

BRIEF OF APPELLANT

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

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

Appellate Case No. 2018-002170

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

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

Plaintiffs

Of which Steven Craig Molloy is the

Appellant

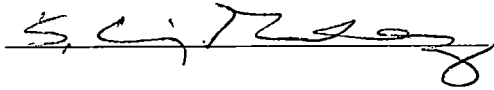
v.

Beaufort County Government,
Gary Kubic, Individually, and as Beaufort County Administrator;
Josh Gruber, Individually and as former Beaufort County In-House Attorney;
Bryan Hill, Individually and as former Beaufort County Deputy Administrator;
Shannon Loper, Individually and as employee of the Beaufort County Parks and
Leisure; Stu Rodman, as Finance Chair of Beaufort County Council;
Dave Thomas, Procurement Director Beaufort County, SC.
Beaufort County Disabilities and Special Needs;
Beaufort County DSN Board

Respondents,

RECEIVED
APR 26 2019
SC Court of Appeals

April 25, 2019



Steven Craig Molloy, Pro Se
43 Big Woods Dr. Hilton Head SC 29926
P: 843-368-73000 E: scmolloy@gmail.com

Appellant

Other Counsel of Record:
John Fletcher, Dawes Cooke
Barnwell Whaley Attorneys
Po Box H Charleston, SC 29402
Beaufort County Attorney
Tom Keaveny
PO Box 1128 Beaufort SC 29901

Appellants Answer to Appellee's Response Brief

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

STATEMENT OF THE CASE

A. Factual Background

- i. The BCDSN/DSN
- ii. The 2010 Contract (RFP # 39JO/100566)
- iii. The 2012 Contract (RFP # 3910/1120221)
- iv. Plaintiffs letters and Complaints to BC agents regarding 2010 Contract
- v. Beaufort County Internal Emails (Exhibits)
- vi. BCDSN June 19, 2012, Board Meeting Minutes

B. Procedural History

- i. Complaint filed on August 22, 2016
- ii. April 6, 2017, Affidavit of William Love
- iii. April 7, 2017, Affidavit of Dave Thomas
- iv. July 21, 2017, Defendants moved for Summary Judgment on four (4) grounds:
 - a. That the action was time-barred by the 2-year Statute of Limitation and claimed the action was brought beyond the limits set forth in such statute;
and
 - b. Claims failed on Procurement Code process

- c. Claims failed on Remedies under Beaufort County Procurement Code and;
- d. Claims against Respondents as a governmental entity are not liable for a tort claim under S.C. Torts Claim Act. ROA See Motion for Summary Judgment filed 7/21/17

- v. February 25, 2018, Plaintiffs filed a Notice of Motion and Motion to Compel Answers to Discovery and Depositions, Motion to Amend.
- vi. March 22, 2018, Defendants filed a Memorandum in Opposition to the Motion to Compel Answers to Discovery and Depositions, Motion to Amend
- vii. March 23, 2018 Transcript of Hearing
- viii. March 23, 2018 the Motion for Summary Judgment was heard by the Hon. Marvin H. Dukes, III
- ix. November 27, 2018, Judge Dukes granted Summary Judgment to Beaufort County and Co-Defendants. ROA See Order, November 27, 2018. The order was emailed on November 29, 2018 and received by Plaintiff's counsel on November 29, 2018.

ARGUMENTS

- A. Standard of Review

- B. This Court should dismiss the Appellee's Summary Judgment, remand this case to the lower court for further adjudication, and should compel Appellee's to submit to depositions.
 - i. Plaintiff Steven Craig Molloy did sustain injury and can fully assert such claim when fraudulent actions by County employees acting outside the scope of their duties

- ii. Plaintiff Steven Craig Molloy did produce corroborating evidence supporting the fraudulent actions of the Defendants resulting in Plaintiffs injury.
- iii. Trial Court erred in granting that the Statute of Limitations is Time-Barred
- iv. The Defendants claim that the express language of Carolina Cleaning's 2010 Agreement precludes claims regarding the termination of contract, however, not when fraudulent actions are present.
- v. The Trial Court erred in granting Summary Judgment because Plaintiffs multiple times did assert their remedies by Beaufort County and State Procurement, which were ignored by the agents listed in this case.
- vi. There is evidence that the Defendants acted outside the scope of their Job Duties
- vii. There is evidence that the Defendants acted Fraudulently, Unconscionably and in Bad Faith
- viii. The Trial Court erred in granting the Defendants Summary Judgment because the BCDSN claims they are both a "Vendor" and a "Department of Beaufort County

Table of Cases, Statutes, Authorities

Cases

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)

Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E. (2d) 728, 729 (1986)

Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988)

Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001)

Santee Portland Cement Co. v. Daniel Int'l Corp. 299 S.C. 269, 271, 384 S.E. 2d 693, 694 (1989)

Searcy v. S.C. Dep't of Educ., 303 S.C. 544, 402 S.E.2d 486 (Ct. App. 1991)

State v. McClinton, 369 S.C. 167, 173, 631 S.E. 2d 895, 898 (2006)

State ex rel. Medlock v. Nest Egg Soc. Today, Inc. (S.C.App. 1986) 290 S.C. 124, 348 S.E.2d 381. Tupper v.

Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997)

Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975)

Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976)

Statutes

S.C. Code Ann. § 39-5-20(a)

S.C. Code §§ 11-35-20 (a) (b) (c) (d) (e) (f) (g) (h)

S.C. Code §§ 11-35-30 (d) (e) (f) (i)

S.C. Code Ann. 11-35-410 (C)

S.C. Code Ann. § 15-3-40

S.C. Code Ann. §§ 15-78-60 (17)

S.C. Code §§ 15-78-62 (2)

S.C. Code Ann. § 15-78-110

S.C. Code Ann. § 15-78-200

S.C. Code Ann § 39-5-20 (a) and (b)

S.C. Code Ann. § 44-20-375

S.C. Code Ann §44-20-375(A)

S.C. Code Ann §44-20-375(C)

S.C. Code Ann §44-20-385

Other Authorities

South Carolina Budget and Control Board Procurement Regulations 19-445.2045 Receipt and Safeguarding of Bids; A. Procedures Prior to Bid Opening. 19-445.2050. Bid Opening A. Procedures; B. Postponement of Bid Opening; C. Disclosure of Bid Information; Regulation 19-445.2010(E)

Wright & Miller, Federal Practice and Procedure § 2741, p. 543 (1983)

Rules

South Carolina Rules of Civil Procedure, Rule 56 (c).....

South Carolina Rules of Civil Procedure, Rule 9 (b)

STATEMENT OF ISSUES ON APPEAL

- A. Did the Lower Court err in granting Summary Judgment to Defendants when Appellant (Plaintiff) Steven Craig Molloy has a legitimate claim to injury by agents (Defendants) in this case
- YES.
- B. Did the Lower Court err in granting Summary Judgment when the (Plaintiff) Appellant Steven Craig Molloy, presented evidence that the BCDSN/DSN Agents (Defendants) acted both as a “Vendor”, and a County “Department”, simultaneously, and failed to compel Defendants to submit to depositions under Rule 56
- YES.
- C. Did the Lower Court err in granting Summary Judgment when (Plaintiff) Appellant Steven Craig Molloy, repeatedly demonstrated for the court and under the South Carolina Tort Claims Act, Statute of Limitations that he had no knowledge of the fraudulent actions by the BC Agents (Defendants) that time-barred his claim
- YES.
- D. Did the Lower Court err in granting Summary Judgment when (Plaintiff) Appellant Steven Craig Molloy, did in fact submit multiple letters and set up multiple meetings with the Beaufort County Agents (Defendants) who ignored the complaints regarding the 2010 Contract
- YES.
- E. Did the Lower Court err in granting summary judgment when the (Plaintiff) Appellant Steven Craig Molloy, in fact presented evidence that the Defendants acted outside of the scope of their job duties.
- YES.

F. Did the Lower Court err in granting Summary Judgment when (Plaintiff) Appellant Steven Craig Molloy, presented evidence that Beaufort County Agents (Defendants) acted fraudulently, unconscionably, and in bad faith

YES.

STANDARD OF REVIEW

A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF; *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997), however, in determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Manning v. Quinn*, 294 S.C. 383, 365 S.E.2d 24 (1988). Appellant alleges that the lower court erred in granting Summary Judgment a drastic remedy which should have been cautiously invoked so that a litigant is not improperly deprived of a trial on disputed factual issues. *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). Disputed factual issues that during the March 23, 2018 did not address during the 3 - hour hearing for several filed Motions, that were never addressed during said hearing. **ROA March 23, 2018 Transcript**. Appellants allege that on appeal from an order granting summary judgment, the appellate court applies the same standard that governs the trial court. The appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. *Osborne v. Adams*, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 230 S.E.2d 447 (1976).

The *S.C. Code Ann. § 15-78-110* provides the following statute of limitations regarding lawsuits against governmental entities: Except as provided for in *S.C. Code Ann. § 15-3-40*, any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered. Respondents claim that the Statute of Limitations is time-barred. Appellant asserts that the original action was filed within the 2-year statute, based on the received FOIA email documents from Joy Nelson of Beaufort County. See Exhibit FOIA request ROA [From: **Nelson, Joy** <jnelson@bcgov.net>. Date: Wed, Sep 24, 2014 at 3:41 PM

S.C. Code Ann. § 15-78-110 is the exclusive remedy for statute of limitations relating to claims against governmental entities. As a matter of law, an action commenced within two years of when the “loss” could have been discovered would not be barred by the Tort Claims Act. "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence. The remedy provided by the Tort Claims Act is “the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents.” S.C. Code Ann. § 15-78-20. Where the legislature has covered the manner and timing for commencing a lawsuit, no other provision should be considered unless expressly allowed by the statute itself. In Searcy v. S.C. Dep't of Educ., 303 S.C. 544, 402 S.E.2d 486 (Ct. App. 1991)

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

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

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

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties. a governmental entity is liable solely for the acts of its employees. S.C. Code Ann. §§ 15-78-40, no exemption can be claimed by Respondents who acted outside the scope of their official duties, which constitutes actual fraud, actual malice, intent to do harm, or a crime involving moral turpitude. Respondents claim that Beaufort County employees have immunity, S.C. Code §§ 15-78-62 (2) however, when actual fraud occurs, and intent to do harm occurs, no exemption can be claimed by the Respondents S.C. Code Ann. §§ 15-78-60 (17)

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

S.C. Code Ann. 11-35-410 (C) For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made. After June 30, 1992, the

department shall recognize only county boards of disabilities and special needs that plan, administer, or provide services to persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries within a county or combination of counties which are created or established pursuant to this section, including those whose members are appointed by the Governor. Legislative Oversight Committee: Healthcare and Regulatory Subcommittee Meeting dated: September 18, 2017 a discussion pertaining to the study performed on the South Carolina DSN on Tuesday, 10/10/2017. South Carolina Department of Disabilities and Special Needs Board of Governance dated October 3, 2017 clearly states, that the BCDSN Board is appointed by the Governor. Beaufort County DSN Board at the time of this meeting in October of 2017 was not under the appointment of the Governor of South Carolina and was not in compliance from 2011 to 2018. (emphasis added)

STATEMENT OF THE CASE

The central issue of this case is the Appellant's allegation his 2010 janitorial cleaning contract was unconscionably and fraudulently interfered with by employees and agents of Beaufort County (with intent), the same employees tasked with oversight of the Appellant's contract and to whom the Appellant was contractually required to direct his complaints and concerns. The Appellant alleges his contract was interfered with because Beaufort County, and the Beaufort County **Board** of Disabilities and Special Needs (dba "Beaufort County **Department** of Disabilities and Special Needs", aka "BCDSN", aka "DSN"), were having financial difficulties and identified the Appellant's 2010 contract as the means by which they could replenish their budgets. The Appellant contends Beaufort County used and continues to use BCDSN/DSN as both an **internal "Department"** and an **outside "Vendor"** in fraudulent financial schemes, and whose unfortunate byproduct is the exploitation of BCDSN's disabled contractors (aka "consumers"). This connivance was dependent on the County's ability to use a Federal Sub-Minimum Wage Certificate that was issued to the BCDSN **Board**. It was this scheme by which the Appellant claims Beaufort County, and its agents and employees, unconscionably and fraudulently interfered with and destroyed the Plaintiffs 2010 contract. **ROA. Verified Amended Complaint filed 6/5/2018.**

Beaufort County's explanation of their financial difficulties and use of BCDSN/DSN are excerpted below, from a sworn affidavit dated **04/07/2017 (ROA)**, by the County's Director of Purchasing, Dave Thomas:

"In 2010, Beaufort County began an effort to reduce all contracts by 10% to help alleviate its budget deficit. At that time, the County was even discussing furloughs for employees and seeking ways to save money on contracts. **Beaufort County sent letters to all contractors requesting a 10% reduction in the contract amount,**

including Island Group Inc., d/b/a Carolina Cleaning currently under the 2010 contract award by Beaufort County.” (emphasis added).

The Appellant argues Beaufort County pressured him to sign one of these letters by intentionally withholding his contracted payments until he relented and signed. Then the Appellant was contacted by the (former) Executive Director of the BCDSN Board, Mitzi Wagner, and her deputy director, William Love, requesting the Appellant hire their BCDSN/DSN disabled consumers under his 2010 contract and pay them sub-minimum wages from a federal certificate (held by the BCDSN Board) not the Appellant. The Appellant declined. Thomas also requested the same of the Appellant at a meeting Thomas convened October 11, 2011. The Appellant declined, again.

Shortly after the Appellant refused these requests, Beaufort County invited Vendors to bid on a new janitorial solicitation, #3910/1120221, dated February 15, 2012, for eight (8) dormant county buildings. The Appellant (along with other Vendors), submitted sealed bids and the bidding formally closed March 22, 2012 at 3:00 pm. Unbeknownst to the Appellant, county employees, including but not limited to Thomas, were covertly working with Wagner to put forth a competing “in-house” bid (submitted well after the March 22, 2012 RFP closing date) using BCDSN/DSN’s disabled “consumers”, as Thomas relates in the following section of his affidavit:

“In 2012 and 2013, in an effort to further reduce costs, Beaufort County began considering using its “in-house” Disabilities and Special Needs (“DSN”) Department to provide the [janitorial] service.” Under that approach, “consumers” of DSN services, i.e., individuals with disabilities and special needs, would perform janitorial work for Beaufort County as “employees of the County” (emphasis added). This would provide benefits both to those consumers and to the taxpayers of Beaufort County. Because any “contract” for the use of DSN was essentially a use of “in-house” employees, it was not technically required to be bid out under the South Carolina Consolidated Procurement Code or the Beaufort County Procurement Code. Nonetheless, in an effort to safeguard the taxpayers of Beaufort County, the County permitted the submission of competing proposals against DSN. Every RFP in which DSN submitted a proposal was in full compliance with all governing procurement procedures. DSN was never given any advantage with regard to bidding or contracting (emphasis added).

The Appellant contends if BCDSN/DSN were an “in-house department” of Beaufort County the disabled individuals would be county “employees” and not “third party consumers / contractors”, at any time. Further, BCDSN/DSN would have been identified in the August 13, 2012 janitorial services award solicitation as an in-house “**Department**”, or not at all, and **not** a competing “**Vendor**”. And there would not be a need for “*contract awards*” between internal departments of the County, for profit. **(Exhibit 6 – 8/13/2012 contract award to BCDSN / Vendor)**

The United States Department of Labor's (DOL) Wage and Hour Division's description of this BCDSN/DSN entity is identified wholly in opposition to Thomas's assertion. The DOL investigated the designee of the Sub-Minimum Wage Certificate, the **BCDSN Board**, and defined them as follows (excerpted from the DOL's 2/28/2017 investigation into back wages owed to the disabled third-party contractors, aka "consumers") (Exhibit 2):

Beaufort County DSN Board, "**Firm**" (emphasis added) 100 Clear Water Way Beaufort, SC 29906, is a *community rehabilitation program (CRP) (Work Center) that does business as "Beaufort County Department of Disabilities". The firm does hold a subminimum wage certificate, under which all consumers are paid hourly rates. The subject "firm" is a "501(c)(3) governmental non-profit organization" and began operation in 2002 (emphasis added).* The Executive Director is William Love. Beaufort County DSN also operates under the direction of a "member appointed board". The *corporation* has one location in Beaufort SC (emphasis added). The Columbia District Office is the district office responsible for this geographic region. *William Love, Executive Director, meets the definition of an employer under 3(d) of the Fair Labor Standards act. He is involved in the daily operations of the business, he has hired and fired employees, directed their work, and otherwise acted in the direct interest of the organization. Therefore, he is the Section 3(d) employer under the act (emphasis added).*

Therefore, it is the BCDSN Board, aka the "**firm**", aka the "**501(c)(3) governmental non-profit organization**", aka the "**corporation**", aka the "**community rehabilitation program (CRP) (Work Center)**" which is the holder of the Sub-Minimum Wage Certificate, *not* Beaufort County. Thus, Beaufort County employees had no legitimate authority to appropriate this Certificate to create competing "in-house" bids, "for profit" in order to undercut the Appellant's contract or other bids or interfere in the contracting process in general by claiming to be a "*Department*" and a "*Vendor*" (you can't be both) simultaneously and competing against the Appellant in the bidding process. Further, by using the promise of an illicitly obtained sub-minimum wage Certificate (that exploited unwitting individuals and (gave every "BCDSN/DSN" bid an automatic financial advantage over the competition) Beaufort County was rigging and price fixing the bids, in direct violation of both county and state procurement laws.

Further, in the sworn affidavit dated 04/06/2017 by BCDSN / the firm's Executive Director, William Love, he states: "*DSN actually employs 26 consumers who work on janitorial crews which provides services to Beaufort County as part of its employment program.*" (emphasis added).

The Appellant requests this Court take judicial notice of Love's statement, above:

...provides services to Beaufort County...

Love's sworn affidavit contradicts Dave Thomas's affidavit as to who is the employer of these

“consumers” for this alleged fraudulent janitorial program. Further, Love repeatedly refers to “Beaufort County and DSN” – two separate and distinct entities, again contradicting Thomas’s claim BCDSN was an “in-house department of Beaufort County””.

In fact, employees and agents of Beaufort County were so intent on taking over the BCDSN Board they crafted Ordinance No. 2011/29 for County Council’s approval (final Reading September 26, 2011) which removed the Beaufort County DSN Board from the statutory authority of the South Carolina Governor to the authority of Beaufort County. The 2011 ordinance change was enacted signed by the then Beaufort County Council Chairman (and first the cousin of the Judge overseeing this matter in lower Court). Thus, the Board operated outside of compliance and the Governor’s purview during the entirety (2011-2018) of the fraudulent interference of the Appellant’s contract.

The changed 2011 ordinance was only recently corrected by the County, at the direction of Tommy Windsor, the governor’s appointed Director of Boards and Commission, because Windsor notified them May 29, 2018 the BCDSN Board was not in compliance with the state statute **ROA (Exhibit 5)**.

And, according to the affidavit of former Beaufort County Councilperson Cynthia Bensch, Beaufort County Council was never informed disabled, third party “consumers” “became” county employees, as Thomas swore to in his affidavit. In fact, there is no evidence these disabled contractors were ever county employees at any time, nor that untrained, disabled “consumers” would be exposed to chemicals and other hazardous products, without the necessary training or notification to their parents and/or their guardians **ROA (Exhibit 6)**.

The South Carolina Legislature, pursuant to §44-20-375(A), dictated the manner in which County Council must pass an ordinance creating a disabilities and special needs board wherein they established the number, terms, appointment, and removal of board members and provide for their powers and duties in compliance with state law and the process for appointing board members which existed on January 1, 1991, must be preserved in the ordinance. This process also provided the authority to appoint the BCDSN Board Members to the Governor, not the Beaufort County Council.

In 2011, Beaufort County Council created Beaufort County Ordinance Number 2011/29, Section 46-92(2), which stated, “The Membership of the (Beaufort County Department of Disabilities and Specials Needs) BCDSN Board shall be at least seven (7) members, but not more than eleven (11), and shall be **“appointed by Beaufort County Council.” Signed by Weston Newton, Beaufort County Council Chairman (also the first cousin of lower Court Judge in this matter)**

Since 2011, Beaufort County has ignored §44-20-375(A) and created its own Board for its financial benefit and use. And Beaufort County relates to BCDSN and Board as “in house” when convenient and also

a “separate entity” when most convenient (Appellant along with the SC Governor’s office contend, you / they cannot be both). Section 44-20-30 defines “Department” as the South Carolina Department of Disabilities and Special Needs.

The South Carolina Department of Disabilities and Special Needs Board is charged with the complete oversight of all County established Boards of Disabilities and Special Needs. Pursuant to §44-20-375(C), the South Carolina Department of Disabilities and Special Needs “**shall recognize**” only county boards of disabilities and special needs **whose members are appointed by the Governor**. This revelation means that Beaufort County and BCDSN/DSN in 2011 was without State oversight during said time of interference with Plaintiffs 2010 awarded Contract and the submission of the 2012 RFP by Beaufort County. The actions taken by BC, BCDSN/DSN against the Appellant’s awarded contract were without State oversight and out of compliance of SC Statute. Respondent’s claim of being in compliance with all SC and BC Procurement Code is a material untruth.

Pursuant to §44-20-385, the Beaufort County Disabilities and Special Needs Board was to be an **“entirely separate administrative, planning, coordinating, and service delivery body for the county disabilities and services under the South Carolina Department of Disabilities and Special Needs’ control”**, *not* Beaufort County government. (emphasis added) Further, it was to be a body corporate in deed and in law with all the powers incident to corporation including the power to incur debt insofar as that debt is payable from contract, grant, or other revenues and is not a debt of the State or its other political subdivisions. A county board may purchase and hold real and mortgage property and erect and maintain property buildings. The South Carolina Department of Disabilities and Special Needs shall approve all debt of Beaufort County Disabilities and Special Needs Boards to be paid in whole or in part from a contract, grant, or other revenues provided by the State, thus Beaufort County. Contrary to Respondent’s contentions, the Appellant would point out the Beaufort County Disabilities and Special Needs Board would have the ability to enter into contracts to fulfill these obligations.

It appears when Respondent Beaufort County granted themselves the ability to appoint Members to the Beaufort County Disabilities and Special Needs Board they also took it upon themselves to create a Beaufort County Disabilities and Special Needs Department. Nowhere in the Statute is there a provision for the existence of this creature. Further, nowhere in the statute are there, or were there, provisions, which provided for the Beaufort County Administrator to enter into any contracts on behalf of Beaufort County Disabilities and Special Needs. Beaufort County, including Council and its Administrator have usurped this process since 2011 for the sole purpose of benefiting themselves and/or a non-existent / non-sanctioned government department created by them, Beaufort County, (emphasis added) causing great harm to vendors, especially Appellant Craig Molloy.

Further, this case history is replete with e-mail communications between County employees and their agents about unfair actions taken against the Appellant, and BCDSN Board meeting minutes, specifically those from June 19, 2012 wherein the BCDSN Board's [former] Executive Director, Wagner and BC Procurement Director Thomas openly discusses eliminating the Appellant by creating a competing janitorial Program, for profit, which caused the injury to the Appellant, all unknown to the Appellant until the Freedom of Information received beginning in September 2014 through 2015. **ROA (See Timelines)**

In an excerpt from these minutes (page 2, paragraph 4) Wagner discusses a recent visit from one *Knuckles Consulting Firm* and their assessment of profits the "consumers" made from a "cottage type industry" selling homemade pottery and other items. Wagner stated to the DSN Board, as it related to these "consumers" cottage industry profits, that:

"...the county wanted it to become a cost center in the budget, close out the bank accounts, and let the treasurer handle the money. [Wagner spoke with] the consulting firm who advised her not to let the county become involved." (emphasis added). Wagner goes on to say (page 3, paragraph 1) that "...she is meeting with county in regard to the cleaning contract (emphasis added). She said we are not pleased with the cleaning crew we now have and are in hopes of having someone new next year. (Contradiction of Award Letters sent to the Appellant) Wagner was complaining about the smaller buildings in the county, mainly with PALS. She said our individuals could clean the smaller buildings. County liked the idea and we put together a proposal to do a lot of the community buildings, Green Street Gym, Bluffton Gym and Burton Wells Senior Citizens. (emphasis added). Some will be monthly, some on an as needed basis. The contract would bring in \$45,000 to \$50,000 annually (the for-profit scheme by Beaufort County) and would mean a lot of our individuals in day program would be employed." (emphasis added).

The Appellant requests this Court take judicial notice the *Green Street Gym, Bluffton Gym and Burton Wells Senior Citizens* that Wagner referenced at this June 19, 2012 meeting were all part of the scope of work contained in Appellants 2010 contract with Beaufort County. And, after this June 19 Board meeting, the Appellant contends BCDSN/DSN and county employees appropriated the Appellant's confidential pricing information from his sealed March 22, 2012 bid and created their own bid that undercut the Appellant's. **ROA.**

There is also incontrovertible proof from published minutes and the agenda of the August 13, 2012 bid award meeting that BCDSN's Wagner, along with a county employee, Shannon Loper, **(both of whom attended pre-bid meetings for this 2012 RFP with Appellant, Craig Molloy) (emphasis added)** were on the bid award committee that chose BCDSN/DSN as the winning "Vendor"; the first of several contested solicitations awarded to BCDSN/DSN. Given Beaufort County's own employees and agents were actively conspiring to destroy the Appellant's contract, the Appellant's complaints about the BCDSN/DSN interference were ignored, fell on deaf ears or the employees and/or agents (Respondents) did not show up for scheduled meetings to review his complaints. It was not until the Appellant sought information through Freedom of

Information requests that he learned of these fraudulent actions. It is the Appellant's position he followed the processes and procedures in a timely manner pursuant to his contract; however, Beaufort County was not acting in good faith, nor was the Purchasing Director or his agents acting in accordance with County and State Procurement Laws.

The Appellant contends Thomas's sworn affidavit, along with the other affidavits of record, are proof the County was acting in a fraudulent and unconscionable manner, thwarting him at every turn where his contract was concerned, under the ruse that they were in full compliance of the State and County Procurement law, and that it was Beaufort County who created and nurtured the circumstances that caused the contract breach that resulted in harm and injury to the Appellant.

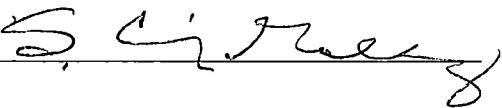
A Letter to the Honorable, Marvin H. Dukes, III, from Respondents counsel, Dawes Cooke, April 11, 2018, page 3, which states the following: "Carolina Cleaning did not have any right to obtain contracts for Janitorial Services, and there is nothing illegal about the County electing to fulfill its Janitorial needs outside of the RFP process". **ROA**. This statement is a direct contradiction of the actions taken by Beaufort County. They did in fact submit an "open market" RFP in 2012. BCDSN/DSN did submit this RFP as a competing "**Vendor**" against other vendors. The affidavits of Dave Thomas, and William Love contain material untruths ignored by the lower court, all point to the Respondents adamant refusal of answering any interrogatories or submitting to depositions in this case under the oath of law. Only two named defendants submitted Affidavits and several non-named parties where all contain material untruths, unquestioned thus far, unless granted by this court. The complexity of this case is fraught with Genuine Issues of Material Fact which demonstrate the lengths the Respondents went to circumvent State and County Procurement Code and statute, while intentionally, unconscionably, and with fraudulent actions, behind closed doors, lied to and drug Appellant along and directly caused irreparable harm to the 25-year business of [Appellant] Molloy [Carolina Cleaning (now closed)].

CONCLUSION

The County documents, emails, affidavits and other evidence underscore the web of deceit and unconscionable, fraudulent actions by Beaufort County, BCDSN/DSN, and county employees who perpetrated an irrecoverable injury to the Appellant. Appellant's 25-year business, of which 18-years was awarded contracts and servicing Beaufort County, and others was irreparably harmed.

The Appellant prays that this Court dismiss the Respondents granted Summary Judgment, remand this case to the lower court for further adjudication, and compel Respondents to submit to depositions.

Respectfully submitted,

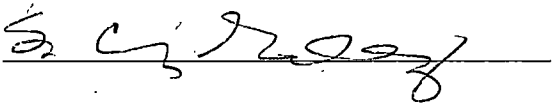
By: 

Steven Craig Molloy, Pro Se
43 Big Woods Dr. Hilton Head SC 29926
P: 843-368-73000 E: scmolloy@gmail.com

April 24, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be served a copy of the foregoing BRIEF OF APPELLANT upon the individual whose name and address are listed below by placing a copy of it in the United States Mail with proper first-class postage affixed on April 24, 2019.



April 24, 2019

S. Craig Molloy – Pro Se’ Appellant
43 Big Woods Dr. Hilton Head SC 29926
843-368-7300
scmolloy@gmail.com

Other Counsel of Record:
John Fletcher, Dawes Cooke
Barnwell Whaley Attorneys
PO Box H Charleston, SC 29402
Beaufort County Attorney
Tom Keaveny
PO Box 1128 Beaufort SC 29901

RECEIVED

APR 26 2019

SC Court of Appeals

Molloy
43 Big Woods
Hilton Head, SC 29926



1000



29211

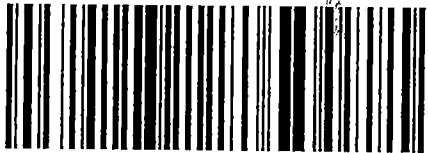
U.S. POSTAGE PAID
FCM LG ENV
HILTON HEAD ISLAND, SC
29926
APR 24, 19
AMOUNT

\$7.75

R2305K138951-10

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®



7019 0160 0000 3893 6225

SC Court of Appeals

PO Box 11629

Columbia, SC 29211

ATTN: Shelby