

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

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SEP 10 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

SECOND MOTION TO STRIKE RECORD ON APPEAL

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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 Second Motion to Strike Record on Appeal:

1. This is an appeal from an order of the trial court granting summary judgment in favor of Respondents as to all claims asserted by the plaintiffs' below.

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 ("Appellant") 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 (the "First Record on Appeal") inaccurately recited that it was mailed on May 25, 2019.

7. The Court of Appeals' docket reflects that it did not receive the First 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 First Record on Appeal:

(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.

See S.C.R.A.P., Rule 210(c) (emphasis added).

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

- The pages were not consecutively numbered. As a result, it is impossible for Respondents to prepare a final brief (even if the First Record on Appeal included all required materials).
- There was no index identifying what is included and where.
- The First Record on Appeal did 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.
- The First Record on Appeal included 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 First 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."

11. On July 2, 2019, Respondent filed its first Motion to Strike Record on Appeal, because of the obvious deficiencies in the First Record on Appeal.

12. On July 12, 2019, Appellant filed a letter response to the first Motion to Strike Record on Appeal, but did not address the merits of that motion. Instead, Appellant made impermissible argument on the merits of the case that included information that was not presented to or considered by the trial court.

13. On or about August 22, 2019, Respondents received a new version of the Record on Appeal (the "Second Record on Appeal").

14. While the Second Record on Appeal corrected *some* of the deficiencies of the First Record on Appeal, it is still materially deficient, in that it does not include numerous documents that Respondents properly identified in their Designation of Matter for Inclusion in the Record on Appeal.

15. For example, Respondents designated the following affidavits and/or memoranda for inclusion in the record, ***with all attachments thereto***:

7. April 6, 2017 Affidavit of Shannon Loper in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits) . . .

9. April 7, 2017 Affidavit of Dave Thomas in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits)

10. April 10, 2017 Affidavit of Alicia Holland in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits)

20. June 25, 2018 Defendants' Second Supplemental Memorandum in Support of Motion for Summary Judgment (including any and all exhibits)

(See Resp.'s Designation of Matter for Inclusion in the Record on Appeal ¶¶ 7, 9, 10, 20).

16. Additionally, the Designation of Matter for Inclusion in the Record on Appeal makes clear that: "Each item designated is to include all attachments or exhibits to the original of the referenced item. Respondents intend to designate each and every item from the record that they cited in their Initial Respondents' Brief in this matter."

17. However, Appellant did not include these exhibits — many of which are fundamental to Respondent's arguments — in the Second Record on Appeal.

18. Additionally, Respondent's Designation of Matter for Inclusion in the Record on Appeal designated the following:

2. February 3, 2017 Form 4 Order granting Motion for a More Definite Statement) . . .

5. March 15, 2017, Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order . . .
13. July 21, 2017 Defendants' Notice of Motion and Motion for Summary Judgment (including any and all exhibits) . . .
15. December 4, 2017 Plaintiffs' Motion for Summary Judgment . . .
22. December 10, 2018 Plaintiff Steven Craig Molloy's Notice of Appeal (including any and all exhibits)

(See *id.* ¶¶ 2, 5, 13, 15, 22). It appears that none of these documents are included in the Second Record on Appeal.

19. Because Appellant failed to include numerous designated matters in the Second Record on Appeal — including exhibits to affidavits and exhibits to filings — Respondents are unable to prepare, serve and file their Final Brief.

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

CONCLUSION

21. Therefore, for the foregoing reasons, Respondents respectfully request that the Court of Appeals strike the currently-filed Second Record on Appeal and dismiss this appeal. In the alternative, the Court should require that Appellant promptly file a Record on Appeal that: contains **all** materials designated by the parties (and **only** those materials).

September 9, 2019

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 

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John W. Fletcher, Esq.
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Counsel for Respondents

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
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Profit); and Beaufort County DSN Board, Respondents

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PROOF OF SERVICE

I certify that I have served the Second 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 September 9, 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.

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**BARNWELL
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PATTERSON & HELMS LLC

80
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REPLY TO SOUTH CAROLINA OFFICE

John W. Fletcher
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September 9, 2019

VIA FEDERAL EXPRESS

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

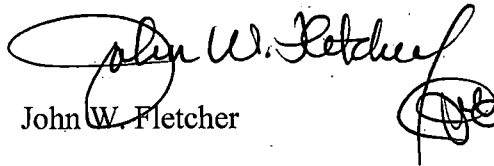
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Gary Kubic individually, and as Beaufort County Administrator; et al
Appellate No. 2018-002170
BWPH File No.: 1.626

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Second 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 W. Fletcher

JWF/jgc
Enclosures

cc (w/enclosures) Steven Craig Molloy

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

