

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	CASE NUMBER 2016-CP-07-2483
PETER MICHAEL BUONAIUTO, SR.,)	
INDIVIDUALLY, AND ON BEHALF)	
OF ALL OTHERS SIMILARLY SITUATED,)	
)	
Plaintiff,)	ORDER GRANTING SUMMARY
)	JUDGMENT
vs.)	RECEIVED
)	Apr 22 2020
THE TOWN OF HILTON HEAD ISLAND,)	
SOUTH CAROLINA,)	
)	
Defendant.)	SC Court of Appeals

This case is before the undersigned on cross Motions for Summary Judgment filed by The Town of Hilton Head Island, South Carolina (hereinafter, the “Town”), on September 10, 2019, and by Peter Michael Buonaiuto, Sr. (hereinafter, “Buonaiuto”), on January 31, 2020. The cross Motions for Summary Judgment were based on the pleadings, the Motions of the parties; the affidavits of William G. Miles, Stephen G. Riley and John M. Troyer served with the Town’s Motion; and, the memoranda of the parties. The cross Motions for Summary Judgment were heard on February 10, 2020, at the Beaufort County Courthouse. Present were Taylor M. Smith, IV, representing Buonaiuto, and Curtis L. Coltrane, representing the Town.

SUMMARY JUDGMENT STANDARD

Under Rule 56, SCRCP, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.¹ Under Rule 56, SCRCP, summary judgment must be granted:

¹ *Café Associates Limited v. Gengross*, 305 S.C. 6, 406 S.E.2d 162 (1991)

[I]f 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.

In determining whether any material issue of fact exists, the evidence and all inferences that can be drawn from the evidence must be viewed in the light most favorable to the non-moving party, or the party resisting the motion.² The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact-finder.³ For purposes of summary judgment, an issue is ‘material’ if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.⁴ Once the moving party has met its burden of demonstrating that no genuine issue of material fact exists, a party defeats summary judgment by affirmatively demonstrating the presence of a genuine issue of material fact. Rule 56(e), SCRCF, states a party may not rest upon the mere allegations or denials of his pleadings.⁵

CLAIMS AND DEFENSES OF THE PARTIES

In his Complaint, Buonaiuto alleges these facts:

1. The Town is a political subdivision of the State of South Carolina.
2. The Town is the recipient of “Accommodations Tax” revenue that is levied and collected by the State of South Carolina, which is credited to the Town, and which must be allocated by the Town under the text of S. C. Code Ann. § 6-4-10(3)(Supp. 2019),

² *Redwend Limited Partnership v. Edwards*, 354 S.C. 58, 581 S.E.2d 496 (Ct.App., 2003)

³ *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003).

⁴ *P.P.G. Industries, Inc. v. Orangeburg Paint & Decorating Center, Inc.*, 297 S.C. 176, 375 S.E.2d 331 (Ct. App., 1988).

⁵ *Hoard ex rel. Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010).

which reads, in part:

- (3) Thirty percent of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. To manage and direct the expenditure of these tourism promotion funds, the municipality or county shall select one or more organizations, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program (hereinafter, the “thirty percent fund”).
3. Under S. C. Code Ann. § 11-35-10, *et seq.* (Supp. 2019), the Town is required to adopt a procurement code.
4. The Town has adopted a procurement code, codified as § 11-1-111., *et seq.*, *Municipal Code of The Town of Hilton Head Island, South Carolina, 1983.*
5. In November of 2015, the Town entered into a contract with the Hilton Head Island-Bluffton Chamber of Commerce, Inc. (hereinafter, the “Chamber”), styled “Contract for Professional Services,” related to the designation of the Chamber as the recipient of the thirty per cent fund.⁶
6. The Town did not publicly bid the contract between the Town and the Chamber (hereinafter, the “December 1, 2015, Contract”).

Based on these allegations, Buonaiuto alleged a single cause of action, seeking a declaratory judgment that the Town acted in violation of §11-1-111, *et seq.*, *The Municipal Code of the Town of Hilton Head Island, 1983*, when it entered into the December 1, 2015, Contract with the Chamber.

ANSWER OF THE TOWN

In its Answer, the Town denied the material allegations of the Complaint and

⁶ The contract is dated December 1, 2015. *See*: Complaint, paragraph 16, Exhibit “A” to

asserted other affirmative defenses not relevant to the Motions.

THE MOTION FOR SUMMARY JUDGMENT OF THE TOWN

In its Motion for Summary Judgment, the Town argues that Buonaiuto’s claim fails because neither the Town’s allocation of the thirty per cent fund as required by S. C. Code Ann. § 6-4-10(3)(Supp. 2019), nor the December 1, 2015, Contract are “procurement” as defined in §11-1-111, *et seq.*, *The Municipal Code of the Town of Hilton Head Island*, 1983.

THE MOTION FOR SUMMARY JUDGMENT OF BUONAIUTO

In his Motion for Summary Judgment, Buonaiuto argues that the December 1, 2015, Contract is styled as a “Contract for Professional Services,” and that it sets out requirements for “services” to be provided by the Chamber to the Town. As a result, Buonaiuto argues that compliance with §1-1-111, *et seq.*, *The Municipal Code of the Town of Hilton Head Island*, 1983, was required.

APPLICABLE LAW RELATING TO STATUTORY INTERPRETATION

In South Carolina, where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.⁷ In interpreting a statute, words must be given their plain and ordinary meaning with resort to subtle or forced construction to limit or expand the statute’s operation.⁸

Complaint, Answer, paragraph 12.

⁷ *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

⁸ *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Paschal v. State Election Commission*, 317 S.C. 434, 454 S.E.2d 890 (1995).

STATUTES GOVERNING THE ALLOCATION AND
EXPENDITURE OF ACCOMMODATIONS TAXES

The “Accommodations Tax” is imposed by S. C. Code Ann. § 12-36-920(A)(Supp. 2019), which reads, in relevant part:

A sales tax equal to seven percent is imposed on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration.

The Accommodations Tax is composed of three separate taxes that are described in S. C. Code Ann. 12-36-2630 (Supp. 2019). Material to this case is the two percent “Local Accommodations Tax” described in S. C. Code Ann. 12-36-2630(3)(Supp. 2019), as follows:

a two percent local accommodations tax, which must be credited to the political subdivisions of the State in accordance with Chapter 4, Title 6. The proceeds of this tax, less the department's actual increase in the cost of administration and the expenses of the Tourism Expenditure Review Committee established pursuant to Section 6-4-35, must be remitted quarterly to the municipality or the county in which it is collected.

The allocation and expenditure of the “Local Accommodations Tax” is governed by S. C. Code Ann. § 6-4-10 (Supp. 2019). Material to this case is S. C. Code Ann. § 6-4-10(3)(Supp. 2019), which reads:

Thirty percent of the balance must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. To manage and direct the expenditure of these tourism promotion funds, the municipality or county shall select one or more organizations, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program. If

no organization exists, the municipality or county shall create an organization with the same membership standard in Section 6-4-25. To be eligible for selection the organization must be organized as a nonprofit organization and shall demonstrate to the municipality or county that it has an existing, ongoing tourism promotion program or that it can develop an effective tourism promotion program. Immediately upon an allocation to the special fund, a municipality or county shall distribute the tourism promotion funds to the organizations selected or created to receive them. Before the beginning of each fiscal year, an organization receiving funds from the accommodations tax from a municipality or county shall submit for approval a budget of planned expenditures. At the end of each fiscal year, an organization receiving funds shall render an accounting of the expenditure to the municipality or county which distributed them. Fees allocated pursuant to this subsection must not be used to pledge as security for bonds and to retire bonds. Also, fees allocated pursuant to this subsection must be allocated to a special fund and used only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity, and not used to pledge as security for bonds and to retire bonds.

THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA,
PROCUREMENT CODE

The procurement code of the Town governs “public purchasing” of “supplies, services and construction” by the Town. § 11-1-112, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), reads:

The purpose of this chapter is to provide for the fair and equitable treatment of all purposes involved in public purchasing by the town, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

§ 11-1-113, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), reads, in relevant part:

This chapter applies to contracts for the procurement of supplies, services, and construction, entered into by this town after the effective date of this chapter unless the parties agree to its application to contracts entered into

prior to the effective date.

FINDINGS AND CONCLUSIONS

1. Under S. C. Code Ann. 12-36-2630 (Supp. 2019), the Town is credited the two percent “Local Accommodations Tax.”
2. The “Local Accommodations Tax” must be allocated by the Town as directed in S. C. Code Ann. § 6-4-10 (Supp. 2019).
3. Under S. C. Code Ann. § 6-4-10(3)(Supp. 2019), the Town must: “select one or more organizations, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program” to “manage and direct the expenditure of these tourism promotion funds,” and the recipient of the thirty percent fund must use it “only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity.”⁹
4. The Chamber has been selected by the Town as the recipient of the thirty percent fund in compliance with S. C. Code Ann. §6-4-10(3)(Supp. 2019).
5. The Town and the Chamber executed the December 1, 2015 Contract which is styled “Contract for Professional Services.”¹⁰
6. Buonaiuto’s argument that the style of the December 1, 2015, Contract, determines its effect and meaning is contrary to the law of South Carolina. The title

⁹ S. C. Code Ann. § 6-4-10(3)(Supp. 2019), is not ambiguous, and the text of the statute must be given its plain and ordinary meaning.

¹⁰ See: Complaint, paragraph 16, Exhibit “A” to Complaint, Answer, paragraph 12; Affidavit of Stephen G. Riley, paragraph 12; Affidavit of William G. Miles, paragraph 13; Affidavit of John M. Troyer, paragraph 8.

given to a contract and the descriptive terms used in it do not determine the meaning.¹¹ Rather, the text of the contract and what it actually calls for determines the meaning.¹² The title of the December 1,2015, Contract, does not determine the meaning of the contract, and neither limits nor expands what the December 1, 2015, Contract actually does.¹³

7. §1-1-111, *et seq.*, *The Municipal Code of the Town of Hilton Head Island*, 1983, is applicable only to “public purchasing” of “supplies, services and construction” by the Town. § 11-1-113, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), states that the Town’s procurement code applies to contracts for the procurement of “supplies, services, and construction” by the Town.¹⁴

8. The only evidence is that under the December 1,2015, Contract, the Chamber

¹¹ *Bolt v. Ligon*, 144 S.C. 218, 142 S.E. 504, 505 (1928). *See Also: Greenwood Mfg. Co. v. Worley*, 222 S.C. 156, 161, 71 S.E.2d 889, 891 (1952), in which the South Carolina Supreme Court held:

The primary test as to the character of the contract is the intention of the parties to be gathered from the whole scope and effect of the language used; and mere verbal formulas, if inconsistent with the real intention, are to be disregard[ed]. 12 Am.Jur., § 242, page 776; 46 Am.Jur., § 17, page 211.

¹² *Thompson v. Ford Motor Co.*, 200 S.C. 393, 21 S.E.2d 34, 47 (1942), in which the South Carolina Supreme Court that the name given by parties (in this case, an alleged agent), did not control what the text of the contact actually did:

It is not the descriptive name employed, but the nature of the business and the extent of authority given and exercised, which is determinative.

¹³ *See Also: In re Carolina Utilities Supply Company, Inc.*, 118 B.R. 412, 415 (Bankr. D.S.C. 1990),

Courts will not be controlled by the nomenclature the parties apply to their relationship. (citation omitted) Neither the form of a contract nor the name given it by the parties controls its interpretation. In determining the real character of a contract courts will always look to its purpose, rather than to the name given it by the parties. * * * The proper construction of a contract is not dependent upon any name given it by the parties, or upon any one provision, but upon the entire body of the contract and its legal effect as a whole.

¹⁴ § 11-1-113, *Municipal Code of The Town of Hilton Head Island, South Carolina* (1983), is not ambiguous, and the text of the ordinance must be given its plain and ordinary meaning.

does not deliver any supplies, services or construction to the Town.¹⁵

9. Rather, the December 1, 2015, Contract sets out reporting requirements to be followed by the Chamber to demonstrate its compliance with S. C. Code Ann. 6-4-10(3)(Supp. 2019).¹⁶

10. S. C. Code Ann. § 6-4-10(3)(Supp. 2019), restricts the use of the thirty percent fund, and the restricted uses do not include the delivery of any supplies, services or construction to the Town.¹⁷ By the plain language of the statute, the Town: “. . . shall distribute the tourism promotion funds to the organization selected or created to receive them.” The organization to which funds are allocated must use the fund: “. . . only for advertising and promotion of tourism to develop and increase tourist attendance through the generation of publicity. . .,” and not for any other purpose.¹⁸

11. The selection of the organization to manage the thirty percent fund is not the procurement of services, supplies, or construction by the Town. Rather, it is the fulfillment of the statutory mandate imposed on the Town to allocate the thirty percent fund. The Town must: “. . .select one or more organizations, such as a chamber of commerce, visitor and convention bureau, or regional tourism commission, which has an existing, ongoing tourist promotion program;” and, to: “immediately . . . distribute

¹⁵ See: Affidavit of William G. Miles, paragraph 14; Affidavit of John M. Troyer, paragraph 9.

¹⁶ See: Affidavit of William G. Miles, paragraph 14; Affidavit of Stephen G. Riley, paragraph 12; Affidavit of John M. Troyer, paragraph 9.

¹⁷ See: S. C. Code Ann. 6-4-10(3)(Supp. 2019); Affidavit of William G. Miles, paragraph 8; Affidavit of Stephen G. Riley, paragraph 4, 9; and, Affidavit of John M. Troyer, paragraph 7.

¹⁸ Because S. C. Code Ann. § 6-4-10(3)(Supp. 2019), restricts the use of Local Accommodations Tax funds, and because the restricted uses do not include the delivery of any supplies, services or construction to the Town, the use of any Local Accommodations Tax funds for the delivery of any supplies, services or construction to the Town would violate the statute.

the tourism promotion funds to the organizations selected or created to receive them.”¹⁹

12. In *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*,²⁰ the South Carolina Supreme Court considered whether the allocation of the thirty percent fund to the Chamber made it subject to the Freedom of Information Act.²¹ The South Carolina Supreme Court held that it did not, ruling that the allocation and expenditure of the thirty percent fund is governed by a specific statute, and when a specific statute covers a subject (i. e., the Accommodations Tax statute), general statutes (such as the Freedom of Information Act) do not apply.²²

13. The argument made by Buonaiuto is indistinguishable from the argument made in *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce, supra*. The allocation and expenditure of the thirty percent fund is governed by S.C. Code Ann. § 6-4-10(3)(Supp.2019), which is a specific statute. The procurement code of The Town of Hilton Head Island, South Carolina, is a general ordinance governing the public purchasing of supplies, services and construction by the Town, and is a general ordinance. Under *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce, supra*, the Town’s procurement code has no

¹⁹ S. C. Code Ann. § 6-4-10(3)(Supp. 2019).

²⁰ *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 814 S.E.2d 513 (2018), *reh’g denied* (June 26, 2018).

²¹ S. C. Code Ann. § 30-4-10, *et seq.* (Supp. 2019).

²² Specifically, the Supreme Court held:

FOIA is a general statute; the A-Tax statute is a specific statute. “Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (citation omitted).

application to the allocation and expenditure of the thirty percent fund.²³

CONCLUSION

Because:

- (1) the allocation and expenditure of the thirty percent fund is not procurement, but rather is the fulfilment of the duties imposed by S. C. Code Ann. § 6-4-10(3)(Supp. 2019), on both The Town of Hilton Head Island, South Carolina, and The Hilton Head Island-Bluffton Chamber of Commerce, Inc.; and,
- (2) the only evidence in the record is that The Hilton Head Island-Bluffton Chamber of Commerce, Inc., does not deliver any supplies, services or construction to The Town of Hilton Head Island, South Carolina, under the terms of the December 1, 2015, Contract; and,
- (3) under S. C. Code Ann. § 6-4-10(3)(Supp. 2019), the use of the thirty percent fund for the delivery of supplies, services or construction using accommodations tax funds is prohibited; and,
- (4) the South Carolina Supreme Court has ruled that the allocation and expenditure of the thirty percent fund is governed by a specific statute, and that general statutes have no application to it;

the claim of Peter Michael Buonaiuto, Sr., fails, and the Town of Hilton Head Island,

Id., 814 S.E. 2d at p. 518.

²³ In his Memorandum filed on February 7, 2020, Buonaiuto relies on an opinion of the South Carolina Attorney General [June 1, 2005, John M. Tolar, Esq., 2005 WL 1609298 (S.C.A.G.)]. This opinion addresses a different question from that presented by this case. In the June 1, 2005, Opinion, the Attorney General opined that recipients of ATAX funds are required to comply with a local government's procurement code in the recipient's expenditure of the funds. That is not the question presented by Buonaiuto in this case., and the Attorney General's opinion appears to conflict with the ruling in *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce, supra*.

South Carolina, is entitled to summary judgment.

Accordingly, it is Ordered that the Motion for Summary Judgment of Peter Michael Buonaiuto, Sr., is denied, and the Motion for Summary Judgment of The Town of Hilton Head Island, South Carolina, is granted.

IT IS SO ORDERED.

(Signature on Following Page)



Beaufort Common Pleas

Case Caption: Peter Michael Buonaiuto Sr VS Hilton Head Island Town Of

Case Number: 2016CP0702483

Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069