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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  
FEB 10 2020  
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

**THIRD 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 Third Motion to Strike Record on Appeal:

1. This is an appeal from an order of the trial court granting summary judgment for Respondents as to all claims asserted by the plaintiffs' (including Appellant Steven Craig Molloy).

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. 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).*

5. Under South Carolina Rule of Appellate Procedure 210(a), Appellant was required to serve the Record on Appeal (including all materials designated by Respondents) by

May 24, 2019. Respondents' counsel did not receive a Record on Appeal until June 13, 2019 ("First Record on Appeal").

6. Appellant's First Record on Appeal did not comply with the Rules of Appellate Procedure, in a number of respects. On July 2, 2019, Respondent filed its first Motion to Strike Record on Appeal, because of the deficiencies in the First Record on Appeal.

7. On or about August 22, 2019, Respondents received a new version of the Record on Appeal ("Second Record on Appeal"). While the Second Record on Appeal corrected *some* of the deficiencies of the First Record on Appeal, it was still materially deficient, in part because it did not include numerous documents that Respondents properly identified in their Designation of Matter for Inclusion in the Record on Appeal.

8. As a result, on or about September 10, 2019, Respondents filed their Second Motion to Strike Record on Appeal.

9. On or about December 20, 2019, this Court granted Respondents' First and Second Motion to Strike Record on Appeal, stating (emphasis added):

Within thirty days, Appellant shall serve and file an amended record on appeal, which *includes all documents listed by the parties in their designations of matter* and excludes any matter that was not presented to the master in equity. The amended record shall include an index, shall be numbered consecutively beginning with the index, and shall be arranged in the order set forth in Rule 210(c) of the South Carolina Appellate Court Rules.

This Order also granted Appellant 30 days to obtain counsel.

10. On January 17, 2020, Appellant served a document upon counsel for Respondent entitled "Brief of Appellant." However, it appears that this document is actually an attempted Record on Appeal ("Third Record on Appeal") served in response to this Court's December 20, 2019 Order.

11. Unfortunately, the Third Record on Appeal did not comply with the Rules of Appellate Procedure and the December 20, 2019 Order. In part, this Record on Appeal does not contain the following documents that Respondents properly identified for inclusion in the Record on Appeal:

- August 22, 2016 Plaintiffs' Summons and Verified Complaint (including any and all exhibits)
- February 3, 2017 Form 4 Order granting Motion for a More Definite Statement)
- February 15, 2017 Plaintiffs' Amended Verified Complaint and Summons (including any and all exhibits)
- March 1, 2017 Defendants' Answer to Amended Complaint
- March 15, 2017, Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order
- April 6, 2017 Affidavit of Lieutenant Brian Baird in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits)
- April 6, 2017 Affidavit of Shannon Loper in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits)
- April 6, 2017 Affidavit of William Love in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits) -- **The Affidavit is in the Third Record on Appeal, but none of the exhibits.**
- April 7, 2017 Affidavit of Dave Thomas in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits) -- **The Affidavit is in the Third Record on Appeal, but none of the exhibits, except for: (a) the first 5 pages of Ex. A; (b) the first page of Exhibit D; (c) Exhibit H; and (d) Exhibit J (with Appellant's handwriting added.**
- April 10, 2017 Affidavit of Alicia Holland in Opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order (including any and all exhibits)
- April 17, 2017 Form 4 Order Denying Motion for Temporary Injunction and Temporary Restraining Order
- May 2, 2017 Form 4 Order denying Motion for Reconsideration
- July 21, 2017 Defendants' Notice of Motion and Motion for Summary Judgment (including any and all exhibits)
- August 1, 2017 Plaintiffs' Return to Motion for Summary Judgment

- December 4, 2017 Plaintiffs' Motion for Summary Judgment
- February 25, 2018 Plaintiffs' Notice of Motion and Motion to Compel Answers to Discovery and Motion to Amend
- June 6, 2018 Form 4 Order granting leave to file Second Amended Complaint
- June 19, 2018 Defendants' Answer to Plaintiffs' (Second) Amended Verified Complaint
- June 25, 2018 Defendants' Second Supplemental Memorandum in Support of Motion for Summary Judgment (including any and all exhibits)
- December 10, 2018 Plaintiff Steven Craig Molloy's Notice of Appeal (including any and all exhibits)

12. In fact, it appears that Appellant has not even included in the Third Record on Appeal all of the items *he* designated for inclusion in the record.

13. Because Appellant failed to include numerous designated matters in the Second Record on Appeal — including filings, exhibits to affidavits and exhibits to filings — Respondents are unable to timely prepare, serve and file their Final Brief, because there is not a complete Record on Appeal for them to cite.

14. Respondents again seek the Court's assistance and guidance so that either: (a) this appeal will be dismissed; or (b) they may have a sufficient record to file a Final Respondent's Brief.

**CONCLUSION**

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

February 6, 2020

BARNWELL WHALEY PATTERSON &  
HELMS, LLC

By: 

M. Dayes 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***

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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  
County Administrator; Josh Gruber, Individually and as former  
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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 Third 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  
February 6, 2020, 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***



REPLY TO SOUTH CAROLINA OFFICE

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

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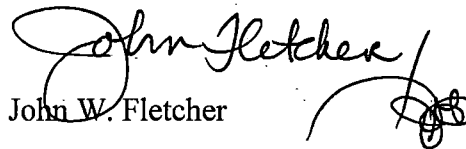
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

RE: Steven Craig Molloy and Island Group, Inc. d/b/a Carolina Cleaning v. Beaufort County; 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' Third 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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[www.barnwell-whaley.com](http://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:  
201 N. 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 1 Charleston SC 29402-0197

1.636  
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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