

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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

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Appellate Case No. 2018-002170

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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

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SC Court of Appeals

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**RESPONDENTS' RETURN TO MOTION TO ENTER NEW INFORMATION  
DIRECTLY RELATED AND RETURN TO  
MOTION TO AWARD DEMAND AND JUDGMENT TO APPELLANT**

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M. Dawes Cooke, Jr., Esq.  
John W. Fletcher, Esq.  
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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 Return to Appellant's Motion to Enter New Information and Motion to Award Demand and Judgment to Appellant:

### INTRODUCTION

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. The only Appellant in this case is Plaintiff Steven Craig Molloy, who is appearing *pro se* in this appeal. The parties have filed their Initial Briefs in this appeal. However, Appellant has not yet served a Record on Appeal that complies with the Rules of Appellate Procedure and includes all materials designated by Respondents. Therefore, Respondents have not yet been able to prepare and file their Final Brief in this matter.

On or about November 19, 2019, Appellant Steven Craig Molloy ("Appellant") filed the instant Motion to Enter New Information and Motion to Award Demand and Judgment to Appellant ("Motion"). The crux of Appellant's Motion is apparently that the Court should open the record on appeal to include materials that were never presented to the trial court:

New information has become available that relates directly to this matter and the lower court decisions including, summary judgement. The new information is the Defendants voluntary admissions in televised public reports during Council meeting and to Council that contradict their earlier sworn affidavits, and their attorney's arguments in hearings, and their briefs and documents submitted to the Appeals Court and the Lower Court in this matter.

This new information is only new to the Appellant, the Appeals court, and the Lower court, the new information volunteered publicly by the Defendants "not new" to the Defendants.

The information consists of admissions by County Procurement Director. Dave Thomas and Beaufort County Attorney, Tom Keaveny in televised reports to County Council on June 10th and 17th, 2019 meetings.

(See Appellant's Mot., at 2). For the reasons that follow, it is wholly inappropriate to open the record on appeal to include information not considered by the trial court. Therefore, this Court should deny Appellant's instant Motion.

### ARGUMENTS

The South Carolina Rules of Appellate Procedure set forth certain procedural and other requirements for a 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). In other words, this Court is not permitted to consider anything that a trial court has not previously considered in making its decision, including newly discovered evidence. See *Croft as Trustee of James A. Croft Trust v. Town of Summerville*, No. 2015-002199, 2019 WL 5057739, at \*10 (S.C. Ct. App. Oct. 9, 2019) ("Appellants have challenged the validity of the Agreement in a separate civil action, and this court previously ordered Appellants to strike from their designation of matter items relating only to the challenge of the Agreement because these items were part of the record in the separate action before the circuit court."); *State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007) ("Morris' statement was not presented to the lower court and cannot be properly included in the Record on Appeal."), *aff'd*, 382 S.C. 265, 676 S.E.2d 684 (2009). An "issue will not be considered for the first time on appeal." See *Shuler v. Tuomey Reg'l Med. Ctr., Inc.*, 313

S.C. 225, 228, 437 S.E.2d 128, 130 (Ct. App. 1993). Appellant's Motion seeks to introduce evidence into the record that was not presented to the trial court. This is plainly improper before this appellate court.

**CONCLUSION**

Therefore, for the foregoing reasons, Respondents respectfully request that the Court of Appeals: (a) deny Appellant's instant Motion; (b) require Appellant to fulfill his duty to prepare and serve a proper Record on Appeal that includes *all* of the information that Respondents have designated; and (c) decide this appeal based solely on the proper record comprised of documents presented to and considered by the Court below.

November 27, 2019

BARNWELL WHALEY PATTERSON &  
HELMS, LLC

By: 

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APPEAL FROM BEAUFORT COUNTY  
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Hon. Marvin H. Dukes, III, Master in Equity

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Steven Craig Molloy and Island Group, Inc., d/b/a Carolina  
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Of which Steven Craig Molloy is the ..... Appellant

v.

Beaufort County; Gary Kubic, Individually, and as Beaufort  
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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 Return to Appellant's Motion to Enter New Information and  
Motion to Award Demand and Judgment to Appellant on the above-referenced Appellant by  
depositing a copy of it in the United States Mail, postage prepaid, on November 27, 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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**REPLY TO SOUTH CAROLINA OFFICE**

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

November 27, 2019

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The Honorable Jenny Abbott Kitchings  
Clerk of Court, S.C. Court of Appeals  
P.O. 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

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of Respondents' Return to Motion to Enter New Information Directly Related and Return to Motion to Award Demand and Judgment to Appellant in this matter. Please file the original and return a clocked copy to me in the envelope provided. By copy of this letter, I am serving a copy of the Return upon *pro se* Appellant.

Sincerely,



John W. Fletcher

JWF/jgc  
Enclosures

cc: Steven Craig Molloy, *pro se* Appellant

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

**BARNWELL  
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