

**BRIEF OF APPELLANT
MOTION FOR REHEARING**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL BRIEF FROM Craig Molloy and Island Group, Inc.
d/b/a Carolina Cleaning

Beaufort County Court of Common Pleas

Honorable Marvin H. Dukes III, Master in Equity

Lower Court Case No. 2016-CP-07-01825

Appellate Case No. 2018-002170

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APR 13 2020

SC Court of Appeals

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

Plaintiff

Of which Steven Craig Molloy is the

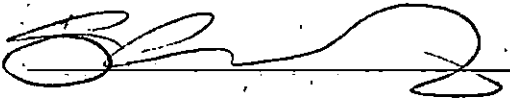
Appellant

v.

Beaufort County Government,
Gary Kubic, Individually, and Beaufort County Administrator;
Josh Gruber, Individually and Former Beaufort County In-House Attorney;
Bryan Hill, Individually and Former Beaufort County Deputy Administrator;
Shannon Loper, Individually and Employee of Beaufort County Parks and Leisure;
Stu Rodman, Finance Chair of Beaufort County Council;
Dave Thomas, Procurement Director, Beaufort County, South Carolina
Beaufort County Disabilities and Special Needs;
Beaufort County DSN Board

Respondents,

April 8, 2020



Steven Craig Molloy, Pro Se
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Appellant

Other Counsel of Record:

John Fletcher, Dawes Cooke
Barnwell Whaley Attorneys
Po Box H Charleston, SC 29402
Beaufort County Attorney office
PO Box 1128 Beaufort SC 29901

INTRODUCTION

Craig Molloy, “Appellant” including Island Group Inc. dba Carolina Cleaning and its shareholders herein, moves this Honorable Court, for a Motion for Consideration, pursuant to South Carolina Court of Appeals, Rule 210, 209, 267, South Carolina Rules of Civil Procedure, the South Carolina Torts Claims Act, and the South Carolina Procurement Statutes in reference to the Order of the Lower Court for Summary Judgment dated November 23, 2018. Appellant is requesting a Rehearing before the South Carolina Court of Appeals based on information provided by Appellants’ to the court about Genuine Issues of Material Facts of the case that was not considered by the courts.

The 2012 inter office County emails [**Exhibits**] show: [1] conversations between County employees acknowledge rigging and price fixing bids in **2012 for and working with** the BC DSN “department” [**also a bidder**] and [2] shows the County’s acknowledgment of conscious intentional violations of their fiduciary responsibility to Appellant’s **2010** awarded contract, signed and entered into with and between Appellant and Beaufort County.

Recent and regular public official reports continue to surface that relate to the material facts in this case which has bearing on the breach of the Appellant’s 2010 contract, and the award of a 2012 contract to the BCDSN “department” to include Beaufort County employees, executives, and Council are at the central issue of this case. Additionally, these public official reports refute the Respondent’s briefs, and sworn testimony submitted in both, the lower court and this Court including evidentiary sworn affidavits and supporting documents that Respondent’s submitted on their Record on Appeal.

The Summary Judgment award and the Respondents briefs do not address [avoid] the material facts presented to the courts, to include their 2012 inter office emails and subsequent related actions.

ARGUMENT FOR REHEARING

The Appellant is informed and believes that Appellant has complied with the South Carolina Court of Appeals Rules 210, 209, 267 as per the court's requests. The Record on Appeal and Supplement Record on Appeal, and the Designation of Matter were modified to the court's specifications. The following arguments have yet to be answered, ruled, or heard by this Honorable court and the lower court of Beaufort County.

MATERIAL FACTS FOR REHEARING

Beaufort County employees conspired to dismantle his 2010 five (5) year contract in order to funnel state and **federal** [emphasis added] monies to a third-party entity the County intentionally branded a County "department". This entity, Beaufort County Disabilities and Special Needs (aka "Beaufort County Disabilities and Special Needs Board" aka "BCDSN") was and is created by state statute as a separate [emphasis added] third party organization (like every other disability board in the state). **By their actions** [emphasis added], Beaufort County employees [Respondents] used their positions to rig and price fix janitorial bids, and violate the County's [and State] anti-competitive practices in secret starting with the 2012 RFP, in order to illicitly redirect monies to the county "department" BCDSN. To accomplish this, Beaufort County, through their actions, secretly and systematically dismantled the Appellant's 2010 five

(5) year janitorial signed contract, behind closed doors, keeping the Appellant unaware of this breach to his contract. [See December 2012 emails from Dave Thomas] [emphasis added].

First, Beaufort County Council eliminated the South Carolina Governor's mandatory and statutory oversight by illegally changing a key county ordinance §§ 46-92 in 2011, signed by then Council Chairman Weston Newton (first cousin to the lower court Judge Marvin Dukes). [Motion to Recuse; Order, Denied] This was done so Beaufort County could take control of the BC DSN "department" and Board and funding, all violations. This was after the defendants, in their own words, "reduce(d) all outside contracts" by "10 percent" to alleviate the budget deficit (emphasis added) [see internal emails of Beaufort County employees]. Then, in 2012, the County internally rigged janitorial bids to favor this county "department" BCDSN by [1] changing the 2012 RFP bid specifications only for and to favor BCDSN [2] allowing BCDSN to submit their 2012 RFP three (3) months after the bid formally closed [3] they covertly siphoned off previously contracted buildings from the Appellant's 2010 separate contract and gave them to the county "department" BCDSN without proper notices or considerations per contract [4] while neglecting all of their "fiduciary responsibilities" to the 2010 contract with Appellant that the County had already previously signed and awarded to the Appellant. [see internal emails between Dave Thomas and fellow employees] [emphasis added] [5] 2012 inter office email Correspondence: Thomas, Roseneau, Holland, DeMont to avoid protest by Appellant: Thomas speaking "the 2010 contract was based on a total number of buildings, with this in mind, Carolina Cleaning [Appellant] will come back with a request for an overall increase when he receives the change order to drop all gyms. Carolina Cleaning should be notified with a meeting and in writing. [Not Done, No Action Taken, Appellant rec'd change order months later]

[**Breach of Contract, unfair trade**] and Thomas speaking: “Most importantly if the scope of work from the original contract was changed by PALS, [working with BC DSN, County Procurement, Executives, Finance, Parks, and Facilities Directors], in order to drop the price, Carolina Cleaning may protest” Carolina Cleaning was never given a chance to meet the pricing change, change orders not provided timely, no contract change considerations given to Appellant [**Breach of Contract, unfair Trade**] And Thomas speaking: “We must remember, the Bluffton Gym was not part of the original 2012 RFP, and we need to proceed fairly in order to avoid a legitimate protest”. Thomas, as the County Procurement Director and by definition of his position has / is the fiduciary responsible to offer Appellant [any contractor] the protest process, rights, procedures and hearing [**Not done**], which Thomas intentionally avoided and promoted his colleagues do the same.

Beaufort County employee’s actions unconscionably and unlawfully caused irreparable injury to the Appellant [Carolina Cleaning]. These were genuine issues of material fact that were never addressed by the lower court.

Further, the defendants willfully interfered with the normal contract protest procedure additionally by withholding FOIA documents that detailed their scheme (another violation). Thomas, a willing participant failed in his duties as the Procurement Professional and allowed “a” bidder, the BCDSN “department” to dictate the job specifications of only their own 2012 RFP / bid. A clear and obvious procurement violation by Thomas who continued to violate procurement by assisting the BCDSN “department” with removing specifications to lower the cost “only for” the BCDSN “department”, and not given to the other bidders for the 2012 RFP

and holding “planning meetings” to conspire with the BC DSN Director, Assistant Director and other defendants, including County Executives.

The Appellant could not have known Beaufort County employees rigged bids against him until receipt of these internal Beaufort County emails by Dave Thomas, Procurement Director, Alicia Holland, Finance Director, and others. [emphasis added]. *South Carolina Torts Claim Act, South Carolina Code Ann. §§ 15-78-110*, governs Statute of Limitations, **“should know that he might have a potential claim”**. [emphasis added]. *Joubert v. South Carolina Dept of Soc. Servs., 341 S.C. 176, 190, 534, S.E.2d 1,8 (Ct pp. 2000)*. *Subject to the Discovery Rule. The Statute of Limitations begins to run when a cause of action reasonably ought to be discovered. [August, September 2015: FOIA emails: bid rigging] [included in the Record on Appeal]. Therefore, Appellant clearly met the Statute of Limitation threshold.*

The 2012 internal emails between the defendants proved they were intentionally rigging bids and discussed in their emails their unauthorized, unlawful process amongst themselves and included BCDSN “a bidder” only, with the strategy and intention being the redirection of funds to this BCDSN “department” for the purpose of enhancing Beaufort County’s failing budget, where the County illicitly, illegally and without authority [per the Governor’s office and SCAG] and gained control. Beaufort County’s actions directly impacted the **Appellant’s business, resulting in a total loss.** [emphasis added].

During the pendency of this appeal, some of these same county employees have given public (recent and regular) official reports and presentations where they unveiled their newly created designation of BCDSN from a “department” to a “Public Procurement Unit” pursuant to Beaufort County ordinance Sec. 2-552. Intergovernmental Relations. (d):

Cooperative use of supplies or services. The purchasing director may enter into an agreement, independent of the requirements of this division, with any public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties. BC DSN was not a public procurement unit during these violations and only changed after the fact, after the damages and this claim filed.

Thomas’s remarks on June 17, 2019 official report contradict his own **sworn affidavit**, his words and other Beaufort County employees **sworn affidavits**, which Attorney Dawes Cooke testified to be true and accurate to the lower court on March 23, 2018 to the Honorable Judge Dukes. Respondents have continued to **publicly** contradict what they pled in their brief to this Court March 22, 2019. Further, this Court will take judicial notice that Thomas’s **sworn affidavit** and that of Alicia Holland, the county’s Finance Director, contains additional contradictory statements. For example, Thomas claimed the “departments” BCDSN’s disabled consumers (the ones compelled to perform the rigged janitorial contracts) were **county employees** [emphasis added], yet Holland claimed these same consumers were **W-9 subcontractors** [emphasis added]. ***Material Facts in Evidence. But the lower court stated [no material facts were left to be learned], thus awarding Summary Judgment to the Defendants*** on November 23, 2018.

The egregious, unconscionable, and unlawful actions taken by Beaufort County and by the “department” BCDSN, is the basis for this lawsuit. Repeatedly, Beaufort County employees lied to the Appellant and conspired against him during their contractual, fiduciary relationship and thus breached their contract with him, all while claiming they could terminate for no reason at all and avoid in total their responsibilities the contract they signed with Appellant. The contractual agreement between the Appellant and the Respondents does not allow for the action of bid-rigging, unfair trade, collusion with other bidders, conspiracy, and is not one of the reasons for terminating his 2010 five (5) year contract. Procurement Director Thomas along with William Love, BCDSN’s Executive Director, states in both their sworn affidavits: “**DSN has never engaged in any collusive conduct or bid-rigging**” [emphasis added]. Yet the actions taken by Beaufort County employees named and detailed in their 2012 inter office emails refute these sworn statements. While the Appellant was trying to save his janitorial business from collapsing, Beaufort County employees were covertly dismantling his 2010 contract *building by building*. Ironically, the underhanded, deceptive actions Beaufort County employees used against the Appellant are remarkably similar to the ones they have employed in their pleadings to both the lower court and this honorable Court.

CONCLUSION

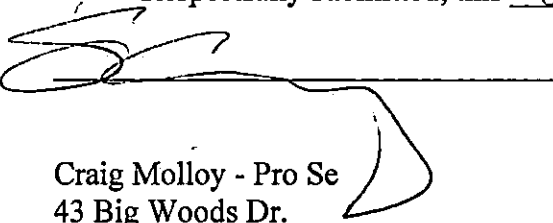
Based on the foregoing, the Appellant prays the Appeals Court remand the dismissal of this matter and remand this matter to the lower court for introduction of the new and contradictory information surfaced while this case was on appeal, and allow the new information that has additional and direct bearing on issues of material fact not considered by the lower court or allowed by this court. Further, this newly revealed information is in direct contradiction to

what the Respondents swore to in their affidavits, their briefs and before both the lower court and this honorable court.

The lower court erred in awarding Summary Judgment for the Defendants. The exhibits (2012) county emails have never been addressed and avoided by the Defendants and show genuine issue of material facts exist [emphasis added] and are yet to be learned.

WHEREFORE, The Appellant prays the Court of Appeals will [1] reverse and remand the decision to dismiss where no hearing or ruling on material facts entered as evidence has been heard or ruled on by this Honorable Court. [2] Appellant prays this court grants this Petition, finds and awards Judgment in favor of the Appellant and orders such other relief as is just and proper. [3] Appellant prays that this Honorable Court remand to lower court and order Respondents to sit for under oath depositions.

Respectfully submitted, this 8 the day of April, 2020.



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Authorities ii

AUTHORITIES

SC Code §§ 22-3-540; §§ 22-3-10; and §§ 22-3-20

SC Code Ann. §§ 15-78-110

SCRCP Rule 26 (b) (1)

BC Ordinance §§ 46-92

Joubert v. South Carolina Dept of Soc. Servs., 341 S.C. 176, 190, 534, S.E.2d 1,8 (Ct pp. 2000)

Hamilton v. Fulgam, 385 S.C. 632, 637, 686 S.E. 2d 683 685 (2009)

Coon v Coon, 364 S.C. 563, 566, 614 S.E.2d 616, 617. (2005)

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**FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM BEAUFORT COUNTY
Judge Marvin Dukes – Master In Equity

Lower Court Case No. 2016-CP070182

Appeal 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

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SC Court of Appeals

v.

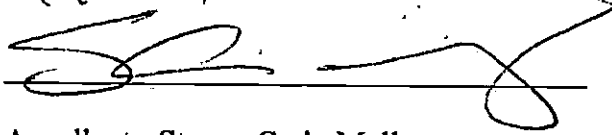
Beaufort County Government,
Gary Kubic, Individually, and as Beaufort County Administrator;
Josh Gruber, Individually and as former Beaufort County In-House Attorney;
Bryan Hill, Individually and as former Beaufort County Deputy Administrator;
Shannon Loper, Individually and as employee of the Beaufort County Parks and
Leisure; Stu Rodman, as Finance Chair of Beaufort County Council;
Dave Thomas, Procurement Director Beaufort County, SC.
Beaufort County Disabilities and Special Needs;
Beaufort County DSN Board

Respondents,

PROOF OF SERVICE

I certify that I have served this Motion to Reconsider / Rehearing of dismissal
And letter to Clerk on Beaufort County and the other named Defendants by
depositing a copy in the US Mail on the date listed here to the Attorneys' of
record, John P. Fletcher, Dawes Cooke, Barnwell Whaley Attorney's PO Box H,
Charleston, SC 29402 and
Beaufort County Attorney's PO Box 1128, Beaufort County, SC. 29901

4/8/2020



Appellant - Steven Craig Molloy

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4/8/2020

South Carolina Court of Appeals
The Honorable Clerk Ms. Jenny Abbott Kitchings
PO Box 11629
Columbia SC 29211

RE: Appeals No. # 2018 - 002170
Molloy Vs. Beaufort County

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SC Court of Appeals

Ms. Kitchings,

I am writing to you to point to serious events related directly to material facts that exist in this case and I believe, support a reconsideration of the recent dismissal order, where no hearing or ruling has taken place.

During the pendency of this matter, some of these same county employees [defendants] gave official public reports on June 10 and 17, 2019 about the Beaufort County BCDSN "department" to Beaufort County Council, where five new members now sit. The new Council continues to be presented questions relating the County relationship to BCDSN including, awards of contracts, it's workforce, it's inception, structure, management and ongoing operations.

Questions continue to surface, some new and some stem from material facts in this case and shed light on the many conflicts by County employees (defendants) and their attorney's.

One example; June 10 and 17, 2019 televised official reports where Procurement Director Dave Thomas (defendant) and County Attorney Tom Keaveny were questioned by Council about the BCDSN and County relationship, the award of janitorial contracts, the inception and operations of BCDSN where conflicting statements tell a very different story, including by the Governor and supported by the SCAG opinions that support a different story than the Defendants and their Attorneys.

This providing many questions and confusion for our new County leaders when information from defendants conflicts their written sworn affidavits and other supporting documents.

An example from new Councilman Michael Covert said, in part, to Thomas:

Covert: "I'm starting to see something. Is BCDSN a department? How do we contract to a Department? You can't do that...you're either a department or a vendor?"

Thomas accompanied by County Attorney Keaveny: "That would be a legal question" and admitting "BCDSN is a contractor" a contradiction to his and others Sworn Affidavit.

Thomas: "That would be a legal question".

Thomas also conflicts his sworn statements about the employees of BCDSN being "contractors" or "employees" and the inception of the BCDSN program by [illegal] change of ordinance.

(Questions unanswered by the lower and this court) And all Respondents' **refused to show** for two separately scheduled discovery sessions. Motion to Compel ignored by lower court, (SCRCP Rule 26 (b)(1)).

In the March 23, 2018 Lower Court hearing the County's outside Counsel, Mr. Cooke attested that BCDSN was "one with Beaufort County" and the "workforce is County employees", both untrue and conflicts Defendants sworn affidavits, and televised reports, and documents. County Attorneys Gruber and Keaveny were present in March 23, 2018 Court, however later to Council Attorney Keaveny reports to Council the completely opposite.

I requested an explanation from County's outside counsel (Mr. Fletcher) to clarify the conflicting reports Vs. their sworn statements and requested a timeframe of their knowledge of the differing statements, Mr. Fletcher has refused to answer or provide explanation, however on this same phone call Mr. Fletcher did invite me to send a demand for settlement, which I have obliged and I'm waiting a response.

It should be noted since the inception of this matter (2) two County Attorneys have been relieved of their official County duties and (1) long standing Councilmen has been forced to step down his Chairmanship while all past Administrators and Executives are no longer employed in County positions, A coincidence?

The new Council is attempting to manage and make decisions regarding Beaufort County, who, are seeking facts, however have only been given conflicting information from the County employees [defendants] Perhaps seeing continued issues arise, I receive additional requests for a demand, which of course, I have provided and I am waiting a response. **To dismiss at this juncture would severely prejudice me.**

If this Honorable Court does not see fit to dismiss their decision to dismiss, I am requesting the case be reinstated.

I hope the Appeals Court can see [1] reverse the dismissal and award Judgement to the Appellant [2] demand defendants respond to the demand they requested [4] require depositions of the defendants.

Thank you for your consideration,

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EXPECTED DELIVERY DAY: 04/10/20
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COLUMBIA SC 29211-1629
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SC Court of Appeals
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Columbia SC 29211
Attn: Honorable Ms. Jany
Abbott Kitchings



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