

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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
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

RETURN TO APPELLANT'S MOTION FOR STAY

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John W. Fletcher, Esq.
BARNWELL WHALEY PATTERSON &
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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 for Stay:

INTRODUCTION

This is an appeal from a November 27, 2018 order of the trial court granting summary judgment in favor of Respondents as to all claims asserted by the plaintiffs below (including Appellant Steven Craig Molloy ("Mr. Molloy" or "Appellant")). The *only* Appellant in this appeal is Mr. Molloy. None of the corporate defendants — against whom the trial court entered summary judgment — appealed from the entry of summary judgment against them. Mr. Molloy is appearing *pro se* and, as a non-lawyer, is unable to represent any corporate entity in this Court.

After Mr. Molloy filed his Initial Appellant's Brief, on or about March 22, 2019, Respondents filed their Initial Respondents' Brief and Designation of Matter for Inclusion in the Record on Appeal. On or about April 24, 2019, Appellant Mr. Molloy filed his Initial Reply Brief. 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"). 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.

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

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. In response, on January 17, 2020, Appellant served a document upon counsel for Respondent entitled "Brief of Appellant," was actually an attempted Record on Appeal ("Third Record on Appeal"). Unfortunately, the Third Record on Appeal did not comply with the Rules of Appellate Procedure and the December 20, 2019 Order and did not include all of the items identified by Respondents. In fact, it appears that Appellant did not even include all of the items *he* designated for inclusion. Because Appellant Mr. Molloy did not include all designated matters (including filings and their exhibits), Respondents were unable to prepare their Final Brief. Respondents were forced to again seek the Court's assistance and guidance. So, on February 10, 2020, Respondents filed their Third Motion to Strike Record on Appeal. On or about March 16, 2020 (months after the deadline in this Court's December 20, 2019 Order), Appellant Mr. Molloy filed a "Supplement to Appellant's Record on Appeal" ("Fourth Record on Appeal").¹

On March 27, 2020, this Court entered an Order dismissing Appellant Mr. Molloy's appeal (the "Dismissal Order"):

¹ The Fourth Record on Appeal was much better than Appellant Mr. Molloy's prior efforts at compiling the Record on Appeal. It still had some deficiencies. One of these was that Mr. Molloy included a nearly five-page supplemental argument that was not included in his Initial Briefs and was, as a result, improper.

Appellant has filed an amended record on appeal that still does not include all matters designated by both parties. Because Appellant has failed to comply with this court's December 20, 2019 order and Rule 210 of the South Carolina Appellate Court Rules, this appeal is dismissed. The remittitur will be sent as required by Rule 221, SCACR.

On or about April 8, 2020, Appellant Mr. Molloy served a Motion for Rehearing, which sought relief from the Dismissal Order. Appellant devotes the vast majority of the Motion for Rehearing to rehashing the arguments on the merits, which he had made in his Initial Briefs. In addition, Appellant relies on evidence that was never presented to the trial court and that could not properly be included in the Record on Appeal. This Motion for Rehearing remains pending before this Court. On June 1, 2020, this Court entered an order as follows:

This appeal was dismissed due to Appellant's failure to comply with this court's December 20, 2019 order requiring an amended record on appeal that included all matters designated by both parties. Appellant has filed a petition for rehearing. Within thirty days of the date of this order, Appellant shall serve and file an amended record on appeal that includes all documents listed in both Appellant's and Respondents' designation of matter. This court will act on Appellant's petition for rehearing upon receipt of the corrected record on appeal or the expiration of thirty days.

(See June 1, 2020 Order, at 1).

In addition to his Motion for Rehearing, on May 25, 2020, Appellant filed the instant "Motion for Stay," which seeks relief under Rule 60(b) from the grant of summary judgment against him. For the reasons that follow, the Court should deny Appellant's Motion for Stay.

ARGUMENTS

Initially, Respondents note that this Court is not authorized to grant any relief under South Carolina Rule of Civil Procedure 60(b); instead, that is authority delegated to the trial court. However, "[d]uring the pendency of an appeal, *leave to make the motion* must be obtained from the appellate court." See S.C.R. Civ. P. 60(b) (emphasis added). Respondents will respond to the instant Motion for Stay as if it is a motion seeking leave to file a Rule 60(b) motion in the Court of Common Pleas of Beaufort County, South Carolina.

A. Appellant's Proposed Rule 60 Motion is Untimely

South Carolina Rule of Civil Procedure 60(b) provides for the granting of relief from judgment in rare circumstances:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

In his Motion for Stay, Appellant urges relief from the entry of summary judgment against him because of alleged "fraud" and "newly discovered evidence."

A Rule 60(b) motion must be made "within a reasonable time, and for reasons (1), (2), and (3) not more than *one year after the judgment, order or proceeding was entered or taken.*" See S.C.R. Civ. P. 60(b) (emphasis added). The order granting summary judgment in this matter was entered on November 27, 2018, well over one year ago. As a result, a Rule 60(b) motion would be plainly untimely at this stage of the case and would be futile. Therefore, this Court should not grant Appellant leave to file a Rule 60(b) motion in this matter and should deny any relief under Rule 60(b).

Appellant suggests that a Rule 60(b) motion would be timely because the Motion for Stay was "filed within one year of the new discovered information [June 10 and 17th 2019] public statements to Council in public meetings where Respondents 'accompanied by Counsel' gave reports conflicting their own sworn statements and arguments to the Lower Court." (See Mot. to Stay, at 4). However, Rule 60(b) is plain that the one-year period is calculated not from the date of the discovery of "new" evidence, but from the entry of the order being challenged. It is

beyond doubt that Appellant's Motion for Stay was filed more than a year after the entry of summary judgment against him.

B. Appellant Has Not Set Forth a Proper Potential Basis for Relief Under Rule 60(b).

Even if Appellant's Motion for Stay is timely, the Court should still refuse to grant Appellant leave to seek Rule 60(b) relief, because it is clear from the face of the record that such relief would not be appropriate in this matter. Appellant should not be permitted to pursue his baseless Rule 60(b) motion in the trial court (or in this Court). Therefore, the Court should deny Appellant's Motion for Stay.

Appellant's main argument surrounds statements that he believes relate to the issue of whether the Beaufort County Department of Special Needs is a department of the County or a separate legal entity:

It appears from the lower court order the Court believed that BC DSN was a department of the County. Therefore, Lower Court Judge just found all of Appellant (Plaintiff) arguments baseless. And that bids were not necessary and that the County could choose to do the cleaning in-house at any time. That is not at all true, and it cannot be true in order for BC DSN to receive the federal funding, which it did.

(See Mot. to Stay, at 5 (emphasis omitted)). Even assuming that everything Appellant argues is true, this is not a proper ground for relief from judgment under Rule 60(b).

The order granting summary judgment did not turn in any way on whether the Department of Special Needs was a separate entity from the County. To the contrary, the trial judge correctly held, *inter alia*, that: (a) the County's agreement with the corporate plaintiffs (who are not appellants) allowed for termination; (b) there is no evidence supporting a claim for misconduct in the procurement process, insofar as the corporate plaintiff's would not have obtained the new contract (even if the Department of Special Needs had not made a proposal); (c) none of the plaintiffs pursued their remedies under the County Procurement Code and contracts; (d) the tort claims were time-barred under the South Carolina Tort Claims Act; and (e) the Tort Claims Act barred any claims against the individual defendants. Nothing in the

Motion for Stay would impact the trial court's grant of summary judgment in any way. Certainly the alleged "newly discovered evidence" would not require the extreme relief provided by Rule 60(b). Therefore, in the interest of justice, the Court should deny Appellant's Motion for Stay and should refuse to allow Appellant to seek Rule 60(b) relief either in this Court or in the trial court.

CONCLUSION

Therefore, for the foregoing reasons, Respondents respectfully request that the Court of Appeals deny Appellant's Motion for Stay.

June 5, 2020

BARNWELL WHALEY PATTERSON &
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By: 

M. Dawes Cooke, Jr.,
John W. Fletcher, Esq.

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Counsel for Respondents

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

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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 Motion for Stay on the above-referenced Appellant
by depositing a copy of it in the United States Mail, postage prepaid, on June 5th, 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.

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Counsel for Respondents



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REPLY TO SOUTH CAROLINA OFFICE

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

June 5, 2020

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:

Please find enclosed for filing the Respondents' Return to Reply Appellant's Motion for Stay. Pursuant to the March 20, 2020 Order and May 29, 2020 Amended Order of the South Carolina Supreme Court, we are sending only one unbound original to the Court for filing.

As indicated in the enclosed Proof of Service, we are also serving a copy of the Return on the Respondent.

Thank you for your assistance.

Sincerely,

John W. Fletcher

JWF/jgc
Enclosure

cc (w/enclosures) Steven Craig Molloy, *pro se*

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

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WHALEY**

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PATTERSON & HELMS LLC

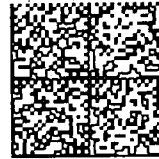
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