

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

APPEAL FROM BEAUFORT COUNTY
Judge Marvin Dukes – Master In Equity

Appeal Court No. 2018--002170

Lower Court Case No. 2016 CP 01071825

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

Plaintiffs

Of which Steven Craig Molloy is the

Appellant

v.

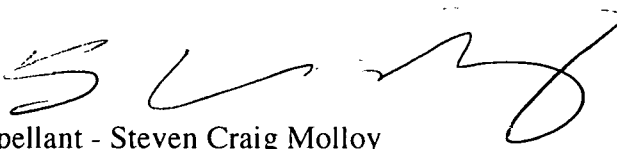
Beaufort County Government,
Gary Kubic, Individually, and as Beaufort County Administrator;
Josh Gruber, Individually and as former Beaufort County In-House Attorney;
Bryan Hill, Individually and as former Beaufort County Deputy Administrator;
Shannon Loper, Individually and as employee of the Beaufort 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,

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JUN 22 2020

SC Court of Appeals



Appellant - Steven Craig Molloy
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Attorney's for Respondents;

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and Beaufort County Attorneys'
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29901

RESPONSE TO RESPONDENTS RETURN MOTION OPPOSING STAY

And now comes the Appellant, S. Craig Molloy for Island Group Inc. dba Carolina Cleaning and / for its Shareholders and file this Response to the Respondents return Motion to Stay in this matter for file of 60-B.

INTRODUCTION

This is an appeal from November 27, 2018 order of the trial granting summary Judgement for the Respondents (Defendants) and the Appellant believes in err, and material facts still exist in this matter.

Appellant believes new information will show summary judgement was awarded in err and the Lower Court was duped by the Defendants.

The Defendants refused to show when the Lower Court ordered Depositions and refused to answer Interrogatories, otherwise some of these new facts would have been discovered during depositions and through interrogatories.

ARGUMENT

The Appellant believes allowing the “additional new relevant information” in this matter will show the Lower Court was duped by the Respondents.

The new information surfaced in June 10th & 17th, 2019 County Council meetings during this Appeal.

The Appellant believes the Respondents kept the new information from the Lower Court, had the Lower Court been privy to this information Summary Judgement for the Defendant would not / could have been awarded.

The Defendants public reports to Beaufort County Council by County Attorney, Tom Keaveny and County Procurement Director Dave Thomas and consist of statements and documents that contradict all of the Defendants sworn affidavits and statements in this matter.

During a march, 22,2018 lower Court hearing the Respondents failed to answer requests by the Lower Court regarding the BC DSN program make up, arrangement and operations which has become material to this matter as the BC DSN program is required to be a separate entity, thus proving the Defendants conspired with third party entity (BC DSN) to rig and price fix bids for the third party, BC DSN, which in fact happened and is evidenced in County Procurement Director Thomas's 2012 emails.

The June 2019 meetings occurred much later however show the defendants knew much earlier and present material facts that where the defendants admit and knew about the BC DSN arrangement and its operations dating back to 2011.

The June, 2019 public reports are material to this case and show the Defendants knew long before (in 2011) this matter was initiated that the Beaufort County Disabilities program (BC DSN) was and is required by statute to be a separate entity and apart from Beaufort County, and in fact, in their June,2019 reports the County Attorney, Tom Keaveny and Procurement Director Thomas discuss this Including their prior knowledge dating back to 2011.

Keaveny, is the same Tom Keaveny sat silent, said nothing to the Lower Court in the March 23,2018 hearings when the lower Court inquired about and Questioned "is BC DSN a part of the County or a separate entity".

Keaveny nor the other Attorneys did not respond to the Lower Court they said nothing and sat silent after the Lower Court questioned the Defendants Attorney's about the same details of the BC DSN program, in fact all three of the Defendants Attorneys present said nothing, until one asked to speak and quickly directed the Court to another subject.

The statute that provides oversight authority of the Disabilities program (BC DSN) requires (emphasis added) third party "independent oversight" of the BC DSN programs and this oversight is provided by the Governor of SC.

Oversight cannot remain with the same County (or entity) thus the County can't oversee and receive the funding and control the operations of said BC DSN programs, oversight must remain independent, like every Federally funded program.

[Example: The VA "Veterans Association" the County does not have control of the VA. or its funding and operations nor would this be allowed. And if a County secretly took over the VA programs and funding this would be a violation.]

Upon learning of these violations (in 2018) the SC Governor sent a letter of reprimand to Beaufort County Attorney, Tom Keaveny demanding Beaufort County replace the oversight authority back to Governor office.

(see exhibit, Governors letter)

In fact, the Respondents removed this oversight in 2011 through deception and secrecy, including their later arguments to this Court and the Lower Court.

(see exhibit 2011 ordinance change)

In their June, 10 & 17th 2019 public meetings, the Respondents, when questioned by County Council the County Attorney, Keaveny and County Procurement Director Thomas admit and discuss they knew the oversight of BC DSN had been removed in 2011, which are very different “conflicting” statements than the Respondents presented in their Sworn Affidavits to the Courts.

The DSN program must remain with an Independent oversight because of it’s receipt of Medicaid dollars, in 2011 Beaufort County removed this oversight and only once “caught” (in 2018) did they replace oversight back to the Governor.

For the record; it appears as of 2019 the oversight has been replaced back to the SC, Governor (on paper) ; however in actuality, the DSN Board authority has not been reestablished as the operator of the programs and County Council remains in control, and funds are deposited into the County’s general fund, so it appears the County remains in violation. The DSN Board remains “advisory only” and does not control the programming, funding to the / for the consumers as intended. All violations and a great disservice to the consumers (great potential for exploitation of the disabled persons in the DSN program) and in Beaufort County.

*In order to **receive / control** the funding from Medicaid, DSN must maintain its own bank account to receive and distribute the funds accordingly. DSN does not maintain its own bank accounts, it pays no bills, handles no money, and funds continue to be received and deposited into Beaufort County’s General Fund, another apparent violation.*

County Attorney, Keaveny and Defendant Dave Thomas failed to mention Or address these facts and the contradictions all of the Defendants sworn affidavits (emphasis added) to this Court, the Lower Court.

A. Respondents Claim that the Rule 60 (b) Motion is untimely fails.

Craig Molloy, “Appellant” requests this Honorable Court, for a Motion for a stay in this matter to file this 60 (b) Motion for Fraud upon the Court.

Craig Molloy as an owner and shareholder (with others) of the [S Corporation, Island Group Inc. dba Carolina Cleaning (est. 1993)] and Under the United States Constitution has a / the right to recover losses and damages for the Corporation, himself and the shareholders] that occurred by actions of others. Appellant has provided countless evidence of material facts that show Respondents are wholly responsible for losses to Appellant, and Appellant will pursue and exhaust his right to recover those losses.

According to the rules of civil procedure 60(b); Mistakes; Inadvertence; Excusable Neglect allows for filing a 60 (b) Motion, such as this and based on; Newly Discovered Evidence; Fraud, etc. 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.**

The 60 (b) Motion was made within the time allowed time of one year (from June 17, 2019) after the new information was discovered, and the request to stay for file of 60 (b) is made within one year of discovery of the fraud upon the Court, the Motion was filed timely.

A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to

set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

This Motion is filed within one year of the new discovered information [June 10 and 17 th 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.

[Robinson v. Estate of Harris - Supreme Court of South Carolina. August 16, 2010 388 S.C. 630 (Relief from judgment is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action)].

Based upon the fraud perpetrated on the court by the Respondents “Defendants”, the court granted Summary Judgment, thinking that BC DSN was just another arm of the County, and it is not and cannot be, therefore the Lower Court never saw the need to compel the other side to answer interrogatories or attend Depositions.

The Lower Court, believing that BC DSN was just another county department did not fully consider all the issues or think that there were any disputed facts.

If one understands that BC DSN must be an independent vendor/agency (and cannot be one with a Government entity) and understands the facts about the Respondents bid-rigging, collusion with regard to the Appellants 2010 Contract with Beaufort County, and the County dismantling his 2010 awarded contract by way of awarding the newly formed / questionable DSN (cleaning entity) separate contracts that included and later added parts by removing from the Appellants 2010 work, under this light, this case looks very different.

Thus, a stay for file if 60 (b) is requested.

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.

This is why in the June 10 & 17th, 2019 Council meetings where County Procurement Director, Dave Thomas (Respondent) and County Attorney, Tom Keaveny stated that and described BC DSN as an (is / a) “independent vendor/agency” which is so important and material to this matter.

All the facts are different according to the Respondents “Defendants” statements in June 10 and 17th. 2019 Vs. their pleadings and arguments.

From the start of the lawsuit, the Respondents, and their Counsel maintained (in error, and went all-in, and kept valuable information, we now know they previously knew about, from the Lower Court) and claimed that BC DSN was a department of Beaufort County. Because of that position, Respondents refused to answer Interrogatories and/or show up for scheduled depositions.

BC DSN cannot be “a part of” or “a department of Beaufort County” and “receive” the or “take control of” the funding or the DSN Board, which Beaufort County, in fact did. Further, clearly, the Lower Court believed the Respondents “Defendants” and therefore thought that compelling any discovery was unnecessary and ended this case before it ever could start.

B. Respondents Claims the Appellant did not set forth proper Potential Basis for relief Under Rule 60 (b) – The Respondents claim fails.

Appellant believes the Motion for Stay is timely and was submitted within the required one year of discovery of new information that is relative and relates to the fraud on the Court.

Appellants main argument partially relates to whether Beaufort County DSN was a County Department or not.

The lower Court questioned if Beaufort County DSN was a County department or not, however, the Lower Court just took the Respondents word for it in without considering the other proof and supporting evidence and facts provided by the Appellant to the Lower Court that DSN cannot be a part of or one with a County Government, two examples;

- 1.) DSN and Disability programs that receive Medicaid funding (which BC DSN does) cannot be a part of or provide oversight within the same County or Government entity.

This standard and guideline for all Federal funding, one cannot receive federal funding and also provide their own oversight of the use and direction of said funding. It's a very common position taken by the Federal Government and almost all lenders, including private.

- 2.) A third party must exist for separation, which in this case is the SC Governors' office is the required third party "statutory requirement" entity to oversee the Funding that originates from Medicaid.

In 2011, Beaufort County in fact, removed this oversight secretly and without authority and kept this fact from this Court and the Lower Court.

This standard in lending that is (almost always) and very common where outside funding is provided to entities including and especially where the Federal Government involved.

- 3.) A requirement of this funding is a separate bank account and accounting for the funds is required for such programs, BC DSN does not handle or

receive or pay any bills and has no bank account for this funding.

Upon taking control, Beaufort County handles this money for BC DSN

In their General fund, another violation.

And so, BC DSN is a separate entity, as required, and Beaufort County after taking control of BC DSN secretly without authority, awarded BC DSN bids in 2012 and 2014 using collusion, conspiracy, bid rigging and price fixing the 2012 & 2014 RFP's and bids in order for BC DSN to win, then Beaufort County and BC DSN (as separate) have committed various procurement Violations and interference with contractual relations violations and the Proof is evidenced in the Beaufort County Procurement Directors, Dave Thomas' 2012 internal emails with the other respondents.

In 2012 and after the County rigged these bids for BC DSN to win the County Began to "interfere with the 2010 contract awarded to Appellant" by removing Facilities from the Appellants 2010 already awarded contract "interference with contractual relations" and simply giving the work to the newly formed BC DSN entity. Previously awarded Appellants facilities that were under a separate contract awarded to his company in 2010.

The Respondents have never addressed the material facts and all Appellants claims against of "interference with contractual relations" and the procurement violations and the Lower Court erred in not compelling them to do so.

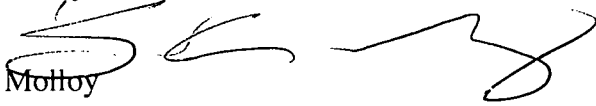
CONCLUSION

The Appellant reminds this Court the Respondents Attorney's and Council has requested a demand from the Appellant, and Appellant has obliged and presented a demand in writing and continues to wait for the Respondents response to demand.

Appellant points attention that (emphasis added) that as this matter has continued only more additional (emphasis added) evidence against the Respondents continues to surface, one example, is the Defendants own statements, once questioned by higher authority (Council) which revealed conflicting (emphasis added) statements discrediting all of the Defendants arguments including their sworn statements in this matter, hence the request to add additional information. The Appellants prays this Honorable Court will not dismiss (during a National Government mandated shut down) or retract and allow for a stay of this matter for file of a 60 (b) or award judgement to Appellant for the fraud upon the Court.

Respectfully submitted,

Craig Molloy



4/15/20

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Appellant

**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

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Of which Steven Craig Molloy is the

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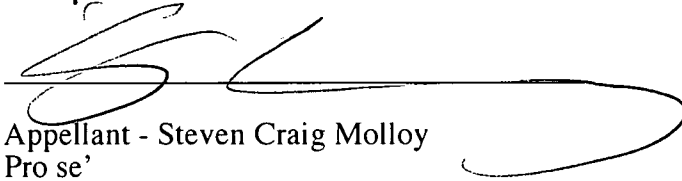
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PROOF OF SERVICE

I certify that I have served this Response to the Respondents Motion for Stay on Beaufort County and the 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

6/15 2020



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