

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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 III**

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JAN 27 2017

SC Court of Appeals

Appellate Case No.: 2016-001811
Case No.: 2014-CP-10-6265

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-v-

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**RECORD ON APPEAL
VOLUME III**

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1 who would make a derogatory comment and I'd warned
2 them and finally just had to delete their comments.

3 Q. You would agree with me if they make
4 the post it's up for there for awhile until you can
5 delete it, correct?

6 A. If I see it and it's something that's
7 alarming, then, yes, I would delete it.

8 Q. What if you don't see it?

9 A. Then it stays up there until I do or
10 one of the new administrators do see it.

11 Q. If somebody were to make a slanderous
12 or libelous comment or post on the Saving Shem
13 Creek Facebook page, do you think you should be
14 liable for that?

15 A. I don't have control of other people.
16 I don't know how I could.

17 Q. Well, let me ask you: Do you think
18 Facebook Company should be held liable for that?

19 A. I don't know the legalities of it. I
20 really couldn't answer your question.

21 Q. There was some testimony earlier about
22 your meeting in June with -- I forgot -- with ADC.
23 Remind me which partner --

24 A. Chris and Greg.

25 Q. Chris and Greg.

1 A. Well, I'm sorry. It was just Chris in
2 June.

3 Q. Did Chris inform you that he was
4 involved in the what we call ADC, the project, at
5 that time?

6 A. No.

7 Q. If you look at Paragraph 9 -- and I'll
8 tell you it's the last sentence where it says: As
9 long as he did not reference ADC Engineering. Do
10 you see that?

11 A. Yes.

12 Q. If you didn't have any knowledge that
13 ADC was involved in the project at that time, what
14 was the concern about you referencing ADC in the
15 first place as it relates to the project?

16 A. That was their request of me, to ensure
17 that they weren't mentioned in the media, that they
18 were out of the limelight, that they weren't
19 inferred through my efforts of opposition.

20 Q. Well, why would they have been
21 concerned about you mentioning ADC if you weren't
22 aware that ADC was involved in the project in the
23 first place?

24 A. Because the opposition that took place
25 was -- and the reason that they were notified is

1 because of my opposition to this project, was to
2 let them know that there was an article coming out.
3 It had my name on it. I didn't want -- I thought
4 it was a professional courtesy on my part to
5 discuss this my employer.

6 Q. And I understand that. I guess I'm a
7 little confused as to why the concern about
8 mentioning ADC in relation to this opposition of
9 this project you were involved in if you weren't
10 even aware that ADC was involved in the project at
11 the time.

12 A. Because of my discussions with Chris.
13 He asked me not to.

14 Q. Notwithstanding the fact that you
15 weren't aware that ADC was involved in the project?

16 A. Correct.

17 Q. Okay. Look at Paragraph 11, if you
18 would. That's on the next page. In reference to
19 my client, the first part about Bryan Crabtree,
20 you see: The material on the website is sometimes
21 republished on the WSCQ website.

22 Is that what you're referring to
23 earlier where you said you had took a screen shot?

24 A. It might have been.

25 Q. What else would it be referring to?

1 A. I don't know that it was referring to
2 anything else.

3 Q. Okay. Do you have any knowledge that
4 anybody other than Bryan Crabtree drafted or
5 created what you consider to be a slanderous
6 comment about you?

7 A. No. I was brought aware of what Bryan
8 Crabtree had to say and that's where the flags went
9 off.

10 Q. Okay. I guess my question is: You
11 don't have any evidence as we sit here today that
12 my client, Gil Kirkman or anybody at Kirkman
13 Broadcasting had anybody anything to do with the
14 creation of the content that you're talking about?

15 A. I don't know that they had anything to
16 do with the creation. I don't know the answer to
17 that question.

18 Q. If I told you that no one at Kirkman
19 Broadcasting had anything to do with the creation
20 of that content, would you have any reason to
21 disagree with me?

22 A. I'm not going to sit here and dispute
23 what you're trying to say without knowing.

24 Q. Do you believe that every radio station
25 has the responsibility to monitor every statement

1 made on the station?

2 A. I believe they have a responsibility to
3 the public and as far as the FCC to control what's
4 said and that there's nothing inflammatory directed
5 at the public whatsoever.

6 Q. Whether it's a sports radio or a
7 syndicated station or somewhere else, you would
8 still make that statement?

9 A. I don't think any broadcasting should
10 directly inflame a person, a private citizen or a
11 public citizen. I just don't see that that should
12 occur at all.

13 Q. Well, I guess my question was a little
14 different. Do you believe that the station itself
15 has a responsibility to monitor everything that's
16 said on the station?

17 A. They have a responsibility to the
18 employee to ensure that things like that don't
19 happen, in my opinion.

20 Q. Well, what if somebody on the radio
21 station is not an employee, like a syndicated broad
22 cast?

23 A. I don't really know enough about your
24 business to make a good comment.

25 Q. I'm asking your opinion on that.

1 A. I believe my opinion is I don't believe
2 information related to the FCC should be
3 conflictive to a private citizen from going back to
4 you being the creator of the Saving Shem Creek
5 Facebook page.

6 Q. Is that different than somebody
7 commenting on your page or making a post on your
8 page?

9 Do you have that same responsibility?

10 A. I have the responsibility to the people
11 when we sent it out to not sling mud and that was
12 the beginning of Saving Shem Creek. In fact,
13 there's also something else in there that says
14 character is made -- I can't remember what it is --
15 reputation by the decisions we make.

16 Q. What are you referring to?

17 What statement is that?

18 A. It's a mission statement on the page.

19 Q. Is this the Saving Shem Creek page?

20 A. Saving Shem Creek, yes.

21 Q. And I could go find that by looking at
22 it today?

23 A. You sure could.

24 Q. Look at Paragraph 12, if you would.
25 Prior to September 23 -- you see that?

1 A. Yeah.

2 Q. You or your attorneys allege that
3 Mr. Crabtree falsely inferred on his radio show
4 that you were a liar. Do you know exactly when
5 that was?

6 A. I think that the screen shots would
7 indicate that it was somewhere around the 21st or
8 22nd of September.

9 Q. All right. And on the 21st and 22nd of
10 September both Mr. Crabtree and yourself by that
11 time were aware that ADC was an engineer in the
12 project that we've been talking about, correct?

13 A. That was the first that I had known.

14 Q. So the first time you were aware was by
15 listening to the Bryan Crabtree show?

16 A. No. It was by the post he had made.

17 Q. His first post?

18 A. No. He posted a site plan that
19 belonged to David, CSC Engineering, and Bryan
20 Crabtree alleged that I was involved, knowing that
21 CSC was not the site engineer on the project. And
22 I tried to correct that in saying that I was not
23 part of that, that CSC -- I'm not involved with
24 CSC.

25 Q. I want to make sure I understand you.

1 Your testimony today is that the first time that
2 you became aware that your employer was involved in
3 the project was based upon something Bryan Crabtree
4 posted, correct?

5 A. I believe that's correct.

6 Q. All right. And if I told you that
7 the first post Mr. Crabtree ever made with your
8 name on it, with Jim Owens' name on it, was on
9 September 19, 2014 do you have any reason to
10 disagree with that?

11 A. No, I don't.

12 Q. Let me see the exhibits. Are those the
13 original? Why don't we do this: I'll keep them
14 back in order.

15 A. All right.

16 Q. Mr. Owens, let's look back at Exhibit
17 14 that was marked earlier.

18 A. Okay.

19 Q. You'll see, I believe, that I think the
20 first page is an e-mail from Mr. O' Kelley to you,
21 correct?

22 A. Yes.

23 Q. And the second page of that is the
24 actual attachment of the content of the letter?

25 A. Yep.

1 Q. And if you'll look back on the first
2 page, do you see that Mr. O'Kelley sent that to you
3 on September 18th --

4 A. Yes.

5 Q. -- at around 11:40 something AM?

6 A. Yes.

7 Q. All right. So would you like to change
8 your answer?

9 A. All I know is that he sent it to Mark.
10 I didn't know if Mark was involved.

11 Q. My question is: When you when you
12 first became aware that ADC was involved in the
13 project we've been talking about and you earlier
14 indicated that it was by looking at Bryan
15 Crabtree's post on September 19th, 2014 --

16 A. Yes.

17 Q. -- now that e-mail and letter was sent
18 to you at 11:40 something AM on September 18th?

19 A. Okay.

20 Q. You were, in fact, aware when that
21 letter was sent that ADC was involved in the
22 project, correct?

23 A. I was not completely aware that they
24 were until I had seen Bryan Crabtree or had a
25 discussion with Chris and Greg, did not know that

1 Mark Wilson was involved in this project until that
2 time. But I had never made any inference to any
3 outside media that ADC -- that I worked for ADC.

4 It wasn't until it was posted by Bryan
5 Crabtree that he inferred that -- and he made
6 available to the media that I was part of ADC.

7 Q. I understand that. My question is:
8 This letter, this evidence preservation letter, and
9 that e-mail --

10 A. Yeah. It gave me the first assumption
11 that ADC was involved in the project.

12 Q. Assumption? Well, if you read the
13 letter, you would know that ADC was involved in the
14 project, correct?

15 A. Yeah.

16 Q. Is that a yes?

17 A. Well, I didn't know until I spoke with
18 them because I realized when I first saw it that it
19 was part of an intimidation letter or what I
20 thought was an intimidation letter. I'm not sure
21 that I read through this until I was gone and I had
22 submitted my letter back to Mr. O'Kelley, stating
23 that I would be complicit with the law.

24 Q. Okay. But, again, you got that e-mail
25 and you acknowledged it because you forwarded it

1 less than two hours later to two of the principals
2 of ADC, correct?

3 A. Well, less than. I mean, it was just
4 minutes, you known within minutes that I forwarded
5 it to them.

6 Q. And when you got that evidence
7 preservation letter that day you became aware that
8 ADC was involved in the project, correct?

9 A. When I first saw this e-mail on my
10 phone, all it had was the first page. The
11 attachment -- I didn't read through the attachment
12 until later. But I understand your point as far as
13 it being September 18th.

14 Q. All right. But the point is that you
15 were aware on September 18th that ADC was involved
16 in the project?

17 A. I still wasn't -- I still had a hard
18 time believing that ADC was part of this project
19 because my contention was the site plan. I had
20 been working off the site plan. Structural
21 wouldn't get -- they wouldn't get involved until
22 after the site plan was approved. The site plan
23 was done by CSE who is David Stephens. So I was
24 basing my information off of CSE and never seeing
25 that ADC was part of any kind of attachment on the

1 cover sheet of the plans, both before this date or
2 after the final approval on September 24th. It
3 never had in the preliminary stages, at any time,
4 referenced ADC as being the structural engineer on
5 that project. So until I heard it from the source,
6 I didn't give this a lot of weight.

7 Q. All right. How about later that
8 afternoon when you met with Chris Cook and Greg
9 Jones at 4:15 in the afternoon?

10 A. Uh-huh.

11 Q. You were aware at that time that ADC
12 was involved in the project, correct?

13 A. And I told them at the time that I
14 didn't realize that Mark was involved in this
15 project.

16 Q. All right. That's fair. But you did
17 become aware, at least by that afternoon, at the
18 meeting --

19 A. I guess so. I guess so. The dates, as
20 far as the 19th, you know, regarding Bryan
21 Crabtree, that that was the first bit of
22 information that he made public, that he was
23 involved with ADC whatsoever. I never -- I never
24 pointed that I was involved with ADC at any time
25 during my opposition.

1 Q. I understand that. When Mr. Crabtree
2 made his first post or first vocal statement
3 about -- with your name attached to it on -- over
4 the radio waves or over the internet, both he and
5 yourself were aware that at that time that ADC was
6 involved this project, correct?

7 A. Again, as I said, I didn't -- you know,
8 I didn't connect it. I mean, all I know was that
9 Mr. Crabtree suggested that ADC was involved in
10 this project. And I see by your point as far as
11 September 18th that this evidence preservation
12 letter spells it out, that I was made aware.

13 Q. In the meeting that afternoon?

14 A. Yes, and the meeting.

15 Q. All right. And if he made the post on
16 September 19th and the first time he went over the
17 airwaves and mentioned your name, at that time,
18 both he and you would have known that ADC, your
19 employer, was involved in the project, correct?

20 A. I suppose so.

21 (DFT. EXH. 20, 9/18/14 Meeting
22 Synopsis, was marked for identification.)
23 BY MR. EARLY:

24 Q. Mr. Owens, I don't want to belabor the
25 point, but you acknowledge that you met that

1 afternoon with Chris Cook and Greg Jones, correct?

2 A. Correct, yes.

3 Q. And, in fact, on the second page you
4 say you were shocked by the letter?

5 A. That's not my writing.

6 Q. I understand that. Do you deny saying
7 you were shocked by the letter?

8 A. I was a bit shocked by the letter, yes,
9 because knowing that I don't -- I didn't have --
10 that I didn't do anything wrong, I was shocked that
11 the developer would come after my employer or put
12 pressure on my employer to let me go.

13 Q. Do you know how Mr. Crabtree became
14 aware of ADC's involvement and your employment with
15 ADC?

16 A. No, I don't.

17 Q. Have you seen what I produced to
18 Mr. Parker in this lawsuit, the discovery
19 documents?

20 A. I'm not sure.

21 Q. I don't want to know anything y'all
22 have talked about, trust me.

23 A. I'm not sure.

24 (DFT. EXH. 21, 9/8/14 e-mail from
25 B. Crabtree to G. Kirkman, was marked for

1 identification.)

2 BY MR. EARLY:

3 Q. Do you know who Tyler Flesch is?

4 A. Never met him.

5 Q. Do you know who he is?

6 A. I've come to find out who he is.

7 Q. Is that not Tex?

8 Is that somebody different than Tex?

9 A. Yes.

10 Q. Does he work with the same company?

11 A. He works with for a different company.

12 Q. What is R-E-D-T-Y Advisors?

13 A. I don't know. I will tell you what I
14 have found about Tyler Flesch is that he works as a
15 partner with Red Drum Capital who is an investor on
16 this parking garage.

17 Q. Who is the developer that Tex worked
18 for?

19 A. Avtex.

20 Q. Okay. Have you ever seen this e-mail
21 before?

22 A. No.

23 Q. Do you have any reason to dispute that
24 this is how Bryan Crabtree found out about ADC's
25 involvement in the project and your employment with

1 ADC?

2 A. No. I have not seen this e-mail

3 Q. All right. Mr. Owens, I asked if you
4 have any reason to disagree that is the Brian
5 Crabtree's -- first time that he became aware of
6 your employment with ADC and ADC'S involvement with
7 the project?

8 A. I can't really answer that. It
9 happened on October 18th in the morning, which is
10 basically the same day which is basically --

11 Q. Let me stop you there. That's a
12 forward. I'm looking at the original e-mail from
13 September 18th.

14 A. I don't know. I don't know. I can't
15 answer that.

16 Q. So you don't --

17 A. I don't have any reason -- I don't have
18 any reasonable to dispute what you're saying.

19 Q. Mr. Crabtree essentially went on air
20 with the information he gleaned from Tyler Flesch?

21 A. I don't know that that's where it came
22 from, is my point.

23 Q. Okay. Is that from -- let me ask you
24 this: If Mr. Crabtree upon receiving this e-mail
25 from Tyler Flesch on the evening of September 18th

1 would have some big breaking discovery, some
2 investigation, and contacted him at ADC he would
3 have found out that you were an employee of ADC at
4 the time, would he not?

5 A. If he would have contacted ADC,
6 certainly.

7 Q. Let me ask you. Also in Paragraph 12,
8 you state that he falsely inferred that you were a
9 liar.

10 A. Okay.

11 Q. What statement did he make that you're
12 talking about there?

13 A. He called it out. He came me out as
14 being a liar --

15 Q. All right. And --

16 A. -- and being two-faced and he had some
17 references about being two-faced and lying.

18 Q. And how many different times?

19 A. I'm not sure. I'd have to go back and
20 look.

21 Q. Tell me, is there anything about the
22 two-faced and -- and I think there's a Pinocchio
23 image.

24 A. There was one.

25 Q. Is that what you're referring to,

1 anything else anywhere than that picture?

2 A. Just the formulation, being called a
3 liar.

4 Q. Have you listened to those broadcasts?

5 A. I have.

6 Q. What is it at the time?

7 Contemporaneous? Later?

8 A. It was probably later. It was not
9 during the time.

10 Q. How did you go about doing that?
11 Was there an archive or something?

12 A. Yes. I guess there is an archive.

13 Q. All right. There was an exhibit -- let
14 me show you -- Mr. Owens, tell me to read off the
15 exhibit number for that again.

16 A. That's 18.

17 MR. EARLY: We need to make this one.

18 (DFT. EXH. 22, copy of website plan
19 comments, was marked for identification.)

20 Q. All right. When you -- that's a
21 comment to a post on Bryan Crabtree's site,
22 correct, that you made?

23 A. I think so, yes.

24 Q. Did Rett call you on the phone?

25 A. I don't remember how he contacted me.

1 I'm not sure.

2 Q. All right. When you made that comment
3 on there on Mr. Crabtree's Facebook page, at that
4 time you had been aware by at least four days then
5 that your company was involved in this project,
6 correct?

7 A. What's the date on it?

8 What's the next -- I was not at the
9 office on the 22nd.

10 Q. Can you see that with your glasses on?

11 A. It says September 22nd.

12 It says the 22nd or the 19th. Let me
13 see yours. 5/15/2015.

14 MR. PARKER: That's the day it was
15 printed on.

16 THE WITNESS: No. That's the date that
17 shot was taken.

18 MR. PARKER: You said 5/19/15?

19 THE WITNESS: That's what it says here.

20 (DFT. EXH. 23, copy of website comments
21 enlarged, was marked for identification.)

22 Do you see the date of September 22 on
23 that post.

24 THE WITNESS: I do.

25 BY MR. EARLY:

1 Q. Do you have any reason to disagree with
2 that?

3 A. I don't disagree with the date.

4 Q. All right. When you made that it's a
5 comment, not a post?

6 A. Yes, a comment.

7 Q. We distinguished the two earlier?

8 A. Correct.

9 Q. When you made that comment on
10 Mr. Crabtree's Facebook page you had been aware at
11 least by four days of your company's involvement in
12 the project at that time, correct?

13 A. I was just made aware that they --
14 what I was made aware of by Mr. Crabtree's posting
15 was that Stubbs Muldrow Herin had initiated their
16 contract with ADC and when that came up -- that was
17 the first time that I believed that they were
18 involved in this project. I'd like to go back, if
19 you don't mind.

20 Q. Can you tell me for the record what
21 you're looking at?

22 A. Yeah. I'm looking at the Buist, Byars,
23 and Taylor letter that was sent on September 18th
24 that they want all communications, sound
25 recordings, et cetera.

1 Q. Do you remember my question?

2 A. Yes, I do, and what I'm trying to look
3 up with regard to this evidence preservation letter
4 is where it states that ADC was involved in this
5 project.

6 Q. Well, let me do it a different way.

7 MR. PARKER: It doesn't say that, if
8 you'll read it.

9 MR. EARLY: Okay.

10 MR. PARKER: Because it's been sort of
11 inferred that it does and it doesn't.

12 BY MR. EARLY:

13 Q. You had a meeting that afternoon with
14 two of the principals in the corporation at ADC
15 where you did find out that ADC was involved in the
16 project, correct?

17 A. We had a meeting after this came out,
18 the two principals, and they said they were going
19 to have to look and find out their terms. That
20 was -- you'll have to check the day of the week
21 that there took place but -- well, it says
22 Thursday. So didn't hear anything Friday. We were
23 off at 12.

24 I didn't come in Monday, which would
25 would have been -- what -- what day? Monday was

180
1 the 22nd. I didn't come in the office and the 23rd
2 is when I find found out about my termination and
3 the fact that, you know, that was the end game. So
4 this was on the 22 on that Monday I still -- they
5 were still checking with the attorneys to find out
6 where they stood and I didn't come back until the
7 23rd and this was posted on the 22nd.

8 Q. Okay. My question is pretty simple,
9 though. Regardless of where the information came
10 from, on the 18th, the day that you got the letter
11 and the day that you had the meeting with the two
12 principals, are you testifying under oath that on
13 that day you never became aware of ADC's
14 involvement in the project?

15 A. I did not know for certain that ADC was
16 involved in the project. I believed it to be an
17 intimidation letter.

18 Q. Well, how about when you talked to your
19 bosses?

20 A. They said this was uncharted territory
21 and they needed to confer with their attorneys to
22 find out where they stood.

23 Q. And you you're testifying that they
24 never told you during that meeting that ADC was
25 involved in this project?

1 A. In fact, I remember stating to them --
2 and I stated to them and I got nothing back -- was
3 that was that I did not know that Mark was involved
4 in this project.

5 Q. But you did know that Mark was involved
6 in this project by time that meeting occurred -- by
7 the end of that meeting, correct?

8 A. There was nothing confirming that Mark
9 was involved in this project. What was said was is
10 that I did not -- because of the way it went, the
11 e-mail was sent to Mark. So my assumption was I
12 did not know that Mark was involved in this
13 project. I never remember or recall the fact that
14 they sent me anything or suggested otherwise, only
15 that they would have to confer with their attorney.

16 Q. Okay. At the end of the meeting were
17 you aware that Mark was involved in the project?

18 A. I'm not sure that I was.

19 Q. Then why would you have said that I
20 wasn't aware that Mark was involved in the project
21 to them?

22 A. Because I was making the assumption
23 because the letter was copied to Mark.

24 Q. Okay. When Mr. Crabtree made the post
25 and the statement over the air on the 19th, he was

1 aware that your company was involved in the
2 project, correct?

3 A. I don't know. Was he?

4 Q. Well, I just showed you the e-mail from
5 the 18th --

6 A. The --

7 Q. -- from Tyler Flesch?

8 A. That's correct. So he takes Tyler
9 Flesch and the e-mail -- I mean, he took Tyler
10 Flesc as the gospel.

11 Q. What we're saying is that ADC was
12 involved from the project and that component of it
13 is true, correct?

14 You know now that ADC was involved in
15 the project?

16 A. I know now that ADC had a contract on
17 the project in 2013 and it was negated in 2014 and
18 I also know that, you know, because of this and
19 because of my communication with my supervisors
20 that I made them aware of my opposition. It would
21 have been a great time at that point in time to let
22 me know that they were going after structural. I
23 had a structural contract.

24 Q. The structural contract was terminated
25 for what reason?

1 A. I don't know.

2 Q. Do you know whether it had anything to
3 do with your involvement in the Save Shem Creek
4 Project?

5 A. It would appear that it would.

6 Q. Look at Paragraph 14 for me in the
7 complaint. I know we're shuffling some exhibits
8 around. I don't think I need to make a the
9 calendar an exhibit, but I brought it.

10 A. What number?

11 Q. It's 14, please. That's on Page 3.

12 A. Got it.

13 Q. When you say, after the Plaintiff,
14 being yourself, advised Mr. Crabtree by social
15 media that he had no knowledge of ADC's involvement
16 in the Shem Creek Project, was that you making him
17 aware that the exhibit we looked at earlier -- was
18 that in some other forum or a private message or
19 what?

20 A. Crabtree published on the internet a
21 piece on September 22nd which disseminated to
22 others. Accused the Plaintiff of being a liar,
23 double down on his lie. That was on the 22nd.

24 Q. Yes, sir. My question is about the
25 first part. I'm just asking how you advised him by

1 social media. Was that by exhibit -- pardon me for
2 reaching over you.

3 A. That's fine.

4 Q. Was that by Exhibit 18 or was that by
5 some other means?

6 A. I'm not sure. It may have been by
7 this or it may have been prior to this. I think
8 that's -- I think that's right, though. Better
9 check your facts before making your claims.
10 Because this was an engineering -- this was the
11 only thing that was given do the Town at the time
12 before it was approved on September 24th as a final
13 design. This was still a preliminary design.
14 Structural would not get involved until after a
15 civil design was approved. Why? Because it could
16 change. A footprint could change, structural beams
17 could change. Footprint could change. So I was
18 following all that -- all that I had was on the
19 town's website, which was from CSC.

20 Q. I'm not disputing that because I'm not
21 an engineer. But the question was how you let him
22 know. Was it by social media? Was there always
23 some other way?

24 A. It could have been.

25 Q. Did you ever call Mr. Crabtree and say,

1 my company's not involved in this project?

2 A. I never spoke to him.

3 Q. Did you ever send him an e-mail saying
4 my company's not involved in this project?

5 A. Never posted that.

6 Q. When you say posted that, better get
7 your facts straight, ADC was not involved in the
8 project?

9 A. They were not involved in -- if you
10 recall what I posted was on the CSC site plan.

11 Q. You're making a distinction between the
12 site plan engineer and the structural engineer?

13 A. Correct.

14 Q. But ADC was the structural engineer?

15 A. Didn't know that at the time.

16 Q. Is that what you're saying?

17 A. Yes, I am.

18 Q. Okay.

19 A. I wouldn't have made it made it
20 otherwise.

21 Q. Mr. Owens, you testified earlier you
22 started the petition, right, and then changed that
23 out yourself?

24 A. Yes.

25 Q. You submitted it to town council

1 yourself?

2 A. I did.

3 Q. And you frequently attended town
4 council meetings?

5 A. I did.

6 Q. As a matter of fact, I think you
7 testified earlier you created a PowerPoint
8 presentation although you never got to do it
9 because you had a concert that night?

10 A. Correct.

11 Q. You had frequent discussions with not
12 only town council but Mayor Page?

13 A. Yes.

14 Q. I think you even listed her as a
15 witness in this case, correct?

16 A. I don't think know that there's a need.

17 Q. You made e-mails to the Post & Courier
18 and the Moultrie News regarding this?

19 A. Yeah. They have published some facts
20 about the parking garage.

21 Q. But you made e-mails to them about
22 this? I mean you drafted e-mails and sent them to
23 the Post & Courier, sent them to the Moultrie News?

24 A. I think so, yes.

25 Q. You were interviewed by the City Paper

1 regarding this project?

2 A. Yes.

3 Q. You stated in the past you represent
4 the locals in this project?

5 A. That is what the town counsel and major
6 believed.

7 Q. You've never made that statement
8 yourself?

9 A. No.

10 Q. You e-mailed, I think -- I just saw
11 some with Chris Nickels. But you e-mailed, I
12 think, Elton Carrier? And I don't know all the
13 members of the town council, but you e-mailed
14 numerous members of the town council regarding the
15 project?

16 A. Elton Carrier's was something he sent
17 me after a response I sent a response to the
18 Moultrie News and that was a response to him. I
19 know all of the counsel members.

20 Q. Did you ever e-mail town council and
21 copy members of the media?

22 A. I don't remember doing that.

23 Q. Do you remember Mr. Carry coming back
24 to you in an e-mail saying that he took issue you
25 copying the Moultrie News with something you sent

1 him?

2 A. No. What he was referring to is that
3 letter that came out in the Moultrie News was
4 minutes from the letter that I sent to town
5 council. So he was assuming that I had copied the
6 Moultrie News on the letter that I had sent town
7 council.

8 Q. Okay. And you have helped create
9 money -- I mean help -- you have helped raise money
10 or tried to raise money on behalf of this cause?

11 A. Yes.

12 Q. You helped created the bumper sticker?

13 A. I did.

14 Q. And you have written letters that had
15 actually been published regarding this controversy,
16 correct?

17 A. Yes.

18 Q. And nobody forced you into this
19 controversy?

20 You did so on your own accord
21 willfully?

22 A. I did.

23 Q. Bear with me just a second. Have you
24 ever alleged that any members of town council have
25 taken bribes because of this project?

1 A. I wouldn't do that.

2 Q. Have you ever done it?

3 A. I've never done it. I don't believe
4 so.

5 Q. Why did --

6 A. I'm sorry. Go ahead.

7 Q. If you wanted to follow up on your
8 answer...

9 A. No. I just -- there have been other
10 people who have alluded to do something like that,
11 but I don't think give it a lot of credence.

12 Q. Why did you relinquish admin status
13 after the comment that you made to Mr. Crabtree on
14 the 22nd?

15 A. I never relinquished admin privileges.

16 Q. Okay.

17 A. That wasn't even on my Saving Shem
18 Creek posts.

19 Q. I understand that. I saw a document --
20 maybe I'm wrong -- that you relinquished it to
21 James Scott at some point?

22 A. No. I added several administrators
23 during the latter stages of my employment.

24 Q. I stand corrected. You were terminated
25 from your job, which is part of the basis of this

1 lawsuit, correct?

2 A. Yes.

3 Q. Do you have any knowledge as to whether
4 or not any of your bosses at ADC ever listened to
5 the Bryan Crabtree program?

6 A. I have no knowledge of that.

7 Q. So you can't say that them hearing your
8 name on the radio caused you to lose your job,
9 correct?

10 A. I have no idea about that. I can't --
11 I can't answer your question.

12 Q. Fair enough. When they met with you on
13 September 18th that afternoon, the two principals,
14 did they ever mention Bryan Crabtree's name during
15 that meeting?

16 A. No. It was a very brief meeting.

17 Q. I think you, not in response to a
18 question from Molly earlier, said that almost
19 everybody in Mount Pleasant is involved in this
20 cause. Is that --

21 A. No. A lot of people are. Most people,
22 I believe, are very aware of what's going on, from
23 the South part to the north part.

24 Q. I would agree, or at least are aware of
25 the controversy.

1 A. Yes.

2 Q. I read in it's read in the newspapers,
3 talked about it?

4 A. It's an unfortunate circumstance.

5 Q. In fact, this lawsuit that you filed
6 has been in the media as well, correct?

7 A. One time.

8 Q. And you saw the article in the Post &
9 Courier?

10 A. I did.

11 Q. Have you ever read the comments under
12 the articles in the Post & Courier?

13 A. Periodically.

14 Q. You have read them?

15 A. I think so.

16 Q. Would you agree about 98 percent of
17 them are favorable, Mr. Owens?

18 A. I don't know. I don't know. I saw the
19 initial, but I didn't go through all of those.

20 MR. EARLY: Okay. Thank you, Mr.
21 Owens. I think that's all I have for you.

22 EXAMINATION

23 BY MR. EARHART:

24 Q. Mr. Owens, how many professional
25 licenses do you hold in the state of South

1 Carolina?

2 A. None any longer.

3 Q. What licenses have you held in the
4 State of South Carolina?

5 A. A mechanical contractor's license in
6 the State of South Carolina.

7 Q. What type of mechanical contractor's
8 license?

9 A. Plumbing and process piping, gas and so
10 forth.

11 Q. Commercial?

12 A. Commercial and residential.

13 Q. I apologize. How long did you hold
14 that license for?

15 A. Probably 10 years or better.

16 Q. What classification did you have on
17 your commercial license?

18 A. It was a Group 1.

19 Q. Do you hold any other professional
20 licenses in South Carolina?

21 A. No, just some certifications for
22 erosion control.

23 Q. Okay. Did you ever finish college?

24 A. Nope.

25 Q. Do you think the fact that you do not

1 have a license and do not have a college is
2 impairing your job search?

3 A. I don't know.

4 Q. You don't think it has any impact on
5 it?

6 A. I'm not sure.

7 Q. Okay. Why did you go on Mr. Crabtree's
8 website?

9 A. Someone had mentioned that he was
10 saying some erroneous things. I don't remember who
11 that was, but that's what directed me to that site.

12 Q. What were you trying to accomplish by
13 publishing Exhibit 18?

14 A. He had said that I was made aware and I
15 was trying to prove him wrong by explaining that
16 this was from CSC. This site plan was being
17 submitted and it's the only thing that the Town of
18 Mount Pleasant had on its town's website addressing
19 this project.

20 Q. Now, the first phrase that you direct
21 to Mr. Crabtree is, better check your facts.

22 A. Yes.

23 Q. Is that correct?

24 A. Uh-huh.

25 Q. Was Mr. Crabtree correct in what his

1 allegations were?

2 A. No. I did not know that ADC was
3 involved in the project at that time.

4 Q. Was what Mr. Crabtree said correct that
5 you worked at ADC and ADC was involved in the
6 project?

7 Was that a true statement he made?

8 A. Can I see the post?

9 MR. PARKER: I object to the form of
10 the question.

11 THE WITNESS: Bryan Crabtree is making
12 comments of Rett Gary's comment about yellow
13 journalism, at its worst.

14 BY MR. EARHART:

15 Q. Do you understand what your friends are
16 accusing Bryan of? Yellow journalism?

17 A. There were more posts on Bryan
18 Crabtree's site than this. I was just trying to
19 point out what he had previously said and that I
20 wanted him to take a look and the town's website to
21 verify what he was accusing me of and he should
22 have found that it belonged to CSC, the site David
23 Stephens --

24 Q. Okay. Were you shocked to learn that
25 ADC was involved in the project we you got the

1 letter?

2 A. I was shocked.

3 MR. PARKER: Object to the letter.

4 BY MR. EARHART:

5 Q. I assume September 18, 2014 was a very
6 bad day, wasn't it?

7 A. It was not a good day.

8 Q. It was a really bad day, fair?

9 A. It wasn't a bad day until the 23rd when
10 I realized what effect it had.

11 Q. Now, you knew on the 18th that
12 advocating against a current client of your company
13 was a very bad thing?

14 A. Not knowing that they were involved was
15 a very bad thing.

16 Q. And you realized then if the
17 allegations were true that ADC was involved that
18 you had a problem?

19 A. I would have been --

20 MR. PARKER: Object to the form.

21 BY MR. EARHART:

22 Q. Do you understand why the developer was
23 angry at ADC and at you?

24 A. Not really because I never attacked the
25 developer. Our questions were always relative to

1 the town, the irregularities that the town had, not
2 with the developer. In fact, I never called him
3 out by name so much. In fact, I used to speak well
4 of him. I used to speak well of him when he did a
5 project out at Oakland in the Kmart, in the
6 Walmart, out at Oakland Shopping Center in Mount
7 Pleasant.

8 MS. CHERRY: Objection.

9 BY MR. EARHART:

10 Q. Do you think it was fair for ADC's
11 client to be concerned that one of their employees
12 was speaking against one of their projects?

13 A. I did not know that he was a client.

14 Q. No. I'm not asking what -- I'm asking
15 you take off your Jim Owens hat for a second. I
16 want you to think about your former client.

17 Do you understand why your client would
18 be distressed why one of their professionals was
19 advocating against a project they are designing?

20 A. In the context that it was never
21 directed towards him, I was shocked because it was
22 always directed at the Town. It never had anything
23 to do with Tex.

24 Q. Do you criticize Tex for being unhappy?

25 A. I don't criticize him at all. In fact,

1 I don't want wish him any ill. I don't have any
2 animosity towards Tex Smalls.

3 Q. I want you to take a look at what we're
4 going to mark as Exhibit 24.

5 (DFT. EXH. 24, Bryan Crabtree internet
6 page, was marked for identification.)

7 BY MR. EARHART:

8 Q. Have you seen Exhibit 24 before?

9 A. I believe I have.

10 Q. I want you to take a look at what was
11 actually posted. It says: Jim Owens who is a
12 founding member and lead contributor to the Saving
13 Shem Creek Facebook page. Is that statement by Mr.
14 Crabtree true?

15 A. Not at the time. At the time, he
16 wasn't -- they weren't involved at the time, that I
17 know.

18 Q. Hold. On we're going step with this.
19 We'll start with: Jim Owens, who is founding
20 member and a leading contributor to the Saving Shem
21 Creek Facebook page...

22 Is what Bryan said true or false?

23 A. Leading contributor of Saving Shem
24 Creek Facebook page is true.

25 Q. Okay. Next page: Boasts nearly a

1 thousand members...

2 True or false?

3 A. True.

4 Q. Next page: Is an employee of the
5 firm's assigned project...

6 Is that true or not false?

7 A. Not according to the information that
8 was available by the Town and what I knew to be
9 from council members and the mayor --

10 Q. Sure.

11 A. -- or the design professionals there
12 and --

13 Q. I'm not asking you what you knew on
14 September 19th. I'm asking you from what you know
15 today, and what Mr. Crabtree is saying, is true or
16 false.

17 A. I would say that in retrospect that
18 it's true.

19 Q. Okay. And the next phrase: The group
20 is most upset about a four-story building and the
21 four-level parking garage. Is that true?

22 A. Not really. It's not -- doesn't have
23 anything to do with the four-story building. It's
24 got to do with the height, 55 feet in height.

25 Q. Okay.

1 A. You know, it's the size of the
2 boulevard and it's going up on Shem Creek.

3 Q. Other than him not understanding
4 exactly what your protest movement was about, is
5 the statement on September 19th substantially true?

6 A. I think that's the problem. He didn't
7 understand it.

8 Q. Didn't understand what?

9 A. What you just said. He didn't
10 understand the particulars.

11 Q. No. I said that you're alleging that
12 he didn't understand what you were protesting
13 against.

14 A. I think he realized that we were
15 protesting the parking garage office building.

16 Q. Okay. Now, I believe you testified
17 earlier that you had a conflict of interest in
18 running the Saving Shem Creek. Is that fair?

19 A. I would have, had I known.

20 Q. All right. That's, in fact, why you
21 removed yourself as the administrator on Facebook?

22 A. I didn't remove myself. I'm still an
23 administrator on the Saving Shem Creek Facebook
24 page.

25 Q. Why did you step back from the Saving

1 Shem Creek movement?

2 A. Because it was becoming too large for
3 one person to maneuver.

4 Q. Was it to try to save your job?

5 A. No. I'm still in it.

6 Q. Did you send the -- did you go visit
7 Bryan's website on May 20th?

8 A. I don't know. I may have. On his
9 Facebook page or --

10 Q. Hold on. Did you do that to try to
11 save the job?

12 A. No.

13 Q. Okay. Can we agree in hindsight what
14 you posted only May 20th and is in Exhibit 18 was
15 not in fact truthful information?

16 MR. PARKER: You said posted May 20th?

17 MR. EARHART: I'm sorry. September
18 22nd.

19 MR. EARLY: September 22d.

20 THE WITNESS: According to my response
21 to Bryan in whatever his earlier post -- and I
22 wished that you wouldn't cut it off. I wished that
23 it would continue on and make it clear. He was
24 alleging that I knew that ADC was part of this and
25 I did not know that ADC was part of that when I

1 issued that and put the CSC site plan below.

2 BY MR. EARHEART:

3 Q. Let me ask you a different question. I
4 want you do assume for a second that you knew ADC
5 was involved. Would posting the CSC site plan be a
6 very misleading thing to do.

7 A. No, because that was the only thing
8 available on the Town of Mount Pleasant website.

9 Q. I want you to assume for a second --

10 MR. PARKER: He has answered the
11 question. It has been asked and answered. You
12 don't have to answer it again.

13 MR. EARHART: I could ask him to make
14 an assumption.

15 MR. PARKER: You just did. You asked
16 the same thing and he answered.

17 BY MR. EARHART:

18 Q. So everything in Exhibit 18 is correct,
19 the statement that you made?

20 A. To the best of my knowledge.

21 Q. As we sit here today, is it still
22 correct?

23 A. To the best of my knowledge --

24 Q. Okay. So the phrase --

25 A. -- at the time it was posted.

1 Q. In hindsight, the phrase, if my
2 employer had done any of the preliminary work, was
3 that true?

4 A. Yes. If the would have done the site
5 plan I wouldn't have been involved in this project.

6 Q. Would you have become involved in the
7 project if they had a structural plan?

8 A. No. If I would have known the
9 structural was coming along, I would have had
10 nothing to do with it. I would washed my hands and
11 have said, today's my last day, guys.

12 Q. The last part of your post, you say, I
13 would imagine he is on his way to obtain his
14 permit. Do you see that?

15 A. Yeah.

16 Q. Now you know what you need to get your
17 permits from the City of Mount Pleasant?

18 A. You have to have final approval.

19 Q. And --

20 A. He was working on final approval.

21 Q. This was not final approval?

22 A. He didn't receive final approval until
23 September 24th.

24 Q. You need your plans to get your permit
25 don't you, Mr. Owens?

1 A. You've got to have an approved plan to
2 get your permits.

3 Q. But if he's going to get his permits
4 then he has his structural plans, doesn't he?

5 A. If you can show any me any of that
6 structural was on his coverer sheet mandated with
7 anything referencing ADC, I'd like to see it.
8 There was no reference to a company on his title
9 sheet. None. To this date, there is still none.

10 Q. What did you do to investigate the
11 truthfulness of the allegations made in the letter
12 on September 18th that ADC was involved in the
13 project?

14 A. The truthfulness to which letter?

15 MR. PARKER: That was not in the
16 letter. You're misstating the facts again.

17 BY MR. EARHART:

18 Q. You had a meeting with Rick Cook on the
19 18th.

20 A. No.

21 Q. I'm sorry. Who did you meet with on
22 the 18th.

23 A. Chris Cook.

24 Q. You met with Chris Cook?

25 A. And Greg Jones.

1 Q. And at at that point there was some
2 discussion of ADC being involved. My question to
3 you is what did you do to investigate the
4 truthfulness of that?

5 A. There was nothing said, only that they
6 with would have to confer with their attorneys.
7 This was uncharted water for them. They needed to
8 look at it.

9 Q. Why would they need to confer with
10 their attorney about the project?

11 A. You'll have to ask them. All I know is
12 I spoke to Chris Cook in early June and told him of
13 my involvement in the opposition. It would have
14 been a great time at that point to tell me they had
15 a structural contract with them. It would have
16 been my last day of any opposition to the project.

17 Q. So in hindsight, this problem was
18 actually caused by ADC not being straightforward
19 with you?

20 MR. PARKER: Object to the form of the
21 question. He didn't say that.

22 Why are you misstating what he said to
23 you? That's improper.

24 BY MR. EARHART:

25 Q. My question to you, as you sit here

1 today, you understand that the cause of all of this
2 in your opinion is ADC not providing you the
3 information?

4 A. No. What I think is that they have --
5 they have their own policy. What I'm stating is
6 that until this was made public it became a
7 problem. They didn't post it and I didn't post it.

8 Q. So your complaint with Mr. Crabtree is
9 he posted your name?

10 A. Do you see that he -- that I double
11 down as a liar? He calls me a liar not once, but
12 twice.

13 Q. Let's talk about that. I'll mark that
14 as Exhibit 25.

15 (DFT. EXH. 25, Bryan Crabtree internet
16 article, was marked for identification.)

17 BY MR. EARHART:

18 Q. Do you want to read through it?

19 A. I've got the gist of what it says.
20 Double down on his lie? That part?

21 Q. No. We're going to go through it
22 sentence by sentence. The first sentence you can
23 to read to yourself and then I'm going to ask you
24 ask if it's true or false.

25 A. When was this posted?

1 Q. I believe on the 22nd after you posted
2 the post saying that they were not involved.

3 A. Was it the 23? The 22 or 23?

4 Q. First sentence: Is what Mr. Crabtree
5 said true or false on Exhibit 25?

6 A. Well, I never said ruining Mount
7 Pleasant.

8 Q. Hold on. We're going sentence by
9 sentence: I asked you: The first sentence, is it
10 true or false?

11 A. First sentence: Recently, I shared
12 with you that the founder of Saving Shem Creek
13 Facebook page was employed by a firm directly
14 involved with a project his group was protesting.
15 That sentence is what his position was, that he
16 believed that would be the case. Facebook was
17 employed by the firm. I didn't know that they were
18 involved in this project.

19 Q. All right.

20 A. So I guess it would be false because
21 I -- at the time I was not aware that they were
22 involved.

23 Q. Your knowledge is no part of the first
24 sentence, is it?

25 A. No.

1 Q. Okay. So what part of -- so you --
2 what part of first sentence is false? You can help
3 me out.

4 A. That the founder of Saving Shem Creek
5 was employed by a firm directly involved with a
6 project his group -- with a project his group was
7 protesting.

8 Q. And what is false about that is that
9 ADC was not involved in designing --

10 A. At the time, I did not know that.

11 Q. No. No. No. No. Mr. Crabtree was
12 told by the developer that he had terminated ADC's
13 contract, right?

14 A. He was?

15 Q. That was --

16 A. Okay.

17 Q. That's fair. I mean, your answers can
18 be what your answers are. Okay. So the first
19 sentence is false because you did not understand at
20 the time that the information was true. Is that
21 fair?

22 A. I suppose so.

23 Q. Okay. And the next sentence says: I
24 publicly asked why would you work for a company
25 that is designing and developing projects that in

1 your words are ruining Mount Pleasant?

2 Do you understand that?

3 A. I do understand it. He says he
4 publicly asked. Who did he -- he didn't publicly
5 ask me.

6 Q. Here's my question to you, though: Is
7 that a fair question about a point of public
8 interest?

9 A. That I'm ruining Mount Pleasant?
10 Is that what he's saying?

11 Q. No, sir. Is that a fair question for
12 Mr. Crabtree to ask on his Facebook?

13 A. I publicly asked, why would you develop
14 a company that is designing and developing project
15 that in your words -- who is he referring to, your
16 words?

17 Q. You.

18 A. Yeah, and I never said Mount Pleasant.
19 Is he putting words in my mouth or is he misstating
20 again.

21 Q. You don't think that's a legitimate
22 question for someone to ask you?

23 A. I don't think it is a legitimate
24 question.

25 Q. Did you find that question offensive?

1 A. No. I find it misleading.

2 Q. Okay. The next sentence. When I first
3 pointed to this conflict of interest -- you would
4 agree with Mr. Crabtree on that point?

5 A. He is speaking. I mean, I'm agreeing
6 that that's exactly what you're reading, is that
7 when I first pointed to this conflict of interest I
8 was met with harsh ridicule.

9 Who has he met with harsh ridicule?

10 Q. Hold on. You agree what you were doing
11 in warning at ADC was a contract of interest?
12 Fair?

13 A. Had I known that my contract company
14 was involved in this project, it would have been a
15 conflict of interest.

16 Q. So we can agree on the conflict of
17 interest?

18 A. We can agree that had I known that it
19 would have been a conflict of interest.

20 Q. Fair enough. You don't know whether he
21 was met with any harsh ridicule?

22 A. That's what he's stating. I can't
23 confirm or deny. That's something he's stating. I
24 wish he would have said who is accusing that. He
25 looks like he's sending it out to me, but I never

1 said that and he never spoke to me about harsh
2 ridicule.

3 There are plenty of times when he was
4 arguing about people with Saving Shem Creek,
5 discussing points of interest relating to this
6 project. None of them were probably positive, but
7 it didn't come from me.

8 Q. Okay. Is anything in the first
9 sentence false?

10 A. Of the second paragraph?

11 Q. Yes, sir.

12 A. I couldn't answer you.

13 Q. The next sentence: I was accused of
14 lying and distorting the truth and acting as a
15 shock jock. Is there anything false about that?

16 A. I have no idea because I did not make
17 the statement.

18 Q. The next sentence is: It got even
19 worse. There's nothing false about that, is there?

20 A. Again, this is Mr. Crabtree's position,
21 his perception.

22 Q. Okay. And the next sentence says: As
23 I presented my case, Mr. Saving Shem Creek --
24 that's you, right?

25 A. That's what he says.

1 Q. Okay. Who works for the firm building
2 garage he opposes -- that's a true statement, isn't
3 it?

4 A. I did not know it at the time.

5 Q. But it's true?

6 A. I was going by the civil, which I
7 worked with in ADC primarily was through civil.
8 This civil was done -- this site plan again was
9 done by David Stephens with CSC. It's the only
10 thing that was available. There was no reference
11 to anything structural.

12 Q. Okay. Is that sentence: As I
13 presented my case, Mr. Saving Shem Creek who works
14 for the firm building a garage he opposes presented
15 a stamped image from the Town of Mount Pleasant
16 showing another firm other than his employer on a
17 plan submitted. Is that factual?

18 A. I did show him a stamped -- I did
19 submit that photograph that you see in a prior
20 exhibit showing --

21 Q. Right --

22 A. The project that CSC was working on.

23 Q. Okay. So that's a correct statement?
24 You did do that?

25 A. According to Mr. Crabtree.

1 Q. No. I'm asking you: Is that a true
2 statement?

3 A. Presented a stamped image? It wasn't a
4 stamped image. You know, it was a photograph that
5 the Town of the Town of Mount Pleasant showing
6 another firm, which is true. It did know show
7 another firm. It did not show ADC.

8 Q. Do you understand, Mr. Crabtree's next
9 sentence where it says, this furthered the case
10 that somehow I was lying?

11 A. What do you want me to comment about?

12 Q. Do you understand how Mr. Crabtree
13 could have felt like you were trying to point him
14 out to be a liar?

15 A. I never tried to point him out. I was
16 trying to give him the facts and ask him to look at
17 it himself.

18 Q. The --

19 A. I never called him a liar.

20 Q. But when you wrote, better check the
21 facts, you're insinuating he wasn't telling the
22 truth, weren't you?

23 A. No. I was asking him to check the
24 facts so he could speak legitimately about what was
25 going on.

1 Q. Who would be in a position better
2 position to investigate the truthfulness of ADC
3 being involved? You or him?

4 A. Well, I thought that it would have been
5 me, but it looks like he was refuting this site
6 plan that was done by another company.

7 Q. Okay. The next paragraph where it
8 says -- the part that you disagree with is the
9 part where Mr. Crabtree says: Mr. Saving Shem
10 Creek clearly knew this but didn't expect it to
11 become known. That's the part you disagree about?

12 A. Yes.

13 Q. Okay. And do you have any evidence to
14 show or suggest that you did not know that ADC was
15 involved?

16 A. Other than the posts that I submitted,
17 believing as I have stated in the past that they
18 weren't involved and then posting the only thing
19 that was made available through the town's website
20 about the approval process going through the
21 permitting.

22 Q. Is the only person in the world that
23 knows the answer to that question yourself?

24 A. Of whether or not what?

25 Q. You knew?

1 A. That I knew that ADC was involved?

2 I don't know who else knew.. I can't
3 answer that.

4 Q. Okay. Let's stop for a second, okay?
5 There is a letter, a nasty eight-page letter from a
6 lawyer, directed to you at your work address, your
7 e-mail address and your personal address. Do you
8 understand that?

9 A. I do.

10 Q. Okay. And there are meeting minutes
11 from a meeting you had with your employers in which
12 they reflect that you were told that ADC was
13 involved, correct?

14 A. I have not seen that.

15 MR. PARKER: That's not in -- that's
16 totally not correct. You can use the document that
17 says what it says, but it doesn't say what you just
18 stated.

19 BY MR. EARHART:

20 Q. Exhibit 20. Hold on. Let me get my
21 Exhibit 20. I want you to look at that. There is
22 my 20. Do you see where the meeting minutes
23 reflect that you were surprised to learn that ADC
24 was a client -- or I'm sorry -- that this was a
25 client?

1 A. Yes. I was.

2 Q. Okay.

3 MR. PARKER: That doesn't say what you
4 said, though, if you want to quote what you said is
5 different than what you're stating.

6 MR. EARLY: I think y'all have the
7 copies.

8 MR. PARKER: I've got the exhibit, not
9 yours. I'll give you one. I've got another one.

10 MR. EARHART: I appreciate that. What
11 number? I'm sorry, Mr. Parker.

12 MR. PARKER: That's Exhibit 20.

13 BY MR. EARHART:

14 Q. Okay. So when the meeting happened
15 with Chris Cook and Greg Jones, you were not
16 surprised to learn via a letter that the developer
17 for the Shem Creek Project was a client of ADC?

18 A. You state I was not surprised?

19 Q. That's what you're saying?

20 MR. PARKER: He was surprised.

21 THE WITNESS: I was surprised.

22 BY MR. EARHART:

23 Q. So where we have Exhibit 20, which is a
24 meeting that you attended, in which it was
25 explained that the Shem Creek was an ADC project --

1 MR. PARKER: That doesn't state that.

2 MR. EARHART: Mr. Parker, if you want
3 to object, to the form of the question --

4 MR. PARKER: Absolutely. I'm going to
5 put my objection on the record.

6 MR. EARHART: Put the witness outside
7 the room and you can say whatever --

8 MR. PARKER: I'm going to put my
9 objection on the record because it's improper for
10 an attorney to take a question and misread it and
11 say that the document says that. It's improper.

12 BY MR. EARHART:

13 Q. Let me ask you a different question.
14 If Chris Cook and Greg Jones testified that they
15 conveyed to you that this was an ADC project, are
16 you going to quarrel with that testimony?

17 A. That's a hypothetical question. I
18 don't know what I'm going to do in the future.

19 Q. If those gentlemen testify that you
20 were told this information, are you going to
21 challenge their credibility?

22 A. Again, you're talking about
23 hypotheticals. They haven't made any declaration
24 to that and I respect both of those people to this
25 day and I haven't heard them say that yet.

1 Q. The next paragraph, the one that
2 begins, so here's the real question...

3 A. Which paragraph are you referring to?

4 Q. It's second complete paragraph on
5 Exhibit 25.

6 A. Okay.

7 Q. Do you see --

8 A. Which one? I'm sorry.

9 Q. So here is the real question: Your
10 objection to Mr. Crabtree's question is that he
11 used the word lie?

12 A. Well, it's a combination of all of it.

13 Q. Let me ask you --

14 A. Lie, double down, lie, Pinocchio,
15 two-faced. What does that tell you?

16 Q. If you knew that ADC was involved when
17 you posted this on November 20th -- on the 22nd
18 would that be a lie?

19 A. If I knew that ADC was involved before
20 I posted that?

21 Q. Yes.

22 A. It would be.

23 Q. The next part of this says: Perhaps it
24 was a run for mayor or city council in the future.
25 Do you see that?

1 A. I do see that.

2 Q. And you understand that Mr. Crabtree
3 was suggesting that you had posted this information
4 because you were spotting for political office?

5 Do you understand that?

6 A. I do see that, yes.

7 Q. Is that the type of criticism that one
8 has in the public sector?

9 A. Do you think that I'm running for
10 counsel or for mayor?

11 Q. No. I'm asking you if that's a fair
12 question for someone to post on a political blog
13 about local politics.

14 A. I don't have any control over what
15 Mr. Crabtree does. I can't comment on anything in
16 the future.

17 Q. The question is: Is that a fair
18 comment for someone to make?

19 A. You'd have to ask him. He made it.

20 Q. I'm asking you: Is challenging your
21 political aspirations something that you don't
22 think is appropriate for people to comment on
23 publicly?

24 A. I mean, it's relevant.

25 Q. I'm going to show you we'll mark as

1 Exhibit 26.

2 (DFT. EXH. 26, Jim Owens Facebook post,
3 was marked for identification.)

4 BY MR. EARHART:

5 Q. So on September 17, you're pushing the
6 mayor to --

7 A. I'm pushing the mayor?

8 Q. You're asking her to get involved. Is
9 that far?

10 A. The mayor is part. She's on the Saving
11 Shem Creek page. She's a former schoolmate of
12 mine. I know the mayor.

13 Q. Do you understand how ADC's client
14 would be disturbed that one of their employees of
15 that you are their structural engineer is pushing
16 the mayor on --

17 A. That's your perception that I'm pushing
18 the mayor. You're talk oh taking it completely out
19 of context. In fact, instead of showing what
20 you've shown here, if you would have shown the
21 first comment that was made, it was made by Linda
22 Page underneath this --

23 Q. My question is: Don't you understand
24 why the developer would be distressed that an ADC
25 employee was doing this?

1 A. I don't know why he would be. It
2 didn't have anything to do referencing him. It was
3 referencing the approval of the project. I was
4 asking her if she could elaborate on it or tell
5 her consistent who were on the page.

6 MR. PARKER: Exhibit 21, I don't
7 believe we had gotten this before today, what is
8 marked as the exhibit. The other documents from
9 Mr. Crabtree to Mr. Kirkman.

10 MR. EARLY: They are the other
11 documents from Mr. Crabtree to Mr. Kirkman. I
12 produced four e-mails from Mr. Crabtree to Mr.
13 Kirkman.

14 MR. PARKER: I've got them all here and
15 this one is -- it might have been. I don't want to
16 say it wasn't:

17 MR. EARLY: We'll call the your office
18 if that's the case.

19 MR. PARKER: I would have picked up on
20 that if I hadn't seen it.

21 MS. CHERRY: Do y'all mind if we take a
22 break for a minute? And I'll get us some more
23 water?

24 (A recess transpired.)

25 BY MR. EARHART:

1 Q. Mr. Owens, Paragraph 17 --

2 A. On which document?

3 Q. Your complaint.

4 A. Which number?

5 MR. EARLY: It was my first exhibit.

6 THE WITNESS: Paragraph?

7 BY MR. EARHART:

8 Q. It's 17.

9 A. Okay.

10 Q. How did Mr. Crabtree's postings cause
11 you to lose your job? That's what you allege in
12 Paragraph 17 in layman's terms.

13 A. This suggests that I was terminated
14 from my job with ADC on September 23 and the
15 results of what Mr. Crabtree had done was prior to
16 that. It certainly -- his comment certainly didn't
17 help my case much.

18 Q. No. I'm asking do you believe that
19 Mr. Crabtree's statements on the radio and the
20 website are what caused you to be fired?

21 A. I don't know all the details. I can't
22 answer your question.

23 Q. Tell me why you think they did.

24 A. Well, in retrospect it looks like
25 there was a conflict of interest and that coupled

1 with Bryan Crabtree's excellent, coupled with other
2 information that was misleading by Tyler Flesch,
3 there are a lot of care variables as to why this
4 came about. I'd like to know that as well.

5 Q. But as you sit here today do you think
6 Mr. Crabtree was the sole cause of your
7 termination?

8 A. The sole cause?

9 Q. Yes, sir.

10 A. I'm not sure. I'm not sure. I don't
11 know.

12 Q. You don't have any information whether
13 anyone at ADC knew anything about Mr. Crabtree that
14 posted. Do you?

15 A. It was never brought to my knowledge.

16 Q. And if any no one at ADC knew anything
17 about that and that they didn't consider that then
18 that's not a legitimate claim to make against Mr.
19 Crabtree?

20 A. The's that's what you're saying.

21 Q. I'm asking --

22 A. I don't know. How can I answer that?

23 I don't know if they heard anything or if they
24 didn't, if they were told the substance of what Mr.
25 Crabtree did. I have no knowledge of any of that

1 information. How can I answer the question?

2 Q. That's fair. So as we sit here today,
3 you don't know whether the allegation in Paragraph
4 17 is true or false?

5 You suspect it may contribute?

6 Is that your opinion?

7 A. I believe that Mr. Crabtree was
8 influential reason with a reason why I'm no longer
9 there. He made it public. I was never going to do
10 that. I would have never done that in my wildest
11 dreams. Bryan Crabtree is the one who made it
12 public. He put it on out on the FCC. He was the
13 one who attached me to the ADC and the ADC to Jim
14 Owens. I had never done that in my many months of
15 working on this to project.

16 Q. And you fault Mr. Crabtree for
17 attaching you to ADC?

18 A. I fault Mr. Crabtree for calling me a
19 liar.

20 Q. How could you fault Mr. Crabtree for
21 connecting you to ADC when you went on his website
22 and posted something negative about him?

23 A. If you look at some of the
24 documentation I --

25 MR. PARKER: Object to the form of

1 question.

2 THE WITNESS: -- provided --

3 BY MR. EARHART:

4 Q. I mean, do you acknowledge picking part
5 of the fight with Mr. Crabtree Mr. Owens.

6 A. Not at all. I've never met the man. I
7 know nothing about him and because of all of this I
8 care to never know anything about him.

9 Q. So you deny indicating Mr. Crabtree?

10 A. I do deny that.

11 Q. And you felt that you had the right to
12 go onto his Facebook page and say something which
13 turns out not to be true --

14 MR. PARKER: Object to the form of the
15 question.

16 BY MR. EARHART:

17 Q. And not the content of -- you can go
18 ahead and --

19 A. I'm sorry?

20 Q. You believe it's perfectly permissible
21 for you to go on Mr. Crabtree's website and say
22 something that which you now acknowledge is not
23 true and you expect him to not to respond?

24 MR. PARKER: Object to the form.

25 THE WITNESS: I was defending myself.

1 BY MR. EARHART:

2 Q. Have you ever done anything to correct
3 these misstatements you made on social media?

4 A. What misstatements?

5 Q. That ADC wasn't involved in the
6 project?

7 A. I never knew that they were.

8 Q. You acknowledged now that they were?

9 A. I know now that they are or were.

10 Q. My question is simple: Have you done
11 anything to correct the misstatement that is you've
12 made?

13 A. I don't know where I have made those
14 misstatements. Maybe you could point those out to
15 me. With regard to Mr. Crabtree's post? Is that
16 what you're referring to? Because Saving Shem
17 Creek I never made mention of it, of Mr. Crabtree's
18 fight.

19 Q. Have you published any clarification --

20 A. On Mr. Crabtree's site it's no longer
21 available.

22 Q. Why do you say that?

23 A. I was told or I looked for it and it
24 wasn't there.

25 Q. Okay.

1 A. Is it still there?

2 Q. It was there yesterday.

3 A. I don't know.

4 Q. How did Mr. Crabtree's statements
5 injured your representation?

6 A. By calling me a liar, doubled down as a
7 liar, two-faced, Pinocchio. I mean what would that
8 do to you? My reputation -- there's only two
9 things that one owns: Name and his word and you
10 can't have one without the other. To be called a
11 liar changes the game for me.

12 Q. Why does the post on Facebook -- why is
13 that so injurious to you?

14 A. It's a public comment and it's not only
15 just on Facebook. It's on the radio station. It
16 was publicly broadcast.

17 Q. Has it affected your ability to get
18 credit, to get a job, to do anything else?

19 A. I don't know.

20 Q. Can you offer any examples of how it's
21 impacted your life?

22 A. Of course. I mean, it's affected me.
23 It's -- you know, reduced me to a liar. What else
24 can I do?

25 Q. Let me ask you a different question.

1 Is any part of the predicament you're in today you
2 your own fault?

3 A. You know, I bear whatever faults are my
4 own. I don't bear the unintended consequences that
5 have taken place over erroneous information and
6 that's the only way I can answer your question.

7 MR. EARHART: That's fine. I don't
8 have any more questions.

9 MR. EARLY: I've got a little bit of
10 follow-up.

11 MS. CHERRY: I had one question.

12 MR. EARLY: Go ahead.

13 EXAMINATION

14 BY MS. CHERRY:

15 Q. Mr. Owens, did you ever ask anyone at
16 ADC Engineering whether they were involved in the
17 parking garage office project we've been
18 discussing?

19 A. No, but it was readily known that I was
20 involved in the opposition of the project. I don't
21 recall asking anybody, but I don't think so. I
22 mean, people would come up to me and ask me how it
23 was going.

24 MS. CHERRY: I don't have any further
25 questions.

EXAMINATION

BY MR. EARLY:

Q. Mr. Owens, I don't have the numbers.
But the preservation letter with the e-mail on the
front of it, can you find that?

As you're looking, I'm going to ask
about those minutes in a second. Mr. Owens, you
had indicated earlier that this evidence
preservation letter did not alert you to fact that
ADC was a client of the developer.

Is that what you testified earlier?

A. It alerted me to that it appeared to be
an intimidation of my opposition to this project.

Q. I understand. But it also has in there
that the last sentence of the first paragraph --
and it references Coleman Boulevard. That's the
parking garage where -- garage office building
we're talking about, correct?

A. In they have -- that's the developer
who sent this preservation letter.

Q. But the Zero Coleman Boulevard is the
same project we're here object about today?

A. Yes.

Q. All right: And the last sentence of
the first paragraph for Mr. O'Kelley's letter says:

1 Your firm, ADC, formerly provide engineering
2 services to our clients, correct?

3 A. That's what it says.

4 Q. Okay.

5 A. What does formally mean? I'm just
6 saying.

7 Q. And in the meeting minutes which is
8 Exhibit 20, but I don't have the -- I think the
9 original is over there. The first -- we look to --
10 I'm not trying to get in your space, but it says:
11 Jim Owens explained that he was surprised to
12 receive the evidence preservation letter and was
13 further surprised to learn via the letter that the
14 developer for the Shem Creek Project was a client
15 of ADC. Did we read that correctly?

16 A. I see that.

17 Q. Are you denying that today?

18 A. Denying what?

19 Q. I'm asking about the second part
20 because the sentence is very clear in my mind that
21 you were surprised to learn that the developer was
22 a client of ADC.

23 A. Surprised to receive the evidence
24 preservation letter. Was further surprised to
25 learn via the letter that the developer for this

1 Shem Creek Project was a client of ADC's.

2 Q. And I'm asking you if you can answer
3 the question. You can explain it afterwards.

4 MR. PARKER: I object because, Number
5 1, these aren't minutes. Number 2, these are ADC's
6 notes. So if -- you know, with that clarification,
7 I think he can answer.

8 MR. EARLY: I think --

9 MR. PARKER: You misstated that they
10 are minutes of that meeting and they are not. They
11 are someone's notes.

12 MR. EARLY: Can we get the actual
13 exhibits. We've got two different people's notes
14 now. If I seem to be misstating something, it is
15 not my intention. I'm reading from that.

16 MR. PARKER: I understand that.

17 MR. EARLY: I'm not making any anything
18 other than the fact that that's what it is is
19 somebody's notes of that meeting.

20 MS. CHERRY: Isn't that what meeting
21 minutes are?

22 MR. PARKER: Well they may or may not
23 be.

24 MR. EARLY: Somebody's got the exhibit.
25 I marked it as a three-page exhibit.

1 MR. EARHART: I'm sorry. Hold on.

2 MR. PARKER: We've got another one.

3 MR. EARHART: I took 18 by accident.

4 MR. EARLY: I had three copies brought
5 in here, so I don't know.

6 BY MR. EARHART:

7 Q. Here it is, Mr. Owens. I kind of lost
8 my train of thought because of the objection.

9 First of all, did I read that
10 correctly, whether this is your writing or Mr.
11 Cook's, or Mr. Jones's? Regardless of whose
12 writing this is, did I read that correctly?

13 Jim Owens explained that he was
14 surprised to receive the evidence preservation
15 letter and was further surprised to learn via the
16 letter that the developer for the Shem Creek
17 Project was a client of ADC.

18 Did I read that correctly?

19 A. That's what it says.

20 Q. And you are disputing that today, is
21 what I understand. Correct?

22 A. When it says was a client of ADC's, if
23 you go back -- just had it a second ago.

24 Q. There's the exhibit I was looking for.

25 A. There it is there. But I'm looking for

1 something there that states -- it might have been
2 in if evidence preservation letter. I'm not sure.

3 Q. Can you explain to me whether you --

4 A. Took a client of ADC's? My question, I
5 guess, my reservation, is when.

6 Q. During this project at all. This
7 parking garage project.

8 A. It says in the letter that the
9 developer for the Shem Creek Project was a client
10 of ADC's. It doesn't state when. We just had a
11 document a second ago that suggests -- and I need
12 to look back at it.

13 MR. PARKER: It's not marked.

14 THE WITNESS: Yes. Your firm -- and it
15 states --

16 BY MR. EARLY:

17 Q. My firm?

18 A. No. This states: Your firm formerly
19 provided engineering services to toward our client.
20 That's all it tells me.

21 Q. Okay.

22 A. It doesn't tell me that he's associated
23 with this project to-date.

24 Q. Okay. So you understand that the firm
25 was fired two days before this, two days before

1 this letter was sent?

2 A. I believe it was the same day.

3 Q. I got that letter, too, which was the
4 16th.

5 A. I think it was written on the 16th and
6 they had 7 days to respond and they went back to
7 the -- I mean, it's just what I've read.

8 Q. Are we arguing over semantics here?

9 A. No. I hope not.

10 Q. At this meeting -- well, further,
11 you've got the actual exhibit and on Page 3 of this
12 exhibit, understanding that the first set of notes
13 were from Chris Cook -- Okay -- and the handwritten
14 notes portion says -- you see where you say, quote:
15 He had nothing to hide.

16 A. Yes.

17 Q. And then he says: He, meaning you,
18 didn't realize they were a client.

19 Did I read that right?

20 A. That he didn't realize they were a
21 client and that's what my position was at the time.

22 Q. But you learned on the 18th that they
23 were a client, correct?

24 A. No. We addressed that earlier that --

25 Q. Okay. You're going to take the

1 position notwithstanding this that you didn't know
2 on the 18th that ADC was a client of the developer
3 at any time related to this project. Is that
4 correct?

5 A. Not for this project at the time. It
6 said that they provided engineering services for
7 our client. Formerly provided. Formerly provided.

8 MR. EARLY: Thank you for your, time
9 sir.

10 EXAMINATION

11 BY MR. EARHART:

12 Q. Did you know who the architect of
13 record took when you were protesting the project?

14 A. I did.

15 Q. Who was it?

16 A. Stubbs Muldrow Herin.

17 Q. How much work have you done with Stubbs
18 Muldrow Herin?

19 A. An average amount, whatever that means.
20 I have worked on projects for Orangeburg, the State
21 College in Orangeburg. We've worked on some
22 schools.

23 Q. And you understand that typically in
24 commercial construction that the engineering firms
25 work as subconsultants to the architect. Is that

1 fair?

2 A. Yes.

3 Q. And often times it's the architects
4 that collect subconsultants. Is that fair?

5 A. It could be.

6 Q. And you were aware at the time that ADC
7 probably generated significant revenue from their
8 relationship with Stubbs Muldrow. Is that fair?

9 A. It would seem that the evidence
10 preservation letter would have continue from Stubbs
11 Muldrow.

12 Q. What did you do to investigate your
13 client Stubbs Muldrow's involvement from the
14 project?

15 A. I didn't.

16 Q. If you had investigated that would you
17 have come to learn that ADC was designing the
18 project?

19 A. Stubbs Muldrow does work -- they're
20 doing the Town Hall in Mount Pleasant. I don't
21 believe, if you look, that ADC is the site engineer
22 for that project. I believe you'll find Seamon
23 Whiteside is the site engineer for that project.
24 So the issue is that the subconsultants are not
25 often times the same as you would indicate.

1 Q. But you knew the guys at Stubbs
2 Muldrow. Is that fair?

3 A. I don't know them personally. I don't
4 deal with them other than in a professional level.

5 Q. But you now where to call to get the
6 information you needed to figure out who the
7 engineering firm was?

8 A. I was under the assumption presuming --
9 based on the site plan which I would -- which was
10 the only discipline that I was affecting was the
11 civil site plan by CSC, David Stephens.

12 It did not -- had I ever known at any
13 time given time that the structural would have been
14 ADC, it would have been the end of my reign as far
15 as opposition in this project.

16 Q. Okay. But you knew that -- did you
17 make any effort to figure out who the other
18 consultants were that were designing the building?

19 A. I based what I knew at the time on the
20 title sheet of the drawings and none of it
21 indicated ADC.

22 Q. And you --

23 A. Not at the preliminary stage or at the
24 final stage.

25 Q. So how did you know who the architect

1 was if you only looked at the site plan?

2 A. Because when he generated it it was
3 across the news, all over the news, that Stubbs
4 Muldrow Herin was the architect.

5 MR. EARHART: I don't have any further
6 more questions.

7 MR. EARLY: I don't have any more.

8 MS. CHERRY: Did you have any follow-up
9 questions, Johnny?

10 MR. PARKER: I don't.

11 (The deposition was concluded at 3:45
12 PM.)
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SIGNATURE OF DEPONENT

DEPONENT: JAMES C. OWENS
DEPOSITION DATE: May 20, 2015
REPORTER: PRISCILLA NAY
CASE CAPTION: JAMES C. OWENS vs. BRYAN CRABTREE

(Please return both Signature of Deponent pages)

I, the undersigned, JAMES C. OWENS, do
hereby certify that I have read the foregoing
deposition and find it to be a true and accurate
transcription of my testimony, with the following
corrections, if any:

PAGE LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: May 20, 2015

REPORTER: PRISCILLA NAY

CASE CAPTION: JAMES C. OWENS vs. BRYAN CRABTREE

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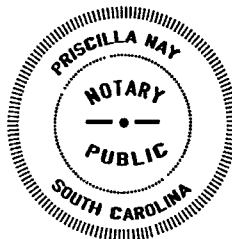
CHANGE

REASON

JAMES C. OWENS

Date

I, Priscilla Nay, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Priscilla Nay

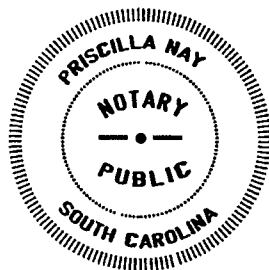
Priscilla Nay,
Certified Shorthand Reporter
My Commission expires
December 12, 2021

CERTIFICATE OF REPORTER

I, Priscilla Nay, Court Reporter and
Notary Public for the State of South Carolina, 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 5th day of June, 2015
at Charleston, Charleston County, South Carolina.



Priscilla Nay

Priscilla Nay,
Court Reporter
My Commission expires
December 2, 2021

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James C. Owens
1197 Island View Dr
Mt. Pleasant, S.C. 29464
(843) 884-2227

Membership Affiliation: Seacoast Christian Community Church; Etewan Lodge No. 95
A.F.M.; Ancient and Accepted Scottish Rite 32°.

Education: Graduate of Wando High School; Attended the College of Charleston;
Attended Trident Technical College; Graduate of the Carolinas Construction Training
Council Four-year Apprenticeship Program; Certificate in Estimating for Mechanical
Contractors by the A.G.C.

Previous Licenses Held: South Carolina Board of Mechanical Contractors License; County
of Charleston Gas, Process Piping and Plumbing "Masters License"; City of Charleston Gas
and Plumbing "Masters License";

Experience:

December 1988 to Present

Commissioners of Public Works
P.O. Drawer B, 103 St. Philip St.
Charleston, S.C. 29402
Phone #727-6800

Position: Senior Construction Inspector/Development
Coordinator/Pipefitter Supervisor

Responsibilities: As a senior construction inspector my responsibilities include reviewing each project whether it be a major capital improvement or a developer project to insure that it meets construction standards, look for alternatives, check details, discuss with the project engineer any improvements that should be implemented prior to bid release. In making detailed daily inspections of several ongoing projects it is my duty to insure that the contractor explicitly follows stringent guidelines in the installation or repair of water and wastewater mains as well as pump stations; which include structural, civil, mechanical and electrical engineering technology. Coordinate construction operations with contractors, engineers, property owners, municipal regulators and SCDHEC officials. Make detailed final inspections for SCDHEC for the acceptance or rejection of all portions of the water distribution and wastewater collection system. Supervise contractors in their construction practices of all aspects of the water distribution and wastewater collection installations. Assists in the revision of specifications and water & wastewater guidelines which include construction details. Coordinate with developers and their engineers close-out documentation necessary for processing final payment. Process change orders and deductions in contracts, pay requests and O & M letters to SCDHEC for final acceptance.



Regarding the structural engineering technology related to pump stations, it was my job to verify the spacing and sizing of rebar and to ensure that all wall and floor steel was properly fastened prior to a concrete slab or wall pour. Keyways and water stops were used for underground and some final grade structures. Also, I would ensure that sleeves were installed prior to the rebar and would make certain that they were anchored properly and tied in to the respective mat. I would then coordinate with the geo-tech, who would bring the required test cylinders for concrete specimen testing on the date of the pour. Breaking the cylinders would ensure proper tensile strength for each pour.

As the Development Coordinator, the responsibilities consist of the transition of water and wastewater project developments from the preliminary design through construction to final inspections and final close-out documentation by the developer and the developers engineer. In carrying out these responsibilities, it is necessary to make use of the following: Developer and Engineering correspondence to acquire project drawings and specifications which are in accordance with CPW guidelines; communicate applicable impact and tap fees; drawing up the proper contract agreements to cover the responsibilities of the developer to the Commissioners of Public Works; project tracking by the use of Dbase IV in tracking each project from the start date to the inspection date to year end maintenance bonds. Also, this position requires communication skills for the developers, engineers, contractors, and the public for their questions concerning fees, water and wastewater availability and location of applicable water and wastewater mains. Computer skills such as: Word processing and data base tracking are imperative. Other information available upon request.

August 1987 to December 1988:

Owens Plumbing and Mechanical Contractors
P.O. Box 132
Mt Pleasant, S.C. 29464
Phone #884-4407

Position: Owner/President

Responsibilities: Estimating, bidding, laying-out, supervising and installing intricate process piping, plumbing and HVAC systems according to contract drawings and specifications; ordering and scheduling material and equipment delivery for each project; responsible for job cost and tracking, employment services, permitting, license fees, scheduling inspections, drawing up contracts, change order and close-out documentation, etc.

February 1984 to August 1987:

C.R. Hipp, Inc.
3537 Dorchester Rd.
Charleston, S.C. 29405
Phone #744-2571

Position: Project Foreman and Superintendent

Responsibilities: Laying out, supervising and installing intricate process piping, plumbing and HVAC systems according to contract drawings and specifications; which

include potable water, salt water, compressed air, steam, hot water, chilled water, jet fuel and wastewater systems; testing, ordering and scheduling material and equipment. Worked in conjunction with all project managers, contractors, sub-contractors, developers and engineers in the completion of projects on or before its schedule; worked with government and public officials such as City and County inspectors, ROICC officers, DHEC officials.

Job listings available upon request, many of which took place for the Federal Government.

May 1978 to February 1984:

F.A. Bailey and Sons, Inc.
Corner of Morrison and Huger
Charleston, S.C. 29403
Phone #577-7500

Position: Same as above.

Responsibilities: Same as above, and are available upon request.

Hobbies: Bicycling, yard work, surfing and spending time with my children.

Personal: Married, four children



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 \$43,000 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 Employee'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
3020-1 PROSPERITY CHURCH ROAD PMB 136

HANAHAN SOUTH CAROLINA 29406
CHARLOTTE, NORTH CAROLINA 28269

PH 843.566.0161
PH 704.494.3362

FAX 843.566.0162
FAX 704.494.3363

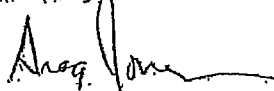
www.adcengineering.com
email@adcengineering.com

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.

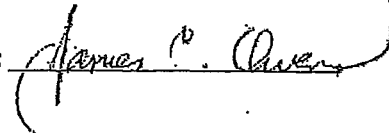
Again, ADC Engineering, Inc. and I look forward to having you join our firm. We believe if you apply yourself, you can develop to be a valuable, long-term asset to our team. Please let me know if you have any questions or need any additional information. I look forward to hearing from you.

Sincerely,



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

Accepted:



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



ADC_000151



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Foreword

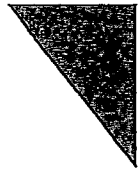
ADC Engineering, Inc. is a company that provides Civil and Structural Engineering, Roofing and Waterproofing Consulting Services as well as Land Planning and Landscape Architecture for our clients. The success of any organization is dependent upon the quality, motivation and performance of its employees, 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

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.

- 
- 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 Employee'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 YEAMAN'S HALL ROAD
3020-1 PROSPERITY CHURCH ROAD, PMB 136

HANAHAN, SOUTH CAROLINA 29406
CHARLOTTE, NORTH CAROLINA 28269

PH 843.566.0161
PH 704.494.3363

FAX 843.566.0162
FAX 704.494.3363

www.adcengineering.com
email@adcengineering.com

ADC_000175

APP. 1104

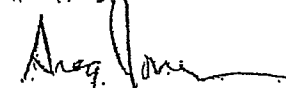
ROA 1097

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.

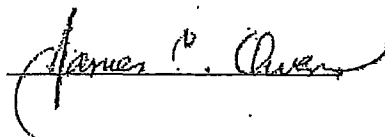
Again, ADC Engineering, Inc. and I look forward to having you join our firm. We believe if you apply yourself, you can develop to be a valuable, long-term asset to our team. Please let me know if you have any questions or need any additional information. I look forward to hearing from you!

Sincerely,



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

Accepted:



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.

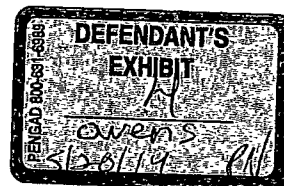
Please sign and date this receipt and return it to the Business Manager.

Date: February 27, 2014

Signature: James C. Owens

Print Name: James C. Owens

Revised 12/18/2013



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

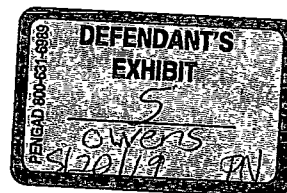
Linda said that she will set up a meeting...Like you, I hope so as well. I would like to invite James Scott to join us... any thoughts?

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

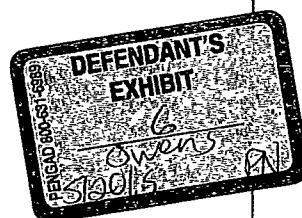
From: Elton Carrier [mailto:elton_carrier@bellsouth.net]
Sent: Wednesday, April 16, 2014 8:10 PM
To: Jim Owens
Subject: Letter To Council

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

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)

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 eaves. 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?

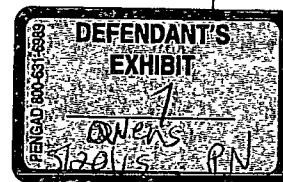
Please let me know if you have additional questions. Thanks

Jim

Jim Owens
Construction Administrator
Site Services/Structural



ENGINEERING SPECIALISTS
1224 YEAMAN'S HALL ROAD
COLUMBIA, SC 29910
office 843-735-5165 / cell 843-991-7049
fax 843-566-0162
ADCENGINEERING.COM



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
GALFORD, NC 28540
office 843-735-5165 / cell 843-991-7049
fax 843-668-0162
ADCENGINEERING.COM



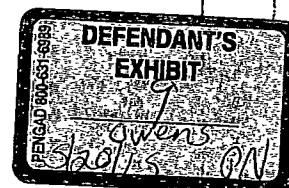
Mr. Owens, I appreciate your letter to Council members regarding the proposed office/parking deck to be located at Coleman Blvd. & Mill St. I am disappointed you felt you needed to copy the Moultrie News. That gave it less attention by my colleagues I am sure. Just to straighten you out on one statement. 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 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.

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 iron 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.

Michael K. Graham

From: Jim Owens
Sent: Tuesday, July 01, 2014 10:50 AM
To: jcowenssr@comcast.net
Subject: Document1
Attachments: Document1.docx

Fyi..

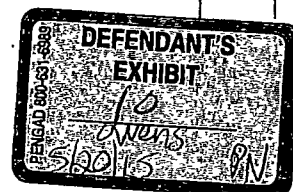


With the latest developments of this project, it's important to remain focused on the task at hand. While it may have seemed quiet, many of us have been working harder than ever and we will need all of your support going forward. The path is going to be a tedious and uncomfortable journey for many, however 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 its 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 spot zoning. We have tried to be open and honest, even transparent to a fault, because it was important to protect our Town from reproach.

Michael K. Graham

From: Jim Owens
Sent: Tuesday, July 29, 2014 2:42 PM
To: 'jcowenssr@comcast.net'
Subject: Document1
Attachments: Document1.docx



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 Upgrade Listing
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

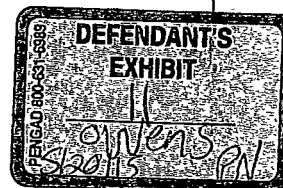
Saila Milja-Smyly practices in the areas of land use and zoning law and real estate development in Nelson Mullins Riley & Scarborough LLP's Charleston office.

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

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

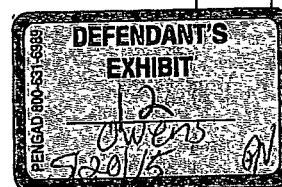
Michael K. Graham

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?

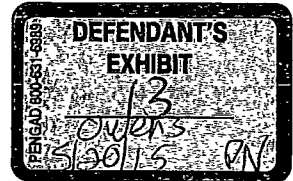
According to the Town, the developer recently missed his opportunity to resubmit to staff. If the Town continues its course towards this project, it's believed that public perception will probably judge them unfavorably. They, save Gary Santos and possibly one or two others, are also causing a public 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



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=388>

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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IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.





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: jmo@adcengineering.com; jcowensr@comcast.net

Mr. Jim Owens
ADC Engineering, Inc.
1226 Yeaman's Hall Road
Hanahan, SC 29401

Re: Evidence Preservation Demand
8 Coleman Boulevard, Mount Pleasant, SC

Dear Mr. Owens:

I represent Lucasville Investment Group, LLC (the tenant under a 99 year ground lease) and Shetti 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);

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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. Computer 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 initiation 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 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 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 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.

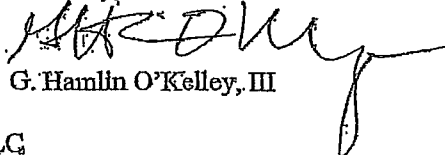
We suggest that with respect to your ESI at ADC, you should remove your ESI systems, media and devices from service and sequestering them and protecting them may be appropriate and the most cost-effective form of preservation.

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

{00520929.DOCX}

ADC_000130

From: Chris Cook <chrisc@adcengineering.com>
Sent: Thursday, September 18, 2014 12:23 PM
To: Mark Dillon; Rick Cook (roofguru@aol.com); Steven Truschka
Cc: Greg Jones
Subject: FW: Evidence Preservation Letter to Jim Owens
Attachments: Evidence Preservation Letter to Jim Owens (00520943).pdf

See below.

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: Thursday, September 18, 2014 12:20 PM
To: Greg Jones; Chris Cook
Subject: Fwd: Evidence Preservation Letter to Jim Owens

Gentlemen:

I just received this and would like to know if or when you'd like to discuss this intimidation letter regarding a personal and civic minded cause that I'm involved in.

Please let me know if you have additional questions. 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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----- Original Message -----

Subject: Evidence Preservation Letter to Jim Owens

From: Hamlin O'Kelley <hamlin.okelley@buistbyars.com>

To: Jim Owens <JimO@adcengineering.com>, jcowenssr@comcast.net

CC: Steven Truschka <StevenT@adcengineering.com>, Mark Dillon <markd@adcengineering.com>

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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IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

**BUIST
BYARS &
TAYLOR, LLC**
ATTORNEYS AT LAW

652 Coleman Blvd., Suite 200.
Mount Pleasant, SC 29464
T 843.856.4488 F 843.856.0813 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:

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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);
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9. Contact and Relationship Management Data (e.g. Outlook, ACT!);
10. Calendar and Diary Application Data (e.g. Outlook, Google Drive, Sharepoint);
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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 user's 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.

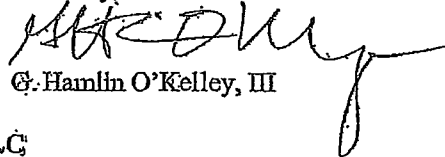
We suggest that with respect to your ESI at ADC, you should remove your ESI systems, media and devices from service and sequestering them and protecting them may be appropriate and the most cost-effective form of preservation.

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: Shem Creek Development Group LLC
Lucasville Investments, LLC

{00520929.DOCX}

ADC_000125

Meeting Synopsis

Date/Time/Place: Sept 18, 2014 4:25 pm - Office of Chris Cook

Topic: Evidence Preservation Letter to Jim Owens (00520943)

Present: Jim Owens, Chris Cook, Greg Jones

Jim Owens explained that he was surprised to receive the evidence preservation letter and was further surprised to learn via the letter that the developer for the Shem Creek project was a client of ADC.

Jim Owens explained that he had made efforts to ensure that all his correspondence and activity related to his efforts in Save Shem Creek did not reference ADC.

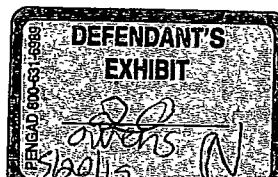
Jim recalled an earlier conversation with Chris Cook where Jim advised Chris of his involvement in the Save Shem Creek activities and that it was clear that it was outside of ADC and that ADC was not to be, in any way, brought into his activities.

Chris Cook and Greg Jones asked if Jim had utilized any ADC equipment or taken any actions on ADC business time related to the Save Shem Creek activities. Jim Owens stated he had utilized ADC time and equipment to edit documents and forward them to his personal email address for further action from home. Jim Owens further stated that he had used his phone during work hours for internet type actions, such as face-book, related to the Save Shem Creek effort.

Jim Owens explained that all his activities related to this matter were intended to be positive and not derogatory. He further stated that he had nothing to hide, had done nothing wrong, and "would let the chips fall where they may."

Jim Owens further stated that he would consult an attorney regarding response to the letter.

Greg Jones and Chris Cook stated that they were unsure what their responsibilities were in response to the letter and would consult an attorney.





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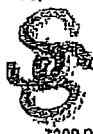
Project: _____
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Calculated By: _____ Date: _____
Checked By: _____ Date: _____
Scale: _____

7/18/2014
4:15 PM

*Chris
meeting notes*

- RESPONDED TO JIM'S REQUEST TO MEET W/
GREG & I
- JIM CAME TO MY OFFICE. GREG & I ASKED
JIM WHAT HE WANTED TO SAY/ASK.
- JIM SAID:
 - HE WAS SHOCKED BY THE LETTER
 - DID NOT EXPECT IT
 - DIDN'T KNOW HOW THEY GOT HIS
WORK EMAIL ADDRESS.
 - HE HAS ATTEMPTED TO BE HONEST
& POSITIVE THROUGH THIS WHOLE
EVENT
 - MANY TRIED TO MAKE IT NEGATIVE,
HE TRIED TO BE POSITIVE & STICK
WITH FACTS
- I ASK IF HE SENT ANYTHING FROM ADC
- HE SAID HE NEVER SENT AN EMAIL OUT TO
ANYONE FROM ADC. HE WOULD SEND SOME
THINGS HOME, WOULD EDIT THEM AND SEND BACK
TO HIS PERSONAL EMAIL
- HE DIDN'T POST TO SOCIAL MEDIA FROM HIS
DESKTOP, BUT DID FROM HIS ADC PHONE
WHILE AT THE OFFICE
- GREG ASKED IF HE HAD STORED ANYTHING ON
HIS COMPUTER AT ADC. JIM REPLIED NO.

(CONT)
ADC_000002



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Environmental & Geotechnical

7309 Peppermint Parkway • N. Charleston, SC 29410
843.767.9628 • 843.767.9782 Fax
www.siteworksuppliers.com

Storm Drainage Systems
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Geosynthetic Geogrids
Erosion Control Mats
NPDES/ADA Products
Field Hand Tools & Supplies

Project _____
Sheet No. _____ Of _____
Calculated By _____ Date _____
Checked By _____ Date _____
Scale _____

(CONT.)

- JIM APOLOGIZED FOR WHAT IS HAPPENING. HE NEVER INTENDED FOR ANYTHING TO EFFECT HIS FAMILY OR ADC
- "HE HAS NOTHING TO HIDE"
- HE DIDN'T REALIZE THAT THEY WERE A CLIENT
- MADE A POINT NOT TO MENTION ADC OR INCLUDE ADC IN ANY DECISIONS.
- WE INDICATED THAT THIS WAS UNCHARTED WATERS FOR US. WE DON'T KNOW WHAT WE CAN ASK OR SAY OR CAN'T ASK OR SAY. WE MUST ASK OUR ATTORNEY.
- JIM RECORDED THE PREVIOUS CONVERSATION THAT HE & I HAD REGARDING HIS INVOLVEMENT RELATED TO THE STORM CREEK PROJECT. HE REMEMBERED THAT I ASKED HIM TO KEEP ADC OUT OF IT. THAT HE HAD RIGHT AS PRIVATE CITIZEN TO OPPOSE, BUT ADC COULD NOT BE BROUGHT IN IN ANY WAY. AND HIS GOAL WAS TO KEEP ADC OUT OF IT.

ADC_000003

Gil Kirkman

From: Bryan Crabtree <bcrabtreeiphone@gmail.com>
Sent: Saturday, October 18, 2014 9:15 AM
To: Gil Kirkman
Subject: Fwd: Jim Owens

See below from September 18 from the developer of the project - I thought this might interest you.

----- Forwarded message -----

From: Tyler Flesch <tyler@redtyadvisors.com>
Date: Thu, Sep 18, 2014 at 9:26 PM
Subject: Jim Owens
To: Bryan Crabtree <bcrabtreeiphone@gmail.com>

Bryan,

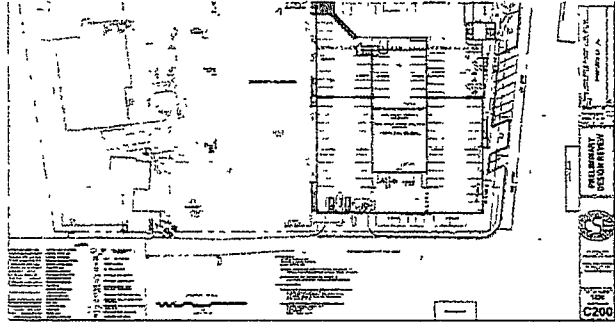
Just something that may interest you. I cannot comment on the air as a lawsuit will more than likely be filed. It turns out Jim Owens, the founder and vocal leader of Saving Shem Creek works for ADC Engineering <https://www.linkedin.com/pub/jim-owens/77/871/320>. ADC Engineering until yesterday (when I terminated them) was our engineer on the Shem Creek Project. So Mr. anti-development makes his living for one of the leading local engineering firms.....check out the saving shem creek facebook page in which he now claims to be a victim of intimidation but neglects to inform them that he works for the engineering group on the project and has huge conflicts and not to mention potential access to proprietary information. This guy is a serious fraud. Just thought you might find it interesting

—

Sincerely,

Bryan Crabtree
Buying or Selling a home? Housedog.com
Morning Drive Host @WQSC, AM 1340 & 950 Radio, weekdays 7-10am.
& The Housedog.com Real Estate Radio Show 9am Saturday and 8am Sunday
843-343-4141 (Charleston phone)





Jim Owens

Before checking your facts, before making your claims, Resow is the preliminary site plan which was submitted in June. Check the Engineers Stamp, I believe it belongs to GSE Engineering. This was taken off of the TCMP website. If my employer had done any of the preliminary work on this site, such as the site design, I would have prevented my involvement. The Town has given the developer his approvals to build his project. I would imagine he is on his way to obtain his permits.

September 22

cc: Nancy Farkas, Julie Thomas-Jackson and Denise Bell like this.

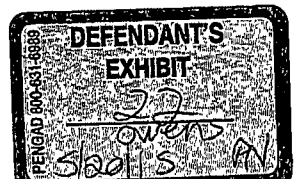
Jim Owens's Photos

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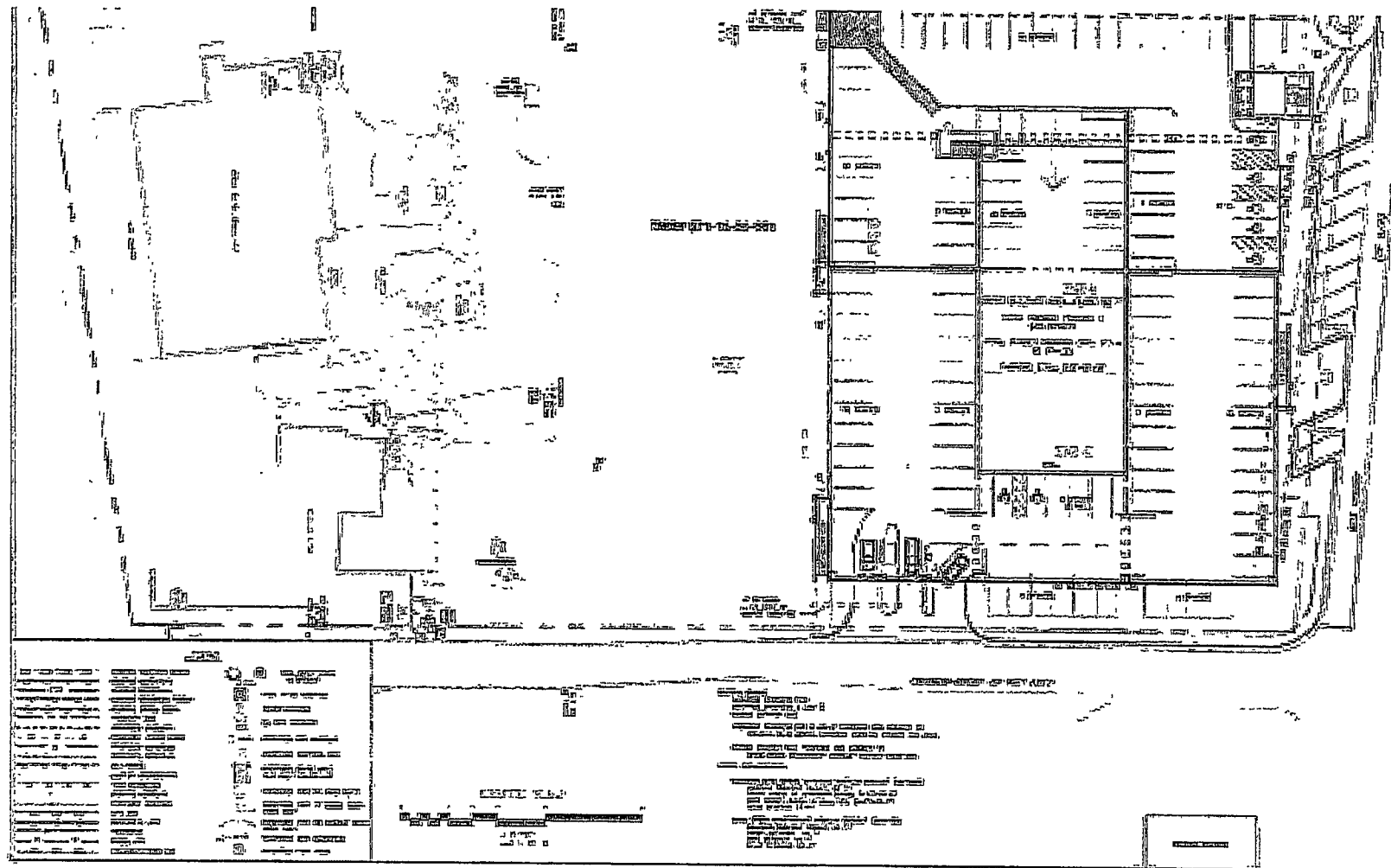
APP. 1145

ROA 1138

Jim Owens

Better check your facts before making your claims. Below is a preliminary site plan which was submitted in June, check the Engineers Stamp. I believe it belongs to CSE Engineering. This was taken off the TOMP website. If my employer had done any of the preliminary work on the site, such as the site design, it would have prevented my involvement. The town has given the developer his approvals to build his project. I would imagine he is on his way to obtain his permits.

September 22



ROA 1140

APP. 1147



Jim Owens

Better check your facts, before making your claims. Below is the preliminary site plan which was submitted in June, check the Engineers Stamp, I believe it belongs to CSE Engineering. This was taken off of the TOMP website. If my employer had done any of the preliminary work on this site, such as the site design, it would have prevented my involvement. The Town has given the developer his approvals to build his project, I would imagine he is on his way to obtain his permits.

September 22

👍 Nancy Fairless, Julie Thomas-deaton and Derek Bell like this.

From: Jim Owens's Photos

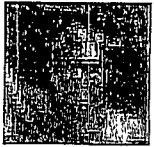
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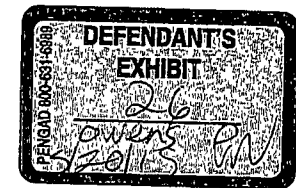
[Report Photo](#)





Jim Owens

September 17 · Edited



SPONE

There have been reports the parking garage was given final approval today. I would ask Mayor Page to give us the official announcement and response. What say you Mayor Linda Page...Please share the news. Thanks

Like · Share

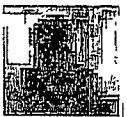
39 people like this.

View 29 more comments



Lucy Price Jacobs If the garage goes in and the developer sells immediately, where do the taxpayer funds that were promised to developer, over the years, go?

September 18 at 5:24pm · Like · 3



Cheryl Boswell Gregorie To the new owner.

September 18 at 5:59pm · Like · 2



Grace S. Edwards Glyn Cowden, lol !

September 19 at 6:30pm · Like · 1



Cheryl Boswell Gregorie

WID S.
AMAZO
WATER
SQU

C
E

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
Charleston, SC

16
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



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ALSO PRESENT:

James C. Owens

(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, Rule 30; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent waives reading and signing of this deposition.

* * * * *

Steven Truschka, Jr.

being first duly sworn, testified as follows:

EXAMINATION

BY MR. PARKER:

Q. Let me ask you first so I don't get your name wrong, do you pronounce it Truschka?

A. Yes, sir.

Q. I am Johnny Parker. We are going to take your testimony in deposition today; and once we start, if you have any questions, you'll need to address them to me and not to your attorney. As we get started, you cannot speak with her under the rules except on things dealing with the assertion of attorney/client privilege and you understand that?

1 A. Yes, sir.

2 Q. Please state your full name.

3 A. Steven Earle Truschka, Jr.

4 Q. And you are employed by ADC

5 Engineering?

6 A. Yes, sir.

7 Q. And have been for how long?

8 A. A little over two years.

9 Q. Tell me something about your
10 educational background, where you are from and so
11 forth.

12 A. Graduated from Winthrop University with
13 business management and then got my master's from
14 the Citadel in business management and started out
15 in banking and then ended up with engineering doing
16 management and HR.

17 Q. With which bank did you work for?

18 A. First Citizens.

19 Q. For how long?

20 A. Three years.

21 Q. And, sir, you are the business manager
22 and you would be in charge of human relations also?

23 A. Yes.

24 Q. What else do you do?

25 A. I handle the finances of the company so

1 I present income statements, handle a lot of the HR
2 function of the company, handle any
3 facilities-related information. Also manage the
4 support staff so for about three employees -- four
5 employees.

6 Q. And how many employees does ADC have?

7 A. It averages around 55.

8 Q. And who are their biggest clients?

9 A. LS3P. McMillan Pazdan Smith;
10 Fentress. Those are some of the biggest clients.

11 Q. How about the architectural firm of
12 Stubbs Muldrow & Herin?

13 A. We do quite a bit of structural work
14 with them.

15 Q. I assume the work that comes through
16 them, somebody other than the architectural firm
17 would be billed, or how would that work?

18 A. It just depends on what kind of
19 relationship we have. Sometimes we directly work
20 for the client or sometimes we usually are fed
21 through the architect relationship.

22 Q. And one of the -- be fair to say that
23 they will be the first or second biggest generated
24 business, would that be accurate?

25 A. I'm not for sure.

1 Q. You don't have a view of that? You
2 don't keep up with that?

3 A. I do, but it changes so I don't really
4 know for sure if they are the top two biggest
5 clients.

6 Q. Of course, you knew Mr. Owens, Jim
7 Owens, at ADC before he was terminated?

8 A. Yes, sir.

9 Q. Did you know anything negative about
10 him?

11 A. No.

12 Q. Was everything positive?

13 A. Yes, sir.

14 Q. And when did you first learn of the
15 controversy about the Save Shem Creek?

16 A. I didn't know anything about it until
17 Mark called me when I was in the office and he was
18 coming back from a meeting with Stubbs Muldrow &
19 Herin and he just said I want to meet with you and
20 the partners and discuss the situation we're
21 having. And he said it was related to the parking
22 garage at Shem Creek and that he was told that he
23 might be fired from the job.

24 Q. And the firm might be fired?

25 A. Yes, sir.

1 Q. And did he also tell you that at this
2 meeting that it was -- he was told that ADC would
3 have to fire Mr. Owens --

4 MS. CHERRY: Object to the form.

5 Q. -- terminate Mr. Owens?

6 You can answer it.

7 MS. CHERRY: Answer it.

8 Q. That's for the record.

9 A. Oh, okay. No.

10 Q. What did he tell you?

11 A. Not during that phone conversation.

12 Q. Did he later tell you that?

13 A. At the meeting that day, he said yes,
14 they would like for us to do something with
15 Mr. Owens.

16 Q. What did you think about him?

17 A. About?

18 Q. Terminating Mr. Owens for speaking out
19 on a public matter.

20 MS. CHERRY: Object to the form.

21 A. At first I didn't know what to think.
22 I mean we first heard about it, it was a little
23 unprecedented so when we got that meeting after the
24 phone call with Mark and after we all met, we were
25 just trying to think about what's going on and what

1 can we do and -- we did a lot of analysis and just
2 kind of thinking about the situation.

3 Q. I hand you Exhibit 1 which is a
4 document that is an e-mail, e-mail chain, with
5 Mr. Tyler Flesch.

6 (PLF. EXH. 1, Copy of two-page e-mail
7 string dated September 16, 2014, Bates stamped
8 ADC_000143 and 144, was marked for identification.)
9 BY MR. PARKER:

10 Q. You are copied on that.

11 MS. CHERRY: I just want to make sure I
12 am not taking an exhibit --

13 MR. PARKER: No. I have my own
14 marked.

15 MS. CHERRY: Okay.

16 MR. PARKER: The significant one.

17 MS. CHERRY: Okay.

18 BY MR. PARKER:

19 Q. Is this an e-mail that you received on
20 September 16?

21 A. Yes.

22 Q. And this would have been in the
23 afternoon at 5:14 so it would have been after his
24 meeting, Mr. Dillon's meeting with Tyler Flesch?

25 A. Yes, sir.

1 Q. And this would have been after you had
2 had your meeting?

3 A. Yes, sir.

4 Q. And in this, Mr. Dillon says: We are
5 taking your concerns and comments very seriously
6 and after returning to the office this afternoon,
7 we have been discussing the situation and possible
8 actions we may take.

9 Did that in fact happen?

10 A. Yes, sir.

11 Q. And who was present at that meeting?

12 A. Greg Jones, Chris Cook, Rick Cook, Mark
13 Dillon and myself.

14 Q. And what was decided at that point in
15 time?

16 A. Nothing was decided. The only course
17 of action that we chose was to consult with our
18 attorney, Molly, and then just continued to assess
19 the situation.

20 Q. And what did you understand that
21 Mr. Flesch wanted?

22 A. From my understanding of the meeting,
23 it seemed like he wanted us to terminate Mr. Owens
24 for -- for his actions.

25 Q. For being opposed to his project?

1 A. Yes.

2 Q. And at that point in time, did y'all do
3 anything at that point in time to preserve
4 evidence?

5 A. No, not at that time.

6 Q. And the following day did y'all receive
7 a letter terminating the employment on the project
8 of ADC?

9 MS. CHERRY: Object to the form.

10 A. I believe it was the next day.

11 Q. I hand you what we marked as Exhibit 2.

12 (PLF. EXH. 2, Copy of e-mail dated
13 September 17, 2014, Bates stamped ADC_000145, was
14 marked for identification.)

15 BY MR. PARKER:

16 Q. Is that the letter that says
17 termination letter then? Was that the letter
18 from --

19 A. Yes, it was.

20 Q. -- terminating the employment of the
21 project?

22 A. Yes, it was.

23 Q. Did you ever have any discussions with
24 anyone with Stubbs Muldrow & Herin?

25 A. No.

1 Q. Who outside of ADC have you discussed
2 this matter with?

3 A. No one.

4 Q. And on the 17th did y'all meet in any
5 way about this matter that you recall?

6 A. I can't remember if we met that day.
7 We met a lot throughout that week.

8 Q. I am going to next hand you Exhibit 3.

9 (PLF. EXH. 3, Copy of e-mail dated
10 September 1, 2014, Bates stamped ADC_000080, was
11 marked for identification.)

12 BY MR. PARKER:

13 Q. Exhibit 3 is an e-mail that you
14 authored? Is that correct?

15 A. Yes, it is.

16 Q. And what was the purpose of this?

17 A. It was just more of I was watching the
18 news that night and saw that the Save Shem Creek
19 was on there and just wanted to give them an FYI
20 that it was on the news.

21 Q. And this must have been on the eleven
22 o'clock news.

23 A. It must have been.

24 Q. And you were just sort of -- because of
25 what is going on, you became interested in it --

1 A. Uh-huh; yes, sir.

2 Q. I next hand you Exhibit 4.

3 (PLF. EXH. 4, Copy of e-mail with
4 attachment dated September 18, 2014, Bates stamped
5 ADC_000141 through 142, was marked for
6 identification.)

7 BY MR. PARKER:

8 Q. And Exhibit 4 is an e-mail that you
9 were copied on?

10 A. Yes, sir.

11 Q. And in this e-mail, it's from
12 Mr. Flesch to the partners. Do you call them
13 partners? What do you call them?

14 A. We call them partners.

15 Q. Partners, and yourself complaining
16 about something that Jim Owens had done.

17 A. Yes, sir.

18 Q. And in that, he suggests, Mr. Flesch,
19 that he'd meet with the partners some point in the
20 future.

21 A. Yes, sir.

22 Q. And did that in fact take place?

23 A. I don't think so.

24 Q. You are not aware of it?

25 A. I am not aware of it.

1 Q. Next I will hand you Exhibit 5 which is
2 another e-mail that you were copied on.

3 (PLF. EXH. 5, Copy of e-mail dated
4 September 18, 2014, Bates stamped ADC_000111, was
5 marked for identification.)

6 BY MR. PARKER:

7 Q. And there's also, up top, there's a --
8 appears to be a Facebook post by Jim Owens?

9 A. Yes, sir.

10 Q. And did y'all discuss all of this on
11 the -- did you have a meeting on the 19th?

12 A. I don't remember if we met that day.
13 I know we did meet and when we did meet, we did
14 discuss the Facebook posts.

15 Q. And --

16 A. And the timing of them.

17 Q. This would have been the e-mail from
18 Mr. Flesch to the five of you, would have been on
19 September the 18th at 10:39 a.m.?

20 A. Yes, sir.

21 Q. And then apparently also on September
22 the 18th at 12:23, and I am going to hand you
23 Exhibit 6, y'all received an e-mail from Mr. Owens.

24 (PLF. EXH. 6, Copy of e-mail dated
25 September 18, 2014 with attachments, Bates stamped

1 ADC_000120 through 125, was marked for
2 identification.)

3 BY MR. PARKER:

4 Q. Is that correct?

5 A. That's correct.

6 Q. And in that, Mr. Owens is sending the
7 preservation of evidence letter that he received
8 from a law firm?

9 A. Yes, sir.

10 Q. So the first time that Mr. Owens would
11 know all this was going on was on September the
12 18th when he received a preservation of evidence
13 letter.

14 MS. CHERRY: Object to the form.

15 Q. As far as you know?

16 A. As far as I know, yes.

17 Q. And his e-mail says: I just received
18 this and would like to know if or when you'd like
19 to discuss this intimidation letter regarding a
20 personal and civic minded cause I am involved in;
21 is that correct, what he said?

22 A. That's correct.

23 Q. Did you know about his involvement in
24 Save Shem Creek prior to that, prior to this matter
25 coming up on the 16th?

1 A. No.

2 Q. First you heard of it?

3 A. First I heard of it.

4 Q. And when you got this letter, what, if
5 anything, did you do when you got the preservation
6 of evidence letter? What, if anything, did you
7 do?

8 MS. CHERRY: Object to the form.

9 A. I didn't do anything specifically. I
10 think I reached out or -- it was either me or Mark
11 that reached out to Michael Graham, our IT
12 director, to let him know we need to meet with him
13 so we can follow the evidence preservation letter.

14 Q. Curious, why would you feel a necessity
15 to preserve the evidence when receiving a letter
16 from a lawyer?

17 MS. CHERRY: Object to the form.

18 A. Because it's -- looks like we would
19 have to comply with it.

20 Q. Y'all believed you had to comply with
21 it?

22 A. We believed we had to.

23 Q. Did you question whether or not he had
24 any legal standing to demand that?

25 MS. CHERRY: Object to the form.

1 A. We didn't.

2 Q. Did you know who Lucasville Investment
3 Group was?

4 A. I did not.

5 Q. Shem Creek Development Group?

6 A. I did not.

7 Q. Did y'all have any contractual
8 relationships with them?

9 A. I don't know.

10 MS. CHERRY: Object to the form.

11 Q. When this was received on the 18th,
12 what, if anything, did y'all do to comply with this
13 letter?

14 A. Like I said, we e-mailed or reached out
15 to Michael Graham and wanted to meet with him, I
16 think he was out of the office that day, so the
17 next time he was in the office we told him of the
18 evidence preservation letter and started preserving
19 the e-mails.

20 Q. Had y'all ever received a letter like
21 this before that you are aware of?

22 A. Not that I knew of.

23 Q. And do you know what Mr. Graham did to
24 comply with this?

25 A. I think he replaced Jim Owens' laptop,

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. I have no idea.

2 Q. And in that chain, the e-mail chain,
3 Mr. Flesch has sent this to you at 11:17 that
4 morning, said: I just received a call from the
5 town and they are less than pleased with being
6 called out for no reason. They have followed
7 procedure to a T on this. They are now aware that
8 Jim is an employee of ADC.

9 How did they become aware of it?

10 MS. CHERRY: I object to the form.

11 Q. If you know.

12 A. How did the town become aware of it?

13 Q. Right.

14 A. I have no idea.

15 Q. Did you ever talk with Tyler Flesch?

16 A. I did not.

17 Q. Next going to hand you Exhibit 9.

18 (PLF. EXH. 9, Copy of e-mail dated
19 September 18, 2014, Bates stamped ADC_000109, was
20 marked for identification.)

21 BY MR. PARKER:

22 Q. Exhibit 9 is another e-mail that you
23 are copied on; is that correct?

24 A. That's correct.

25 Q. And this is at 5:40 p.m. And at 5:40

1 on that date, you received an e-mail from Greg
2 Jones that stated, the subject is blurb. You have
3 engaged in non-work related activities on company
4 time and utilizing company equipment that has
5 resulted in harm to ADC.

6 A. That's correct.

7 Q. And this e-mail was generated after the
8 meeting that you had that day?

9 A. I believe so, yes.

10 Q. And the decision had been made in that
11 meeting to terminate Mr. Owens?

12 A. That's --

13 MS. CHERRY: I object to the form.

14 A. I don't believe there was a final
15 decision made at that day.

16 Q. Tentative decision was made?

17 A. I believe so.

18 Q. And this is the wording that was going
19 to be used to terminate Mr. Owens?

20 A. I believe this is the wording that Greg
21 and Chris agreed on and we still had to discuss it
22 with Mark and Rick.

23 Q. All right. And that's on the 18th and
24 you had -- did not have Mr. Owens' whatever he had
25 done on his computer at that time, did you?

1 MS. CHERRY: Object to the form.

2 A. I believe we did.

3 Q. You think you had that from Mr. Graham
4 at that point --

5 A. I believe so.

6 Q. What time?

7 A. I cannot remember, but I believe we had
8 it at that time.

9 Q. And you think -- what form had he given
10 you that information?

11 A. Michael Graham?

12 Q. Yes.

13 A. Paper form.

14 Q. And he made copies of whatever --

15 A. Of the e-mails, yes, sir.

16 Q. And how many e-mails were there?

17 A. I want to say there were at least 20.

18 Q. That's over how many months?

19 A. I don't know.

20 Q. Did it seem to be excessive?

21 MS. CHERRY: Objection to form.

22 A. To me, yes.

23 Q. If we checked your e-mails would you
24 have had some personal e-mails?

25 A. Some personal, yes, sir.

1 Q. And you had some under what he had,
2 Mr. Owens?

3 A. I am not sure.

4 MS. CHERRY: Object to the form.

5 A. I don't think so.

6 Q. You don't think you had 20 personal
7 e-mails over several months?

8 MS. CHERRY: Object to the form.

9 A. I don't think so.

10 Q. Have you checked to see?

11 A. No, I have not.

12 Q. Did you check anybody else's to see
13 what they had used for personal e-mails?

14 A. No, I did not.

15 Q. The policy of ADC is to allow personal
16 e-mails; correct?

17 MS. CHERRY: Object to the form.

18 Q. Correct?

19 A. As long as it's not excessive or
20 inappropriate.

21 Q. And who defined excessive?

22 A. Nobody.

23 Q. Y'all defined it for Mr. Owens after
24 the fact.

25 MS. CHERRY: Object to the form.

1 A. No. It's almost -- you kind of know
2 when you know. If it seems excessive, it's
3 excessive. It's kind of hard to put a number on
4 it.

5 Q. But Mr. Owens didn't know what
6 excessive was?

7 MS. CHERRY: Object to the form.

8 Q. He was not advised as to what excessive
9 was, defined to him; is that correct?

10 A. As defined to him, yes.

11 Q. I am going to hand you Exhibit 10.

12 (PLF. EXH. 10, Copy of handwritten note
13 dated 9/23/2014, Bates stamped ADC_000150, was
14 marked for identification.)

15 BY MR. PARKER:

16 Q. And Exhibit 10 is a handwritten memo to
17 yourself, Chris, Greg and Jim; is that correct?

18 A. That's correct.

19 Q. And who is -- whose writing is that?

20 A. This is mine.

21 Q. And you were present, it says Chris and
22 Greg presented termination letter to Jim and
23 outlined reasons for termination.

24 A. Yes.

25 Q. Jim praised ADC, said it was hard.

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.

1 Q. This is dated September 23 at
2 9:56 a.m.?

3 A. Yes, sir.

4 Q. And is that before you -- before
5 Mr. Owens was terminated?

6 A. That's correct.

7 Q. And in this it says: Bryan Crabtree's
8 show shocking hypocrisy saving Shem Creek founders
9 engineering firm employer designed building he
10 wishes to destroy.

11 A. Yes. The link.

12 Q. Is that true, the statement in that
13 link, is that a true statement?

14 MS. CHERRY: Object to the form.

15 THE WITNESS: I don't think so.

16 BY MR. PARKER:

17 Q. And the -- Mr. Owens in fact did not
18 even know that ADC was working on the Shem Creek
19 project, did he?

20 A. I don't know.

21 MS. CHERRY: Object to the form.

22 BY MR. PARKER:

23 Q. Do you have any knowledge that he did?

24 A. I don't know.

25 Q. Mr. Owens doesn't design the building,

1 did he?

2 A. Did he design the building?

3 Q. Yes.

4 A. I don't think so.

5 Q. And how would he wish to destroy a
6 building that hadn't been built?

7 A. I don't know.

8 Q. Do you know what was meant by the
9 hypocrisy?

10 A. I don't.

11 Q. Did you in fact -- I assume you read
12 what was on the website?

13 A. I did.

14 Q. Did you see the picture of Pinocchio?

15 A. I did.

16 Q. Was that a fair representation of
17 Mr. Owens?

18 A. I don't think so.

19 Q. Did you find Mr. Owens to be a liar?

20 A. Not in my dealings with him, no.

21 Q. Did you see the depiction of two faces
22 on the website?

23 A. Yes, I did.

24 Q. Is he a two-faced person?

25 A. I don't think so.

1 Q. What you saw was that -- such that if
2 somebody believed that, it would harm Mr. Owens'
3 reputation?

4 MR. EARLY: Object to the form.

5 THE WITNESS: It could.

6 BY MR. PARKER:

7 Q. If you believed it, it certainly would,
8 wouldn't it?

9 MR. EARLY: Same objection.

10 THE WITNESS: It could, yes.

11 BY MR. PARKER:

12 Q. Did you believe it, what you read?

13 A. No, because I knew the truth.

14 Q. Next I will hand you Exhibit 12.

15 (PLF. EXH. 12, Copy of e-mail dated
16 October 20, 2014, Bates stamped ADC_000385, was
17 marked for identification.)

18 BY MR. PARKER:

19 Q. Exhibit 12 is another e-mail from you.
20 And when you see this e-mail dated October the 20th
21 and it's to all. Who is all?

22 A. That's all the employees at ADC.

23 Q. And this is from you telling them about
24 the attached article in the paper?

25 A. Yes, sir.

1 Q. And this was an article about the
2 lawsuit that Mr. Owens filed?

3 A. Yes, sir.

4 Q. It says: Indeed, ADC has no issue with
5 Jim's or any employees' interests and pursuits in
6 the community as an individual. However, as
7 explained to Jim, any such pursuits should not and
8 cannot involve ADC, its time, equipment and
9 property.

10 How did Jim involve ADC?

11 A. Indirectly involved ADC when he was
12 sending the e-mails from his work computer and
13 posting Facebook posts, the time he was supposed to
14 be working.

15 Q. I mean he in fact sent the e-mails to
16 his own computer, did he not?

17 A. I believe so.

18 Q. And then sent e-mails from his own
19 computer; correct?

20 A. I don't know.

21 Q. Okay. Who would know that, Mr. Graham?

22 A. He might know.

23 Q. As I understand it, he was terminated
24 because he used his time and computer excessively
25 at work?

1 A. That's correct.

2 Q. And what I would like for you to do is
3 tell me what excessive means.

4 A. Again, it's hard to define excessive.
5 It's -- it's -- you kind of know when you see it.
6 It's also based on the content of the e-mails and
7 the personal use.

8 Q. Now, ADC had an interest in terminating
9 Mr. Owens; correct?

10 MS. CHERRY: Object to the form.

11 THE WITNESS: Can you clarify a little
12 bit?

13 BY MR. PARKER:

14 Q. Had an interest in terminating
15 Mr. Owens.

16 MS. CHERRY: Same objection.

17 THE WITNESS: Kind of confused what you
18 mean by interest.

19 BY MR. PARKER:

20 Q. In other words, it was in ADC's best
21 interest to terminate Mr. Owens.

22 A. That's not true.

23 Q. You wanted to maintain your
24 relationship with Stubbs Muldrow & Herin; correct?

25 A. We did, but not at the expense of Jim

1 Owens.

2 Q. And they were one of your largest
3 clients?

4 MS. CHERRY: Object to the form.

5 BY MR. PARKER:

6 Q. Is that correct?

7 A. I believe so. Again, I don't know how
8 they rank as far as our top clients.

9 Q. How much business does ADC do in one
10 year?

11 A. About eight million in revenues.

12 Q. And Mr. Dillon testified that through
13 Stubbs Muldrow & Herin, approximately \$3 million of
14 business a year came through them.

15 A. I did not know that.

16 MS. CHERRY: Object to the form.

17 BY MR. PARKER:

18 Q. You don't know that?

19 A. I did not know that.

20 Q. You don't know how large they are?

21 A. I am not a hundred percent sure, no.

22 Q. Did you talk with anyone with Stubbs
23 Muldrow & Herin about this?

24 A. I did not.

25 Q. Was any conversation relayed to you

1 about what they said about this?

2 A. I think the only conversation that Mark
3 shared was that he -- I think it was -- can't
4 remember if it was Stubbs or Herin that said that
5 they are sorry this happened and that they had to
6 terminate us.

7 Q. And that's for the Shem Creek job.

8 A. That's correct.

9 Q. Did anyone say why they didn't tell
10 Mr. Owens about ADC's involvement in the project?

11 MS. CHERRY: Object to --

12 BY MR. PARKER:

13 Q. -- prior to all of this coming to light
14 on September the 16th?

15 MS. CHERRY: Object to the form.

16 THE WITNESS: Could you repeat that?

17 BY MR. PARKER:

18 Q. Did anyone, in this meeting, say why
19 Mr. Owens wasn't told that ADC had an involvement
20 in the project, the Shem Creek project?

21 A. No, I don't think so.

22 Q. Do you know why he wasn't told about
23 ADC's involvement in the project?

24 MS. CHERRY: Object to the form.

25 THE WITNESS: I am not sure.

1 BY MR. PARKER:

2 Q. You heard no one say why they decided
3 not to tell him about it?

4 MS. CHERRY: Object to the form.

5 THE WITNESS: No, I did not.

6 BY MR. PARKER:

7 Q. Let's go ahead and do Exhibit 13.

8 (PLF. EXH. 13, Copy of e-mail dated
9 October 24, 2014, Bates stamped ADC_000325, was
10 marked for identification.)

11 BY MR. PARKER:

12 Q. This is another e-mail you received on
13 October 24 of '14; is that correct?

14 A. That's correct.

15 Q. And it's from Greg Jones to you and
16 copied to others but says: Steven, I am sending a
17 couple of e-mails relative to Jim Owens for the
18 file.

19 Correct, did I read that correctly?

20 A. That's correct.

21 Q. Do y'all have a file on Jim Owens?

22 A. Yes, we do.

23 Q. Do you keep that file?

24 A. I do.

25 Q. And has everything in that file been

1 produced in this case?

2 A. Yes.

3 Q. Did someone go through and pull all of
4 the posts from Mr. Owens to Facebook?

5 A. I don't think so, except for what Tyler
6 sent us.

7 Q. And we have been produced documents by
8 ADC that includes a number of posts that Mr. Owens
9 made. Would this be what Tyler had sent you?

10 A. I believe that's what Tyler sent us.

11 Q. What else did Tyler send?

12 A. He sent, I think, a PowerPoint
13 presentation that he presented at the -- at a Town
14 Hall type meeting. He sent an e-mail that Jim --

15 Q. That Jim produced?

16 A. That Jim produced.

17 Q. And what else did he send?

18 A. An e-mail from Jim, I can't remember
19 who it was to, but it was regarding the Shem Creek
20 project.

21 Q. Did you find anything wrong about the
22 presentation that Jim had made?

23 MS. CHERRY: Object to the form.

24 THE WITNESS: I briefly looked over it.
25 I did not read it in depth.

1 BY MR. PARKER:

2 Q. Did you find anything inappropriate
3 about it?

4 A. No.

5 MS. CHERRY: Object to the form.

6 BY MR. PARKER:

7 Q. I am going to try to identify this if I
8 can. So I am not sure this is it, but -- we'll
9 mark it. It has an exhibit -- is this what you
10 are referring to?

11 A. Yes, I believe so.

12 MS. CHERRY: Do you mind for the record
13 if we just at least --

14 MR. PARKER: I will identify it.

15 MS. CHERRY: Sorry.

16 BY MR. PARKER:

17 Q. You were looking at a Comprehensive
18 Plan Update Meeting, Land Use Element, 4/13/14.

19 A. Yes.

20 Q. Bates stamps ADC 54.

21 And what else did Mr. Flesch produce to
22 you other than that, the Facebook and this
23 presentation?

24 A. That e-mail that he sent, I can't
25 remember who he sent it to, but there was an e-mail

1 that he included to the -- that included the
2 timestamp; I am not sure who he included it to but
3 like to some town council members.

4 Q. It was an e-mail that Jim had sent to
5 who, the Mt. Pleasant town council?

6 A. It looks like it could have been. I
7 can't remember if it was Linda Page. I know I
8 think she was mentioned in the e-mail.

9 Q. I am going to let you look through
10 these documents and see if you can identify that
11 particular e-mail.

12 A. Okay.

13 Q. Because I don't see, even those e-mails
14 that look like they are consistent with that, they
15 don't seem to be from Mr. Flesch.

16 A. No, it's not in there. The e-mail I
17 am referring to was sent to us by Tyler in a
18 DropBox file and it was included in that DropBox
19 file and that's the same stack with the Facebook
20 posts.

21 Q. It's not Exhibit -- document 23 to
22 Mayor Page?

23 A. No, that's not it.

24 Q. What does that particular document that
25 was sent, what did it say?

1 A. It was addressing something with the
2 garage. I can't remember exactly what it said.
3 But I know it was included in that stack of files
4 that Tyler sent us. Via DropBox.

5 Q. And those have all been printed off and
6 maintained?

7 A. Yes, sir.

8 Q. This would have been a letter from Jim
9 to the mayor about the garage?

10 A. If it was to the mayor, I think it was
11 referring to the garage, yes.

12 Q. Okay. What else was in the DropBox?

13 A. Those Facebook posts and then that
14 PowerPoint presentation. I am not sure if it was
15 this same one that was in the file or not.

16 Q. But it would have been something
17 similar to that?

18 A. Yes, sir.

19 Q. And then the letter to the mayor, town
20 council, whoever that would have been?

21 A. Yes.

22 Q. When did Mr. Flesch want y'all to
23 have --

24 A. I think just to show that Jim Owens was
25 doing it on company time.

1 Q. How would he know that?

2 A. I don't know.

3 Q. Did you think that Mr. Flesch was
4 trying to get Mr. Owens fired?

5 A. I do.

6 Q. And that was his intent as far as you
7 could tell it?

8 A. As far as I could tell.

9 Q. And you are basing that all upon
10 e-mails?

11 A. Yes.

12 Q. And I assume upon Mr. Dillon's
13 conversation with Mr. Flesch.

14 A. Yes.

15 Q. Do you know who was present at the
16 meeting he had with Mr. Flesch other than
17 Mr. Flesch and Mr. Dillon?

18 A. It was somebody from Stubbs Muldrow
19 Herin as well.

20 Q. Anybody else that you know of?

21 A. Not that I know of.

22 Q. You, I guess, you had only known
23 Mr. Owens couple of years; is that correct?

24 A. That's correct.

25 Q. Any complaints about his work during

1 that time?

2 A. None that I received.

3 Q. Any complaints about anything about
4 him?

5 A. No.

6 Q. Was he a good employee?

7 A. As far as I could tell, yes.

8 Q. Have you ever spoken with Bryan
9 Crabtree?

10 A. No.

11 Q. Do you know anyone with Kirkman
12 Broadcasting?

13 A. I don't.

14 Q. Have you had inquiries concerning
15 Mr. Owens from prospective employers?

16 A. No, not that I know of.

17 MR. PARKER: Let's take a break. We'll
18 be right back.

19 (A recess transpired.)

20 BY MR. PARKER:

21 Q. I have no further questions. Thank
22 you for coming.

23 (The deposition was adjourned at
24 10:48 a.m.)

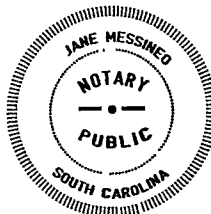
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CERTIFICATE OF REPORTER

I, Jane Messineo, Court 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 3rd day of June, 2015
at Charleston, Charleston County, South Carolina.



Jane Messineo

Jane Messineo, RPR, CSR-NJ
My Commission expires
February 18, 2025

I N D E X

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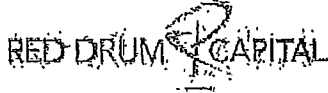
E X H I B I T S

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PLF. EXH. 1, Copy of two-page e-mail string dated September 16, 2014, Bates stamped ADC_000143 and 144	8	6

1	PLF. EXH. 2, Copy of e-mail	10	12
2	dated September 17, 2014,		
3	Bates stamped ADC_000145		
4	PLF. EXH. 3, Copy of e-mail	11	9
5	dated September 1, 2014, Bates		
6	stamped ADC_000080		
7	PLF. EXH. 4, Copy of e-mail	12	3
8	with attachment dated		
9	September 18, 2014, Bates		
10	stamped ADC_000141 through 142		
11	PLF. EXH. 5, Copy of e-mail	13	3
12	dated September 18, 2014,		
13	Bates stamped ADC_000111		
14	PLF. EXH. 6, Copy of e-mail	13	24
15	dated September 18, 2014 with		
16	attachments, Bates stamped		
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23	Bates stamped ADC_000110		
24	PLF. EXH. 9, Copy of e-mail	19	18
25	dated September 18, 2014,		

1 Bates stamped ADC_000109
2 PLF. EXH. 10, Copy of 23 12
3 handwritten note dated
4 9/23/2014, Bates stamped
5 ADC_000150
6 PLF. EXH. 11, Copy of e-mail 24 18
7 dated September 23, 2014,
8 Bates stamped ADC_000081
9 PLF. EXH. 12, Copy of e-mail 27 15
10 dated October 20, 2014, Bates
11 stamped ADC_000385
12 PLF. EXH. 13, Copy of e-mail 32 8
13 dated October 24, 2014, Bates
14 stamped ADC_000325
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Red Drum Capital Group LLC
400 Hibben Street #200
Mt. Pleasant, SC 29464
www.reddrumcapital.com
843-628-3595 (O)
843-696-3030 (M)



From: Mark Dillon [<mailto:markd@adcengineering.com>]
Sent: Tuesday, September 16, 2014 5:14 PM
To: Tyler Flesch; Steven Truschka; Chris Cook; Greg Jones
Subject: RE:

Tyler,

We are taking your concerns and comments very seriously and after returning to the office this afternoon, we have been discussing the situation and the possible actions we may take. We have also called our attorney and plan to conference with her tomorrow. The one known action at this time is to find out more about Jim's statements and actions to date. Thus, we will review what you send plus other general information available through the Facebook page and news media outlets. I have copied Chris and Greg who are partners and co-leaders of Jim's department as well as our business manager Steven. Please reply to this email when you send the information so that we are all copied.

Thanks Mark

Mark Dillon, PE, SE
Partner, Structural Engineer
markd@adcengineering.com



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fax 843-566-0162
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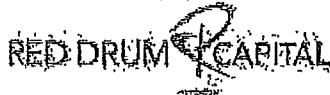
From: Tyler Flesch [<mailto:tyler@redtyadvisors.com>]
Sent: Tuesday, September 16, 2014 2:33 PM
To: Mark Dillon
Subject:

Mark,

I appreciate your time today. I am going to send you a link to few snippets of Facebook, e-mails, etc. for illustration purposes and I encourage you to send someone on the "Saving Shem Creek" Facebook group to look at content and time of the posts themselves..... This is a small fraction of what we have and I think you will see the gravity of this as you read on. Especially the segments where he references speaking directly to the mayor about finding an alternative location for the deck and communicating with the Mayor and Council members directly regarding my project, as well as calling for the rescinding of the funding (2.8 million) for the deck. I will also include 1 of 4 presentations he has made to

date about the deck at council meetings which are riddled with inaccuracies and exaggeration. I look forward to speaking to you about how this can be resolved amicably.....

Tyler Flesch
Principal
Red Drum Capital Group LLC
400 Hibben Street #200
Mt. Pleasant, SC 29464
www.reddrumcapital.com
843-628-3595 (O)
843-696-3030 (M)



From: Mark Dillon <markd@adcengineering.com>
Sent: Wednesday, September 17, 2014 8:35 AM
To: Steven Truschka
Subject: FW: Shem.Creek Office - ADC Letter of Termination -1347
Attachments: ADC Termination Letter 091614.pdf; ATT00001.htm

Mark Dillon, PE, SE
Partner, Structural Engineer
markd@adcengineering.com



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HANAHAN, SC 29410
office 843-566-0161
fax 843-566-0162
ADCENGINEERING.COM

From: Sam Herin [<mailto:s.herin@smha.com>]
Sent: Wednesday, September 17, 2014 8:20 AM
To: Mark Dillon
Cc: Charles S Muldrow; Jeff Johnston; tyler@reddrumcapital.com; Chris Anderson
Subject: Shem Creek Office - ADC Letter of Termination -1347

Mark - Please find attached the letter of termination. Thank you for the understanding in this matter.

Sam Herin, AIA
STUBBS MULDROW HERIN architects, Inc.
400 Hibben Street • Mount Pleasant, SC 29464 • 843.881.7642 • 843.884.5021 fax • www.smha.com • [smha on facebook](#)
Designing in the Lowcountry since 1990



From: Steven Truschka <StevenT@adcengineering.com>
Sent: Wednesday, September 17, 2014 11:13 PM
To: Chris Cook; Greg Jones; Mark Dillon; Rick Cook
Subject: Shem Creek

Just some interesting FYI. The Shem creek office building situation was just on the 11pm news. The planning commission recommended that the council lower construction heights on Shem creek from 55 to 45ft. A representative from "save Shem creek" gave an interview but really nothing that hasn't already been said.

Steven Truschka
Business Manager
ADC Engineering
1226 YEAMANS HALL ROAD
HANAHAN, SC 29410
office 843-566-0161
fax 843-566-0162

(sent from mobile device)

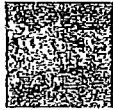


From: Tyler Flesch <tyler@redtyadvisors.com>
Sent: Thursday, September 18, 2014 10:39 AM
To: Mark Dillon; Steven Truschka; Chris Cook; Greg Jones
Subject: RE:

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

18 mins · Edited

Below is an email that I sent to the Town this morning. I'll let you know the response I receive.

David,

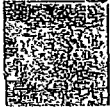
I received confirmation from the Mayor that Christiane informed her that project was given final review approval yesterday. With that said, I've copied Christiane in hope that she can elaborate on the approval and the impending process going forward. The recent submittal that was placed online (projects 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



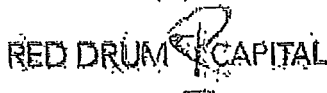
Jim Owens

13 hrs · Edited

There have been reports the parking garage was given final approval I would ask Mayor Page to give us a public announcement and respo What say you Linda Page...please give us your response. I am eager see the stamped site plan along with the comments from staff...I have asked legal for the information. Please share with us the news.

Like · Share

Tyler Flesch
Principal
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843-628-3595 (O)
843-696-3030 (M)



From: Tyler Flesch [<mailto: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



From: Rick Cook <roofguru@aol.com>
Sent: Thursday, September 18, 2014 12:32 PM
To: Chris Cook
Cc: Mark Dillon; Steven Truschka; Greg Jones
Subject: Re: Evidence Preservation Letter to Jim Owens

If he is sending these from office compute and during office timer my opinion will likely change. This is involving ADC improperly, intended or not.

Rick Cook, ADC Engineering

Chris Cook <chrisc@adcengineering.com> wrote:

See below.

Chris Cook PE, LEED

Partner

Site Services / Civil Engineering



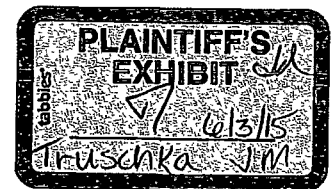
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fax 843-566-0162 / direct 843-735-5141

ADCENGINEERING.COM

From: Jim Owens
Sent: Thursday, September 18, 2014 12:20 PM
To: Greg Jones; Chris Cook
Subject: Fwd: Evidence Preservation Letter to Jim Owens



Gentlemen:

From: Tyler Flesch <tyler@redtyadvisors.com>
Sent: Thursday, September 18, 2014 2:31 PM
To: Mark Dillon; Steven Truschka; Chris Cook; Greg Jones
Cc: 'Gray Taylor'
Subject: RE:

<https://www.facebook.com/groups/716849508365434/files/>

Tyler Flesch
Principal
Red Drum Capital Group LLC
400 Hibben Street #200
Mt. Pleasant, SC 29464
www.reddrumcapital.com
843-628-3595 (O)
843-696-3030 (M)

RED DRUM CAPITAL

From: Tyler Flesch [mailto:tyler@redtyadvisors.com]
Sent: Thursday, September 18, 2014 11:17 AM
To: 'Mark Dillon'; 'Steven Truschka'; 'Chris Cook'; 'Greg Jones'
Cc: 'Gray Taylor'
Subject: RE:

I just received a call from the Town and they are less than pleased with being called out for no reason. They have followed procedure to a t on this.....They are now aware that Jim is an employee of ADC.....



From: Greg Jones <gregj@adcengineering.com>
Sent: Thursday, September 18, 2014 5:40 PM
To: Chris Cook; Steven Truschka
Subject: blurb

You have engaged in non-work related activities on company time and utilizing company equipment that has resulted in harm to ADC.

Greg Jones PE, LEED AP
Partner
Site Services / Civil Engineering / Aviation



ENGINEERING SPECIALISTS
1226 YEAMANS HALL ROAD
HANAHAN, SC 29410
office 843-735-5142 / mobile 843-991-7043
fax 843-566-0162
ADCENGINEERING.COM

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9/23/2014

Steven, Chris, Greg, Jim

- Chris and Greg presented termination letter to Jim and outlined reasons for termination
- Jim Prause ADC said it was hard



ADC_000150

From: Steven Truschka <StevenT@adcengineering.com>
Sent: Tuesday, September 23, 2014 9:56 AM
To: Chris Cook; Greg Jones; Rick Cook (roofguru@aol.com); Mark Dillon
Subject: Shem Creek

FYI

<http://www.thebryancrabtreeshow.com/shocking-hypocrisy-saving-shem-creek-founders-engineering-firm-employer-designed-building-he-wishes-to-destroy/>

Steven Truschka
Business Manager



ENGINEERING SPECIALISTS
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ADCENGINEERING.COM

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From: Steven Truschka
Sent: Monday, October 20, 2014 8:05 AM
To: ALL
Subject: Newspaper Article

<http://www.postandcourier.com/article/20141016/PC16/141019486/1177>

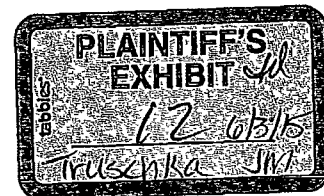
We have received numerous inquiries from a variety of individuals regarding the attached article. While ADC does not generally comment on personnel or litigation matters, we want to clarify for you that Jim was not dismissed because of his public comments or activities. Indeed, ADC had and has no issue with Jim's or any employee's interests/pursuits in the community as an individual. However, as explained to Jim, any such pursuits should not and cannot involve ADC, its time, equipment or property or harm or damage the company. We explained this to Jim and are disappointed that he has, nevertheless, chosen to pursue litigation against the company. While we wish him well, ADC will defend itself and its reputation in the pending lawsuit. In light of the lawsuit, if you receive any inquiry from the press or otherwise, we ask that you please direct all such inquiries to Steven Truschka.

Steven Truschka
Business Manager



ENGINEERING SPECIALISTS
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fax 843-566-0162
ADCENGINEERING.COM

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From: Greg Jones <gregj@adcengineering.com>
Sent: Friday, October 24, 2014 7:15 AM
To: Steven Truschka
Cc: Chris Cook; roofguru@aol.com; Mark Dillon
Subject: For the file

Steven,

I am sending a couple of emails relative Jim Owens for the file. Recently I had Jim make corrections to a time sheet where he charged work hours on two days that he took vacation. I don't know if it was intentional or just a mistake. I gave Jim the benefit of the doubt and had him correct the time sheet.

Greg Jones PE, LEED AP
Partner
Site Services / Civil Engineering / Aviation



ENGINEERING SPECIALISTS
1226 YEAMANS HALL ROAD
HANAHAN, SC 29410
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ADCENGINEERING.COM

CONFIDENTIALITY NOTICE: The material in this electronic transmission is either private, confidential, legally privileged or constitutes work product, and is intended only for the use of the individual(s) named above. If you are not the intended recipient, be advised that unauthorized use, disclosure, copying, distribution, or the taking of any action in reliance on this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone or return electronic transmission.

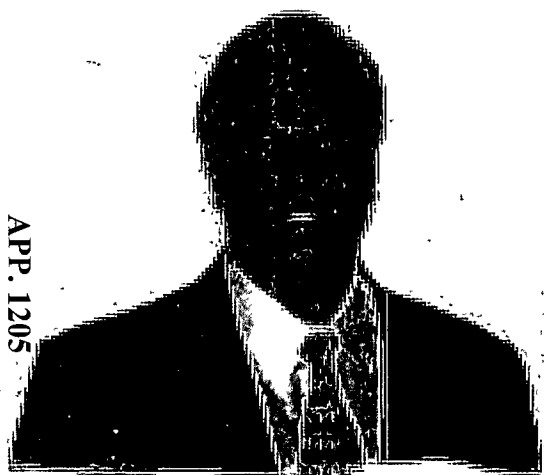


Jim Owens

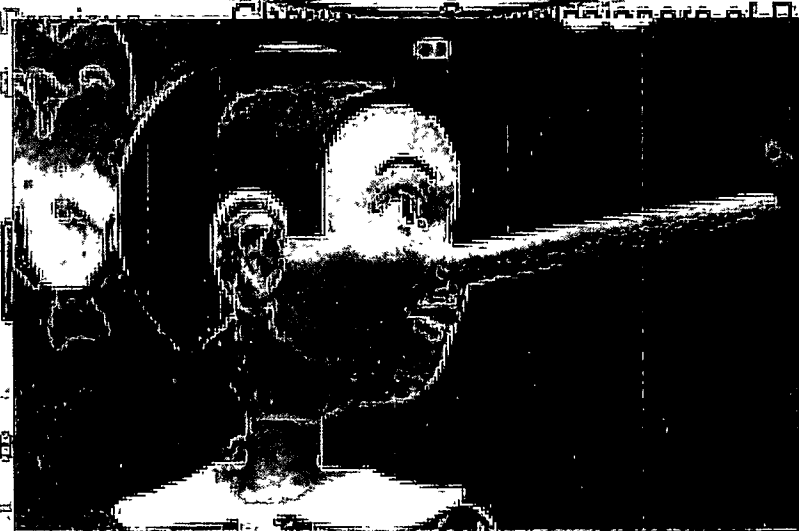
Construction Administrator with ADC Engineering, Inc
 North Charleston, South Carolina ; Civil Engineering

Current:

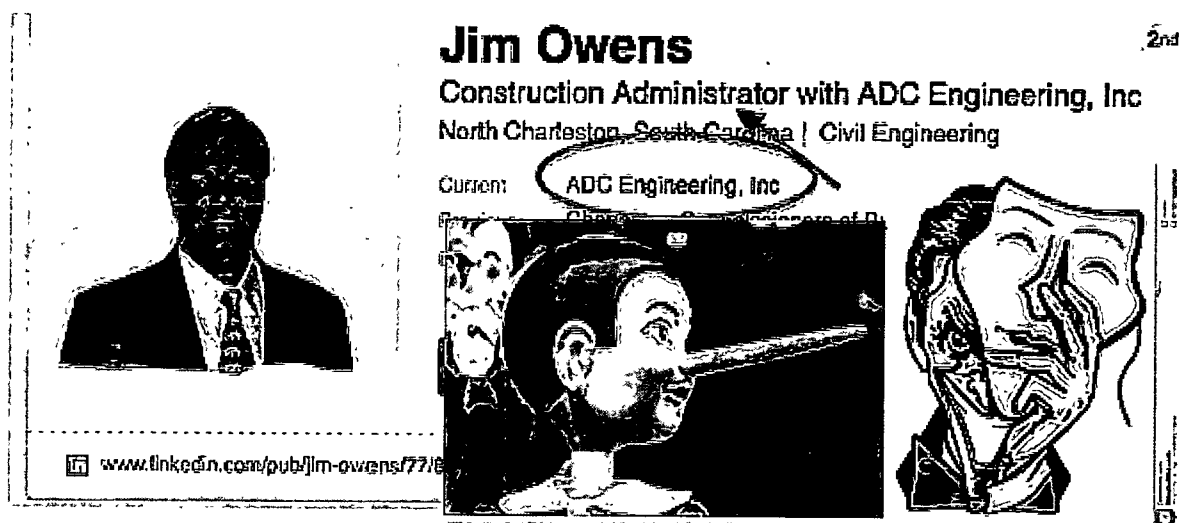
ADC Engineering, Inc



APP. 1205



www.linkedin.com/pub/jim-owens/7718



Shocking Hypocrisy: "Saving Shem Creek" leading member's engineering firm (employer) designed building he wishes to destroy.

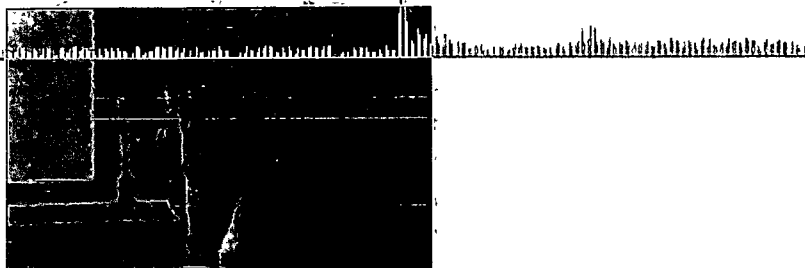
 Send

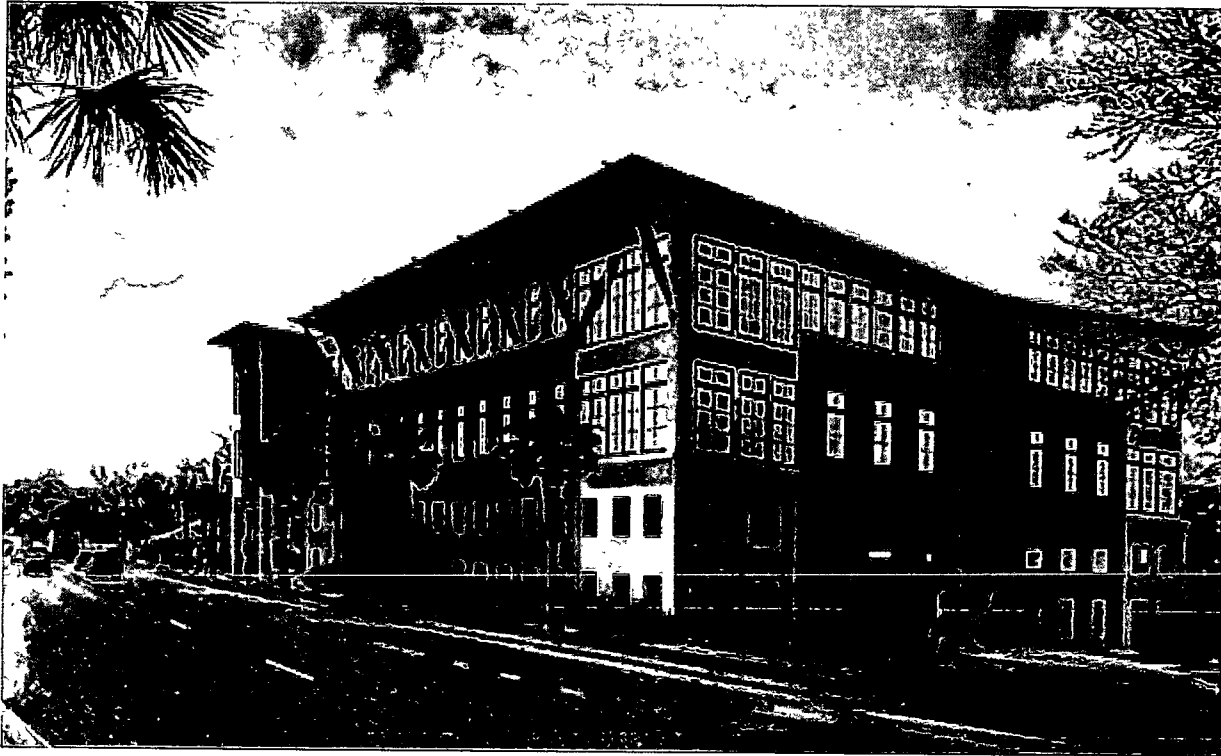
 Like 101 people like this. Be the first of your friends.

 Like 101 people like this. Be the first of your friends.



Jim Owens, who is a founding/leading member and lead contributor to the Saving Shem Creek Facebook page (which boasts nearly 1000 members), is an employee of the firm that designed the project the group is most upset about (a four story building and two-level parking garage). What is the hidden agenda and/or financial gain, he may receive, from blocking a development his employer is profiting from creating? Bryan asks the question (later in the audio), "Why don't we start making our city better," instead of trying to "save it from being ruined?" Plus, one lady's comment on the Saving Shem Creek page made out of innocence and ignorance undermines their entire agenda. Listen:





Someday I'll get to live in the REAL Mt. Pleasant – For now it's "Fake" for me!

0
SHARES



Facebook



Twitter

As Mt. Pleasant experiences rapid growth, there are a few hundred citizens who repeatedly oppose most development. In the recent case of Coleman Blvd, they are opposed to the 75 foot height restriction on Coleman Blvd., saying it should be much less. The city may reduce it. But the opponents don't realize that the existing buildings they are complaining about are nowhere near 75 feet. These are the same people that were complaining about the 52-foot building incorrectly called "parking garage" just two months ago.

In their mind, they want to keep the Old Village and Old Mt. Pleasant areas exactly as they are. Well, okay, maybe a fresh coat of paint here and there, but certainly no more development!

And, in order to continue to infringe on these owners private property rights, they have to make up lies in order to get peoples' emotions stirred. In the past, I've made the mistake of saying those who are against this growth are snobs. [Old Article Click Here](#)>

I must clarify. There are two types of people in this debate against the growth: 1. The snobs. 2. Those being misled by the snobs.

On the Post and Courier's opinion piece from Thursday, (Mt. Pleasant needs to grow up), some readers commented (on Facebook) that this area was the "Real Mount Pleasant" referring to the other 65,000 people (I assume) as outcasts or unimportant. Maybe the rest of us are just "Fake Mt. Pleasant." I just have one question: Aren't all homeowners in Mt. Pleasant paying taxes? What if the people in Park West told the people in Old Village that they wanted the Super Wal-Mart to move from North Mt. Pleasant to just off Coleman in the REAL Mt. Pleasant? One guy suggested that building big buildings was fine in Mt. Pleasant so long as it was on Johnnie Dodds.

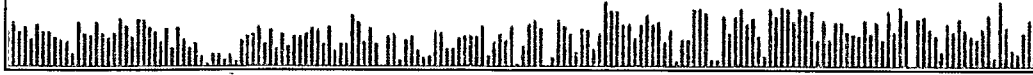
This is a community of people that will soon be 100,000 strong. We better start learning how to compromise and we better start respecting the rights of every citizen and property owner to have an opinion and not just a few who take the facts and distort them so boldly, that they have become lies.

It seems that everybody in America today still believes in private property rights until it comes to the issue of their neighbors' rights. Then, there should be "control."

If we keep pushing businesses out to Awendaw, we're going to end up with massive traffic issues we've yet to imagine and the people creating the problems will not be paying city taxes, but they'll be using all our City resources, just the same. Urban Sprawl is the root cause of a traffic nightmares in most big cities, and this will be the ruination of Mt. Pleasant; not the buildings they are complaining about. So, I agree, Mount Pleasant must grow UP not OUT.

However, if some of the opponents wish to pay a couple extra tax bills for those of us who don't live in the Real Mt. Pleasant, then we'll be happy to concede our votes and opinions to them! Until then, I'll stay on my postage-stamp lot in Mt. Pleasant (not the Real Mt. Pleasant, the Fake part of Mt. Pleasant - whatever that means) and I'll keep being vocal.

More Complainants in Mt. Pleasant.



LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

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* CLYDE A. ELTZROTH, JR.
J. PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R. ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
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* INACTIVE

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101 MULBERRY STREET EAST
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HAMPTON, SOUTH CAROLINA
29924-0457

RANDOLPH MURDAUGH, SR.
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1998)
J. ROBERT PETERS, JR.
(1927-2008)

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William F. Barnes, III
Direct Dial: (803) 914-6702
Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

August 30, 2016

Joyce C. Rueger
P.O. Box 1472
Johns Island, SC 29457

Re: James Owens v. Crabtree, et al.
Civil Action No.: 2014-CP-10-6265

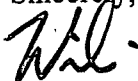
Dear Ms. Rueger:

Plaintiff's Motion to Alter or Amend Judgment was heard July 19, 2016 before Judge Nicholson. As the court reporter for this hearing, please allow this letter to serve as our formal request for a copy of the complete transcript as soon as conveniently possible.

Please forward an invoice with the transcript and we will remit payment upon receipt as provided by Rule 607, SCACR. Thank you for your assistance in this matter.

If you need any additional information, please let us know.

With kind regards, I am

Sincerely,


William F. Barnes, III

WFB/mcd

cc: Honorable Jenny Abbott Kitchings, SC Court of Appeals
SC Court Administration
Molly Hughes Cherry, Esquire
Ryan Earhart, Esquire
William P. Early, Esquire
Andrew S. Halio, Esquire
G. Hamlin O'Kelley, III, Esquire

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Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

August 30, 2016

Phyllis H. Norton
636 Long Point Road, Unit G, #74
Mt. Pleasant, SC 29464

Re: *James Owens v. Crabtree, et al.*
Civil Action No.: 2014-CP-10-6265

Dear Ms. Norton:

Defendant, ADC Engineering Inc.'s Motion for Summary Judgment was heard May 16, 2016 before Judge Nicholson. As the court reporter for this hearing, please allow this letter to serve as our formal request for a copy of the complete transcript as soon as conveniently possible.

Please forward an invoice with the transcript and we will remit payment upon receipt as provided by Rule 607, SCACR. Thank you for your assistance in this matter.

If you need any additional information, please let us know.

With kind regards, I am

Sincerely,


William F. Barnes, III

WFB/mcd

cc: Honorable Jenny Abbott Kitchings, SC Court of Appeals
SC Court Administration
Molly Hughes Cherry, Esquire
Ryan Earhart, Esquire
William P. Early, Esquire
Andrew S. Halio, Esquire
G. Hamlin O'Kelley, III, Esquire

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P.O. BOX 457
HAMPTON, SOUTH CAROLINA
29924-0457

August 30, 2016

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Email: wbarnes@pmped.com
Paralegal: mdavis@pmped.com

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Ste. 106
Charleston, SC 29401

Re: *Owens v. Crabtree, et al.*
Civil Action No.: 2014-CP-10-6265

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of the Notice of Appeal in the above-referenced case. Please file the documents and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions, please do not hesitate to contact our office.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: The Honorable Jenny Abbott Kitchings
Molly Hughes Cherry, Esquire
Ryan Earhart, Esquire
William P. Early, Esquire
Andrew S. Halio, Esquire
G. Hamlin O'Kelley, III, Esquire

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

Case No.: 2014-CP-10-06265

James C. Owens Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio,
Tyler Flesh, and Red Drum Capitol Group, LLC, Defendants,

Of whom, ADC Engineering, Inc. is Respondent

NOTICE OF APPEAL

PLEASE take notice that James C. Owens ("Appellant"), pursuant to Rule 203, SCACR, appeals the Order of the Honorable J. C. Nicholson. Jr. dated August 1, 2016, denying Plaintiff's Motion to Alter or Amend Judgment (Exhibit A) and Order granting ADC Engineering, Inc.'s ("Respondent") Motion for Summary Judgment dated June 22, 2016 (Exhibit B).

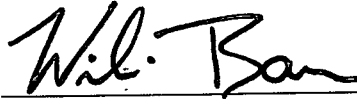
Appellant received written notice of entry of the Order denying the Motion to Alter or Amend on August 8, 2016. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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

August 30, 2016
Hampton, South Carolina

BY: 
John E. Parker
William F. Barnes, III
101 Mulberry Street, East
P.O. Box 457
Hampton, SC 29924
Phone: (803) 943-2111
Email: jparker@pmped.com
Email: wbarnes@pmped.com

Attorneys for Appellant

Other Counsel of Record:

Molly Hughes Cherry, Esquire
Nexsen Pruet, L.L.C.
Post Office Box 486
Charleston, SC 29402

Attorney for Respondent

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

DEFENDANT(S)

CLERK OF COURT

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

Date

EXHIBIT

A

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.

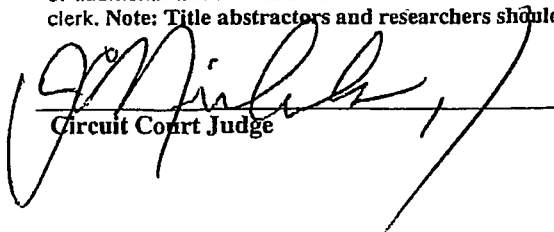
Additional Information for the Clerk : _____

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.

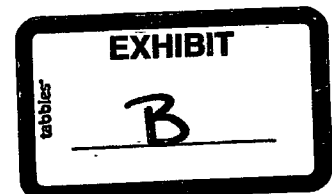
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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,
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.

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

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

 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.

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.



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

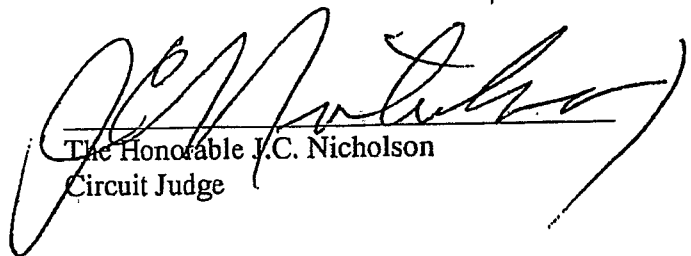
efforts. Moreover, Owens, as an employee, would have access to inside information pertaining to the very project he was opposing. Even Owens acknowledged that ADC's role as the engineer on the parking garage project he opposed presented a conflict of interest. Owens' actions in opposing a project on 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

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

Case No.: 2014-CP-10-06265

James C. Owens Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio,
Tyler Flesh, and Red Drum Capitol Group, LLC, Defendants,

Of whom, ADC Engineering, Inc. is Respondent

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 30th day of August, 2016.

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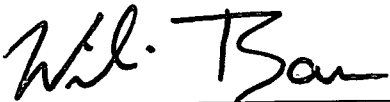
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PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

August 30th, 2016
Hampton, South Carolina

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August 30, 2016

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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: James C. Owens v. Crabtree, et al.
Civil Action No.: 2014-CP-10-6265

Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of the Notice of Appeal in the above-referenced case. Also enclosed is proof of service of the Notice of Appeal on Respondent, ADC Engineering, Inc., a copy of the Orders challenged on appeal, and a check in the amount of \$100.00 for the filing fee. Please file the documents and return a file-stamped copy to me in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions, please do not hesitate to contact our office.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: The Honorable Julie J. Armstrong
Molly Hughes Cherry, Esquire
Ryan Earhart, Esquire
William P. Early, Esquire
Andrew S. Halio, Esquire
G. Hamlin O'Kelley, III, Esquire

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

Case No.: 2014-CP-10-06265

James C. Owens Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio,
Tyler Flesh, and Red Drum Capitol Group, LLC, Defendants,

Of whom, ADC Engineering, Inc. is Respondent

NOTICE OF APPEAL

PLEASE take notice that James C. Owens (“Appellant”), pursuant to Rule 203, SCACR, appeals the Order of the Honorable J. C. Nicholson. Jr. dated August 1, 2016, denying Plaintiff’s Motion to Alter or Amend Judgment (Exhibit A) and Order granting ADC Engineering, Inc.’s (“Respondent”) Motion for Summary Judgment dated June 22, 2016 (Exhibit B).

Appellant received written notice of entry of the Order denying the Motion to Alter or Amend on August 8, 2016. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

[SIGNITURE PAGE TO FOLLOW]

Respectfully submitted,

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

August 30, 2016
Hampton, South Carolina

BY: Wil. Barnes

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Other Counsel of Record:

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Post Office Box 486
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Attorney for Respondent

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
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)

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☐ 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 :

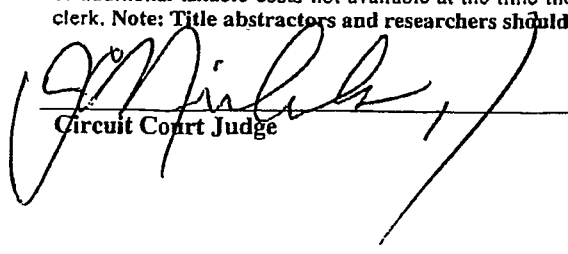
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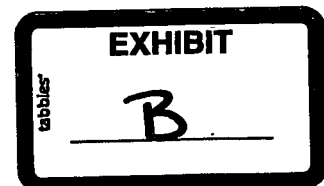
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Circuit Court Judge

2117
Judge Code

6/22/16
Date



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JAMES C. OWENS,
Plaintiff,

Civil Action No. 2014-CP-10-6265

vs.

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

Defendants.

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

FILED
2016 JUN 22 PM 2:00
JULIE J. ALFSTRONG
CLERK OF COURT

 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.

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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.



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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.

gm
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.*

gn
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

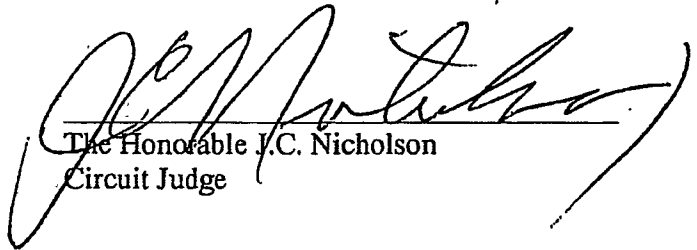
efforts. Moreover, Owens, as an employee, would have access to inside information pertaining to the very project he was opposing. Even Owens acknowledged that ADC's role as the engineer on the parking garage project he opposed presented a conflict of interest. Owens' actions in opposing a project on 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

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

Case No.: 2014-CP-10-06265

James C. Owens Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC Radio,
Tyler Flesh, and Red Drum Capitol Group, LLC, Defendants,

Of whom, ADC Engineering, Inc. is Respondent

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 30th day of August, 2016.

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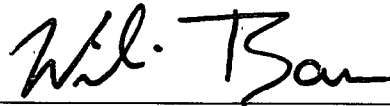
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September 20, 2016

The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
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Re: James C. Owens v. Crabtree, et al.
Civil Action No.: 2014-CP-10-6265

Dear Ms. Kitchings:

The transcript of the hearing ordered from Phyllis Norton, the court reporter who covered the motion for summary judgment hearing in the matter, was received from her on September 9, 2016.

The transcript of the hearing ordered from Joyce C. Rueger, the court reporter who covered the motion to Alter/Amend Judgment hearing in the matter, was received from her on September 20, 2016.

With kind regards, I am

Sincerely,

William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: Molly Hughes Cherry, Esquire
Ryan Earhart, Esquire
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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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SC Court of Appeals

Appellate Case No.: 2016-001811

James C. Owens, ... Appellant,

-v-

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

of whom ADC Engineering, Inc., is Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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January 26, 2017
Hampton, South Carolina

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SC Court of Appeals

ROA 1237

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Appellate Case No.: 2016-001811

James C. Owens, ... Appellant,

-v-

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

of whom ADC Engineering, Inc., is Respondent.

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE LOWER COURT ERR IN GRANTING ADC'S MOTION FOR SUMMARY JUDGMENT ON THE BASIS THAT S.C. CODE ANN. § 16-17-560 DOES NOT PROVIDE A PRIVATE CAUSE OF ACTION WHEN SOUTH CAROLINA LAW PROVIDES OTHERWISE?**

- II. DID THE LOWER COURT ERR IN HOLDING THAT OWENS' EXTENSIVE INVOLVEMENT WITH THE EXECUTIVE, LEGISLATIVE, AND ADMINISTRATIVE PROCESS IN OPPOSING THE PROJECT DID NOT CONSTITUTE PRIVILEGES PROTECTED BY THE UNITED STATES CONSTITUTION OR SOUTH CAROLINA CONSTITUTION?**

STATEMENT OF THE CASE

This appeal arises from the wrongful termination of James “Jim” Owens (“Owens”) by ADC Engineering, Incorporated (“ADC”) in violation of S.C. CODE ANN. § 16-17-560, which makes it unlawful to discharge a person because of the exercise of privileges guaranteed by the United States Constitution and South Carolina Constitution. Owens filed a Complaint against ADC, and other defendants, on October 10, 2014, in the Charleston County Court of Common Pleas. (R. pp. 271-279). Owens alleges that until September 23, 2014, he was employed by ADC for over ten (10) years and had always been praised by his supervisors. (R. pp. 274-275, ¶ 5). Around mid-December 2013, Owens learned of a proposed high rise parking garage and office building (“Building”, “Project”, or “Shem Creek Project”) that was to be built near Shem Creek in Mount Pleasant. (R. p. 275, ¶ 6). Owens, along with numerous other citizens, became concerned that the Building was out of character where it was proposed to be built as well as contrary to Mount Pleasant’s guidance documents that protect and preserve the area around Shem Creek. (R. p. 275, ¶ 6).

Owens, along with the other concerned citizens, formed a Facebook group called “Saving Shem Creek” to oppose the Building at the proposed location and persuade Mount Pleasant to support a building more compatible with the surrounding area. (R. p. 275, ¶ 7). As Owens became involved in opposing the Building, he met with his supervisor at ADC Engineering in early-June 2014 to talk about his opposition to the Project. (R. pp. 275-276, ¶ 9). His supervisor told him that it was permissible for him to be involved as long as he made it clear that his opposition was his personal opposition and he did not reference ADC. (R. pp. 275-276, ¶ 9). Owens followed ADC’s instructions and only voiced his personal opinion. (R. pp. 275-276, ¶ 9).

Exercising his right to free speech guaranteed by the First Amendment of United States Constitution and Article 1, § 2 of the South Carolina Constitution, Owens attended Mount Pleasant Town Council meetings, met with the Mayor, the Developer, Town Council Members and other administration officials in voicing his opposition to the Project. (R. p. 275, ¶ 8). Unbeknownst to Owens, on September 27, 2013, Stubbs Muldrow Herin Architects, Inc. (“Stubbs Muldrow”) entered into an agreement with ADC for structural services related to Building. (R. pp. 277-278, ¶ 20).

On September 16, 2014, Stubbs Muldrow wrote ADC and advised it was terminating the agreement with ADC. (R. pp. 277-278, ¶ 20). After receiving the letter from Stubbs Muldrow, ADC terminated Owens on September 23, 2014, for his opposition to the Project, despite express approval from ADC, in violation of S.C. CODE ANN. § 16-17-560. (R. p. 278, ¶ 21).

ADC served its Answer on November 14, 2014. The answer generally denied the allegations asserted in Owens’ Complaint. (R. pp. 280-287). In addition to responding to Owens’ Complaint, ADC also filed a counterclaim against Owens alleging that he violated a duty of loyalty to ADC. (R. pp. 280-287). Despite ADC being aware of Owens opposition to the Project, ADC sought actual damages and punitive damages against Owens for his “willful, wanton and reckless actions.” (R. p. 293, ¶ 33).

On February 16, 2016, ADC moved for summary judgment on the basis that conduct alleged in the Amended Complaint does not give rise to a wrongful termination claim. (R. pp. 25-29). The lower court heard ADC’s motion for summary judgment on May 16, 2016. (R. pp. 295-355). In an order filed June 22, 2016, the lower court granted ADC’s motion for summary judgment. (R. pp. 6-14).

Owens filed a Motion to Reconsider pursuant to Rule 59(e), SCRPC, on June 30, 2016. (R. pp. 16-19). The lower court held that Owens does not have a private cause of action against ADC under S.C. Code Ann. § 16-17-560. However, South Carolina precedent mandates that the prohibition of retaliatory discharge in violation of clear mandate of public policy extends to legislatively defined “Crimes Against Public Policy” of which § 16-17-560 is one. (R. pp. 20-21). Owens also took exception to the Order characterizing his activity as a “personal endeavor” when the evidence supported an inference that he was terminated for potentially costing ADC substantial revenue despite their blessing of his opposition to the Project, and his engagement in the executive, legislative, and administrative process. (R. pp. 21-22). In a Form 4 Order filed August 8, 2016, the lower court denied Owen’s motion to reconsider. (R. p. 15). Owens timely filed his Notice of Appeal on September 1, 2016. (R. pp. 1222-1235).

FACTS

Given that this appeal is before the Court on a motion for summary judgment, the facts below are to be viewed in a light most favorable to Owens as the non-moving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

I. OWENS EMPLOYMENT WITH ADC

Owens grew up in Mount Pleasant and started working for ADC as a construction administrator in mid-September 2004. (R. p. 866, lines, 7-8; p. 871, lines 5-12). His job responsibilities included working with engineers, reviewing designs and submissions for construction, and ensuring that projects were installed in accordance with the plans and specifications. (R. p. 871, lines 16-23). Owens split his time between working in the office and working in the field, and had flexibility regarding what he did during the workday. (R. p. 873, lines 8-18; p. 874, lines 17-22).

ADC has four divisions of engineering consulting – building envelope, structural, civil, and landscape.¹ (R. p. 874, line 23 – p. 875, line 12). ADC partners, Greg Jones and Chris Cook, were in charge of civil engineering, where Owens primarily worked. (R. p. 876, lines 17-22). Owens was one of three construction administrators with ADC and was not involved in who hired ADC to work on a project. (R. p. 402, line 24 – p. 403, line 3; p. 878, lines 15-19). In 2014, ADC had approximately sixty (60) employees. (R. p. 526, lines 14-16). ADC provided Owens a Motorola mobile phone that he used while employed by ADC. (R. p. 861, lines 8-22).

II. TYLER FLESCH'S DEVELOPMENT OF THE SHEM CREEK PROJECT

Tyler Flesch is in the real estate investment business. (R. p. 622, lines 5-14). In 2011, Flesch had conversations with Mount Pleasant officials about construction of the Project. (R. p. 628, lines 4-13). Initially, Mount Pleasant was going to build the garage and Flesch was going to be the landlord for the ground floor. (R. p. 628, lines 4-13). However, Mount Pleasant later decided it did not want to spend the money to construct the Project. (R. p. 628, lines 4-13). Following Mount Pleasant's decision, Flesch decided to work on plans to develop the Project with an office building. (R. p. 628, lines 2-5).

Flesch became aware of height restrictions in that area when they started to draw the building. (R. p. 631, lines 3-6). The law capped building height at forty-five (45) feet which resulted in Flesch needing a variance from Mount Pleasant to construct the Building as designed. (R. p. 631, lines 7-12). The request for a variance brought public opposition to the Project and Flesch later learned Owens was leading the opposition group, Saving Shem Creek. (R. p. 631, lines 13-25).

¹ ADC partner, Rick Cook, was in charge of the building envelope division, (R. p. 875, lines 17-22), while ADC partner, Mark Dillon, was in charge of structural engineering. (R. p. 876, lines 2-9). Warren Pruitt was in charge of landscape architecture. (R. p. 876, line 23 – p. 877, line 1).

III. FLESCH'S EFFORTS TO EXERT FINANCIAL PRESSURE ON ADC

Owens set up a Facebook page named Saving Shem Creek in March or April 2014.² (R. p. 839, lines 3-7). The purpose of the Facebook page was to disseminate information about the Shem Creek Project. (R. p. 839, lines 15-22). In early June 2014 Owens informed his supervisor and ADC partner, Cook, about his opposition to the Shem Creek Project. (R. p. 903, lines 4-13; p. 393, line 10 – p. 394, line 25). Owens felt it was his duty to inform ADC as he did not want ADC seeing his name in the paper without him informing ADC of what he was doing as a private citizen. (R. p. 903, line 20 – p. 904, line 8). Cook gave Owens permission to oppose the Project as long as he did not mention ADC and it was his personal opinion. (R. p. 394, lines 22-25). At the time of this June 2014 meeting, Cook knew of ADC's involvement with the Project, (R. p. 395, lines 1-8) but did not tell Owens.³ (R. p. 907, line 25 – p. 908, line 3; p. 982, line 21 – p. 983, line 6).

As the opposition to the Project grew, Flesch contacted morning radio host, Bryan Crabtree, after seeing a pod cast Crabtree put out about the Project. (R. p. 633, lines 7-19). Flesch felt the public opposition to the Project was directed against his livelihood. (R. p. 639, lines 14-15). Crabtree supported the Project on his show, The Bryan Crabtree Show, and Flesch thanked him for his support. (R. p. 642, lines 2-9). In an August 12, 2014 email, Flesch emailed Crabtree about that night's Mount Pleasant Town Council meeting. (R. p. 714). Flesch said to "look for a Jim Owens soliloquy of over 20 minutes by folks yielding their time. Guy doesn't know when to quit lying." (R. p. 714).

² Saving Shem Creek's Facebook page currently has over 5,000 members.

³ Cook testified he does not remember specifically talking with Owens about ADC's involvement in the Project. (R. p. 395, lines 1-8).

On the night of September 15, 2016, Flesch began searching Google and Facebook to learn more about Owens. (R. p. 653, lines 16-25). Flesch discovered Owens' LinkedIn page that listed ADC Engineering as Owens' employer. (R. p. 653, line 16 – p. 654, line 9). After confirming ADC employed Owens on September 15, Flesch sought to terminate ADC or have Stubbs Muldrow, the Project's architect, terminate ADC the next day, September 16th. (R. p. 653, line 16 – p. 654, line 9). In a September 18, 2014 email to Crabtree, Flesch provided Owens' LinkedIn page and noted that Owens was a "serous [sic] fraud". (R. p. 725). However, Flesch testified he did not direct Crabtree to do anything with the information. (R. p. 670, lines 8-10). In a September 22, 2014 email, Flesch wrote to Crabtree that "[t]his guy [Owens] is out of control and the fact he makes a living off of us commercial developers is so hyporcritical [sic] call this guy out, HARD." (R. pp. 723-724). Crabtree subsequently published on his and Kirkman Broadcasting's website, an image of Owens next to Pinocchio and an individual that is two-faced. (R. p. 1198; pp. 514-515).

IV. OWENS TERMINATION

Following Flesch's directive, Stubbs Muldrow summoned ADC Partner, Mark Dillon, to a meeting on September 16, 2014. (R. p. 527, lines 11-13). Flesch was present during that meeting. At the meeting Flesch informed Dillon of Owens' opposition to the Project, how unhappy he was that Owens was an ADC employee, and that ADC "would be fired from the job unless [ADC] fired Jim." (R. p. 531, line 23 – p. 532, line 3). In the hour long meeting, Flesch expressed extreme displeasure about Owens' opposition and was "very upset, very angry about it." (R. p. 535, lines 14-24). If Flesch had it his way, Dillon would have called Owens on the phone right then and terminated Owens' employment, and, after pressing the issue quite hard, could not understand why Dillon could not terminate Owens immediately. (R. p. 535, line 24 – p.

536, line 3). Flesch mentioned to Dillon that Owens sent emails and made Facebook posts during working hours. (R. pp. 541-542; p. 604). Flesch also threatened to sue ADC. (R. p. 542, line 24 – p. 543, line 5; p. 604).

Contrarily, Flesch testified that he never asked Dillon or anyone else to fire or terminate Owens during the September 16th meeting. (R. p. 657, lines 8-20). Additionally, Flesch stated he “never decided to take action against Mr. Owens.” (R. p. 632, line 23 – p. 633, line 5). Flesch believes Owens could have known about ADC’s involvement in the Project by contacting his bosses. (R. p. 668, lines 9-12). After the September 16, 2014 meeting, Flesch wrote to Dillon by email and included portions of Facebook posts and emails from Owens about his opposition to the Project. (R. p. 609). Flesch ended his email to Dillon by noting “I look forward to speaking to you about how this can be resolved amicably.” (R. p. 609).

The next day, on September 17, 2015, Dillon called Charles Muldrow of Stubbs Muldrow to inform him that ADC was not terminating Owens. (R. p. 547, line 20 – p. 548, line 5). Stubbs Muldrow was one of ADC’s top two clients as they have worked together since 1990. (R. p. 533, line 16 – p. 534, line 9). Dillon believed ADC was Stubbs Muldrow’s first choice for engineering on their projects. (R. p. 548, lines 9-10). Muldrow was disappointed in ADC’s decision. (R. p. 548, lines 2-16).

On September 18, 2016, ADC received an evidence preservation letter from Stubbs Muldrow. (R. p. 811, lines 12-16; p. 605). Although ADC had decided not to take action with regard to Owens, that changed after it received the evidence preservation letter. (R. p. 405, lines 17-20). After receiving the letter, Cook and Jones met with Owens later that day at 4:15 p.m. (R. p. 811, lines 17-20; pp. 607-608). Cook noted that during the meeting Owens referenced the previous conversation with Cook regarding his involvement in opposing the Project. (R. pp. 607-

608). Owens remembered that Cook asked him to keep ADC out of it but stated that Owens had a right to oppose the Project a private citizen. (R. p. 394, lines 18-25; pp. 607-608). Owens' goal was to keep ADC out of everything. (R. pp. 607-608).

Michael Graham served as the IT Specialist for ADC Engineering for over seven (7) years. (R. p. 730, lines 3-9). Graham seized information from Owens' computer following ADC's receipt of the September 16, 2016 Stubbs Muldrow evidence preservation letter. (R. p. 731, line 1 – p. 732, line 8). ADC management testified that Owens sent approximately twenty personal emails sent from his ADC computer. (R. p. 1162, lines 16-17; p. 419, lines 11-17). However, there were only fourteen (14) emails Owens sent from May 16, 2014 through September 10, 2014 that Graham located. (R. p. 732, line 24 – p. 733, line 2; pp. 741-798). The fourteen (14) emails were all sent to Owens personal email account – jcowenssr@comcast.net – and eleven (11) to twelve (12) contained little to no text. (R. pp. 741-798; p. 833, lines 10-11). Despite the intense business pressure from Flesch and Stubbs Muldrow, and Flesch's suggestion to ADC that Owens sent emails during working hours, ADC asserts it terminated Owens solely for violating ADC's Technology Policy. ADC's Technology Policy specifically *allowed* personal emails as long as it was not "excessive." (R. p. 1163, lines 15-20; p. 1083). Steve Truschka, ADC's business and human resources manager, acknowledged sending personal emails but does not believe he sent twenty (20) over several months. (R. p. 1162, line 21 – p. 1163, line 11). No one with ADC defined "excessive" and Truschka admitted "it's hard to define excessive." (R. p. 1163, lines 21-22; p. 1170, lines 2-7). Unfortunately, Owens was not advised as to what constitutes excessive use of ADC equipment that was expressly permitted in ADC's Technology Policy. (R. p. 1164, lines 5-10).

Cook likewise could not define the “significant” amount of time Owens allegedly used ADC resources that warranted Owens termination. (R. p. 418, lines 1-23). Like Truschka, Cook acknowledged frequently using ADC equipment for personal endeavors. (R. p. 419, lines 21-25).

In Graham’s seven years as the IT Specialist, ADC has never had another instance where employee use of a computer was checked for personal use. (R. p. 734, lines 19-25). ADC did not check anyone else’s computer when checking Owens’ computer of whether they had used ADC equipment for personal use or how the other employees’ usage compared to Owens’ personal use. (R. p. 1163, lines 12-14; p. 420, lines 4-21; p. 421, lines 19-23). ADC’s personal email at work policy is recommended only during lunch hours, but “it is not a very strict policy.” (R. p. 735, lines 20-25). Out of approximately sixty (60) employees, Graham is not aware of another ADC employee disciplined or reprimanded for personal computer use. (R. p. 736, lines 1-9).

Owens had already told ADC of his use of company equipment, which is expressly allowed under the ADC Technology Policy, when it received the emails from Graham after his search of Owens’ email account. (R. p. 433, lines 6-8; p. 940, lines 3-8).

V. OWENS EXEMPLARY TEN YEAR EMPLOYMENT WITH ADC

Owens first learned of ADC’s involvement with the Project from a Bryan Crabtree Facebook post. (R. p. 908, lines 8-17). Had Owens known or been told ADC was the structural engineer, he would have removed himself from opposing the Project as he deemed it a “conflict of interest” and would not have “knowingly subjected [ADC] to harm.” (R. p. 908, line 18 – p. 909, line 10).

ADC partner, Greg Jones described Owens as a good employee that carried out his duties with ADC appropriately. (R. p. 806, lines 8-14). He was never given any negative reviews or write-ups. (R. p. 806, lines 15-17). Steve Truschka is ADC’s Business Manager which makes

him in charge of human relations. (R. p. 1145, line 21 – p. 1146, line 5). Truschka did not know anything negative about Owens until Flesch and Stubbs Muldrow threatened to terminate any relationship with ADC. (R. p. 1147, lines 6-25). In fact, everything Truschka knew about Owens was positive, and he had received no complaints about Owens. (R. p. 1147, lines 12-13; p. 1179, lines 3-5).

Although labeled as Pinocchio and two-faced by Crabtree, Owens' ADC superiors would not label him as such. (R. p. 527, lines 3-8; p. 578, lines 23-24). Truschka did not find the Pinocchio image to be a fair representation of Owens as he never knew Owens to be a liar. (R. p. 1167, lines 14-25). Up until the threats from Flesch, Cook could not think of anything negative about Owens. (R. p. 392, lines 17-24). Following his termination, Owens applied for many jobs⁴ without success. (R. p. 946, line 14 – p. 961, line 20). When Owens deposition was taken on May 20, 2015, Owens had not received a paycheck since his termination from ADC in September 2014. (p. 961, line 21 – p. 962, line 3).

STANDARD OF REVIEW

The standard governing summary judgment is well established, and appellate courts apply the same standard as the trial court. Summary judgment is only appropriate where there is no genuine issue of material fact, and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCF. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490,

⁴ Owens unsuccessfully applied for a job with Weston & Sampson, Lowcountry Land Development Consultants, Water Missions International, MeadWestvaco, Choate Construction, Medical University of South Carolina, Charleston County, Jacobs Engineering, Summerville CPW, Charleston Water Systems, Premier Integrated Consultants, Dorchester County Public Works, Armchem International Corp., Power Home Technologies, US Health Group, Jones Ford, and Jackson Built Custom Homes. (R. p. 946, line 14 – p. 961, line 20)

493, 443 S.E.2d 392, 394 (1994). On a motion for summary judgment, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-S. Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). “Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues.” Murphy v. Tyndall, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009).

ARGUMENT

The evidence set forth above, viewed in a light most favorable to Owens, supports an inference that ADC terminated Owens for exercising his right to free speech which is guaranteed by the United States Constitution and South Carolina Constitution in violation of S.C. CODE ANN. § 16-17-560. Section 16-17-560 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 States⁵ or by the Constitution and laws of this State.⁶

S.C. CODE ANN. § 16-17-560. In granting summary judgment to ADC, the lower court disregarded the established summary judgment standard and viewed the evidence in a light most favorable to ADC – concluding that Owens was terminated for violating ADC’s Technology Policy despite extensive evidence of the financial pressure put on ADC by Flesch and Stubbs Muldrow. If the lower court’s decision is allowed to stand in its current form, the only time an

⁵ The United States Constitution’s First Amendment provides freedom of speech: “Congress shall make no law . . . abridging the freedom of speech . . . , or . . . to petition the Government for a redress of grievances.” U.S. CONST. AMEND. 1.

⁶ The South Carolina Constitution provides that “[t]he General Assembly shall make no law . . . abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.” S.C. CONST. ART. I, § 2.

employee could maintain a wrongful termination action for violation of § 16-17-560 would be when the employer admits it terminated the employee for exercising his or her constitutional rights. Unfortunately this would never happen as the employer would come up with another reason to terminate an at-will employee which the employee could not challenge or present evidence of another reason for the termination.

I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT TO ADC ON THE BASIS THAT S.C. CODE ANN. § 16-17-560 DOES NOT PROVIDE A PRIVATE CAUSE OF ACTION WHEN SOUTH CAROLINA LAW PROVIDES OTHERWISE

The lower court incorrectly granted summary judgment based on the evidence in this case in contravention of established South Carolina law. In its Order, the Court acknowledges that termination of an “at-will employee will give rise to an action for wrongful termination when there is a violation of clear mandate of public policy.” (R. p. 11). Despite acknowledging a wrongful termination action can be maintained based on a violation of public policy, the lower court improperly weighed the evidence and held “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.” (R. p. 10). This was the central issue in the case – whether Owens was terminated based on the financial pressure exerted by Flesch and Stubbs Muldrow or for violating ADC’s technology policy that expressly allows personal email use. By granting summary judgment on the fact that Owens was terminated for violating the Technology Policy, the lower court improperly weighed the evidence in contravention of the well-established summary judgment standard.

A. *Ludwick Holds a Wrongful Termination Action Can Be Maintained for a Violation of a Clear Mandate of Public Policy*

The lower court also incorrectly notes that the statute relied upon by Owens – S.C. CODE ANN. § 16-17-560 – does not create a private cause of action. The South Carolina Supreme Court held that a wrongful termination action for a violation of a clear mandate of public policy could be maintained in Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985). Ludwick involved a seamstress that was an at-will employee at a sewing plant in Summerville. Id. at 220, 337 S.E.2d at 213. Ludwick was served a subpoena to appear before the South Carolina Employment Security Commission. Id. at 221, 337 S.E.2d at 213-14. She was advised by her employer that if she obeyed the subpoena she would be fired. Id. at 221, 337 S.E.2d at 214. Ludwick honored the subpoena, testified at the hearing, and was terminated upon returning to her job. Id. Ludwick filed a wrongful termination action and, following the presentation of her evidence at trial, the trial court dismissed her action on the basis that neither statutory nor common law recognized a public policy exception to the employment at-will doctrine. Id. On appeal, the Supreme Court reversed and noted that “[w]here the retaliatory discharge of an at-will employee constitutes a violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises.” Id. at 225, 337 S.E.2d at 216.

B. Culler Holds a Public Policy Violation Includes the Legislatively Defined “Crimes Against Public Policy”, Of Which S.C. CODE ANN. § 16-17-560 is Included

Following Ludwick, the South Carolina Supreme Court expanded a public policy violation to include legislatively defined “Crimes Against Public Policy” in Culler v. Blue Ridge Elec. Coop., 309 S.C. 243, 422 S.E.2d 91 (1992). Culler involved a wrongful termination case brought by Gerald Culler, a Blue Ridge Electric Coop employee, when he was terminated for not contributing to Blue Ridge’s PAC. Id. at 244, 422 S.E.2d at 91. Prior to the 1980’s, Blue Ridge maintained a pay-roll deduction plan for its employees to donate to the PAC. Id. at 244, 422

S.E.2d at 91-92. The PAC gave money to the campaigns of politicians who supported cooperative utilities. Id. at 244, 422 S.E.2d at 92. Although Blue Ridge was itself prohibited from directly contributing to political campaigns by federal law, Blue Ridge employees testified that it encouraged employees to contribute to the PAC fund. Id. When Culler began working for Blue Ridge, the PAC dues were deducted from his pay check. Id. at 244-45, 422 S.E.2d at 92. Once PAC dues were no longer pay-roll deducted, Culler discontinued his membership. Id. at 245. When Blue Ridge reinstated pay-roll deduction for PAC membership, Culler refused to join. Id. Soon thereafter, Culler was transferred from a line crew to right of way crew, and later terminated. Id.

Culler claimed Blue Ridge terminated him because he refused to join the PAC. Id. The trial court, *sitting without a jury*, held that Culler did not have an actionable claim under the public policy exception to the at-will employment doctrine. Id. Additionally, the trial court found that the evidence did not support Culler's claim. Id.

On appeal, the Supreme Court analyzed Ludwick and noted that "Chapter 17 of Title 16 defines 'Crimes Against Public Policy.'" Id. at 246, 422 S.E.2d at 92. In holding that a wrongful termination action could be maintained, the Supreme Court held "[w]e believe that Ludwick's prohibition of retaliatory discharge in violation of a clear mandate of public policy of this State extends at least to legislatively defined 'Crimes Against Public Policy.'" ⁷ Id. at 246, 422 S.E.2d at 92-93. "Thus, if Culler was discharged because he refused to contribute to a political action fund, he would have a cause of action for wrongful termination under Ludwick and S.C. Code Ann. § 16-17-560." Id. at 246, 422 S.E.2d at 93. While noting that an action could be

⁷ Section 16-17-560, upon which Owens relies here, is included in the legislatively defined "Crimes Against Public Policy." Id.

maintained for violating § 16-17-560, the Supreme Court affirmed the trial court's findings (sitting without a jury) because it found the evidence supported Blue Ridge's termination for Culler's "bad attitude."⁸ *Id.* at 247, 422 S.E.2d at 93.

C. ADC's Position Changed Upon Receipt of the Evidence Preservation Letter and Potential Loss of Substantial Revenue

Contrary to the express holding in Culler, the lower court here held that S.C. CODE ANN. § 16-17-560 does not create a private cause of action. Other than merely citing Culler, the lower court's order does not address or analyze the Supreme Court's holding upon which Owens relies. (R. pp. 6-14). Culler makes clear that § 16-17-560 can be relied upon to support a public policy violation for wrongful termination.

The evidence presented here, when viewed in a light most favorable to the Owens as the non-moving party, establishes that ADC terminated Owens for his involvement with the Project. Owens notified ADC of his opposition to the Project in early June 2014. (R. p. 903, lines 4-13; p. 393, line 10 – p. 394, line 25). Cook gave Owens permission to oppose the Project as long as he did not mention ADC and it was his personal opinion.⁹ (R. p. 394, lines 22-25). At that time Cook knew of ADC's involvement with the Project but did not inform Owens of ADC's involvement.¹⁰ (R. p. 395, lines 1-8; p. 982, line 21 – p. 983, line 6). Owens continued opposing the Project. On September 16, 2014, Flesch and Stubbs Muldrow summoned Dillon to a meeting

⁸ In addition to Culler, the Court of Appeals in Moshtaghi v. Citadel, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994), noted that the South Carolina Constitution, along with the United States Constitution, provide for freedom of speech, of assembly, and the right to petition the government for redress of grievances in an action for wrongful termination in violation of constitutional rights. *Id.* at 323, 443 S.E.2d at 919.

⁹ Despite ADC's express approval of Owens' opposition to the Project in June 2014, ADC filed a counterclaim against Owens seeking both actual and punitive damages for his "willful, wanton and reckless actions." (R. p. 293, ¶ 33).

¹⁰ Owens submits there is no evidence that he knew of ADC's involvement in the project until September 2014.

regarding Owens' opposition to the Project. Flesch demanded that Dillon call Owens on the phone right then and terminate Owens' employment. (R. p. 535, line 24 – p. 536, line 3). Flesch could not understand why Dillon would not terminate Owens immediately. (R. p. 535, line 24 – p. 536, line 3). Flesch also informed Dillon, during this meeting, that Owens sent emails and made Facebook posts during working hours, and ADC ultimately terminated Owens under the pretext of personal use of a work computer. (R. pp. 541-542; p. 604). Flesch also threatened to sue ADC. (R. p. 542, line 24 – p. 543, line 5; p. 604).

Following the September 16th meeting, on September 17, 2015, Dillon called Stubbs Muldrow to inform them that ADC was not terminating Owens. (R. p. 547, line 20 – p. 548, line 5). Stubbs Muldrow was one of ADC's top two clients, and Dillon believed ADC was one of Stubbs Muldrow's first choices for engineering projects. (R. p. 533, line 16 – p. 534, line 9; p. 548, lines 9-10). ADC's decision not to take action with regard to Owens changed after its receipt of the September 18, 2016 evidence preservation letter from Stubbs Muldrow. (R. p. 405, lines 17-20; p. 811, lines 12-16; p. 605).

This evidence supports an inference that ADC terminated Owens, not for violating the Technology Policy, but for potentially costing ADC substantial revenue for exercising his right to free speech (with ADC's prior approval). Stubbs Muldrow is one of ADC's top two clients. (R. p. 533, line 16 – p. 534, line 9). ADC generates revenue of about \$8,000,000.00 per year and generates about \$3,000,000.00 in revenue from their top architectural firm client, LS3P. (R. p. 1171, lines 9-11; p. 400, lines 2-11). This is a substantial amount of revenue to lose if Stubbs Muldrow terminated its relationship with ADC. This evidence, taken alone, is sufficient to reverse the lower court's granting of ADC's motion for summary judgment.

D. ADC Already Knew of Owens Emails and Facebook Posts Prior to Advising Stubbs Muldrow It was not Terminating Owens and ADC's Management Engaged in Personal Email Use and Could Not Define "Excessive" Use

The only argument put forth on this point by ADC is that Owens was not terminated for exercising his constitutional rights but for violating the company's Technology Policy. In Culler, the Supreme Court affirmed trial court's finding, *sitting without a jury*, that the evidence did not support Culler's claim that he was terminated for exercising his constitutional rights, but instead his "bad attitude." Culler, 309 S.C. at 246-47, 422 S.E.2d at 93. This matter was before the lower court on ADC's motion for summary judgment which requires the evidence to be viewed in a light most favorable to Owens as the non-moving party. If Owens is forced to accept ADC's reason for his termination and could not present evidence to the contrary – extensive evidence to the contrary exists here – an individual could never maintain a wrongful termination action for violation of § 16-17-560 – especially an at-will employee that can be terminated for any reason.¹¹ See Prescott v. Farmers Tel. Coop., Inc., 335 S.C. 330, 334, 516 S.E.2d 923, 925 (1999) ("At-will employment is generally terminable by either party at any time, for any reason or for no reason at all."). Under this scenario an at-will employee could never maintain an action for a violation of § 16-17-560 despite Culler's holding to the contrary.

Culler and its progeny hold a wrongful termination action can be maintained for violating S.C. CODE ANN. § 16-17-560. This is highlighted by the Court's statement at the motion to reconsider hearing:

¹¹ Accepting ADC's position at face value would be akin to accepting a drunk driver's testimony – at the summary judgment stage – that he was not drunk despite evidence of swerving outside of his lane and slurred speech. Another example would be a company testifying it did not have notice of a premises defect despite notice in its records. These discrepancies illustrate the summary judgment standard which requires the court to view the evidence and all inferences in a light most favorable to the non-moving party. Rule 56, SCRPC.

- - and I don't have any question about that. The question I have in my mind is there sufficient evidence to show that possibly they did fire him for free speech; for exercising his right to speech, okay at a summary judgment level. That's where we're talking about; is there a scintilla. Can somebody reach a logical conclusion with a scintilla of evidence that they fired him for that reason, okay.

Now, I know your argument is its not political speech and you're trying to close that in legal language and not factual language. You may be right and may not be; I don't know. But's that an issue and quite frankly I thought that Mr. Owens was aware that the company was involved in the Shem Creek business.

(R. p. 380, lines 11-24).

ADC's argument that it terminated Owens for violating the Technology Policy is further undercut by ADC's principals' testimony about their personal use of the ADC equipment and email. Additionally, ADC knew of Owens' emails and Facebook posts on September 16th at the meeting with Flesch. (R. pp. 541-542; p. 604). Despite having this knowledge, ADC informed Stubbs Muldrow on September 17th that it was not terminating Owens. (R. p. 547, line 20 – p. 548, line 5). ADC found only fourteen (14) emails Owens sent from May 16, 2014 through September 10, 2014. (R. p. 732, line 24 – p. 733, line 2; pp. 741-798). The fourteen (14) emails sent over nearly four months were all sent to Owens personal email account – jcowenssr@comcast.net – and eleven (11) to twelve (12) contained little to no text in the body of the email. (R. pp. 741-798; p. 833, lines 10-11). ADC's Technology Policy specifically allowed personal emails as long as it was not "excessive." (R. p. 1163, lines 15-20). Steve Truschka, ADC's business and human resources manager, acknowledged sending personal emails. (R. p. 1162, line 23 – p. 1163, line 11). No one with ADC defined "excessive" and Truschka admitted "it's hard to define excessive." (R. p. 1163, lines 21-22; p. 1170, lines 2-7). Cook likewise could not define the "significant" amount of time Owens allegedly used ADC resources that warranted

Owens termination. (R. p. 418, lines 1-23). Like Truschka, Cook acknowledged frequently using ADC equipment for personal endeavors. (R. p. 419, lines 21-25).

In Graham's seven years as the IT Specialist, ADC has never had another instance where an employee's use of a computer was checked for personal use. (R. p. 734, lines 19-25). ADC, likewise, did not check anyone else's computer when checking Owens' computer for personal use or assess how the other employees' use compared to Owens' personal use. (R. p. 1163, lines 12-14; p. 420, lines 4-21; p. 421, lines 19-23). Graham is not aware of another ADC employee that has been disciplined or reprimanded for personal computer use. (R. p. 736, lines 1-9). This evidence indicates that ADC's principals were in violation of the policy they allegedly terminated Owens for violating and supports an inference that the technology policy violation was a pretext for terminating Owens. It can hardly be argued that sending fourteen (14) emails over a period of four months is "excessive" personal email use. Owens submits this is why no other employees' equipment was searched and compared to Owens because Owens use would not be "excessive." This evidence, when viewed in a light most favorable to Owens as the non-moving party, indicates that Owens was not terminated for violating the Technology Policy, especially when expressly permitted by the Policy and ADC management could not define "excessive." As this evidence indicates, Owens was terminated for exercising his right to free speech in opposing the Project, and the lower court's granting of summary judgment to ADC should be reversed.

II. OWENS' EXTENSIVE INVOLVEMENT WITH THE EXECUTIVE, LEGISLATIVE, AND ADMINISTRATIVE PROCESS IN OPPOSING THE PROJECT CONSTITUTES PRIVILEGES AND RIGHTS PROTECTED BY THE UNITED STATES CONSTITUTION OR SOUTH CAROLINA CONSTITUTION

Even though the evidence presents a question of fact as to whether ADC terminated Owens for exercising his constitutional rights, the lower court also held that Owens' speech

“does not amount to protected political speech under the statute at issue.” (R. p. 12). In support of this finding, the lower court relies upon a District Court opinion in Vanderhoff v. John Deere Consumer Prods., No. C.A. 3:02-0685-22, 2003 WL 23691107, 2003 U.S. Dist. LEXIS 25805 (D.S.C. 2003). As an initial matter, the District Court’s decision is not binding on this Court or the lower court. Although persuasive authority, Owens submits that Vanderhoff is easily distinguished given Owens’ extensive involvement in opposing the Project.

Vanderhoff involved a case for William Vanderhoff, who described himself as a member of the “Confederate Southern American” ethnic group, and claimed he was prohibited from displaying a confederate flag on his work toolbox. Id. at 2. In 2001, Vanderhoff filed an employment discrimination complaint under Title VII of the Civil Rights Act of 1964. Id. He also sought recovery under state law for wrongful discharge pursuant to § 16-17-560. Id. The District Court granted summary judgment on the Title VII claim and dismissed without prejudice the wrongful discharge claim. Id. at 2-3. Vanderhoff subsequently filed another action in state court alleging wrongful termination pursuant to § 16-17-560. Id. The District Court granted John Deere’s motion for summary judgment as “the display of a confederate flag decal is not a political opinion or the exercise of any political right or privilege . . . 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 6. Although the District Court held § 16-17-560 did not extend to placement of a confederate flag decal on a work toolbox, the Court noted 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. at 7.

Owens submits that, based on the statute's plain and ordinary meaning, § 16-17-560 is not as limited as the lower court interpreted the district court to hold in Vanderhoff. See Paschal v. State Election Comm'n, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) ("Where the terms of the statute are clear, the court must apply those terms according to their literal meaning. This Court cannot construe a statute without regard to its plain and ordinary meaning, and may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope.").

Section 16-17-560 mandates that "it is unlawful for a person to . . . discharge a citizen from employment or occupation . . . because of (1) political opinions or the exercise of (2) 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 Fourth Circuit Court of Appeals in Dixon v. Coburg Dairy, 369 F.3d 811, 818 (4th Cir. 2004)¹² – decided subsequent to Vanderhoff – noted three ways liability could be predicated on § 16-17-560: "(1) Dixon was fired because of his political opinions; (2) Dixon was fired for exercising political rights guaranteed by the United States Constitution; and (3) Dixon was fired for exercising political rights guaranteed by the South Carolina Constitution." Section 16-17-560 is not as narrow as Vanderhoff holds in light of the Fourth Circuit's decision in Dixon. If § 16-17-560 is as narrow as Vanderhoff holds, then the opinions, rights, and privileges guaranteed by the United States Constitution and South Carolina would be greatly diminished and the statute would protect very few privileges.

Even if the Court is inclined to follow the rationale in Vanderhoff over Dixon, Owens took more affirmative steps to exercise his free speech rights and privileges than merely placing a confederate flag decal on his work toolbox, and actually engaged in the executive, legislative,

¹² The Fourth Circuit in Dixon remanded the case back to the South Carolina Court of Common Pleas. Id. at 819.

and administrative process in opposing the Project. Owens set up a Facebook page named Saving Shem Creek in March or April 2014 to disseminate information about the Shem Creek Project. (R. p. 839, lines 3-22).¹³ Owens, along with other individuals, formed Save Shem Creek Corp., a nonprofit. (R. p. 842, lines 8-25). There were more than ten (10) officers of Save Shem Creek Corp. and Owens served on the board of directors. (R. p. 843, lines 8-25). Save Shem Creek Corp.'s Board of Directors met once or twice a month and Owens attended those meetings. (R. p. 844, lines 1-8). Owens attended Mount Pleasant Town Council meetings and prepared a Powerpoint presentation to give to Town Council, a political body. (R. p. 632, lines 2-8; p. 930, lines 4-25). Owens also emailed with members of the Mount Pleasant Town Council (R. pp. 912-914) and attended Mount Pleasant Planning Commission meetings regarding the Project. (R. p. 925, lines 11-24). Owens also had frequent communications with Mount Pleasant Mayor Linda Page regarding the Project. (R. p. 1009, lines 11-13). Attending Town Council and Planning Commission meetings and meeting with the Mayor is exercising his political rights and privileges guaranteed by the Constitutions. If Owens' extensive involvement with the political process by exercising his constitutional rights is not protected by § 16-17-560 then what is?

This evidence, when viewed in a light most favorable to Owens, indicates that he was much more involved with the executive, legislative, and administrative process than simply putting a confederate flag decal on a work toolbox. This extensive involvement with the governing process is the type of conduct the Legislature intended to protect in enacting § 16-17-560. As Vanderhoff is inapplicable to this case given the extensive evidence of political involvement, the lower court's order granting summary judgment on this ground should be reversed.

¹³ The Saving Shem Creek Facebook page had at least seven (7) other administrators. (R. p. 840, lines 2-6).

CONCLUSION

The evidence in this case, at a minimum, establishes that Owens informed ADC of his involvement in opposing the Project in June 2014. Despite Cook's knowledge of ADC's involvement in the Project, he did not inform Owens. At the meeting on September 16, 2014, Flesch exerted financial pressure on ADC and informed ADC that Owens sent emails and made Facebook posts during working hours. Despite this knowledge, the next day on September 17, 2014, ADC informed Stubbs Muldrow that it was not terminating Owens. Following receipt of the evidence preservation letter, ADC's position changed. ADC then terminated Owens for violating its Technology Policy when the policy expressly allowed personal email use and ADC management could not quantify excessive use. Owens extensive involvement in the executive, legislative, and administrative process to oppose the Project is protected by the United States Constitution and South Carolina Constitution, and the type of conduct Culler intended to protect. For these and all other reasons put forth to the lower court and viewing this evidence in a light most favorable to Owens, as the Court is required to do at summary judgment, the lower court's granting of summary judgment to ADC should be reversed.

PETERS, MURDAUGH, PARKER, ELTZROTH
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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

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.

FINAL BRIEF OF RESPONDENT

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COUNTER STATEMENT OF ISSUES ON APPEAL

1. Whether the circuit court correctly granted summary judgment in favor of ADC Engineering, Inc. because the determination of what constitutes a clear mandate of public policy is a question of law to be construed narrowly, the public policy in this state is at-will employment, and James Owens' opposition to the Shem Creek parking garage did not amount to protected political speech under the statute at issue?
2. Whether the circuit court correctly granted summary judgment in favor of ADC Engineering, Inc. because S.C. Code Ann. § 16-7-560 does not provide a private cause of action and James Owens' termination did not contravene a clear mandate of public policy?

COUNTER STATEMENT OF THE CASE

James “Jim” Owens (“Owens”) filed a lawsuit against ADC Engineering, Incorporated (“ADC”) and other defendants¹ on October 10, 2014, in the Charleston County Court of Common Pleas. (R. pp. 271-279). In his complaint, Owens alleged a single cause of action against ADC Engineering for wrongful termination. ADC filed its answer and a counterclaim on November 14, 2014, against Owens for breaching his duty of loyalty to ADC by willfully and recklessly using ADC’s equipment and technology while at work to advance a personal cause against the construction of a parking garage on Shem Creek in Mt. Pleasant, South Carolina, a project on which ADC was working as the structural engineer. (R. pp. 288-294).

Following discovery, ADC moved for summary judgment on February 16, 2016. (R. pp. 25-29). The court heard arguments on ADC’s motion on May 16, 2016, and issued an order granting summary judgment to ADC on June 22, 2016. (R. pp. 6-14). Owens filed a motion to alter or amend the judgment on June 30, 2016. (R. pp. 20-24). The court heard Owens’ motion to alter or amend on July 19, 2016, and issued a Form 4 order denying Owens’ motion on August 8, 2016. (R. p. 15). This appeal followed.

COUNTER STATEMENT OF THE FACTS

ADC is an engineering firm that handles generally every aspect of engineering, predominantly on commercial projects: envelope, structural, landscape architects and civil design. (R. p. 874, line 23 – p. 875, line 1; R. p. 877, line 20 – p. 878, line 4). Owens was a construction administrator with ADC for approximately ten years.

¹ The other defendants included Bryan Crabtree and Kirkman Broadcasting, Inc. d/b/a WQSC Radio. Owens alleged defamation against Crabtree and Kirkman Broadcasting. (R. p. 276.). Owens filed an amended complaint on June 19, 2015, wherein he added defendants Tyler Flesch and Red Drum Capital Group, LLC and asserted causes of action for defamation against both Flesch and Red Drum. (R. pp. 262-270).

At the time he was hired, Owens was presented an employment agreement that detailed a number of items, including working hours. (R. p. 870, line 16 – p. 871, line 4; R. pp. 94-96.). 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. (R. p. 872, lines 20-23). He was also given an employee handbook. (R. p. 879, lines 16-24; R. p. 95.). 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.

(R. pp. 108-109). Some of the technology ADC provided to Owens included a cell phone, the number for which was: 843-991-7049. (R. p. 861, line 14 – p. 862, line 2). ADC provided him with use of a laptop computer that was hard-wired into a docking station at the office. (R. p. 837, lines 8-16).

During the last year of Owens' 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. (R. p. 865, lines 18-24). ADC was the structural engineer for the Shem Creek parking garage building, having been hired by the architectural firm, Stubbs Muldrow Herin. (R. p. 527, line 11 – p. 528, line 12). 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. (R. p. 574, line 17 – p. 575, line 5).

Owens had previously been involved in raising concern over projects for clients of ADC, including specifically the Charleston County School District. (R. p. 887, line 4 – p. 890, line 22). At that time of his actions, Owens informed ADC of his opposition because he knew the Charleston County School District was a client of ADC. (R. p. 890, lines 2-22).

Similarly, Owens informed ADC of his opposition activities involving the Shem Creek parking garage in June of 2014. (R. p. 903, lines 4-25). Owens 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 Owens, 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.” (R. p. 906, lines 6-22). In fact, ADC did not object to Owens’ 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. (R. p. 539, line 23 – p. 540, line 10).

As part of his efforts to oppose the Shem Creek parking garage, Owens personally set up a Saving Shem Creek Facebook page in March or April of 2014. (R. p. 839, lines 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.” (R. p. 864, lines 15-25). He was an administrator of the Facebook page, such that he could post and delete items on the page. (R. p. 848, lines 16-21; R. p. 850, lines 21-24). Owens 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. (R. p. 853, line 22 – p. 854, line 1; R. p. 855, lines 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.” (R. p. 858, line 23 – p. 859, line 2).

At a minimum, however, 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. (R. p. 911, line 10 – p. 913, line 9; R. pp. 152-155; R. p. 916, line 12 – p. 917, line 25; R. pp. 156-160; R. pp. 161-162; R. p. 918, line 21 – p. 919, line 6; R. pp. 163-166; R. p. 922, line 10 – p. 924, line 11; R. pp. 167-169; R. p. 924, line 19 – p. 925, line 24; R. pp. 170-173; R. p. 926, lines 4-23; R. pp. 174-176; R. p. 927, line 3 – p. 928, line 4; R. pp. 177-180; R. p. 928, line 19 – p. 929, line 13; R. pp. 181-183).

Owens 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. (R. p. 186, number 6; R. p. 571, line 6 – p. 572, line 5). Moreover, Owens 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. (R. p. 187, number 8; R. p. 227, number 17). There is evidence, as well, that Owens attended meetings pertaining to the Shem Creek parking garage during working hours. (R. p. 537, line 16 – p. 542, line 6). Notably, Owens testified that, 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.” (R. p. 908, line 18- p. 909, line 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 Owens’ opposition activities. (R. p. 530, line 18 – p. 531, line 15). Specifically, Mr. Flesch informed ADC that it would be fired from working on the Shem Creek parking garage project, unless it fired Owens. (R. p. 531, line 23 – p. 532, line 3). Mr. Flesch also threatened a lawsuit against ADC and Owens. (R. p. 542, line 24 – p. 543, line 12; R. p. 545, lines 6-23).

The partners at ADC decided they would not terminate Owens and informed Stubbs Muldrow Herrin that it was not going to fire Owens. (R. p. 547, lines 7-24; R. p. 568, lines 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. (R. p. 546, line 24 – p. 547, line 1; R. pp. 230-231). 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. (R. pp. 232-236).

Owens also received a similar letter instructing him to preserve electronic evidence pertaining to the Shem Creek development, which he forwarded to ADC. (R. p. 931, line 17 – p. 932, line 11; R. pp. 237-242). At least one of the partners at ADC had concerns over whether Owens had been sending emails from company computers during office time. (R. p. 1158, line 22 – p. 1159, line 6; R. pp. 248-250; R. p. 568, line 12 – p. 569, line 10).

Owens 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. (R. p. 939, line 17 – p. 940, line 8; R. p. 555, lines 11-25). 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 it received. (R. p. 730, lines 1-6; R. p. 731, line 1 – p. 732, line 8; R. p. 569, line 6 – p. 570, line 6). ADC also discovered Owens has used his cell phone for text messages related to the Shem Creek parking garage project. (R. p. 570, lines 4-6).

The four partners of ADC met on Friday, September 19, 2014, to discuss the matter. (R. p. 1165, lines 2-15). The decision was made to terminate Owens' employment as a result of his involvement of ADC, its time, resources and equipment in his personal pursuits that damaged the

company. (R. p. 582, line 8 – p. 584, line 19). He was out sick on Monday, September 22, 2014, and did not come into the office. (R. p. 940, line 15 – p. 942, line 9; R. pp. 256-257). His employment was terminated the following day on September 23, 2014.

STANDARD OF REVIEW

When the circuit court grants summary judgment on a question of law, this Court reviews the ruling de novo. Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp., 413 S.C. 630, 635, 776 S.E.2d 434, 437 (Ct. App. 2015) (citing Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). The question of what constitutes public policy is a question of law for the court to decide. Barron v. Labor Finders of S.C., 393 S.C. 609, 617, 713 S.E.2d 634, 638 (2011) (“The determination of what constitutes public policy is a question of law for the courts to decide.”). 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. Rule 56, SCRPC; 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):

ARGUMENTS

Summary judgment was appropriate because the question of what constitutes public policy is a question of law for the court that should be construed narrowly, and Mr. Owens’ cannot demonstrate that he engaged in protected political speech under S.C. Code Ann. § 16-17-560 (1976). Section 16-17-560 of the South Carolina Code, on which Owens relies to assert his cause of action for wrongful termination, is inapplicable to Owens’ conduct and Owens has not identified

any clear mandate of public policy violated by his termination. Therefore, the Court should affirm the circuit court's order granting summary judgment to ADC.

I. The Circuit Court Correctly Granted Summary Judgment Because Owens' Opposition to His Employer's Work Project Did Not Amount to Protected Political Speech Pursuant to Section 16–17–560 of the South Carolina Code.

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, 393 S.C. at 614, 713 S.E.2d at 636. 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, 223, 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., 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (noting the court exercises "restraint when undertaking the amorphous inquiry of what constitutes public policy."). "Courts have invoked the public policy exception in two instances: (1) where an employer requires an employee, as a condition of continued employment, to break the law, and (2) where an employer's termination is itself illegal." Taghivand, 411 S.C. at 243, 768 S.E.2d at 387 (citing Culler v. Blue Ridge Elec. Coop., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992)). While the courts in this state have made clear that this exception is not limited to the two identified situations, the courts have recognized no others. Id.

Section 16-17-560 specifically states: "It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house,

land, or other property 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). The circuit court correctly held that any activity by Owens opposing the Shem Creek parking garage project does not amount to protected political speech under § 16-17-560. 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.” Id. (citing State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct.App.1999)); see also Powell v. Media Gen. Operations, Inc., No. CIV.A. 7:10-3170-HFF, 2011 WL 4501836, at *3 (D.S.C. Apr. 26, 2011), report and recommendation adopted, No. CIV.A. 7:10-03170, 2011 WL 4501564 (D.S.C. Sept. 28, 2011) (“The plain language of § 16-17-560 reveals that it does not protect all opinions, rights, and privileges. Instead, the statute expressly provides that it protects only political opinions, rights, and privileges.”).

Owens contends that the Vanderhoff decision is not controlling on this Court and, thus, suggests the case is otherwise inapplicable or unpersuasive. However, the Vanderhoff court

engaged in an extensive, detailed analysis of South Carolina law and the statute at issue in addressing the political rights under the statute. Indeed, the court highlighted that the “available case law suggests the [South Carolina] 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 the Constitution of the State of South Carolina.” Id. Indeed, Owens, a private employee of a private employer, appears to conflate alleged “free speech” rights under the First Amendment regarding state employees and actors. The statute is not as broad as Owens’ argument suggests.

Under the narrow construction of the statute, dictated by South Carolina state law, Owens’ opposition to the construction of a parking garage structure on Shem Creek, for which his employer was the structural engineer, 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, 309 S.C. at 246, 422 S.E.2d at 92-93 (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, Owens’ opposition to the construction of a parking garage on Shem Creek does not constitute “political” speech governed under the statute. Owens argues that his activities were

much more extensive than the plaintiff's in the Vanderhoff case. However, this argument amounts to form over substance. Notwithstanding how much of Owens' activities took place on company time using company resources, the issue for purposes of the statute is not the amount of activity, but the activity itself. Owens opposed the building of a parking garage on Shem Creek in Mt. Pleasant, South Carolina. The fact that other individuals in the area along with Owens opposed the building of the parking garage or that he and the others were vocal and active in their opposition does not somehow transform the opposition into political speech. Notably, Owens' 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. As the Vanderhoff court astutely observed, "[t]o 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."

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 on which ADC was employed to work. Even Owens acknowledged that ADC's role as the engineer on the parking garage project he opposed presented a "conflict of interest." (R. p. 908, line 18 – p. 909, line 4). 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, the circuit court correctly granted summary judgment to ADC on Owens' claim for wrongful termination.

II. The Circuit Court Correctly Granted Summary Judgment Because Section 16-17-560 Does Not Provide a Private Cause of Action and Owens' Termination Did Not Contravene a Clear Mandate of Public Policy.

Section 16-17-560 is a criminal statute and does not provide a private cause of action against an employer. Owens' counsel argued, however, that "the court in Culler v. Blue Ridge said it does." (R. p. 367, lines 2-5). This assertion is misleading and incorrectly states the holding of Culler v. Blue Ridge Electric Co-op, Inc., 309 S.C. 243, 422 S.E.2d 91 (1992). Culler relied on the decision in Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) for its interpretation of the prohibition of retaliatory discharge in violation of a clear mandate of public policy. In Culler, the court stated, "We believe 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.' Thus if Culler was discharged because he refused to contribute to a political action fund, he would have a cause of action for wrongful discharge under Ludwick and S.C. Code Ann § 16-17-560 (1976)." Culler, 309 S.C. at 246, 422 S.E.2d at 92-93.

Culler did not, however, hold that Section 16-7-560 itself provides a private cause of action; instead the court relied on the holding in Ludwick to extend Ludwick's prohibition of retaliatory discharge in violation of public policy to "legislatively defined 'Crimes Against Public Policy.'" Regardless, however, Owens' termination did not violate the statute or otherwise give rise to a wrongful termination claim. 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.

Owens was terminated for using ADC's equipment to pursue a personal endeavor on company time, while being paid by 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.

Owens admitted that he conducted some of his personal efforts to oppose the Shem Creek parking garage on company time during working hours and on company equipment. (R. p. 911, line 10 – p. 913, line 9; R. pp. 152-155; R. p. 916, line 12 – p. 917, line 25; R. pp. 156-160; R. pp. 161-162; R. p. 918, line 21 – p. 919, line 6; R. pp. 163-166; R. p. 922, line 10 – p. 924, line 11; R. pp. 167-169; R. p. 924, line 19 – p. 925, line 24; R. pp. 170-173; R. p. 926, lines 4-23; R. pp. 174-176; R. p. 927, line 3 – p. 928, line 4; R. pp. 177-180; R. p. 928, line 19 – p. 929, line 13; R. pp. 181-183; R. p. 939, line 17 – p. 940, line 8).

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. (R. p. 186, number 6; R. p. 571, line 6 – p. 572, line 5). Notably, Owens testified that his opposition efforts presented a conflict of interest for ADC. Specifically, he testified that, if he had known

ADC was the engineer on the parking garage, he would have backed off his opposition efforts, because they would have presented a “conflict of interest.” (R. p. 908, line 18 – p. 909, line 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 Owens’ opposition activities. (R. p. 530, line 18 – p. 531, line 15). Specifically, Mr. Flesch informed ADC that it would be fired from working on the Shem Creek parking garage project, unless it fired Owens. (R. p. 531, line 23 – p. 532, line 3). Mr. Flesch also threatened a lawsuit against ADC and Owens. (R. p. 542, line 24 – p. 543, line 12; R. p. 545, lines 6-23). According to Owens, ADC knew at that time that he had been using its equipment to oppose the Shem Creek parking garage. He seems to suggest that ADC should have terminated him then and, because ADC did not, his termination must have been because of his political activities. Owens argument is wholly illogical.

The partners at ADC informed Stubbs Muldrow Herrin that they did not intend to fire Owens. (R. p. 547, lines 7-24; R. p. 568, lines 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. (R. p. 546, line 24 – p. 547, line 1; R. pp. 230-231). 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. (R. pp. 232-236).

Owens also received a similar letter instructing him to preserve electronic evidence pertaining to the Shem Creek development, which he forwarded to ADC. (R. p. 931, line 17 – p. 932, line 11; R. pp. 237-242). At least one of the partners at ADC had concerns over whether Owens had been sending emails from company computers during office time. (R. p. 1158, line 22 – p. 1159, line 6; R. pp. 248-250; R. p. 568, line 12 – p. 569, line 10).

At that time, Owens affirmed to ADC that he had used his work computer at ADC for matters associated with the Shem Creek parking garage opposition. On or about the same day, ADC conducted an electronic search to preserve Owens' emails, in conjunction with the electronic preservation letter it received. (R. p. 730, lines 1-6; R. p. 731, line 1 – p. 732, line 8; R. p. 569, line 6 – p. 570, line 6). ADC also subsequently discovered Owens has used his cell phone for text messages related to the Shem Creek parking garage project. (R. p. 570, lines 4-6). Owens suggests that because ADC only searched his emails, in the face of his having received an electronic preservation letter, his termination was somehow because of his political activities. This argument is, again, wholly illogical.

Importantly, Owens does not deny that he used ADC's time, equipment and other resources in pursuing his opposition efforts to the Shem Creek parking garage project. Nevertheless, he contends that his termination was because of his opposition efforts to the Shem Creek parking garage project, in violation of S.C. Code Ann. § 16-17-560. Owens' termination was undoubtedly related to the Shem Creek parking garage project but that is the direct result of Owens having used company property, time and resources to oppose a project on which the company was working which ultimately resulted in damage to the company, not because of any political opinion or speech.

Interestingly, under Owens' theory, ADC could have terminated him for using company property to work on a personal building project, such as a home addition, or using company resources to create a "Go Fund Me" campaign to raise money for an individual or a charity. Moreover, according to Owens, ADC could have terminated him for opposing the Shem Creek parking garage because he did not like the material used to construct the garage, because it blocked his view of the water or because he did not like the color paint being used, regardless of whether

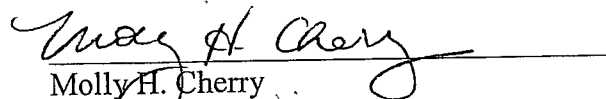
those actions occurred on company time or using company property. However, under Owens' theory, he cannot be terminated for using company property and time to oppose the construction of the parking garage altogether, individually or as a group endeavor. His argument is fundamentally flawed and illogical, at best, but, in any event, does not amount to a political opinion or speech under the statute or otherwise constitute a violation of South Carolina's public policy.

Under these circumstances, Owens' termination does not give rise to any claim for wrongful termination in violation of public policy. Therefore, the circuit court correctly granted summary judgment in favor of ADC.

CONCLUSION

For the reasons stated, this Court should affirm the order of the circuit court granting summary judgment in favor of ADC.

Respectfully submitted,



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February 10, 2017

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JAN 27 2017

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

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

Appellate Case No.: 2016-001811

James C. Owens, ... Appellant,

-v-

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

of whom ADC Engineering, Inc., is Respondent.

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ARGUMENT

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James C. Owens, Appellant,

v.

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

Of which ADC Engineering, Inc., is the Respondent.

Appellate Case No. 2016-001811

Appeal From Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 5616
Heard October 10, 2018 – Filed January 16, 2019

AFFIRMED

John E. Parker and William Franklin Barnes, III, of
Peters Murdaugh Parker Eltzroth & Detrick, PA, of
Hampton, for Appellant.

Molly Hughes Cherry and Melissa Ashley Fried, of
Nexsen Pruet, LLC, of Charleston, for Respondent.

LOCKEMY, C.J.: In this wrongful termination action, James Owens appeals a circuit court order granting summary judgment in favor of ADC Engineering, Inc. Owens argues the circuit court erred in holding (1) that his discharge from ADC did not give rise to a cause of action under the public policy exception to the at-

will employment doctrine and (2) that his opposition to the construction of a parking garage was not protected political speech under section 16-17-560 of the South Carolina Code (2015). We affirm.

FACTS/PROCEDURAL HISTORY

ADC is an engineering firm located in the Town of Mount Pleasant, SC (Town). The firm employs approximately sixty people and is divided into four engineering divisions—building envelope, civil, structural, and landscaping. In September 2004, ADC hired Owens as a construction administrator. In this capacity, Owens worked primarily in the civil engineering division, where he reviewed designs for commercial projects and ensured the construction complied with plans and specifications. Owens's job responsibilities required him to split time between the office and the field, which allowed some "flexibility" in how he spent his workday. ADC provided Owens with a cell phone and laptop computer for use on the job. According to company policy, employees were allowed "[b]rief or incidental use of office technology for personal, non-business purposes . . . as long as it [was] not excessive or inappropriate, and [did] not result in expense or loss to the company."

In 2011, Tyler Flesch, a local real estate developer, began planning the construction of a parking garage near Shem Creek—a popular waterfront dining and recreation area known for its picturesque views and historic charm. In early 2013, the Town council voted to approve construction of the garage and to enter into a parking license agreement with Flesch. Shortly thereafter, Stubbs Muldrow Herin, the architecture firm that Flesch had hired to draw plans for the proposed garage, hired ADC as the project's structural engineer. Because Owens worked primarily in the civil engineering division, he was not involved in the project through ADC.

After the project became public knowledge in the fall of 2013, it immediately drew the ire of local residents, many of whom were weary of commercial development around Shem Creek. Owens testified he learned of the project at a Town council meeting but was unaware of ADC's role as the structural engineer. Owens soon became a vocal opponent of the Shem Creek project. In the spring of 2014, Owens set up a Facebook page titled "Saving Shem Creek," which he devoted to raising awareness about the project, including writing posts targeted specifically at Flesch. As the project progressed, so did Owens's efforts to oppose it; Owens attended Town council meetings, lobbied council members, circulated a petition asking the Town to rescind its approval of the project, made and distributed "Save Shem Creek" bumper stickers, created a "Save Shem Creek" corporation for which he

was also a board member, and sent letters and emails to the Town's mayor. By the summer of 2014, the Shem Creek project had become a prominent, public issue in the Town.

In June 2014, Owens learned his name would appear in a Charleston *The Post and Courier* article highlighting local opposition to the project. According to Owens, he met with Chris Cook, the partner at ADC in charge of the civil engineering division, "out of courtesy" to tell him of his involvement in the opposition efforts. Owens indicated he was still unaware of ADC's role in the Shem Creek project at the time he spoke to Cook, but wanted to "make certain that they were aware of what [he] did as a private and public citizen." Cook testified he told Owens that ADC had no problem with him voicing his personal opinions as long as it did not harm or reflect negatively on ADC; however, Cook could not recall whether or not he told Owens that ADC was working on the project.

On September 15, 2014, Flesch received a tip informing him that Owens was employed at ADC. Although Flesch was familiar with Owens's efforts to oppose the Shem Creek project, he had not been aware of his affiliation with the engineering firm. After conducting an internet search, Flesch confirmed that Owens was indeed an ADC employee, and on September 16, 2014, Flesch asked Stubbs Muldrow Herin to arrange a meeting with Mark Dillon, the head of ADC's structural engineering division. Later that day, Flesch met with Dillon and informed him that ADC would be terminated from the Shem Creek project unless they fired Owens. Dillon described Flesch as being "very upset, very angry" about the situation, but Dillon declined to fire Owens without first meeting with the other ADC partners.

The next day, the ADC partners met and decided not to terminate Owens. ADC subsequently informed Stubbs Muldrow Herin of their decision. On September 18, 2014, Stubbs Muldrow Herin sent a letter to ADC terminating their contract for the Shem Creek project. That same day, attorneys for Stubbs Muldrow Herin sent an "Evidence Preservation Demand" letter to both ADC and Owens, ordering them to preserve any electronically-stored data, documents, or materials on Owens's ADC devices. Following the receipt of the letter, Owens met with Cook and another partner, Greg Jones, to tell them that he may have used his work computer for matters associated with the Shem Creek project, possibly during work hours. Owens again told the partners that he had been unaware ADC was involved with

the Shem Creek project and assured them that had he known, he "would have backed off."¹

In compliance with the letter, ADC partners directed an IT specialist to search Owens's work computer and cell phone. The search revealed at least a dozen emails Owens had sent during work hours regarding matters related to the Shem Creek project, although most of these emails were sent to his personal email account. ADC also found documents and a power point presentation on Owens's work computer related to the Shem Creek project. Additionally, a review of Owens's cell phone log showed a large volume of text messages and calls he made during the day that ADC believed was related to the project. Finally, ADC learned Owens had recruited another ADC employee to help him prepare a presentation for a Town council meeting.

On September 19, 2014, ADC decided to terminate Owens. Dillon testified ADC fired Owens because it learned he had used company time, equipment, materials, and employees to engage in "an activity that ultimately harmed ADC." In October of 2015, Owens filed a lawsuit against ADC for wrongful termination.² Owens alleged that in firing him, ADC violated section 16-17-560 of the South Carolina Code (2015), which makes it 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 [South Carolina]." ADC answered and counterclaimed, asserting Owens violated both ADC's technology policy and a duty of loyalty to ADC in using company resources to actively oppose a project in which ADC was involved.

On February 16, 2016, ADC moved for summary judgment on Owens's wrongful termination claim. ADC argued Owens could not maintain his cause of action because Owens was an at-will employee and ADC had a right to fire him for violating company policy—specifically, its policy regarding the use of company technology that results in expense or loss to the company. Following a hearing, the

¹ ADC does not directly dispute Owens's lack of knowledge regarding the company's involvement in the Shem Creek project; however, at least one partner testified there is an internal procedure whereby any employee may quickly search to see if ADC is working on a particular job.

² Owens also brought a defamation action against a local radio station and one of its hosts who reported on the Shem Creek project. That action is not a subject of this appeal.

circuit court granted ADC's motion. The court found section 16-17-560 did not provide Owens a private cause of action against ADC and regardless, ADC did not violate the statute because Owens's activity did not rise to protected political speech. Owens filed a motion to alter or amend, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. When the circuit court grants summary judgment on a question of law, we review the ruling *de novo*. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (citation omitted).

PUBLIC POLICY EXCEPTION

"South Carolina has a strong policy favoring at-will employment." *Taghivand v. Rite Aid Corp.*, 411 S.C. 240, 243, 768 S.E.2d 385, 386 (2015). "In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment." *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614, 713 S.E.2d 634, 636 (2011). "[A]n at-will employee may be terminated for any reason or no reason at all." *Id.* However, "[w]here the retaliatory discharge of an at-will employee constitutes violation of a clear mandate of public policy, a cause of action in tort for wrongful discharge arises." *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985).

Under the "public policy exception" to the at-will employment doctrine, an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy. *Id.* at 225, 337 S.E.2d at 216. In *Ludwick*, our supreme court recognized a cause of action in tort for the discharge of an at-will employee when the discharge constituted a violation of public policy. 287 S.C. at 215, 337 S.E.2d at 216. Under the rule outlined in *Ludwick*, "the public policy exception is invoked when an employer requires an at-will employee, as a condition of retaining employment, to violate the law." *Moshtaghi v. The Citadel*, 314 S.C. 316, 323, 443 S.E.2d 915, 919 (Ct. App. 1994).

In *Culler v. Blue Ridge Elec. Co-op., Inc.*, our supreme court expanded the public policy exception elucidated in *Ludwick* to include instances when an employee's discharge is itself a violation of the law. 309 S.C. 243, 246, 422 S.E.2d 91, 92-93 (1992). In that case, Culler alleged he was discharged for refusing to donate to a political action fund that supported campaigns favorable to utility cooperatives. 309 S.C. at 246, 422 S.E.2d at 93. Although our supreme court found evidence that Culler was fired because of his "bad attitude," it held that under *Ludwick*, an employee could maintain a cause of action for wrongful termination against his employer if he could prove he was fired because of his political beliefs in violation of section 16-17-560, which is a legislatively defined "crime against public policy." *Id.*

Thus, the public policy exception clearly applies in cases in which either: (1) the employer requires the employee to violate the law; or (2) the reason for the employee's termination itself is a violation of criminal law. *Ludwick*, 287 S.C. at 215, 337 S.E.2d at 216; *Culler*, 309 S.C. at 246, 422 S.E.2d at 92-93. Although our supreme court has made clear the exception "is not limited to these situations," it has not explicitly recognized any others. *Barron*, 393 S.C. at 614, 713 S.E.2d at 637.

"The determination of what constitutes public policy is a question of law for the courts to decide." *Id.* at 617, 713 S.E.2d at 638. We have been cautioned to "exercise restraint when undertaking the amorphous inquiry of what constitutes public policy." *Taghivand*, 411 S.C. at 244, 768 S.E.2d at 387. "The primary source of the declaration of the public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration." *Id.* (citing *Citizens' Bank v. Heyward*, 135 S.C. 190, 204, 133 S.E. 709, 713 (1925)). This court has held that the General Assembly's use of the phrase "[t]he public policy of South Carolina is" constitutes a clear declaration of legislative intent to define the public policy of the State. *Donevant v. Town of Surfside Beach*, 414 S.C. 396, 415-16, 778 S.E.2d 320, 331 (Ct. App. 2015), *aff'd*, 422 S.C. 264, 811 S.E.2d 744 (2018) (holding the termination of an employee for enforcing a building code under section 6-9-10 of the South Carolina Code (2004 & Supp. 2017) was a violation of a clear mandate of public policy).

VIOLATION OF PUBLIC POLICY

Section 16-17-560 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.

In the circuit court's order dismissing Owens's wrongful termination claim, it wrote section 16-17-560 "did not give rise to a private cause of action by Owens against ADC, and Owens'[s] termination did not otherwise violate the statute." Owens contends this holding was error because pursuant to *Culler*, section 16-17-560 does provide a private cause of action against an employer for wrongful termination. Furthermore, Owens argues summary judgment was inappropriate because he raised a question of fact as to whether ADC terminated him for exercising his constitutional right to free speech, which would be a violation of a clear mandate of public policy under *Culler* and section 16-17-560.

While we agree with Owens that under limited circumstances a violation of section 16-17-560 supports a cause of action against an employer for wrongful termination, for the reasons below, we do not believe those considerations have been met in this case.

Viewing the evidence in the light most favorable to Owens, we believe he fails to raise a genuine issue of material fact as to whether he was discharged for exercising his constitutional rights in violation of a clear mandate of public policy as set forth in section 16-17-560. *See* Rule 56, SCRCPP; *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. at 235, 692 S.E.2d at 505. It is undisputed both the Federal and South Carolina Constitutions provide for freedom of speech, of assembly, and the right to petition the government for redress of grievances. U.S. Const. amend. I; S.C. Const., art. I, § 2. Furthermore, it is not disputed that Owens's use of the political process to actively oppose the Shem Creek project was within his rights as a private citizen. We do not believe, however, that Owens's decision to enjoy those rights was the reason for his termination; rather, the evidence shows Owens was discharged because he used company equipment, materials, and time to engage in an activity that was a violation of company policy and unquestionably detrimental to ADC.

ADC's technology policy allowed for "[b]rief or incidental use of office technology for personal, non-business purposes . . . as long as it [was] not excessive or inappropriate, and [did] not result in expense or loss to the company." (emphasis

added). ADC had no issue with Owens exercising his right to engage in speech opposing the Shem Creek project—or other projects that ADC was working on—as long as he did not do it during work hours or with work equipment. Yet, the uncontroverted testimony was that Owens spent time at work actively opposing a project that ADC had a financial stake in and also disregarded a directive from ADC's management to keep ADC away from controversy. We believe ADC was within its rights to discharge an at-will employee for a violation of rules that brought economic harm to the company. *See Taghivand*, 411 S.C. at 243, 768 S.E.2d at 386 ("South Carolina has a strong policy favoring at-will employment."); *Barron*, 393 S.C. at 614, 713 S.E.2d at 636 ("[A]n at-will employee may be terminated for any reason or no reason at all."). Accordingly, we find Owens's termination violated neither section 16-17-560 nor a clear mandate of public policy.

CONCLUSION

Based on the foregoing, the decision of the circuit court is

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

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

RECEIVED

JAN 30 2019

SC Court of Appeals

James C. Owens Appellant,

v.

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

of whom ADC Engineering, Inc., is Respondent,

APPELLANT'S PETITION FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the Appellant moves the Court for Rehearing and/or to Alter its Opinion number 5616 of January 16, 2019, which affirms the trial court's grant of summary judgment to Respondent, ADC Engineering, Inc.

Although agreeing with Owens that S.C. Code Ann. § 16-17-560 supports a cause of action for wrongful termination, the Court improperly weighed the evidence to affirm summary judgment and held that ADC was justified in terminating Owens. The Court quoted the standard of review that all evidence is to be viewed in a light most favorable to the non-moving party. (Op. p. 5) ("Quail Hill, LLC v. Cty. Of Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505

(2010)"). However, one sentence confirms the Court weighed the evidence in affirming summary judgment: "We *believe* ADC was within its rights to discharge an at-will employee for a *violation of rules* that brought *economic harm to the company*." (Op. p. 8) (emphasis added). Belief is not sufficient as a matter of law to hold Owens was not terminated for exercising his constitutional rights in violation of § 16-17-560.

This action presented two scenarios that led to Owens termination: (1) Owens was terminated for exercising his constitutional rights that harmed ADC or (2) Owens was terminated for violating ADC's technology policy that specifically allowed personal use but harmed ADC. By holding as a matter of law that ADC was within its rights to terminate Owens for violating the technology policy, the Court improperly weighed the evidence in contravention of the well-established summary judgment standard.

As quoted by the Court, ADC's technology policy allowed for "[b]rief or incidental use of office technology for personal, non-business purposes . . . as long as it [was] not excessive or inappropriate, *and did not result in expense or loss to the company*." (Op. p. 7) (emphasis added). To warrant discipline or termination under the technology policy, the conjunctive *and* requires that the personal, non-business use be both (1) excessive or inappropriate and (2) result in expense or loss to the company. See Terry v. Lee, 314 S.C. 420, 425, 445 S.E.2d 435, 437 (1994) (holding the use of "the conjunctive term 'and'" in a statute required compliance with both stated requirements); Charleston Cty. Aviation Auth. v. Wasson, 277 S.C. 480, 483, 489, 289 S.E.2d 416, 418, 421 (1982) (finding the General Assembly's use of "the conjunctive word 'and'" in the language "duty of the Tax Commission and county assessor to determine" indicates "both the Tax Commission and assessor are to make the determination" (emphasis added)); Holman v. Bulldog Trucking Co., 311 S.C. 341, 345, 428 S.E.2d 889, 891 (Ct. App. 1993)

(stating the General Assembly's prior use of the term "and" rather than "or" in a list of conditions made the conditions "conjunctive rather than alternative, so a claimant had to meet all of them or his claim failed").

The Court does not hold Owens personal use was "excessive" or "inappropriate", a prerequisite to a violation of the technology policy. It is a jury question as to whether his personal use was "excessive" or "inappropriate" as the Court cannot weigh this evidence and hold as a matter of law on summary judgment the personal use was "excessive" or "inappropriate". The Court's decision should be reheard on this basis alone.

Although not holding Owens conduct was excessive or inappropriate, the Court finds Owens's conduct harmed the company: "rather, the evidence shows Owens was discharged because he used company equipment, materials, and time to engage in an activity that was a violation of company policy and *unquestionably detrimental to ADC.*" (Opinion p. 7) (emphasis added). The same conduct that the Court held is a constitutional right – "using the political process to actively oppose the Shem Creek project was within his rights as a private citizen" – is the same conduct that the Court held brought economic harm to ADC to warrant termination under the technology policy. The issue here is whether that constitutional conduct is and actually was a valid basis for his termination by ADC. As held by the Court, ADC could not terminate Owens for exercising his constitutional rights as that is a violation of § 16-17-560, but ADC can terminate Owens if the exercise of those constitutional rights caused expense or loss to ADC.¹ This is allowing a result to be done indirectly that cannot be done directly and is merely form over substance. Owens's constitutionally permissible conduct in opposing the Project is the

¹ Owens submits there is no other expense or loss ADC suffered other than losing the contract with Stubbs Muldrow.

basis of his termination under either scenario set forth above. This inconsistency must be corrected on rehearing by the Court.

It should be for a jury to decide if Owens violated the policy when the evidence, viewed in a light most favorable to him, is that he did not know of ADC's involvement with the project, did not know his actions violated the policy, or were or could be a detriment to ADC.

For these and all other reasons put forth in Owens briefs and at hearing on this matter, the Court's decision affirming summary judgment should be reheard and reversed.

Respectfully submitted,

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

January 30, 2019
Hampton, South Carolina

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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

Appellant Case No.: 2016-001811

RECEIVED

JAN 30 2019

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,

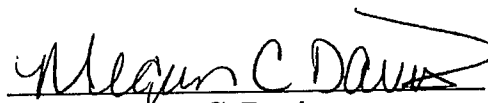
of whom ADC Engineering, Inc., is Respondent.

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 Appellant, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within *Appellant's Petition for Rehearing* to:

Molly H. Cherry, Esquire
Melissa A. Fried, Esquire
Nexsen Pruet, L.L.C.
Post Office Box 486
Charleston, SC 29402

Attorney for Respondent, ADC Engineering, Inc.


Megan C. Davis

January 30th, 2019
Hampton, South Carolina

The South Carolina Court of Appeals

James C. Owens, Appellant,

v.

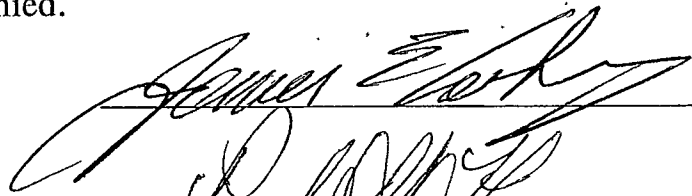
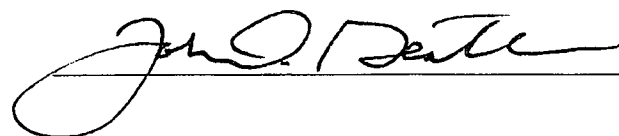
Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a WQSC
Radio and ADC Engineering, Inc., Tyler Flesch, and Red
Drum Capital Group, LLC, Defendants,

Of which ADC Engineering, Inc., is the Respondent.

Appellate Case No. 2016-001811

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

John E. Parker, Esquire

William Franklin Barnes, III, Esquire

FILED

February 21, 2019

Molly Hughes Cherry, Esquire
Melissa Ashley Fried, Esquire
Julie J. Armstrong