

FORM 18

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA IN THE SUPREME
COURT APPEAL FROM BEAUFORT COUNTY Master in Equity

Marvin H. Dukes III, Lower Court Judge

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

Appellate Case No. 2018-002170

Steven Craig Molloy and Island Group Inc dba Carolina Cleaning and the Share-
holders

Petitioner "Appellant"

PETITION FOR WRIT OF CERTIORARI

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RECEIVED
JUL 02 2020
S.C. SUPREME COURT

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INDEX

Certificate of Counsel1
Questions Presented.....2
Statement of the Case.....3
Argument.....4
Conclusion.....5

1. **CERTIFICATE** Petitioner certifies that the matter was dismissed by the Court of Appeals On March, 30, 2020. And on April 8, 2020 Appellant filed “Petition for Rehearing” And on May, 25, 2020 Appellant filed “Motion for Stay to file 60 (b)” and on June 1, 2020 Appellant received a second dismissal and letter and on June 5, 2020 Appellant received Respondents opposition to Appellants Motion to Stay for 60 (b) Continuing this matter. Appeals dismissed this matter on March, 30, 2002 without any hearing and without any ruling on any material fact in question and during the Government mandated national shutdown which included the SC Courts were also closed.

For the reasons stated here and below Appellant requests this Honorable Court review this matter, requests rehearing, and / or continue this matter or Judgment ruled for the Appellant for the

Respondents willful avoidance and fraud upon the Courts

outlined in the Motion to stay for file of 60 (b).

1. QUESTIONS PRESENTED

- a. Did the Court of Appeals err in dismissing this matter stating the petitioner "Appellant" failed to timely submit a revised ROA?

2. STATEMENT OF THE CASE

Craig Molloy, "Petitioner" and "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. This matter involves violations of federal law where this Honorable Court takes note and Respondents have never addressed (avoided) material facts directly related to accepting Federal monies for the Bc DSN program where Respondents took control (secretly) of the Federally funded BC DSN program by way of a (secret) ordinance change. The 2011 ordinance change allowed the respondents to "control" the BC DSN Board and programs and funding, which is a direct conflict to the requirements for participation in the DSN programs, a third party

independent must remain in an oversight position, Respondents without question violated the mandatory rules and statutes related and have avoided (refused / avoided all depositions and interrogatories to explain their actions.

The 2012 inter office County emails [Exhibits] show: [1] conversations between County employee's 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 (6/10 & 17, 2019) 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. Petitioner seeks a writ of certiorari to review the Appeals Court decision to dismiss.

3. ARGUMENT

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

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 (2012 County emails) "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 2012 internal County emails between Dave Thomas and fellow employees] [emphasis added] [5] 2012 inter office email Correspondence: Thomas, Roseneau, Holland, DeMont and others 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 [Contractor, filed, Not done by Thomas], 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 or the appeals 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 BC DSN “department” to dictate the job specifications for their own 2012 RFP / bid after viewing and discussing with Procurement Director, Thomas the other bidders submissions. 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 (Appellant) (see 2012 internal County emails) 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 of Beaufort County employees who worked against the Appellant are remarkably similar to the ones they have employed in their pleadings to both the lower court and this honorable Court.

Because of the Respondents continued and recent public statements / official reports to Council the Appellant believes and so filed a Motion to file a 60 (b) Motion for Fraud upon the Court.

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; the 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 motion was made within the reasonable and allowed time (one year) after the new information was discovered. 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 therefore 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

according to Federal Guidelines (cannot be one with or overseen, by a or the same Government entity) and understands the facts about the Respondents bid-rigging, collusion etc. This case looks a lot different. 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 the June 10 and 17 th, 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 17 th, 2019 Vs. their pleadings and arguments.

From the start of the lawsuit, the Respondents, and their Counsel maintained (in error, and went all-in) to claim 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”
(an error) and therefore the Lower Court thought that compelling any discovery
was unnecessary and ended this case before it ever could start.

CONCLUSION

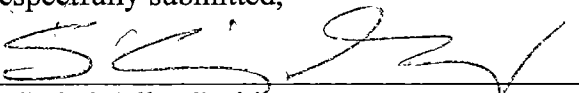
Upon the realization of violations and the newly discovered information that
Respondents willfully kept from the Courts showing contradictions of their sworn
statements, documents and subsequent actions, the newly elected Beaufort County
Council members and County Attorney, Inglese requested a demand from
Appellant to settle this matter, the Appellant has obliged and is waits a response
from Respondents. Appellant prays this matter continue or award Judgement to
Appellant.

In addition, Respondents “Defendants”, contradictions of their own internal
Statements and their (internal and external) lawyers arguments in the
(March 23, 2018) lower court hearing.

For the reasons stated, petitioner asks the Court to grant the petition for a writ of
certiorari.

June, 29,2020

Respectfully submitted,



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