate knowledge of what's
22 going on.

23 So, I think that's evidence as well that
24 to be digging that far into everything on Coleman
25 Boulevard and everything going on around his home,

1 A. Yeah, that's correct.

2 Q. This an e-mail to you from Tyler Flesch?

3 A. That's correct.

4 Q. And it's dated August 12th of 2014?

5 A. That's correct.

6 Q. And in this e-mail, Mr. Flesch is
7 informing you that Mr. Owens doesn't know when to
8 quit lying?

9 A. That's correct.

10 Q. What did you know about Mr. Owens lying
11 at that time?

12 A. I don't think I would -- I would not say
13 that I specifically knew about his lying at that
14 point. What I knew is that the facts that were
15 being portrayed about these issues in Mount Pleasant
16 under Saving Shem Creek and by Jim Owens, as I
17 investigated them individually, I found them to be
18 either partially untrue or wholly untrue, or in some
19 cases true but highly sensationalized.

20 And so that was my sense of it. At this
21 point I had not covered, as far as I can recall,
22 anything to do with Jim Owens and had no real
23 intention of doing so at this point. But I -- this
24 particular e-mail is similar to statements I get on
25 Facebook and e-mails I get -- you know, sometimes I

1 get dozens of them a week, sometimes I get hundreds
2 of them a week from listeners who want me to cover
3 something and want me to cover it with their
4 opinion. At that point that was -- when I received
5 this e-mail, I investigated, realized that he was,
6 in fact, truly the developer. He wasn't someone
7 acting like the developer. And I wanted to learn
8 more about what he had to say in his own words
9 because what better way to provide perspective to my
10 audience than to do that, you know.

11 So, at this point this was just the
12 beginning of realizing and forming opinion, which is
13 what I do, that there was a whole lot more to this
14 than just a parking garage on Shem Creek.

15 Q. All right. Just said that there was
16 some things that were half truths and some things
17 that were false about the Shem Creek parking
18 facility.

19 A. Uh-huh.

20 Q. If you would, tell me the things that
21 were half true that were being disseminated about
22 the Shem Creek Project.

23 A. Well, I think first and foremost this is
24 not a parking garage, and so when I got the, I
25 think -- don't hold me to the dates -- the March

1 e-mail, which was instigated on shanes.org by your
2 client Jim Owens, I was sort of drawn into this as
3 well. "This is awful" was my initial reaction,
4 which is the tone of the e-mail. But being in
5 media, I've learned to question everything that I
6 get presented and verify for myself the facts of it
7 and try to come to a logical conclusion of the
8 facts, and I quickly determined from that
9 investigation that this was not even on Shem Creek,
10 number one. So, it's not on Shem Creek. It's a
11 block off of it.

12 Number two, I went out with a camera and
13 determined you cannot even see this thing from Shem
14 Creek once it's built, and number three, and most
15 importantly, it's not a parking garage. And it
16 seemed to be the coverage of all these things sort
17 of spun from that nucleus of distortion.

18 Q. So, on Shem Creek to you means it was on
19 the waterfront itself?

20 A. Well, when someone says a Shem Creek
21 parking garage and they put that in context as if
22 though to say this is going to destroy the fabric of
23 Shem Creek, the view and the beauty of Shem Creek,
24 then, yes, I would assume that it is on Shem Creek,
25 yes.

1 Q. So, you made that assumption?

2 A. I think the entire town made that
3 assumption.

4 Q. Well, who named it the Shem Creek
5 Project?

6 A. To my -- I mean, I don't want to go on
7 record on that because I would be guessing. It
8 would simply be a guess, and I don't like to guess.
9 I like to go with what I feel reasonably comfortable
10 with.

11 Q. So, you don't know who put the name Shem
12 Creek Project on it?

13 A. I really don't.

14 Q. And part of the project was a parking
15 garage, correct?

16 A. I think we get into definitions to what
17 a parking garage is. I think if you want to label
18 it that, I don't think that would be inaccurate. I
19 think when I hear parking garage I think of a
20 multistory multideck garage. This is really a
21 parking space with a roof on it that has parking on
22 an open air roof. So, garage, yeah, I don't think
23 that's a distortion, but I do think it -- it paints
24 an image in my mind that it's much larger than it
25 is.

1 Q. That's what you determined. You thought
2 that it was not a parking garage for the reasons you
3 just stated?

4 A. Well, I think that it is a parking
5 garage from a definition standpoint, but it is not
6 typical of what we see as a parking garage in
7 Charleston.

8 Q. Now, what else did you find -- think
9 that the components to the Shem Creek Project were
10 making inaccurate statements about?

11 A. Well, I think that inaccurate statements
12 were a representation of this thing as being of no
13 benefit to the city, there was no -- you know, there
14 was no -- the city was working with the developer
15 and this is sort of the -- the -- I don't -- a
16 cronyism. I don't know that word was used, but
17 that's a good way to be descriptive about what was
18 being inferred or asserted about this garage. And
19 that there was this belief that we must stop this.

20 The folks at Shem Creek were leading the
21 community to believe that this somehow could be
22 stopped. It had been up for public comment years
23 ago. It wasn't -- it was already in contract, and
24 part of my coverage was to say in the end, hey, we
25 could get our city sued if we cause the city to, you

1 know, breach this contract.

2 So, there were a lot of -- there was a
3 lot of misunderstanding and distortions being
4 portrayed about where the status of the project was,
5 where it actually sat on Coleman Boulevard and what
6 it sat next to, how high the garage actually was,
7 what was there before it, the background of the
8 project, and what it was zoned for and when it was
9 zoned for that. It was being made up to paint the
10 picture that they were building another boulevard
11 apartment building and that the -- that these
12 developers had somehow gotten in the pockets of the
13 city and that was somehow cronyism creating it.

14 That was the message I collectively saw
15 and many others saw, and it was my intention as a
16 local pundit to get to the bottom of what, in fact,
17 is the truth. And that's what we did.

18 Q. When you -- when you got Exhibit 1, I
19 assume you formed some opinion about Mr. Owens after
20 Mr. Flesch says, "This guy doesn't know when to quit
21 lying"?

22 A. No. I would say quite the opposite
23 because most of what I read every day, particularly
24 when it comes in the form of an opinion from another
25 person, has a bias to it. So, I always investigate

1 biases. So, I would say quite the opposite, that
2 Tyler Flesch had very little impact on my opinion of
3 Mr. Owens.

4 Q. But did you ask Mr. Owens to appear on
5 your show?

6 A. I believe I attempted to find his e-mail
7 address. I do know that his stand-in on the Saving
8 Shem Creek page -- and, pardon me, I don't remember
9 his name. I believe his last name is Scott. I had
10 invited him to come on the show. I believe I sent
11 him a couple of Facebook messages and said I would
12 like to have your perspective presented on this or
13 rebuttal. They were unwilling to speak to me and
14 present their side of the story.

15 Q. When did you have Tyler Flesch on your
16 show?

17 A. I would be guessing. That particular
18 date probably was in July or August -- probably in
19 late August or early September of 2014.

20 Q. And how did you get in touch with
21 Mr. Flesch?

22 A. I believe he sent me an e-mail and all
23 of which I think you've seen. Weren't a whole lot
24 of e-mail exchanges, but I think he sent an e-mail
25 and I began asking him a couple of questions. And

1 ultimately that led in to just having him come on
2 the show so that I could just rattle through a
3 series of questions about the project.

4 I think the initial thing was, to be
5 honest, now that I recall, I wanted -- I don't know
6 if this is what triggered me getting in touch with
7 Mr. Flesch, but I had called the telephone number of
8 the Realtor on the sign. And I said, hey, I would
9 like a copy of all the plans so that I can see for
10 myself architecturally what is this thing, you know,
11 because I couldn't figure it out from their coverage
12 of it what, in fact, it was. I kept seeing images
13 that were one thing and their portrayal was
14 something else. I don't know if that netted
15 Mr. Flesch getting in touch with me or not, but it
16 was me trying to get to the bottom of the truth.

17 (Plaintiff's Exhibit 1A was marked
18 for identification.)

19 Q. Get you to look at Exhibit 1A, which is
20 another e-mail to you from Mr. Flesch.

21 A. Okay.

22 Q. And this is August 27th, Mr. Flesch,
23 again says that "Guy can't stop lying about our
24 project."

25 A. Okay.

1 Q. Do you recall getting that e-mail?

2 A. I do. I recall reading it. I don't
3 remember -- so much data, I don't remember what this
4 particular article says, unless it's in this
5 exhibit. But I remember seeing that, reading it,
6 adding that cumulative to my perspective of it.

7 (Plaintiff's Exhibit 1B was marked
8 for identification.)

9 Q. Okay. And next you have Exhibit 1B
10 there that is another e-mail to you. It's a little
11 more detailed. The subject being "Re: Jim Owens."
12 Do you recall getting that e-mail?

13 A. Yeah, I do because -- yeah. Yeah.

14 Q. And in that e-mail -- I assume this is
15 after the -- you had started -- I assume this is
16 before -- I mean, after you published your article
17 in which you liken Mr. Owens to Pinocchio?

18 A. I believe this would have been --

19 Q. E-mail before or after?

20 A. Timeline wise, this would have been just
21 after that was published.

22 Q. Okay. Why was Mr. Flesch e-mailing you
23 this?

24 A. I would -- it would only be a guess. I
25 don't know, unless there was some e-mail prior to

1 this that I sent him, which I don't recall. The
2 thing that strikes me in this is that it seems to go
3 with the theme that I had covered on all of this is
4 that I believe your client, Mr. Owens, and others
5 involved in saving Shem Creek had deep political
6 aspirations, and that was an overture of my coverage
7 of this, that it appears to be a group of people
8 with a solution trying to find a problem, the
9 problem was the parking garage. And that given the
10 political background of some of these people, they
11 wanted to get into politics, and in which case, as
12 of now they have.

13 And that seems to be -- it could have
14 been his e-mailing based upon what I said on the air
15 or I don't know really. I mean, I get these
16 things -- I get these sort of things all of the time
17 from listeners on all sorts of subjects regarding
18 things I've said on the air or in social media to
19 try to give me information that they don't think I
20 have or to try to shape my opinion on a matter. It
21 is a common practice daily.

22 Q. Do you have any relationship with
23 Mr. Flesch?

24 A. I don't.

25 Q. Or any of the developers of the Shem

1 Creek Project?

2 A. I don't. I've met Mr. Flesch one time.
3 We spoke on the phone a couple of times during all
4 this, these e-mails that you have, and I have never
5 met any of the other parties involved, except the
6 attorney for the developer, who took the same
7 CrossFit class that I have or did take.

8 Q. And who is that?

9 A. Gray Taylor is his name.

10 Q. How about Mr. Tex Moss, have you ever
11 met him?

12 A. Never met him. Never spoke to him, that
13 I can recall.

14 Q. Did anyone associated with the developer
15 advertise with the station that you worked with
16 or --

17 A. Not that I -- I'm sorry. Say that
18 again. I interrupted you. I apologize.

19 Q. Did any of the developers of the Shem
20 Creek Project advertise with the radio station that
21 you had your program on?

22 A. Not to my knowledge, no.

23 (Plaintiff's Exhibit 2 was marked
24 for identification.)

25 Q. Exhibit 2 appears to be a transcript of

1 your program on September 22nd; is that correct?

2 A. It appears to be. I would have to
3 listen to the audio to verify that this is precisely
4 what's said.

5 Q. Take a minute and read it, if you will.

6 A. Okay.

7 Q. Does that appear to be --

8 A. Generally speaking it appears to be
9 something I would have said.

10 Q. -- the broadcast of September 22nd?

11 A. I couldn't tell you it was the exact
12 date, but it does appear to be a broadcast that did
13 occur, yes.

14 Q. And you state on the last page that,
15 "We'll be there if we continue to let these kinds of
16 groups, like Saving Shem Creek with people like Jim
17 Owens who are profiting from, indirectly or
18 directly, from designing the projects that he's now
19 online bashing. Can you say hypocrite? Can you say
20 disingenuous?" Did you state that?

21 A. I did.

22 Q. What evidence did you have that
23 Mr. Owens was profiting --

24 A. He received --

25 Q. -- from the Shem Creek Project?

1 A. He received a salary from ADC which was
2 funded by projects, including and like Saving Shem
3 Creek's office building and parking garage.

4 Q. And for Mr. Owens to be a hypocrite, he
5 would have to know that ADC had some involvement,
6 correct?

7 A. I don't agree with that statement, no.

8 Q. Why not?

9 A. Because if I'm collecting a salary from
10 a company that does what I'm opposing, then I'm
11 biting the hand that feeds me.

12 Q. In other words, if you are an
13 engineering firm and you work for an engineering
14 firm, you find something wrong about someone being
15 opposed to certain kinds of development; is that
16 correct?

17 MR. EARHART: Objection.

18 A. I don't think I understand your
19 question.

20 Q. In other words, the question is, if a
21 person works for an engineering firm, then they
22 should be in favor of any development.

23 A. I didn't say that either.

24 MR. HALIO: Object to the form.

25 MR. EARHART: Objection.

1 Q. You didn't say that?

2 A. I did not say that.

3 Q. Do you agree with that?

4 A. I don't agree with that
5 characterization, no.

6 (Plaintiff's Exhibit 3 was marked
7 for identification.)

8 Q. Exhibit 3, something that you published
9 on the -- about Mr. Owens; is that correct?

10 A. That's correct.

11 Q. Now, you intended to hold Mr. Owens up
12 to ridicule?

13 A. No. I intended to set the record
14 straight. This was not about Mr. Owens. It was
15 about the source of the information as it had become
16 known to me and the accuracy of it.

17 Q. Well, if it's not about Mr. Owens, why
18 did you entitle it, article up top "Jim Owens"?

19 A. I didn't entitle it Jim Owens. That's a
20 screen shot from his LinkedIn profile, which I took
21 off of his page and simply posted it onto mine to
22 evidence what I was saying to being accurate.

23 Q. And you say, "Jim Owens, Construction
24 Administrator with ADC Engineering, Inc.," and
25 circled "ADC Engineering," and then you have

1 Mr. Owens' picture up top; is that correct?

2 A. I don't have that up top. That's simply
3 a screen shot. All of that, with exception of
4 Pinocchio, is an image of his own page, which I took
5 off of his own page online. That's not my doing. I
6 didn't construct that at all.

7 Q. But you put it there. You placed his
8 picture there next to Pinocchio's picture, correct?

9 A. That's correct.

10 Q. And then next to that, you have an image
11 of someone that's two-faced, correct?

12 A. Well, if you want to call it that,
13 that's fine. Yeah, it's basically saying one thing
14 and doing another.

15 Q. Well, I mean, where did you get the mask
16 and someone behind it indicating somebody being
17 two-faced? Where did you get that?

18 A. I don't recall specifically. I have
19 several different accounts that have image piles
20 that I grab from time to time to illustrate a
21 headline to get people to read it. I mean --

22 Q. Tell me what where those two sources
23 would be, what would be the names of them?

24 A. I don't recall specific sources.
25 Sometimes I have to buy images. Lot of times they

1 are available on Google. It just depends on what
2 the subject matter is. This particular one I don't
3 really recall where I found them.

4 Q. All right. Did you get the Pinocchio
5 and the two faces from the same location?

6 A. I don't recall, unfortunately. I'm
7 sorry.

8 Q. And you intended to link Mr. Owens with
9 Pinocchio and with being two-faced, correct?

10 A. I intended to do what is common in all
11 media with public figures when they make statements
12 regarding politics or public policy, which is the
13 Pinocchio effect, the two Pinocchios, three
14 Pinocchios. It's a common use. It's not meant to
15 be harmful. It's meant to be descriptive with
16 images, which happens all the time. You know,
17 someone saying something that either the effect of
18 what they're saying is inaccurate or it's completely
19 inaccurate to the point of a lie or any point in
20 between, we commonly use Pinocchios to describe that
21 particular circumstance.

22 Q. What is the story of Pinocchio?

23 A. I'm not sure that I understand it s
24 relevance. Pinocchio is a person who says things to
25 people to mislead them or -- I mean, even the GEICO

1 commercial is what comes to mind when I think of the
2 story of Pinocchio. That's the most current. Which
3 it's basically telling a group of people something
4 to make them feel good or make them feel bad only to
5 know that it's completely inaccurate and not
6 effectually true.

7 Q. What happens when he does that?

8 A. His nose grows.

9 Q. And you're saying in this -- by this
10 depiction that Mr. Owens is lying and his nose is
11 growing, correct?

12 A. I'm saying Mr. Owens is presenting a lot
13 of inaccurate information to the public of Mount
14 Pleasant. I don't -- I think -- I think you're
15 reading way far into what these images mean. Images
16 and headlines are meant to tell a quick version of
17 the story, and the story is meant to tell the whole
18 story. And, you know, I think -- I would say that
19 the net effect of this story is the audio is -- is
20 very easy and in context and the questions you are
21 asking me are kind of out-of-context questions.

22 I understand your need to ask the
23 questions, but there's not -- there's really not a
24 whole lot meant by any of this image on the front of
25 the page, other than part of a headline, which is

1 the punch line of what the story is about,
2 inaccurate information shaping public policy and
3 opinion.

4 Q. You went to a lot of trouble to find
5 these images, correct?

6 A. I go to a lot of trouble on every story
7 that I post on my website. I sometimes spend two
8 and three hours researching a five-minute piece to
9 make sure I get the facts straight. So, yes, I went
10 to a lot of trouble on this, as I do with everything
11 I talk about.

12 Q. Where did you get any of your
13 information, other than from Mr. Flesch?

14 A. Moultrie News, Post and Courier,
15 conversations with callers on the air, posts on
16 Facebook, general assertion, research, looking at
17 people's Facebook profiles, looking at their
18 political backgrounds, looking at other things
19 they've said, reviewing audio if they've ever been
20 on my show. Anything I could find that would give
21 me a perspective and anything I could find that
22 would say to me, hey, I'm wrong on this. There's
23 something -- I generally create a feeling from the
24 stories I'm reading. My feeling's generally
25 accurate, but I always talk about on my radio

1 program and behind the scenes that I must question
2 everything I do and say where could I be wrong. And
3 so I -- I start from my feeling and I start trying
4 to unpack where can I be wrong.

5 So, the process of doing that is looking
6 at anything and everything available on any blog
7 site anywhere, Googling Saving Shem Creek, Googling
8 Jim Owens, looking at everything and saying, you
9 know, what is the perspective and the foundation of
10 this argument. And --

11 Q. What --

12 A. That was it.

13 Q. What did you -- what did you read from
14 Facebook?

15 A. Probably what nets to at least hundreds
16 of comments from people that he was clearly leading
17 in the public policy debate of this particular
18 issue, many of whom were incredibly vile, very
19 destructive, calling me names, discrediting my
20 background, picking up -- you know, picking up data
21 from anything I'd ever done in the past in my
22 professional business life. It might be a public
23 record, distorting it in order to slander me.

24 And it was -- it was interesting to see
25 this group of people that he was leading, and many

1 of which were on his page, that seemed to not want
2 to ever debate with me ever the points I was making,
3 but it was always about destroying my credibility
4 and my message. And so, you know -- and then you
5 take their comments on their pages and his comments
6 on his pages, and you sort of start to build a story
7 that makes sense.

8 Q. What did Mr. Owens comment negatively
9 about you?

10 A. Well, I mean, prior to any of this last
11 little hoorah happening, he called me essentially --
12 I don't remember the exact contents, but the word
13 "stupid" comes to mind and "Craptree,"
14 C-r-a-p-t-r-e-e. So, he clearly had gotten into the
15 juvenile side of renaming me, just like I heard when
16 I was in elementary school that I was Craptree or
17 Crabapple or Crabgrass or Crabass. And so he and
18 his people began to use those types of terms toward
19 anything I was saying, which, I mean, I get from
20 everyone. So, this is just Facebook spat as I see
21 it.

22 Q. And Mr. --

23 A. I want to back that up. I get that a
24 lot collectively when people oppose my opinions. I
25 don't get it from everyone, but I get it a lot. And

1 so to me this was never about me feeling attacked
2 and wanting to get back at anyone. This was just
3 simply about me getting to the truth and determining
4 what of all of this stuff about Jim and about me and
5 about this project. What's relevant to my audience.
6 And that's all I covered, what I thought was
7 important for my audience. That was it.

8 Q. When did you -- Exhibit 3, your radio
9 broadcast was on the 22nd. When did you post
10 Exhibit 3?

11 A. I generally post those within 24 hours
12 of their original air time if I'm going to put them
13 on social media, and I'm pretty confident that was
14 the case here.

15 (Plaintiff's Exhibit 4 was marked
16 for identification.)

17 Q. Get you to look at Exhibit 4. I assume
18 that Exhibit 4, it looked like your broadcast was
19 run earlier than that. Look like it was run at 1
20 O'clock, 1:30; is that correct?

21 A. My broadcast?

22 Q. Yes.

23 A. My broadcast --

24 Q. The transcript shows on it that the
25 start time at 1:30 on September 22nd.

1 A. Yeah, I don't think that -- maybe start
2 time is 1:30 into the podcast because the first --
3 that sounds like an open. No. The broadcast is
4 between 7:00 and 10:00 a.m.

5 Q. Okay. So, that would have been earlier
6 that day?

7 A. Yeah.

8 Q. Is that correct?

9 A. That's correct.

10 Q. Exhibit 4 is a -- another e-mail to you
11 from Mr. Flesch; is that correct?

12 A. Correct.

13 Q. And in this, Mr. Flesch says, "Just
14 between us but I will include some documentation so
15 you know your credibility is upheld in talking about
16 this stuff yourself. This guy is out of control and
17 the fact he makes a living off us commercial
18 developers is so hypocritical.....call this guy out
19 hard." You recall getting that?

20 A. I do.

21 Q. And did you try to do what Mr. Flesch
22 asked you to do?

23 A. I don't remember the context of where I
24 was in the coverage of this. What I remember is
25 that between a Wednesday, the 18th of September,

1 which coincidentally was the day that Mr. Owens had
2 received his preservation letter, as I recall, and
3 Tyler and I had been in some form of communication
4 off and on for a couple of months, I suppose at this
5 point, or at least through August and September, I
6 was struggling with trying to get to the facts. I
7 felt at this point I had found them. I had -- and I
8 don't remember if this particular e-mail predates or
9 postdates a crisis that I was facing in which I went
10 on social media on Thursday or Friday of that week.
11 I asserted several things about this project, which
12 have turned out to be wholly true, and the
13 coverage -- and one of them was the fact that
14 Mr. Owens worked for the developer -- developers --
15 one of the developers' engineering companies, and
16 that I felt that there was something more going on
17 here. I don't remember exact words used, but
18 there's something more to this, political
19 aspirations, trying to build a platform, I mean,
20 activist, community activist, which is what I would
21 describe where Jim Owens had become at this point.
22 Tend to have some pretty vibrant things to say and
23 people tend to rally behind him. That's all part of
24 the American system. I don't discount their right
25 to do that.

1 So I came to -- because of this e-mail
2 or maybe prior to it, I had enough data to talk
3 about it. I had enough evidence to back up my
4 opinions. The problem I had is I didn't have a
5 letter or an image tying Mr. Owens' company to that
6 project. This particular e-mail has that in it, and
7 I don't know if it was this or some component, may
8 have been a quick phone call, where he said I'm
9 going to send you this but I don't want this letter
10 going public. Because I don't think he wanted this
11 level of his dirty laundry and internal documents
12 spread in the media. So, I honored that. I said, I
13 will cover it, and I will talk about it based upon
14 the fact that I can see it. Because if I hadn't
15 seen this, I would not have gone to the level of
16 coverage I had. I saw this. This is clearly ADC
17 involved with the project, and then I have Jim
18 Owens' LinkedIn page involving the project. So, I
19 say, okay, here it is.

20 So, I go to social media and Facebook
21 and I cover this. And all of his followers, which
22 are numerous, started just absolutely bashing me and
23 calling me names and four-letter words and I -- I
24 don't know if he's inciting this riot, you know, in
25 a sense on Facebook, trying to get me broken down.

1 They are sharing it on their page. I can't comment
2 back in some areas. I allow them to comment on my
3 page freely. I go to their page, they block me so I
4 can't. So, it's really a one-sided unfetterred
5 platform on their end.

6 So, I go back at some point, I don't
7 know if it's e-mail or phone, to Tyler between this
8 e-mail and Monday. Listen, I've got to put this
9 image up online, and I think that's when the Saving
10 Shem Creek thing occurred. Saving Shem Creek with
11 the Pinocchio as a result of that because he then
12 responded to my initial post that was making the
13 assertions but without the evidence, which is the
14 letter in this e-mail, by saying you better check
15 your facts. And he put a image of Stubbs and
16 Muldrow up to say, look, Crabtree's lying.

17 You know, he essentially -- he didn't
18 say it in so many words, but he essentially said,
19 look, you better check your facts, get your facts
20 straight, something like that. My company's nowhere
21 involved in this project.

22 Now, at that point, I've done a lot of
23 coverage of a lot of issues from politics. I go,
24 okay, I've got it here in black and white, and so
25 now I've got permission from my source to publish

1 it. I put it online and the attacks on me stopped.
2 And that's really the end of it. It wasn't about
3 Jim Owens, except for the fact that he decided to
4 engage and try to make me look like I have no
5 credibility. I was making this stuff up. That was
6 the diatribe occurring.

7 And at the end of the day, all I was
8 looking for is to present the facts, have a debate
9 substantively on the truth. I kept redirecting and
10 begging everyone to stop attacking me. If you don't
11 like what I have to say, attack what I have to say,
12 but stop calling me things like fuck job. I mean,
13 that was the kind of stuff that some of the Saving
14 Shem Creek people were saying over and over and over
15 again. Let's talk about the issue and come up with
16 a resolution.

17 And so this was all part of me making
18 sure that what I was saying was true and to present
19 to the public that what I'm saying is backed up by
20 these images, and by the way, you folks, you do
21 whatever you want, you make whatever decision you
22 want. And now here we are, you know, over what
23 essentially is not really a broadcast but a Facebook
24 spat that happens millions of times a day in
25 America. And that's this. That's Exhibit 4. The

1 context and timelines I've given you as best as I
2 possibly can.

3 (Plaintiff's Exhibit 5 was marked
4 for identification.)

5 Q. Okay. Get you to look at Exhibit 5
6 next.

7 A. Okay.

8 Q. And this is another e-mail from
9 Mr. Flesch to you dated September 18th, and --

10 A. That's correct.

11 Q. Is this when you first learned that
12 Mr. Owens worked for ADC Engineering?

13 A. I would -- I don't recall that specific
14 date. It was -- it was about this time. It could
15 have been a week prior or up to this date, but I
16 don't recall if this was the first instance I
17 learned that.

18 Q. And in this, Mr. Flesch says, "This guy
19 is a serious fraud." Did he say that?

20 A. That's what's in the e-mail.

21 Q. And you thought that Mr. Owens was a
22 serious fraud?

23 A. I can't tell you what I was thinking at
24 the time I read the e-mail. I'm not sure where I
25 was in the thought process of this. All I know is

1 that what I just told you in a bit of a lengthy
2 explanation is that this was really in my mind never
3 about specifically Jim Owens until Jim Owens
4 basically told the audience that follows him and my
5 audience by nature of that, that I was making stuff
6 up and that I better get my facts straight. That
7 was when I had to defend my credibility because I
8 had dozens and dozens of people calling me names on
9 social media because they believed him instead of
10 what I had in black and white.

11 (Plaintiff's Exhibit 6 was marked
12 for identification.)

13 Q. And then you sent a letter to the --
14 Exhibit 6 is a letter to the Moultrie News that you
15 sent?

16 A. Looks like a letter I sent, yes.

17 Q. Do you know when you sent that?

18 A. I don't remember the exact date. It was
19 a week or two ago.

20 (Plaintiff's Exhibit 7 was marked
21 for identification.)

22 Q. Exhibit 7 is a recent post you had on
23 your website that says, "Save Scam Creek"?

24 A. That's correct.

25 Q. What is Scam Creek?

1 A. It's a headline.

2 Q. What did you mean by that?

3 A. I believe in the audio I've described
4 what I mean by it is that there's a lot of things
5 going on that are very questionable.

6 Q. And what do you mean about that?

7 A. Well, I mean, you've got -- I mean, I --
8 you've got Shem Creek Corporation, which has a
9 letter from the secretary of state as of November
10 the 4th, either just prior to or just after the
11 elections that just occurred in Mount Pleasant, that
12 states it's an illegal entity raising money in South
13 Carolina through donations, from secretary of state
14 himself. So, you've got that. That's a bit of a
15 scam.

16 So, if I'm soliciting donations for a
17 legal nonprofit organization and I'm not even
18 registered in the state to abide by the laws, then I
19 am a bit of a scam at that point. I mean, I could
20 use a lot of words. That's the word I chose.

21 Q. Say that again, you are saying that
22 Saving Shem Creek is some kind of scam?

23 A. That's not what I said.

24 Q. What is it that you said? You tell me.

25 A. I said that if I am soliciting donations

1 for any purpose in the state of South Carolina as a
2 nonprofit corporation and I'm not properly
3 registered with the secretary of state's office
4 according to the laws of South Carolina, then I am
5 doing something illegal. Is illegal a scam, I mean,
6 that's -- I mean, lot of semantics in this, but
7 words are words and scam, illegal, not licensed. I
8 mean, I don't know -- you know, we in the media
9 choose words of brevity to get our message across.
10 We don't get to explain it.

11 Q. Where did you learn in order to raise
12 money you had to be incorporated?

13 A. Well, to the extent that I'm owning the
14 story, from the secretary of state's letter that was
15 sent to the Saving Shem Creek Corporation.

16 Q. What did the letter say?

17 A. I don't have it with me. It was simply
18 a letter that asserted -- it's posted on this page.
19 I don't see it on this exhibit, but it's posted on
20 this page. And it very clearly outlines that you
21 all have not filed the appropriate paperwork to be
22 soliciting and collecting donations. It was to that
23 context. Aside from the fact that they are, you
24 know -- I'm not a lawyer and I'm not trying to be.
25 I'm a pundit on radio and digital media talking

1 about issues that affect public people and public
2 matters and the social makeup of our country. If it
3 fits into that and I think it's relevant to my
4 audience or followers, I talk about it.

5 We frequently talk about politics, and
6 this is specifically a piece about politics. It's
7 about politicians and groups that are very closely
8 aligned with them. Be no different than talking
9 about the presidential election and calling the Coke
10 Foundation, the Coke Brothers a scam because they
11 donate to political candidates and run their own
12 business. It's the same type of conversation. I'm
13 not saying it's parallel. That's not an analogy for
14 it. I'm simply saying it's a political
15 conversation. It's my opinion based on the facts
16 that I've read.

17 Q. Who were you aiming this at, Exhibit 7?

18 A. People who live in Mount Pleasant who
19 might be concerned about the future of the city and
20 the tax base and economics of the city.

21 Q. Your intent in doing this was to have
22 people in Mount Pleasant not vote for certain
23 people?

24 A. I don't believe I said that. No, that
25 wasn't my intent at all.

1 Q. What was it?

2 A. I don't believe by principle that my job
3 as a radio host is ever to tell anyone who to vote
4 for. I simply present them with the facts, my
5 opinions on the facts, and I believe -- I don't have
6 the arrogance to believe that I'm in a position to
7 tell anybody what to do. I'm only in the position
8 to tell people what I think they should know. They
9 should make their own decision. That's the extent
10 of this.

11 If they like what these folks are for,
12 they should vote for them, and I'm sure there's a
13 lot of people that will. If they don't, they vote
14 for someone else. That's America. That's the --
15 that's the conversation I always have.

16 Q. When you worked for Kirkman
17 Broadcasting, were you paid by Kirkman Broadcasting?

18 A. I was. I was paid by them, yes.

19 Q. And how much were you paid?

20 A. Well, I don't know if that's a question
21 I'm willing to answer. I -- I was not an employee.
22 I was an independent contractor, and I had a number
23 of things that I think are proprietary of my
24 negotiation and my style of compensation that they
25 came through both barter and through a stipend as an

1 independent contractor.

2 Q. What was the amount of money that you
3 received?

4 A. I would have to go back and look to tell
5 you exactly what I received.

6 Q. Approximately.

7 A. I don't believe that that question has
8 any relevance to -- I mean, my income, if it was
9 \$5,000 or 5 million, I'm not sure where that -- I'm
10 not willing to share that information.

11 Q. Are you refusing to answer the question?

12 A. I'm unwilling to share information that
13 would be about my income or about my proprietary
14 operation and trade secrets, yes, in public record.

15 Q. You are contending that your payment by
16 Kirkman Broadcasting was a trade secret?

17 A. I'm contending that my model is not very
18 common in the broadcast industry, and I'm not
19 willing to share it for that reason.

20 Q. What model is that?

21 A. I'm unwilling to share my model.

22 Q. Well, what do you mean by model?

23 A. A number of factors coming together to
24 create a compensation package, which every
25 broadcaster has in some fashion.