STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	CASE NO.: 2017-CP-37-00320
David T. Stokes,	)	
	)	
Plaintiff,	)	
	)	**ORDER**
v.	)	
	)	
Oconee County, Wayne McCall, and Edda Cammick,	)	
	)	
Defendants.	)	

On May 28, 2019, this matter came before the Court for a hearing on numerous motions. As to the Defendants' Motions for Summary Judgment filed on December 4, 2018, February 28, 2019, and March 26, 2019, the Court hereby grants the motions as to the Plaintiff's cause of action for slander *per se*. The Court denies, as premature, the County's motion for summary judgment as to the Plaintiff's cause of action for wrongful termination in violation of public policy. In addition, the Court hereby grants Oconee County's Motion to Quash the Subpoena *Duces Tecum* issued by Joseph Clay Hopkins, attorney for the Plaintiff, on June 1, 2018, to Scott Moulder, who is the former County Administrator for Oconee County, and denies the Plaintiff's Motion to Compel Financial Information from Wayne McCall and Edda Cammick.

NATURE OF THE CASE

This action arises from the Plaintiff's termination from his position as Oconee County's Community Development Director (also known as the County's "Building Official"), effective on or about May 18, 2017. The Complaint, alleging two causes of action (slander *per se* and wrongful termination in violation of public policy), was filed on or about May 31, 2017. The Plaintiff sued Oconee County, as well as Councilmembers

Edda Cammick and Wayne McCall, in their official capacities only. The Defendants filed timely Answers, denying many of the material allegations of the Complaint and pleading numerous affirmative defenses.

FINDINGS OF FACTS

The evidence, taken in the light most favorable to the Plaintiff, shows that the Plaintiff was previously employed by the Defendant Oconee County as the "Building Official," and was "the administrator for building and code compliance within Oconee County." (See Complaint at ¶ 7.) In late April of 2017, the County Council held a Budget, Finance, and Administration Council Committee meeting. (See Complaint ¶ 14.) According to the Plaintiff's Complaint, "Defendants McCall and Cammick ... asserted they had received numerous citizen complaints regarding customer service and delays with Plaintiff's department, and that Plaintiff had 'blackballed' certain contractors and businesses within Oconee County." A review of the transcript from the meeting shows that Plaintiff's name was not specifically mentioned, nor was the pronoun "he" used during the discussion of the Plaintiff's department.

The County Administrator, Scott Moulder, terminated the Plaintiff, effective May 18, 2017.[1] According to Moulder, the termination was based on "growing concerns with the complaints that we were receiving about the department" and Moulder's belief that "a change in the department needed to be made." (See Depo. of Scott Moulder, p. 19, l. 16-25.) Moulder testified that there had been numerous complaints about the Plaintiff's department, including "inconsistency with application of the code, rudeness and the time frame it took to get permits, ... inability to get ahold of somebody when they called up

[1] Oconee County Code of Ordinances §6-81 specifically provides that "[t]he codes department shall be headed by a building official who shall be appointed by and serve at the pleasure of the chief administrative officer."

there or get a call back, modifying in the field how we are going to enforce a code without notifying the contractors of that change, just to name a few." (See Moulder Depo. p. 29, l. 1-15.) Mr. Moulder also testified that there "were discussions about Mr. Stokes and others over a three or four-month time period in the fall of 2016" and that neither Cammick nor McCall directly recommended that the Plaintiff be terminated. The ongoing discussions were about the Plaintiff as well as four (4) other department heads and were "about complaints that they had about those particular offices and that they wanted the matters cured." (See Moulder Depo. p. 31, l. 11 – p. 32, l. 9.)

The Plaintiff acknowledges that Mr. Moulder "receive[d] complaints about the building codes department" which were relayed to the Plaintiff and that Moulder told him his termination was due to questions about his "incompetence and not knowing the codes and permitting issues and complaints from contractors." (See Stokes Depo. p. 44, l. 22-25; p. 81, l. 17 – p. 82, l. 17.) Although the Plaintiff testified that he did not "precisely" know whether or not people complained about his department to Defendants McCall or Cammick or other members of the County Council, he admitted that he was aware of a meeting where multiple builders complained to Councilman Wayne McCall about his department and of a separate complaint made by a property owner (Joel Perkins). (See Stokes Depo. p. 67, l. 11 – p. 70, l. 19; p. 76, l. 22 – p. 78, l. 11.)

Plaintiff alleges that the Defendants slandered him during the County Council Budget, Finance, and Administration Meeting on April 25, 2017 and that his termination was in violation of public policy.

SUMMARY JUDGMENT STANDARD

Summary judgment "shall be rendered forthwith if 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." S.C.R.C.P. 56(c). Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Garvin v. Bi-Lo, Inc.,* 343 S.C. 625, 541 S.E.2d 831 (2001). *See also Barron v. Labor Finders of S.C.*, 393 S.C. 609, 713 S.E.2d 634 (2011). The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Dawkins v. Fields,* 354 S.C. 58, 580 S.E.2d 433 (2003).

In determining whether any triable issue of fact exists, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Guinan v. Tenet Healthsystems of Hilton Head*, 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009).

FINDINGS OF LAW

The Plaintiff alleges (1) slander *per se* against the Defendants Oconee County and against Edda Cammick and Wayne McCall, in their official capacities; and (2) wrongful termination in violation of public policy against Oconee County. As discussed

hereinbelow, the Court finds that each of the Defendants is entitled to summary judgment as to the cause of action for slander *per se*. The Court finds that the Defendant Oconee County's motion for summary judgment as to wrongful termination is premature at this time and, therefore, denies the same.

I. THE DEFENDANTS EDDA CAMMICK AND WAYNE MCCALL WERE NOT, AND CANNOT BE, SUED IN THEIR INDIVIDUAL CAPACITIES HEREIN AND ARE HEREBY DISMISSED AS DEFENDANTS.

The Complaint specifically states that Edda Cammick and Wayne McCall are sued only in their "official capacity." However, even had the Plaintiff named these Defendants in their "individual capacity," such would have been improper.

The S.C. Tort Claims Act, at §15-78-70, specifically states the following:

> a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.

There is no dispute that the only alleged slander occurred during a County Council Budget, Finance, and Administration Meeting. There is not a scintilla of evidence that either Cammick or McCall acted outside of their official capacity as members of Oconee County Council during that meeting. Based thereon, they are not properly named defendants herein and must be dismissed from the lawsuit.

In addition, Cammick and McCall cannot be sued for defamation, including slander *per se*, due to an absolute privilege. "A sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties. Accordingly, an absolute privilege is recognized as to defamatory statements made by legislators in the course of their functions, if such statements are connected with,

or relevant or material to, the matter under inquiry." *Richardson v. McGill*, 273 S.C. 142, 255 S.E.2d 341 (1979). *See also* Restatement (Second) of Torts § 590 (1977) (a member of a local legislative body is "absolutely privileged to publish defamatory matter concerning another in the performance of his legislative functions"). It is the duty of the trial judge to determine if the statement is privileged. *Id.* Here, the alleged statements were made at a County Council Committee meeting, dealt with a County office that the Council oversees, and which is funded by taxpayer money, and dealt with the undisputed fact that complaints had been made about that office. The Council members are clearly protected from a suit for defamation under such circumstances. Based thereon, the Defendants Cammick and McCall are dismissed as defendants herein.

II. OCONEE COUNTY IS ENTITLED TO SUMMARY JUDGMENT AS TO PLAINTIFF'S SLANDER *PER SE* CLAIM.

Oconee County is entitled to summary judgment as to Plaintiff's slander *per se* claim based on several reasons.

First, the Plaintiff's counsel admitted that he is a "public official." Therefore, he is required to show, among other things, that the allegedly defamatory statement(s) were made with actual malice, *i.e.*, "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). "Whether the evidence is sufficient to support a finding of actual malice is a question of law [for the trial court]." *Elder v. Gaffney Ledger,* 341 S.C. 108, 533 S.E.2d 899 (2000) (citing *Harte–Hanks Communications, Inc. v. Connaughton,* 491 U.S. 657, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989)). Although the Plaintiff's Complaint alleges that the statements were made with "malicious intent" (see

Complaint at ¶ 18), he failed to produce sufficient evidence of malice,[2] entitling these Defendants to summary judgment.

Secondly, even if the Plaintiff could show "actual malice," Oconee County cannot be sued for a tort that includes malice. *See* S.C. Code Ann. §15-78-60(17), which provides that "[t]he governmental entity is not liable for a loss resulting from ... employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." *See Cornelius v. City of Columbia*, 663 F.Supp.2d 471 (D.S.C.2012).

As an additional ground for dismissal of the slander cause of action, the Plaintiff cannot show several required elements of a defamation or slander cause of action, namely that the statements referred to the Plaintiff or that any of the statements made at the Council Budget meeting were "false." "To prevail in a defamation action, the plaintiff must establish that the defendant's statement referred to some ascertainable person and that the plaintiff was the person to whom the statement referred." *Burns v. Gardner*, 328 S.C. 608, 615, 493 S.E. 2d 356, 359 (Ct.App.1997 (citing *Neeley v. Winn-Dixie Greenville, Inc.*, 255 S.C. 301, 308, 178 S.E.2d 662, 665 (1971)). "[W]here defamatory statements are made against an aggregate body of persons, an individual member not specifically imputed or designated cannot maintain an action." *Id.* (citing *Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 379, 9 S.E.2d 796, 800 (1940). Here, the

[2] To prove malice, the Plaintiff must "prove by clear and convincing proof that the allegedly defamatory statement was made with the knowledge of its falsity or with reckless disregard for its truth. A 'reckless disregard' for the truth, however, requires more than a departure from reasonably prudent conduct. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. There must be evidence the defendant had a 'high degree of awareness of ... probable falsity.'" *Elder, supra* at 114 (internal citations omitted).

transcript of the relevant portion of the Budget meeting shows that the Plaintiff's name was never mentioned.[3]

In addition, the Plaintiff cannot show that anything said at the meeting pertaining to his office was "false." The worst thing said or suggested was that multiple people had complained about the building codes department, a fact that was supported by the deposition testimony of both the Plaintiff and Mr. Moulder. Based thereon, the County is entitled to summary judgment as to the slander cause of action. "The Court will not hunt for a forced and strained construction to put on ordinary words, but will construe them fairly, according to their natural and reasonable import, in the plain and popular sense in which the average reader naturally understands them. There is no presumption of defamation." *Burns v. Gardner*, *supra* (citing *Hospital Care Corp. v. Commercial Cas. Ins. Co., supra*).

III. THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFF'S CLAIM FOR WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY IS PREMATURE AT THIS TIME.

Plaintiff's second cause of action, brought only against Oconee County, is for wrongful termination in violation of public policy. The Court finds that this motion is premature at this time, due to the possible need for additional discovery, but may be raised again at the conclusion of a reasonable discovery period.

CONCLUSION

The Defendants Motions for Summary Judgment as to the Plaintiff's slander *per se* cause of action are hereby GRANTED.

The County's Motion for Summary Judgment as to the Plaintiff's wrongful termination claim is DENIED as premature at this time.

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[3] In fact, the pronoun "he" was not even used.

The Defendant's Motion to Quash the Subpoena *Duces Tecum* for a second deposition of Scott Moulder is GRANTED.

The Plaintiff's Motion to Compel Financial Information from Edda Cammick and Wayne McCall is DENIED.

AND IT IS SO ORDERED.

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Judge R. Lawton McIntosh

July ___, 2019

Oconee Common Pleas

Case Caption: David T. Stokes VS Oconee County , defendant, et al

Case Number: 2017CP3700320

Type: Order/Other

S/R. LAWTON McINTOSH

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