

90189

RECEIVED

JUL 02 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Judicial Circuit

Hon. Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2018-002170

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

Of which Steven Craig Molloy is the Appellant

v.

Beaufort County; Gary Kubic, Individually, and as Beaufort
County Administrator; Josh Gruber, Individually and as former
Beaufort County In-House Attorney; Bryan Hill, Individually and
as former Beaufort County Deputy Administrator; Shannon Loper,
Individually, and as Employee of the Beaufort County Parks and
Leisure; Stu Rodman, as finance Chair of Beaufort County
Council; and Dave Thomas, Procurement Director for Beaufort
County, South Carolina; Disabilities and Special Needs (Non-
Profit); and Beaufort County DSN Board,..... Respondents

MOTION TO STRIKE RECORD ON APPEAL

M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
BARNWELL WHALEY PATTERSON &
HELMS, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401
(843) 577-7700 Fax: (843) 577-7708
Counsel for Respondents

AND NOW COME Respondents Beaufort County, Gary Kubic (Individually, and as Beaufort County Administrator), Josh Gruber (Individually and as former Beaufort County In-House Attorney), Bryan Hill (Individually and as former Beaufort County Deputy Administrator), Shannon Loper (Individually, and as employee of the Beaufort County Parks and Leisure), Stu Rodman (Finance Chair of Beaufort County Council), Dave Thomas (Individually and as Procurement Director for Beaufort County), and Disabilities and Special Needs (NON-PROFIT) Beaufort County DSN Board (collectively "Respondents"), by and through their undersigned counsel, and file this Motion to Strike Record on Appeal:

1. This is an appeal from an order of the trial court granting summary judgment to Respondents as to all claims.

2. On or about March 22, 2019, Respondents filed their Initial Respondents' Brief and Designation of Matter for Inclusion in the Record on Appeal.

3. On or about April 24, 2019, Appellant Steven Craig Molloy filed his Initial Reply Brief.

4. Under South Carolina Rule of Appellate Procedure 210(a), Appellant was required to serve the compiled record (including all materials designated by Respondents) on or before May 24, 2019.

5. Appellant did not serve a timely Record on Appeal.

6. In fact, Respondents' counsel did not receive any Record on Appeal until June 13, 2019, several weeks after the due date. However, the Proof of Service for that Record on Appeal inaccurately recites that it was mailed on May 25, 2019.

7. The Court of Appeals' docket reflects that it did not receive the Record on Appeal until June 13, 2019, the same date Respondents did.

8. The South Carolina Rules of Appellate Procedure set forth certain procedural and other requirements for the Record on Appeal:

(a) Time for Service. Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has

served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court. . . .

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

See S.C.R.A.P., Rule 210(a) & (c).

9. The Record on Appeal served by Appellant is deficient in a number of important respects, including (but not limited to):

- The pages are not consecutively numbered. As a result, it is impossible for Respondents to prepare a final brief (even if the Record on Appeal included all required materials).
- There is no index identifying what is included and where.
- The Record on Appeal does not contain all of the materials designated by Respondents for inclusion in the record. By way of illustration only, Appellant included certain affidavits designated by Respondents, but did not include the exhibits thereto. Moreover, the Record on Appeal does not appear to even contain the order from which this appeal was taken.
- The Record on Appeal includes materials that neither party has designated for inclusion.
- The Proof of Service inaccurately indicates that it was served on May 25, 2019. Even if this date was true (which it is not), Appellant was required to "immediately" file the proof of service, not wait several weeks.

10. Upon receipt of the deficient Record on Appeal, counsel for Respondents immediately reached out to Appellant to identify some of the issues. Appellant responded: "I'll talk to appeals court about and get back to you." (See Ex. A hereto).

11. To date, Appellant has not served or filed a corrected Record on Appeal, which is preventing Respondents from preparing, serving and filing their Final Brief.

12. Appellant's conduct is causing significant prejudice to Respondents' ability to present their arguments on appeal in compliance with the rules.

CONCLUSION

13. Therefore, for the foregoing reasons, Respondents respectfully request that the Court of Appeals strike the currently-filed Record on Appeal and dismiss this appeal. In the alternative, the Court should require that Appellant promptly file a Record on Appeal that:

(a) fully and completely complies with Rule 210 in all respects (including an index and consecutively numbered pages); (b) contains **all** materials designated by the parties (and **only** those materials); and (c) does not include any matter not presented to the trial court.

June ~~26~~²⁸, 2019

BARNWELL WHALEY PATTERSON &
HELMS, LLC

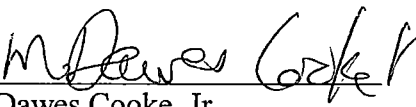
By: 
M. Dawes Cooke, Jr.,
John W. Fletcher, Esq.
BARNWELL WHALEY PATTERSON &
HELMS, LLC
288 Meeting St., Ste. 200
Charleston, SC 29401
(843) 577-7700 Fax: (843) 577-7708
Counsel for Respondents

EXHIBIT A

Diana Murray

From: John Fletcher
Sent: Monday, June 17, 2019 12:49 PM
To: C Molloy
Cc: M. Dawes Cooke
Subject: RE: Molloy Appeal

Thanks. I look forward to receiving a corrected Record on Appeal so I can file a final brief on behalf of my clients.

Given the procedural posture of this case, unless you are willing to release all claims for a truly nominal amount, there is probably not much of a chance of resolving this matter.

From: C Molloy <scmolloy@gmail.com>
Sent: Friday, June 14, 2019 11:06 AM
To: John Fletcher <jfletcher@barnwell-whaley.com>
Subject: Re: Molloy Appeal

I'll talk to appeals court about and get back to you.

Have you had a chance to discuss settling this case with your clients?
If so - their thoughts?

Please advise.

Craig

Craig Molloy
e: scmolloy@gmail.com
p: 843.368.7300

On Thu, Jun 13, 2019 at 1:58 PM John Fletcher <jfletcher@barnwell-whaley.com> wrote:

Mr. Molloy,

I have received your record on appeal. I haven't had time to go through it in detail, but it appears to not be in compliance with the Rules. Under Rule of Appellate Procedure 210(c), "[e]ach page of the Record on Appeal shall be numbered consecutively beginning with the index." In addition, under Rule 210(e), the record "shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits." Please serve a record on appeal that is in compliance with the rules so I can prepare and file our Final Brief of Respondent. Thanks!

John

From: Craig Molloy <scmolloy@gmail.com>
Sent: Sunday, May 26, 2019 12:53 PM
To: John Fletcher <jfletcher@barnwell-whaley.com>
Subject: Re: Molloy Appeal

Thanks,

I'll be sending ROI later this week.

I need to speak to appeals court Tues. about a few things related.

Would your clients be interested in discussing settlement of this ?

Craig

Craig Molloy

Scmolloy@gmail.com

843.368.7300

On May 26, 2019, at 12:44 PM, John Fletcher <jfletcher@barnwell-whaley.com> wrote:

Mr. Molloy,

It appears that you filed your initial reply brief in this matter on or about April 24, 2019. Under S.C.R. App. P. 210(a), you are required to serve the record on appeal — containing all materials designated by the parties — on all parties within 30 days of that date. To date, I have not received a copy of the record on appeal. I look forward to receiving the record in the near future. Thank you.

John

JOHN W. FLETCHER

BARNWELL WHALEY PATTERSON & HELMS, LLC

288 Meeting Street | Charleston SC 29401 | 843.577.7700 | 843.329.5328 (D)

jfletcher@barnwell-whaley.com | [Firm Website](#) | [Bio](#) | [vCard](#) | [Twitter](#)

<image001.jpg>

CONFIDENTIAL

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return email and destroy any copies, electronic, paper or otherwise, which you may have of this communication

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
In the Court of Common Pleas for the Fourteenth Judicial Circuit

Hon. Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2018-002170

RECEIVED
JUL 02 2019
SC Court of Appeals

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

Of which Steven Craig Molloy is the Appellant

v.

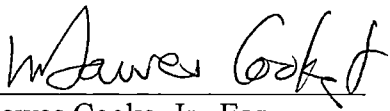
Beaufort County; Gary Kubic, Individually, and as Beaufort
County Administrator; Josh Gruber, Individually and as former
Beaufort County In-House Attorney; Bryan Hill, Individually and
as former Beaufort County Deputy Administrator; Shannon Loper,
Individually, and as Employee of the Beaufort County Parks and
Leisure; Stu Rodman, as finance Chair of Beaufort County
Council; and Dave Thomas, Procurement Director for Beaufort
County, South Carolina; Disabilities and Special Needs (Non-
Profit); and Beaufort County DSN Board,..... Respondents

PROOF OF SERVICE

I certify that I have served the Motion to Strike Record on Appeal on the above-referenced
Appellant by depositing a copy of it in the United States Mail, postage prepaid, on June 20, 2019,
addressed to him at the following address:

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

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

M. Dawes Cooke, Jr., Esq.

John W. Fletcher, Esq.

BARNWELL WHALEY PATTERSON &
HELMS, LLC

288 Meeting St., Ste. 200

Charleston, SC 29401

(843) 577-7700 Fax: (843) 577-7708

Counsel for Respondents



John W. Fletcher, Esquire
jfletcher@barnwell-whaley.com

June 28, 2019

RECEIVED
JUL 02 2019
SC Court of Appeals

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

RE: Steven Craig Molloy and Island Group, Inc. d/b/a Carolina Cleaning v. Beaufort County;
Gary Kubic individually, and as Beaufort County Administrator; et al
Appellate No. 2018-002170
BWPB File No.: 1.626

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike Record on Appeal and the original and one (1) copy of a Proof of Service of the same. I have also enclosed a \$50.00 check for the filing fee. Please file the Motion and Proof of Service and return a clocked copy of each to me in the envelope provided. Thank you for your assistance.

Sincerely,

John Fletcher (KJ)
John W. Fletcher

JWF/klj
Enclosures

cc (w/enclosures) Steven Craig Molloy

{00914147.DOCX.1 }

www.barnwell-whaley.com

SOUTH CAROLINA OFFICE:
288 Meeting Street, Suite 200, Charleston, SC 29401
P 843.577.7700 F 843.577.7708

NORTH CAROLINA OFFICE:
201N. Front Street, Suite 1003, Wilmington, NC 28401
P 910.679.1388 F 910.679.4663

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



**BARNWELL
WHALEY** | 80 YEARS
PATTERSON & HELMS LLC
P.O. Drawer H | Charleston SC 29402-0197

L626

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

RECEIVED
JUL 02 2019
SC Court of Appeals