BRIEF OF APPELLANT
MOTION FOR STAY
(SECOND (2nd) REQUEST FOR MOTION TO STAY FOR FILE OF 60 b)

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

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

Of which Steven Craig Molloy is the
(for all of the shareholders) — 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,

Sept 3, August, _____, 2020

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MOTION FOR STAY
(SECOND REQUEST FOR MOTION TO STAY FOR FILE OF 60 b)

INTRODUCTION

Craig Molloy, "Appellant" including Island Group Inc. dba Carolina Cleaning and its shareholders herein, moves this Honorable Court, for a Motion for second request to stay of this matter to file this 60 (b) Motion for Fraud upon the Court. Since this matter has been re-instated and 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.

This motion is made within the reasonable allowed time (one year) after the

new information was discovered and continues to be discovered and

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 was first filed within one year of the new discovered information [June 10 and 17 th 2019] public statements to Council in public meetings where Respondent "Defendants" Dave Thomas "accompanied by the County's Counsel Tom Keaveny" gave official reports directly **conflicting** Thomas's own Previously submitted sworn statements and the other Defendants sworn statements, and statements by their attorney' on behalf of the Defendants to the Lower Court.

This second Motion for Stay is respectfully submitted to this Court to seek justice and fact finding where the Defendants have **conflicted** their own sworn testimony again and again in this matter. The Respondents 'Defendants" in their own

internal documents, and now, also in external official reports conflict their previous sworn statement regarding BC DSN and the consumers as employees or contractors or vendors and statements about the BC DSN Board are a central issue in this matter that the Respondents continue to avoid.

The relationship between the County and DSN and the consumers is paramount to this matter, as to whether the County employed the DSN consumers directly or as third party contractors or vendors, thus far the Respondents explanations of this relationship, all conflict each other. Throughout this matter, the Respondents have referred to the disabled consumers as "employees" and "vendors" and "contractors" and contracted employees - no such employment status exists.

In order for truth finding to begin, a determination must take place as to the Respondents authority "over" and relationship "to" the BC DSN Board, program and the consumers. The "County arranged" contracts to be "awarded" to the BC DSN entity, where waivers had been issued to the BC DSN Board, not to Beaufort County.

The Respondents hired BC DSN consumers to work, the County has testified they paid the consumers, although they do not know how they were paid, nor can they explain under what type employment status, and later, in 2012 and 2014, the County conspired with BC DSN to award contracts, public bids and rfp's, and then, later dismantled other previously awarded (in 2010) separate contracts

awarded to the Plaintiff, only to give the work to the BC DSN program.

There are material facts yet to be discovered that relate to the contract arrangements and the relationship between Beaufort County and the BC DSN Board and program and their consumers.

This Court re-instated this Appeal on 8/12/2020 and the Plaintiff prays this court agrees to the Motion to stay this appeal for file of 60 b for discovery of the apparent frauds committed on the 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 both courts by the Respondents "Defendants", the Lower 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 "a requirement for summary judgement" **(emphasis added).** 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.

The relationship between BC DSN, the consumers and the County are direct Material facts in this case, and directly affect this matter as to the County's ability to award contracts to one's own department including that departments

participation in the entire procurement process if, in fact BC DSN was / is, a County department, why then, would the County be bidding officially through the entire process on their own work, when there was no need?

And, if not a County Department, then County clearly violating third party, collusion and anti-competitive practices to award these contracts to BC DSN. Either way anti-competitive practices are strictly forbidden in all contracting, including intergovernmental arrangements.

If one understands that BC DSN must be an independent vendor/agency and cannot be one with a Government entity, and one understands the facts about what type agency / corporation can access and receive and use the federal waivers for payment of under minimum wages this case looks very different.

The waivers are only provided to "service providers" i.e. providers of professional services; "not to Government agencies or County's" to pay under minimum wages to disabled consumers so the County can benefit from lower cost labor in contracting.

Further, the waivers are not (ever) for use by any entity not in the business specified for the intended use of the waivers. The "Respondents" are not professional service providers for disabled consumers in any way.

Further, the waivers are never allowed to be used by any entity for any monetary gain, or savings from competitive bidding of any kind.

Throughout this matter, the Respondents claim they used the waivers to save

money. It is strictly forbidden for the waivers to be used to gain an edge in procurement, contracting, open market RFP's or competitive bidding or to give an entity a competitive advantage or "leg up" over others (public or private) bidding any contracts, which is, in fact, what the Respondents did in 2012 and 2014 and have testified to.

The Respondents used the waivers to award "BC DSN" bids by allowing them to lower their expenses by paying under minimum wage, to the consumers "their workers" on the contracts.

These benefits were not offered to the other bidders in the 2012 and 2014 RFP's, only BC DSN. The Respondent, Dave Thomas, County Procurement Director, testified this was to "save money", further stating "no other bidder / contractor could possibly match or beat the pricing" that BC DSN "working with the County put forward, thus using the "under minimum wage" disabled consumer as "cheap" labor for these bids.

[NOTE: this is EXPLOITATION of disabled consumers in the care of Beaufort County, by Beaufort County]. (***emphasis added***).

The Respondents continued their intent, and in their own words repeat these claims outside the Courts, in televised, official reports to Council in June 10th and 17th, 2019 Council meetings. The Respondents conflict their earlier sworn statements and are directly relevant and are material facts in this matter.

The bid rigging and price fixing occurred after the Respondents illicitly gained

control of the DSN Board and program in 2011 by changing the ordinance, without authority and not allowed, that they thought gave the County access, and authority over DSN, the Board and program, these violations are noted in the letter from the Governors' office to the Respondents, Attorney Tom Keaveny, and echoed by the SC Attorney General's office.

This was the County's intent all along, use waivers issued to the DSN Board, (not issued to Beaufort County Government) to take control of DSN and later award DSN / "themselves" bids (through conspiracy, bid rigging and fixing that is reimbursed at significant upcharges where the County has gained control (without authority) of the DSN Board and program and it's funding.

Respondents, showed no concern for the disabled consumers, contracts they previously signed with the other vendors, the law, statutes or codes.

In fact, the County could have waited a couple of years when the Plaintiff's contract ran out, then give all of the work to BC DSN, if it's a department, and not contract any facilities to outside firms, instead they, for some reason, wanted something from bids awarded to DSN, in fact by the Respondents state "they didn't have to bid in the first place", but they did bid and this along with the Illicit moves created great losses for the Plaintiff.

The respondents developed a scheme to under-mind the procurement process,

rig bids for a known separate entity (BC DSN) that didn't meet a single qualification as a bidder, and then, dismantled the Plaintiff's previously awarded contracts where only one result would be gained for the County, increased intake of funds to the County, and savings from cheap labor on the backs of disabled consumers. This Court can make this right by granting a stay to file a 60 b (and ordering the depositions of the respondents) "a supposed requirement of summary judgement" also overlooked and not compelled by the lower court.

The BC DSN program has no bank account, funds are deposited into the County general fund, another violation of the use and separation required to use waivers and operate programs such as BC DSN.

The Respondents testify throughout that they awarded bids to BC DSN for their own monetary gain through savings, this was done through anti-competitive practices which are strictly forbidden in every statute and code presented by the Respondents.

The Respondents reference codes related to intergovernmental agreements, and shy away from the areas in the codes relating to anti-competitive practices that are forbidden in intergovernmental agreements also.

Of course the Respondents can do business with other Government entities, however, every statute referenced by the Respondents disallows the use of anti-competitive practices in procurement, rfp's, contracting, including

where federal waivers are involved. (***emphasis added***) No public or private agency may use anti-competitive practices of any kind in any procurement bid rigging, price fixing and interfere with contracts to gain access to the waivers, including third party contractors or in-house agreements.

It is undisputed, in their 2012 emails that the Respondents used anti-competitive practices to award bids to BC DSN and then, interfere with the Plaintiff's awarded contracts, and knew what they were doing.

In the 2012 emails, Procurement Director, Thomas tells all parties copied to "be careful", acknowledging the specifications in the RFP Thomas made only for BC DSN, specifically naming the Plaintiff as one to keep his changes from.

The Plaintiff prays this Honorable Court allow a stay for file 60 b and preserve the Plaintiffs' claims of a.) interference with contractual relations, b.) fraudulent intent and c.) procurement violations, that were overlooked by the lower court for the Respondents fraud upon the Court.

This complaint was filed timely and should not be time barred. (***emphasis added).***

The Plaintiffs' could not have known they had an action until receipt of the FOIA in 9/2015, which shows the Respondents conversations in internal emails And only after this did the Plaintiff know a legal remedy was possible.

The Respondents committed fraud on the Courts regarding this area of the

complaint. The Respondents claim the Plaintiff knew on the exact day 6/31/2014, his company was let go, that this is an absolute impossibility, the Plaintiff could not have possibly known until all the information was gathered and reviewed thoroughly with proper legal Counsel.

If one understands the material facts about this, this case looks a lot different. It appears from the lower court order the Court believed that BC DSN was a "complete" department of the County. Therefore, the Lower Court Judge just found all of Appellant (Plaintiff) arguments baseless, and they are not, And that bids were not necessary and that the County could choose to do the cleaning in-house at any time.

That is not true, and it cannot be true if BC DSN received the waivers and funding, which it did.

All of the Appellants causes have not been addressed by the Court for the Respondents fraud on the court. (***emphasis added***)

The Respondents signed previous contracts in 2010 with the Plaintiff for many facilities, and the Lower Court failed to view or rule on where the evidence shows bid rigging and price fixing occurred, which then led to the interference with the Appellants contracts. Appellant properly protested to Procurement Director Thomas, who in his position is responsible to accept And address protests. However, and unknown to the Appellant at the time,

Thomas was involved in (later found to be the ring leader) of the anti-competitive practices and working behind the appellants back to rig bids and interfere with the Appellants 2010 contract. Appellant did not know this at the time nor did he receive the evidence confirming Thomas' illicit actions until 9/2015, this suit was filed 8/2016 and within the two year statute. Thomas, as the Procurement Director is the one to accept and process protests and who the Appellant filed protest with. The areas of this matter relating to "interference with contractual relations" has not been addressed by the Courts. The Lower Court failed to view the many 2012 internal emails of County Procurement Director, Dave Thomas and DSN Director, Mitzi Wagner (and others) where Thomas arranged / conspired to award bids for BC DSN, (fraudulent intent) these are Anti-competitive practices and strictly forbidden in all contracting, RFP's, procurement procedures and forbidden in every statute the Respondents have put forth. In fact, the only areas of the statutes put forth by the Respondents relate to the areas where "a County can do business with another County" i.e. "intergovernmental agreements" when quoting these statutes, the Respondents leave out all areas of the statutes that forbid anti-competitive practices.

Anti-competitive practices are not allowed and strictly forbidden in all and every local, state, federal procurement and competitive bidding.

Anti-competitive practices under-mines the entire basis, intent and purpose of the competitive bidding process and are never allowed, or you simply don't have a procurement process.

Much of the interference with contractual relations is evidenced in Thomas' 2012 internal email exchanges, where Thomas' discusses dismantling the Plaintiff's 2010 contract for their plan. Thomas acknowledges his discretions by warning others to "be careful" in his 2012 emails.

This appears to be fraud and would extend if not remove the statutes.

These were overlooked by the lower Court for the Respondents fraud when the lower court questioned the viability, make-up and requirements of the BC DSN program, the Respondents were not truthful with the Lower Court.

These additional material facts are relevant and why the new information presented by Thomas and Keaveny in June 10th and 17th, 2019 Council meetings where they state BC DSN is a "independent vendor/agency" and the County does not "pay the consumers". These statements conflict their previous sworn statements and are material to this matter.

All the facts are different according to the Respondents statements in the June 10 and 17 th, 2019 meetings versus their sworn statements.

Thomas appears to not know the difference between an "employee vs. a

contractor" and how they are paid, simple questions for the Beaufort County, procurement director.

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 show for scheduled depositions.

BC DSN cannot be "a part of" or "a department of Beaufort County" and Receive and take control of the BC DSN Board, programming and funding or the and also benefit from the waivers, which Beaufort County, in fact did.

Thus, the Lower Court believed the Respondents " Defendants" (in error) and therefore thought, that compelling depositions for the Respondents was unnecessary and ended this case before it ever could start.

The lower courts have not heard or considered the evidence related to the Interference with contractual relations, big rigging, price fixing, procurement violations and anti-competitive practices by the Respondents, thus the Plaintiff requests these be preserved and / or grant this Motion to stay for file 60 (b).

CONCLUSION

Because of the aforementioned Lower Court ruling the evidence that supports and shows the appearance of clear fraud by the Defendants on the courts, and because of this fraud, many material issues have not been addressed by the Courts, thus, the Appellant requests this Honorable Court to stay this matter under rule of 60 (b).

Respectfully submitted, ~~August~~ Sept 3, _____, 2020

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AUTHORITIES

I. [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].

II. [Chewning v. Ford Motor Co. Eyeglasses – Supreme Court of South Carolina. April 14, 2003354 S.C. 72579 S.E.2d 605.]

FORM 7
PROOF OF SERVICE
(MOTION TO STAY (2nd) FOR FILE OF 60 (b))

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
(for all of the shareholders)

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

PROOF OF SERVICE

I certify that I have served this Second Motion to Stay for File of 60 (b) to the Defendants, Beaufort County, Attorneys' on record by depositing a copy in the US Mail on the date listed here to the Attorneys' of record at Barnwell Whaley Attorney's PO Box H, Charleston, SC 29402 and Beaufort County Attorney office PO Box 1128, Beaufort County, SC. 29901.

Sept. 3
August. ___, 2020

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